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:

Section 1. Section 2164 of the public health law, as amended by chapter 401 of the laws of 2015, subdivisions 6 and 7 as amended by chapter 35 of the laws of 2019, is amended to read as follows:

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

a. The term "school" means and includes any public, private or parochial child caring center, day nursery, day care agency, nursery school, kindergarten, elementary, intermediate or secondary school.

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

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

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

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

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

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

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

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

4. If any person in parental relation to such child is unable to pay
for the services of a private health practitioner, such person shall
present such child to the health officer of the county in which the
child resides, who shall then administer the immunizing agent without
charge.
5. The health practitioner who administers such immunizing agent against poliomyelitis, mumps, measles, diphtheria, Haemophilus influenzae type b (Hib), rubella, varicella, pertussis, tetanus, pneumococcal disease, meningococcal disease, [and] hepatitis B and human papillomavirus (HPV) to any such child shall give a certificate of such immunization to the person in parental relation to such child.

6. In the event that a person in parental relation to a child makes application for admission of such child to a school or has a child attending school and there exists no certificate 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 inform such person of the necessity to have the child immunized, that such immunization may be administered by any health practitioner, or that the child may be immunized without charge by the health officer in the county where the child resides, if such person executes a consent therefor. In the event that such person does not wish to select a health practitioner to administer the immunization, he or she shall be provided with a form which shall give notice that as a prerequisite to processing the application for admission to, or for continued attendance at, the school such person shall state a valid reason for withholding consent or consent shall be given for immunization to be administered by a health officer in the public employ, or by a school physician or nurse. The form shall provide for the execution of a consent by such person and it shall also state that such person need not execute such consent if subdivision eight of this section applies to such child.

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 or where the parent, guardian, or any other person in parental relationship to such child can demonstrate that a child has received at least the first dose in each immunization series required by this section and has age appropriate appointments scheduled to complete the immunization series according to the Advisory Committee on Immunization Practices Recommended Immunization Schedules for Persons Aged 0 through 18 Years.

(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.

8. If any physician licensed to practice medicine in this state certifies that such immunization may be detrimental to a child's health, the requirements of this section shall be inapplicable until such immunization is found no longer to be detrimental to the child's health.
 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 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.

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

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

§ 4. This act shall take effect on September 1, 2021; provided, however, that:

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

b. the amendments to subdivision 7 of section 2164 of the public health law made by section one of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 4 of chapter 35 of the laws of 2019 when upon such date the provisions of section two of this act shall take effect.

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