

4324--A

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I N   S E N A T E

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Introduced by Sens. HANNON, AVELLA, BRESLIN, CARLUCCI, ESPAILLAT, HOYLMAN, KENNEDY, LATIMER, PERKINS, RIVERA, SAVINO, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report

AN ACT to amend the public health law, in relation to meningococcal immunizations

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 added by chapter  
2     994 of the laws of 1966, the section heading and subdivisions 3, 5, and  
3     6, paragraph (a) of subdivision 7 and the opening paragraph of subdivi-  
4     sion 8-a as amended by chapter 189 of the laws of 2006, paragraph b of  
5     subdivision 1 and subdivision 7 as amended by chapter 443 of the laws of  
6     1979, paragraph c of subdivision 1 as amended by chapter 119 of the laws  
7     of 2005, paragraph d of subdivision 1 as added and subdivisions 4 and  
8     8-a as amended by chapter 538 of the laws of 1989, subdivision 2 as  
9     separately amended by chapters 189 and 506 of the laws of 2006, subdivi-  
10    sions 8 and 10 as renumbered by chapter 633 of the laws of 1975, subdivi-  
11    sion 9 as separately amended by chapters 405 and 538 of the laws of  
12    1989, subdivision 10 as added by chapter 1094 of the laws of 1968, and  
13    subdivision 11 as added by chapter 521 of the laws of 1994, is amended  
14    to read as follows:

15    S     2164. Definitions; immunization against poliomyelitis, mumps,  
16    measles, diphtheria, rubella, varicella, Haemophilus influenzae type b  
17    (Hib), pertussis, tetanus, pneumococcal disease, MENINGOCOCCAL DISEASE,  
18    and hepatitis B. 1. As used in this section, unless the context  
19    requires otherwise:

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

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

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

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

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

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

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

35 C. EVERY PERSON IN PARENTAL RELATION TO A CHILD IN THIS STATE ENTERING  
36 OR HAVING ENTERED SEVENTH GRADE AND TWELFTH GRADE OR A COMPARABLE AGE  
37 LEVEL SPECIAL EDUCATION PROGRAM WITH AN UNASSIGNED GRADE ON OR AFTER  
38 SEPTEMBER FIRST, TWO THOUSAND SIXTEEN, SHALL HAVE ADMINISTERED TO SUCH  
39 CHILD AN ADEQUATE DOSE OR DOSES OF IMMUNIZING AGENTS AGAINST MENINGOCOC-  
40 CAL DISEASE AS RECOMMENDED BY THE ADVISORY COMMITTEE ON IMMUNIZATION  
41 PRACTICES OF THE CENTERS FOR DISEASE CONTROL AND PREVENTION, WHICH MEETS  
42 THE STANDARDS APPROVED BY THE UNITED STATES PUBLIC HEALTH SERVICE FOR  
43 SUCH BIOLOGICAL PRODUCTS, AND WHICH IS APPROVED BY THE DEPARTMENT UNDER  
44 SUCH CONDITIONS AS MAY BE SPECIFIED BY THE PUBLIC HEALTH AND PLANNING  
45 COUNCIL.

46 3. The person in parental relation to any such child who has not  
47 previously received such immunization shall present the child to a  
48 health practitioner and request such health practitioner to administer  
49 the necessary immunization against poliomyelitis, mumps, measles,  
50 diphtheria, Haemophilus influenzae type b (Hib), rubella, varicella,  
51 pertussis, tetanus, pneumococcal disease, MENINGOCOCCAL DISEASE, and  
52 hepatitis B as provided in subdivision two of this section.

53 4. If any person in parental relation to such child is unable to pay  
54 for the services of a private health practitioner, such person shall  
55 present such child to the health officer of the county in which the

1 child resides, who shall then administer the immunizing agent without  
2 charge.

3 5. The health practitioner who administers such immunizing agent  
4 against poliomyelitis, mumps, measles, diphtheria, Haemophilus influen-  
5 zae type b (Hib), rubella, varicella, pertussis, tetanus, pneumococcal  
6 disease, MENINGOCOCCAL DISEASE, and hepatitis B to any such child shall  
7 give a certificate of such immunization to the person in parental  
8 relation to such child.

