

STATE OF NEW YORK

2178

2023-2024 Regular Sessions

IN ASSEMBLY

January 23, 2023

Introduced by M. of A. DINOWITZ, STECK -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to requiring immunization against COVID-19

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 2164 of the public health law, as amended by chapter 401 of the laws of 2015, subdivision 6 as amended by chapter 35 of the laws of 2019, is amended to read as follows:

2 § 2164. Definitions; immunization against poliomyelitis, mumps, measles, diphtheria, rubella, varicella, Haemophilus influenzae type b (Hib), pertussis, tetanus, pneumococcal disease, meningococcal disease, [and] hepatitis B, and COVID-19. 1. As used in this section, unless the context requires otherwise:

3 a. The term "school" means and includes any public, private or parochial child caring center, day nursery, day care agency, nursery school, kindergarten, elementary, intermediate or secondary school.

4 b. The term "child" shall mean and include any person between the ages of two months and eighteen years.

5 c. The term "person in parental relation to a child" shall mean and include his father or mother, by birth or adoption, his legally appointed guardian, or his custodian. A person shall be regarded as the custodian of a child if he has assumed the charge and care of the child because the parents or legally appointed guardian of the minor have died, are imprisoned, are mentally ill, or have been committed to an institution, or because they have abandoned or deserted such child or are living outside the state or their whereabouts are unknown, or have designated the person pursuant to title fifteen-A of article five of the general obligations law as a person in parental relation to the child.

6 d. The term "health practitioner" shall mean any person authorized by law to administer an immunization.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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2. a. Every person in parental relation to a child in this state shall have administered to such child an adequate dose or doses of an immunizing agent against poliomyelitis, mumps, measles, diphtheria, rubella, varicella, Haemophilus influenzae type b (Hib), pertussis, tetanus, pneumococcal disease, [and] hepatitis B, and COVID-19, which meets the standards approved by the United States public health service for such biological products, and which is approved by the department under such conditions as may be specified by the public health and health planning council.

b. Every person in parental relation to a child in this state born on or after January first, nineteen hundred ninety-four and entering sixth grade or a comparable age level special education program with an unassigned grade on or after September first, two thousand seven, shall have administered to such child a booster immunization containing diphtheria and tetanus toxoids, and an acellular pertussis vaccine, which meets the standards approved by the United States public health service for such biological products, and which is approved by the department under such conditions as may be specified by the public health and health planning council.

c. Every person in parental relation to a child in this state entering or having entered seventh grade and twelfth grade or a comparable age level special education program with an unassigned grade on or after September first, two thousand sixteen, shall have administered to such child an adequate dose or doses of immunizing agents against meningococcal disease as recommended by the advisory committee on immunization practices of the centers for disease control and prevention, which meets the standards approved by the United States public health service for such biological products, and which is approved by the department under such conditions as may be specified by the public health and health planning council.

3. The person in parental relation to any such child who has not previously received such immunization shall present the child to a health practitioner and request such health practitioner to administer the necessary immunization against poliomyelitis, mumps, measles, diphtheria, Haemophilus influenzae type b (Hib), rubella, varicella, pertussis, tetanus, pneumococcal disease, meningococcal disease, [and] hepatitis B, and COVID-19, as provided in subdivision two of this section.

4. If any person in parental relation to such child is unable to pay for the services of a private health practitioner, such person shall present such child to the health officer of the county in which the child resides, who shall then administer the immunizing agent without charge.

5. The health practitioner who administers such immunizing agent against poliomyelitis, mumps, measles, diphtheria, Haemophilus influenzae type b (Hib), rubella, varicella, pertussis, tetanus, pneumococcal disease, meningococcal disease, [and] hepatitis B, and COVID-19 to any such child shall give a certificate of such immunization to the person in parental relation to such child.

6. In the event that a person in parental relation to a child makes application for admission of such child to a school or has a child attending school and there exists no certificate or other acceptable evidence of the child's immunization against poliomyelitis, mumps, measles, diphtheria, rubella, varicella, hepatitis B, pertussis, tetanus, COVID-19, and, where applicable, Haemophilus influenzae type b (Hib), meningococcal disease, and pneumococcal disease, the principal,

1 teacher, owner or person in charge of the school shall inform such
2 person of the necessity to have the child immunized, that such immuniza-
3 tion may be administered by any health practitioner, or that the child
4 may be immunized without charge by the health officer in the county
5 where the child resides, if such person executes a consent therefor. In
6 the event that such person does not wish to select a health practitioner
7 to administer the immunization, he or she shall be provided with a form
8 which shall give notice that as a prerequisite to processing the appli-
9 cation for admission to, or for continued attendance at, the school such
10 person shall state a valid reason for withholding consent or consent
11 shall be given for immunization to be administered by a health officer
12 in the public employ, or by a school physician or nurse. The form shall
13 provide for the execution of a consent by such person and it shall also
14 state that such person need not execute such consent if subdivision
15 eight of this section applies to such child.

