

4228

2013-2014 Regular Sessions

I N S E N A T E

March 15, 2013

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to parental involvement in the distribution of emergency contraception in the public schools

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative intent. The legislature hereby finds and
2 declares that parents of minor children should be involved in their
3 child's healthcare, especially when such healthcare involves sensitive
4 matters that may impact their child's physical and emotional wellbeing
5 for the remainder of their life. Healthcare services of this nature
6 include the distribution of emergency contraception.
7 The courts of this state have long recognized the freedom of parents
8 to direct and control the education and upbringing of their children.
9 *PIERCE V. SOCIETY OF SISTERS*, 268 U.S. 510 (1925). New York courts have
10 determined this right to be "fundamental," and have stated that public
11 schools are "prohibited from dispensing condoms to unemancipated, minor
12 students without the prior consent of their parents or guardians, or
13 without an opt-out provision..." *ALFONSO V. FERNANDEZ*, 195 A.D. 2D 46,
14 60.
15 The courts have determined that prior consent (an "opt-in" provision)
16 is appropriate under the constitution of this state, and the legislature
17 agrees, finding such a requirement best preserves the interests of
18 parental involvement, provides for fully informed consent, and continues
19 to allow for access to healthcare services by children in public
20 schools.
21 Further, the legislature finds that any consent made by parents on
22 behalf of their minor child or any consent a child over the age of eigh-
23 teen provides must be fully and adequately informed. Therefore, the
24 legislature affirms that all information about the risks, side-effects

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

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1 and potential contraindications of the use of emergency contraception
2 must be provided with any "opt-in" provision.

3 S 2. The education law is amended by adding a new section 907 to read
4 as follows:

5 S 907. CONSENT TO THE PRESCRIPTION AND DISTRIBUTION OF EMERGENCY
6 CONTRACEPTION. 1. NOTWITHSTANDING ANY CONTRARY PROVISION OF LAW, THE
7 CONSENT OF A PARENT OR GUARDIAN MUST BE OBTAINED FOR THE PRESCRIPTION
8 AND DISTRIBUTION OF EMERGENCY CONTRACEPTION, AS DEFINED IN PARAGRAPH (A)
9 OF SUBDIVISION ONE OF SECTION TWO THOUSAND EIGHT HUNDRED FIVE-P OF THE
10 PUBLIC HEALTH LAW, BY THE DIRECTOR OF SCHOOL HEALTH SERVICES OF EACH
11 SCHOOL DISTRICT IN THIS STATE THAT IS REQUIRED TO PROVIDE SCHOOL HEALTH
12 SERVICES, OR THE HEALTH DEPARTMENT OR AGENCY OTHERWISE RESPONSIBLE TO
13 PROVIDE SUCH SERVICES, OR THE HEALTH CARE ADMINISTRATOR OF ANY PUBLIC
14 SCHOOL IN THIS STATE.

15 2. THE DIRECTOR OF SCHOOL HEALTH SERVICES OF EACH SCHOOL DISTRICT IN
16 THIS STATE THAT IS REQUIRED TO PROVIDE SCHOOL HEALTH SERVICES, OR THE
17 HEALTH DEPARTMENT OR AGENCY OTHERWISE RESPONSIBLE TO PROVIDE SUCH
18 SERVICES, OR THE HEALTH CARE ADMINISTRATOR OF ANY PUBLIC SCHOOL IN THIS
19 STATE SHALL MAIL A LETTER, IN ENGLISH AND SPANISH, TO THE PARENT OR
20 GUARDIAN OF ANY CHILD YET TO REACH THE AGE OF EIGHTEEN ON THE FIRST DAY
21 THE SCHOOL YEAR COMMENCES IN THE YEAR FOLLOWING THE EFFECTIVE DATE OF
22 THIS SECTION. SUCH LETTER MUST CONTAIN THE FOLLOWING PROVISIONS:

23 A. A TITLE IN BOLD LETTERING, AT THE TOP OF THE LETTER FOLLOWING THE
24 LETTERHEAD BUT BEFORE THE SALUTATION, OF THE SAME SIZE AS THE TEXT OF
25 THE LETTER, WHICH STATES "CONSENT FOR THE RECEIPT OF EMERGENCY CONTRA-
26 CEPTION."

27 B. A BRIEF EXPLANATION IN THE TEXT OF THE LETTER THAT INFORMS THE
28 RECIPIENT OF THE LETTER THAT HE OR SHE HAS THE RIGHT UNDER NEW YORK
29 STATE LAW TO WITHHOLD OR PROVIDE CONSENT FOR THE DISTRIBUTION OF EMER-
30 GENCY CONTRACEPTION TO HIS OR HER MINOR CHILD BY THE PUBLIC SCHOOLS.