9 6. In the event that a person in parental relation to a child makes  
10 application for admission of such child to a school or has a child  
11 attending school and there exists no certificate or other acceptable  
12 evidence of the child's immunization against poliomyelitis, mumps,  
13 measles, diphtheria, rubella, varicella, hepatitis B, pertussis, teta-  
14 nus, and, where applicable, Haemophilus influenzae type b (Hib), MENIN-  
15 GOCOCCAL DISEASE, and pneumococcal disease, the principal, teacher,  
16 owner or person in charge of the school shall inform such person of the  
17 necessity to have the child immunized, that such immunization may be  
18 administered by any health practitioner, or that the child may be immun-  
19 ized without charge by the health officer in the county where the child  
20 resides, if such person executes a consent therefor. In the event that  
21 such person does not wish to select a health practitioner to administer  
22 the immunization, he or she shall be provided with a form which shall  
23 give notice that as a prerequisite to processing the application for  
24 admission to, or for continued attendance at, the school such person  
25 shall state a valid reason for withholding consent or consent shall be  
26 given for immunization to be administered by a health officer in the  
27 public employ, or by a school physician or nurse. The form shall provide  
28 for the execution of a consent by such person and it shall also state  
29 that such person need not execute such consent if subdivision eight or  
30 nine of this section apply to such child.

31 7. (a) No principal, teacher, owner or person in charge of a school  
32 shall permit any child to be admitted to such school, or to attend such  
33 school, in excess of fourteen days, without the certificate provided for  
34 in subdivision five of this section or some other acceptable evidence of  
35 the child's immunization against poliomyelitis, mumps, measles, diphthe-  
36 ria, rubella, varicella, hepatitis B, pertussis, tetanus, and, where  
37 applicable, Haemophilus influenzae type b (Hib), MENINGOCOCCAL DISEASE,  
38 and pneumococcal disease; provided, however, such fourteen day period  
39 may be extended to not more than thirty days for an individual student  
40 by the appropriate principal, teacher, owner or other person in charge  
41 where such student is transferring from out-of-state or from another  
42 country and can show a good faith effort to get the necessary certif-  
43 ication or other evidence of immunization.

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

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

52 8-a. Whenever a child has been refused admission to, or continued  
53 attendance at, a school as provided for in subdivision seven of this  
54 section because there exists no certificate provided for in subdivision  
55 five of this section or other acceptable evidence of the child's immuni-  
56 zation against poliomyelitis, mumps, measles, diphtheria, rubella, vari-

1 cella, hepatitis B, pertussis, tetanus, and, where applicable, Haemophi-  
2 lus influenzae type b (Hib), MENINGOCOCCAL DISEASE, and pneumococcal  
3 disease, the principal, teacher, owner or person in charge of the school  
4 shall:

5 a. forward a report of such exclusion and the name and address of such  
6 child to the local health authority and to the person in parental  
7 relation to the child together with a notification of the responsibility  
8 of such person under subdivision two of this section and a form of  
9 consent as prescribed by regulation of the commissioner, and

10 b. provide, with the cooperation of the appropriate local health  
11 authority, for a time and place at which an immunizing agent or agents  
12 shall be administered, as required by subdivision two of this section,  
13 to a child for whom a consent has been obtained. Upon failure of a local  
14 health authority to cooperate in arranging for a time and place at which  
15 an immunizing agent or agents shall be administered as required by  
16 subdivision two of this section, the commissioner shall arrange for such  
17 administration and may recover the cost thereof from the amount of state  
18 aid to which the local health authority would otherwise be entitled.

19 9. This section shall not apply to children whose parent, parents, or  
20 guardian hold genuine and sincere religious beliefs which are contrary  
21 to the practices herein required, and no certificate shall be required  
22 as a prerequisite to such children being admitted or received into  
23 school or attending school.

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

26 11. Every school shall annually provide the commissioner, on forms  
27 provided by the commissioner, a summary regarding compliance with the  
28 provisions of this section.

29 S 2. This act shall take effect immediately.