16 7. (a) No principal, teacher, owner or person in charge of a school
17 shall permit any child to be admitted to such school, or to attend such
18 school, in excess of fourteen days, without the certificate provided for
19 in subdivision five of this section or some other acceptable evidence of
20 the child's immunization against poliomyelitis, mumps, measles, diphthe-
21 ria, rubella, varicella, hepatitis B, pertussis, tetanus, COVID-19 and,
22 where applicable, Haemophilus influenzae type b (Hib), meningococcal
23 disease, and pneumococcal disease; provided, however, such fourteen day
24 period may be extended to not more than thirty days for an individual
25 student by the appropriate principal, teacher, owner or other person in
26 charge where such student is transferring from out-of-state or from
27 another country and can show a good faith effort to get the necessary
28 certification or other evidence of immunization.

29 (b) A parent, a guardian or any other person in parental relationship
30 to a child denied school entrance or attendance may appeal by petition
31 to the commissioner of education in accordance with the provisions of
32 section three hundred ten of the education law.

33 8. If any physician licensed to practice medicine in this state certi-
34 fies that such immunization may be detrimental to a child's health, the
35 requirements of this section shall be inapplicable until such immuniza-
36 tion is found no longer to be detrimental to the child's health.

37 8-a. Whenever a child has been refused admission to, or continued
38 attendance at, a school as provided for in subdivision seven of this
39 section because there exists no certificate provided for in subdivision
40 five of this section or other acceptable evidence of the child's immuni-
41 zation against poliomyelitis, mumps, measles, diphtheria, rubella, vari-
42 cella, hepatitis B, pertussis, tetanus, COVID-19, and, where applicable,
43 Haemophilus influenzae type b (Hib), meningococcal disease, and pneumo-
44 coccal disease, the principal, teacher, owner or person in charge of the
45 school shall:

46 a. forward a report of such exclusion and the name and address of such
47 child to the local health authority and to the person in parental
48 relation to the child together with a notification of the responsibility
49 of such person under subdivision two of this section and a form of
50 consent as prescribed by regulation of the commissioner, and

51 b. provide, with the cooperation of the appropriate local health
52 authority, for a time and place at which an immunizing agent or agents
53 shall be administered, as required by subdivision two of this section,
54 to a child for whom a consent has been obtained. Upon failure of a local
55 health authority to cooperate in arranging for a time and place at which
56 an immunizing agent or agents shall be administered as required by

1 subdivision two of this section, the commissioner shall arrange for such
2 administration and may recover the cost thereof from the amount of state
3 aid to which the local health authority would otherwise be entitled.

4 10. The commissioner may adopt and amend rules and regulations to
5 effectuate the provisions and purposes of this section.

6 11. Every school shall annually provide the commissioner, on forms
7 provided by the commissioner, a summary regarding compliance with the
8 provisions of this section.

9 § 2. Paragraph (a) of subdivision 1 of section 613 of the public
10 health law, as amended by section 24 of part E of chapter 56 of the laws
11 of 2013, is amended to read as follows:

12 (a) The commissioner shall develop and supervise the execution of a
13 program of immunization, surveillance and testing, to raise to the high-
14 est reasonable level the immunity of the children of the state against
15 communicable diseases including, but not limited to, influenza, poliomy-
16 elitis, measles, mumps, rubella, haemophilus influenzae type b (Hib),
17 diphtheria, pertussis, tetanus, **COVID-19**, varicella, hepatitis B, pneu-
18 mococcal disease, and the immunity of adults of the state against
19 diseases identified by the commissioner, including but not limited to
20 influenza, smallpox, hepatitis and such other diseases as the commis-
21 sioner may designate through regulation. Municipalities in the state
22 shall maintain local programs of immunization to raise the immunity of
23 the children and adults of each municipality to the highest reasonable
24 level, in accordance with an application for state aid submitted by the
25 municipality and approved by the commissioner. Such programs shall
26 include assurance of provision of vaccine, serological testing of indi-
27 viduals and educational efforts to inform health care providers and
28 target populations or their parents, if they are minors, of the facts
29 relative to these diseases and immunizations to prevent their occur-
30 rence.

31 § 4. This act shall take effect on the thirtieth day after the date
32 upon which an immunizing agent against COVID-19 for which the United
33 States Food and Drug Administration has issued a biologics license is
34 recommended by majority vote of the advisory committee on immunization
35 practices of the Centers for Disease Control and Prevention; provided
36 that the commissioner of health shall notify the legislative bill draft-
37 ing commission upon the occurrence of both such approval and such recom-
38 mendation in order that the commission may maintain an accurate and
39 timely effective data base of the official text of the laws of the state
40 of New York in furtherance of effectuating the provisions of section 44
41 of the legislative law and section 70-b of the public officers law.
42 Effective immediately the addition, amendment and/or repeal of any rule
43 or regulation necessary for the implementation of this act on its effec-
44 tive date are authorized to be made and completed on or before such
45 date.