

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.