31 C. A FULL LISTING OF ALL INDICATIONS AND USAGE, CONTRAINDICATIONS,
32 ADVERSE REACTIONS AND WARNINGS AND PRECAUTIONS OF ANY FORM OF EMERGENCY
33 CONTRACEPTION THAT THE HEALTH CARE PROVIDER AT THE PUBLIC SCHOOL MAY
34 DISPENSE OR PRESCRIBE OVER THE COURSE OF THE YEAR AS SUCH INDICATIONS
35 AND USAGE, CONTRAINDICATIONS, ADVERSE REACTIONS AND WARNINGS AND PRECAU-
36 TIONS APPEAR IN THE UNITED STATES FOOD AND DRUG ADMINISTRATION DRUG
37 APPROVAL DATABASE. IF THE INDICATIONS AND USAGE, CONTRAINDICATIONS,
38 ADVERSE REACTIONS AND WARNINGS AND PRECAUTIONS OF A PARTICULAR FORM OF
39 EMERGENCY CONTRACEPTION ARE NOT INCLUDED IN SUCH LETTER, THEY MAY NOT BE
40 DISPENSED OR PRESCRIBED BY THE SCHOOL HEALTH CARE PROVIDER.

41 D. A PORTION OF THE LETTER, TO BE PLACED AT THE END OF THE LETTER
42 FOLLOWING ALL OF THE ABOVE DESCRIBED PROVISIONS, ALLOWING THE PARENT OR
43 GUARDIAN OF THE MINOR CHILD TO PROVIDE AFFIRMATIVE CONSENT FOR THE
44 RECEIPT OF EMERGENCY CONTRACEPTION, MUST BE RETURNED TO THE SCHOOL
45 HEALTH PROFESSIONAL OR OFFICE OF SCHOOL HEALTH, OR ANY SCHOOL OFFICIAL
46 WHO SHALL FORWARD SUCH FORM TO THE SCHOOL HEALTH PROFESSIONAL OR OFFICE
47 OF SCHOOL HEALTH. THIS PORTION OF THE LETTER SHALL READ AS FOLLOWS:

48 "I AM THE PARENT/GUARDIAN OF . I HAVE READ THE ABOVE
49 LETTER AND INFORMATION CONCERNING THE PROVISION OF EMERGENCY CONTRA-
50 CEPTION TO MY CHILD AND THE RISKS ASSOCIATED WITH PROVIDING MY CHILD
51 WITH EMERGENCY CONTRACEPTION. I UNDERSTAND THESE RISKS AND WISH FOR
52 MY CHILD TO BE PROVIDED WITH SUCH SERVICES AND MEDICATIONS SHOULD MY
53 CHILD REQUEST THEM, WITHOUT FURTHER APPROVAL REQUIRED OF ME.

54 DATE: SIGNATURE OF PARENT/GUARDIAN: ."

55 3. ANY CONSENT DERIVED FROM THE LETTER DESCRIBED IN THIS SECTION SHALL
56 BE VALID ONLY UNTIL THE DAY PRIOR TO THE FIRST DAY OF THE SUBSEQUENT

1 SCHOOL YEAR FOLLOWING THE YEAR IN WHICH THE LETTER WAS SENT TO A CHILD'S
2 PARENT OR GUARDIAN.

3 4. FULL WRITTEN AND ORAL INFORMED CONSENT MUST BE SPECIFICALLY AND
4 PERSONALLY PROVIDED BY THE LICENSED HEALTH CARE PROFESSIONAL PRESCRIBING
5 THE EMERGENCY CONTRACEPTION IN THE PUBLIC SCHOOL. THIS INFORMED CONSENT
6 MUST INCLUDE THE INDICATIONS AND USAGE, CONTRAINDICATIONS, ADVERSE
7 REACTIONS AND WARNINGS AND PRECAUTIONS AS THEY APPEAR IN THE UNITED
8 STATES FOOD AND DRUG ADMINISTRATION DRUG APPROVAL DATABASE. ANY LICENSED
9 HEALTH CARE PROFESSIONAL WHO PRESCRIBES EMERGENCY CONTRACEPTION AFTER
10 RECEIVING CONSENT THAT DOES NOT INCLUDE THE INDICATIONS AND USAGE,
11 CONTRAINDICATIONS, ADVERSE REACTIONS AND WARNINGS AND PRECAUTIONS AS
12 THEY APPEAR IN THE UNITED STATES FOOD AND DRUG ADMINISTRATION DRUG
13 APPROVAL DATABASE SHALL BE DEEMED TO HAVE WILLFULLY VIOLATED THIS
14 SECTION.

