

# STATE OF NEW YORK

298--A

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to requiring immunization against human papillomavirus (HPV)

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 chap-  
2 ter 401 of the laws of 2015, is amended to read as follows:

3 § 2164. Definitions; immunization against poliomyelitis, mumps,  
4 measles, diphtheria, rubella, varicella, human papillomavirus (HPV),  
5 Haemophilus influenzae type b (Hib), pertussis, tetanus, pneumococcal  
6 disease, meningococcal disease, and hepatitis B. 1. As used in this  
7 section, unless the context requires otherwise:

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

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

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

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

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

3 2. a. Every person in parental relation to a child in this state shall  
4 have administered to such child an adequate dose or doses of an immuniz-  
5 ing agent against poliomyelitis, mumps, measles, diphtheria, rubella,  
6 varicella, human papillomavirus (HPV), Haemophilus influenzae type b  
7 (Hib), pertussis, tetanus, pneumococcal disease, and hepatitis B, which  
8 meets the standards approved by the United States public health service  
9 for such biological products, and which is approved by the department  
10 under such conditions as may be specified by the public health council.

11 b. Every person in parental relation to a child in this state born on  
12 or after January first, nineteen hundred ninety-four and entering sixth  
13 grade or a comparable age level special education program with an unas-  
14 signed grade on or after September first, two thousand seven, shall have  
15 administered to such child a booster immunization containing diphtheria  
16 and tetanus toxoids, [~~and~~] an acellular pertussis vaccine, and a human  
17 papillomavirus (HPV) vaccine, which meets the standards approved by the  
18 United States public health service for such biological products, and  
19 which is approved by the department under such conditions as may be  
20 specified by the public health council.

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

32 3. The person in parental relation to any such child who has not  
33 previously received such immunization shall present the child to a  
34 health practitioner and request such health practitioner to administer  
35 the necessary immunization against poliomyelitis, mumps, measles,  
36 diphtheria, Haemophilus influenzae type b (Hib), rubella, varicella,  
37 human papillomavirus (HPV), pertussis, tetanus, pneumococcal disease,  
38 meningococcal disease, and hepatitis B as provided in subdivision two of  
39 this section.

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

45 5. The health practitioner who administers such immunizing agent  
46 against poliomyelitis, mumps, measles, diphtheria, Haemophilus influen-  
47 zae type b (Hib), rubella, varicella, human papillomavirus (HPV),  
48 pertussis, tetanus, pneumococcal disease, meningococcal disease, and  
49 hepatitis B to any such child shall give a certificate of such immuniza-  
50 tion to the person in parental relation to such child.

51 6. In the event that a person in parental relation to a child makes  
52 application for admission of such child to a school or has a child  
53 attending school and there exists no certificate or other acceptable  
54 evidence of the child's immunization against poliomyelitis, mumps,  
55 measles, diphtheria, rubella, varicella, human papillomavirus (HPV),  
56 hepatitis B, pertussis, tetanus, and, where applicable, Haemophilus

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

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

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

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

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

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

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

1 an immunizing agent or agents shall be administered as required by  
2 subdivision two of this section, the commissioner shall arrange for such  
3 administration and may recover the cost thereof from the amount of state  
4 aid to which the local health authority would otherwise be entitled.

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

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

12 11. Every school shall annually provide the commissioner, on forms  
13 provided by the commissioner, a summary regarding compliance with the  
14 provisions of this section.

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

18 (a) The commissioner shall develop and supervise the execution of a  
19 program of immunization, surveillance and testing, to raise to the high-  
20 est reasonable level the immunity of the children of the state against  
21 communicable diseases including, but not limited to, influenza, poliomy-  
22 elitis, measles, mumps, rubella, haemophilus influenzae type b (Hib),  
23 diphtheria, pertussis, tetanus, varicella, human papillomavirus (HPV),  
24 hepatitis B, pneumococcal disease, and the immunity of adults of the  
25 state against diseases identified by the commissioner, including but not  
26 limited to influenza, smallpox, hepatitis and such other diseases as the  
27 commissioner may designate through regulation. Municipalities in the  
28 state shall maintain local programs of immunization to raise the immuni-  
29 ty of the children and adults of each municipality to the highest  
30 reasonable level, in accordance with an application for state aid  
31 submitted by the municipality and approved by the commissioner. Such  
32 programs shall include assurance of provision of vaccine, serological  
33 testing of individuals and educational efforts to inform health care  
34 providers and target populations or their parents, if they are minors,  
35 of the facts relative to these diseases and immunizations to prevent  
36 their occurrence.

37 § 3. This act shall take effect on the first of September next  
38 succeeding the date on which it shall have become a law; provided,  
39 however, that section one of this act shall apply only to children born  
40 on or after January 1, 2008.