

# STATE OF NEW YORK

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298--B

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

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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 -- 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 chapter  
2 ter 401 of the laws of 2015, subdivisions 6 and 7 as amended by chapter  
3 35 of the laws of 2019, is amended to read as follows:

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

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

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

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

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

LBD03954-09-9

1 designated the person pursuant to title fifteen-A of article five of the  
2 general obligations law as a person in parental relation to the child.

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

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

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

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

34 d. Every person in parental relation to a child in this state entering  
35 or having entered seventh grade or a comparable age level special educa-  
36 tion program with an unassigned grade on or after September first, two  
37 thousand twenty-one, shall have administered to such child an adequate  
38 dose or doses of immunizing agents against human papillomavirus (HPV) as  
39 recommended by the advisory committee on immunization practices of the  
40 centers for disease control and prevention, which meets the standards  
41 approved by the United States public health service for such biological  
42 products, and which is approved by the department under such conditions  
43 as may be specified by the public health and health planning council.

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

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

1 5. The health practitioner who administers such immunizing agent  
2 against poliomyelitis, mumps, measles, diphtheria, Haemophilus influen-  
3 zae type b (Hib), rubella, varicella, pertussis, tetanus, pneumococcal  
4 disease, meningococcal disease, [and] hepatitis B and human papillomavi-  
5 rus (HPV) to any such child shall give a certificate of such immuniza-  
6 tion to the person in parental relation to such child.

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

29 7. (a) No principal, teacher, owner or person in charge of a school  
30 shall permit any child to be admitted to such school, or to attend such  
31 school, in excess of fourteen days, without the certificate provided for  
32 in subdivision five of this section or some other acceptable evidence of  
33 the child's immunization against poliomyelitis, mumps, measles, diphthe-  
34 ria, rubella, varicella, hepatitis B, pertussis, tetanus, and, where  
35 applicable, Haemophilus influenzae type b (Hib), meningococcal disease,  
36 [and] pneumococcal disease and human papillomavirus (HPV); provided,  
37 however, such fourteen day period may be extended to not more than thir-  
38 ty days for an individual student by the appropriate principal, teacher,  
39 owner or other person in charge where such student is transferring from  
40 out-of-state or from another country and can show a good faith effort to  
41 get the necessary certification or other evidence of immunization or  
42 where the parent, guardian, or any other person in parental relationship  
43 to such child can demonstrate that a child has received at least the  
44 first dose in each immunization series required by this section and has  
45 age appropriate appointments scheduled to complete the immunization  
46 series according to the Advisory Committee on Immunization Practices  
47 Recommended Immunization Schedules for Persons Aged 0 through 18 Years.

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

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

8-a. Whenever a child has been refused admission to, or continued attendance at, a school as provided for in subdivision seven of this section because there exists no certificate provided for in subdivision five of this section or other acceptable evidence of the child's immunization against poliomyelitis, mumps, measles, diphtheria, rubella, varicella, hepatitis B, pertussis, tetanus, and, where applicable, Haemophilus influenzae type b (Hib), meningococcal disease, ~~[and]~~ pneumococcal disease and human papillomavirus (HPV), the principal, teacher, owner or person in charge of the school shall:

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

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

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

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

§ 2. Subdivision 7 of section 2164 of the public health law, as amended by chapter 401 of the laws of 2015, is amended to read as follows:

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

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

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

(a) The commissioner shall develop and supervise the execution of a program of immunization, surveillance and testing, to raise to the highest reasonable level the immunity of the children of the state against communicable diseases including, but not limited to, influenza, poliomyelitis, measles, mumps, rubella, haemophilus influenzae type b (Hib),

1 diphtheria, pertussis, tetanus, varicella, hepatitis B, pneumococcal  
2 disease, human papillomavirus (HPV), and the immunity of adults of the  
3 state against diseases identified by the commissioner, including but not  
4 limited to influenza, smallpox, hepatitis and such other diseases as the  
5 commissioner may designate through regulation. Municipalities in the  
6 state shall maintain local programs of immunization to raise the immuni-  
7 ty of the children and adults of each municipality to the highest  
8 reasonable level, in accordance with an application for state aid  
9 submitted by the municipality and approved by the commissioner. Such  
10 programs shall include assurance of provision of vaccine, serological  
11 testing of individuals and educational efforts to inform health care  
12 providers and target populations or their parents, if they are minors,  
13 of the facts relative to these diseases and immunizations to prevent  
14 their occurrence.

15 § 4. This act shall take effect on September 1, 2021; provided, howev-  
16 er, that:

17 a. sections one and two of this act shall apply only to children born  
18 on or after January 1, 2009; and

19 b. the amendments to subdivision 7 of section 2164 of the public  
20 health law made by section one of this act shall be subject to the expi-  
21 ration and reversion of such subdivision pursuant to section 4 of chap-  
22 ter 35 of the laws of 2019 when upon such date the provisions of section  
23 two of this act shall take effect.

24 Effective immediately the addition, amendment and/or repeal of any  
25 rule or regulation necessary for the implementation of this act on its  
26 effective date are authorized to be made and completed on or before such  
27 date.