15 5. NO FORM OF EMERGENCY CONTRACEPTION MAY BE DISPENSED TO ANY MINOR
16 CHILD BY ANY PUBLIC SCHOOL HEALTH PROFESSIONAL OR OFFICE OF SCHOOL
17 HEALTH UNTIL SUCH OFFICE OR PROFESSIONAL HAS RECEIVED AFFIRMATIVE
18 CONSENT FOR SUCH SERVICES AS PRESCRIBED IN SUBDIVISION ONE OF THIS
19 SECTION, AND ONLY AFTER A SPECIFIC REVIEW OF THE CHILD'S MEDICAL CONDI-
20 TION AND HISTORY BY THE LICENSED HEALTH CARE PROVIDER PROVIDING SUCH
21 SERVICE. A RECORD OF THIS SPECIFIC REVIEW AND MEDICAL CONDITION OF THE
22 CHILD MUST BE CREATED BY THE LICENSED HEALTH CARE PROFESSIONAL CONTEMPO-
23 RANEOUSLY WITH DISTRIBUTION OF EMERGENCY CONTRACEPTION TO THE CHILD. ANY
24 LICENSED HEALTH CARE PROFESSIONAL THAT FAILS TO CREATE SUCH RECORD SHALL
25 BE DEEMED TO HAVE WILLFULLY VIOLATED THIS SECTION.

26 6. ALL LICENSED HEALTH CARE PROFESSIONALS SHALL RECORD, AS REQUIRED IN
27 SUBDIVISION FIVE OF THIS SECTION AND PURSUANT TO SECTION FOUR HUNDRED
28 THIRTEEN OF THE SOCIAL SERVICES LAW, ANY AND ALL EVIDENCE INDICATIVE OF
29 ABUSE OR MALTREATMENT AS DEFINED IN SECTION FOUR HUNDRED TWELVE OF THE
30 SOCIAL SERVICES LAW. ANY VIOLATION OF THIS SUBDIVISION SHALL BE DEEMED A
31 WILLFUL VIOLATION OF SECTION FOUR HUNDRED TWENTY OF THE SOCIAL SERVICES
32 LAW.

33 7. THE DIRECTOR OF SCHOOL HEALTH SERVICES OF EACH SCHOOL DISTRICT IN
34 THIS STATE THAT IS REQUIRED TO PROVIDE SCHOOL HEALTH SERVICES, OR THE
35 HEALTH DEPARTMENT OR AGENCY OTHERWISE RESPONSIBLE TO PROVIDE SUCH
36 SERVICES, OR THE HEALTH CARE ADMINISTRATOR OF ANY PUBLIC SCHOOL IN THIS
37 STATE, SHALL MAINTAIN THE RECORDS DESCRIBED IN SUBDIVISION FIVE OF THIS
38 SECTION, IN WHATEVER MEDIUM THEY WERE CREATED, FOR A MINIMUM OF FOUR
39 YEARS FOLLOWING THE CHILD'S LAST DAY OF ATTENDANCE AT THE SCHOOL.

40 8. NO LICENSED HEALTH CARE PROFESSIONAL COVERED BY THIS SECTION SHALL
41 PRESCRIBE ANY FORM OF EMERGENCY CONTRACEPTION FOR USE BY A CHILD OTHER
42 THAN THE USE THAT IS DESCRIBED AND APPROVED BY THE UNITED STATES FOOD
43 AND DRUG ADMINISTRATION. ANY LICENSED HEALTH CARE PROFESSIONAL FOUND TO
44 HAVE PRESCRIBED EMERGENCY CONTRACEPTION TO A CHILD FOR USE OTHER THAN
45 THAT AS DESCRIBED AND APPROVED BY THE UNITED STATES FOOD AND DRUG ADMIN-
46 ISTRATION SHALL BE DEEMED TO HAVE WILLFULLY VIOLATED THIS SECTION.

47 S 3. Section 6509 of the education law is amended by adding a new
48 subdivision 15 to read as follows:

49 (15) A WILLFUL VIOLATION BY A LICENSEE OF SECTION NINE HUNDRED SEVEN
50 OF THIS CHAPTER.

51 S 4. Section 6530 of the education law is amended by adding a new
52 subdivision 50 to read as follows:

53 50. A WILLFUL VIOLATION BY A LICENSEE OF SECTION NINE HUNDRED SEVEN OF
54 THIS TITLE.

55 S 5. This act shall take effect immediately.