

STATE OF NEW YORK

298--B

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 -- 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, 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.

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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.

1 8-a. Whenever a child has been refused admission to, or continued
2 attendance at, a school as provided for in subdivision seven of this
3 section because there exists no certificate provided for in subdivision
4 five of this section or other acceptable evidence of the child's immuni-
5 zation against poliomyelitis, mumps, measles, diphtheria, rubella, vari-
6 cella, hepatitis B, pertussis, tetanus, and, where applicable, Haemophi-
7 lus influenzae type b (Hib), meningococcal disease, [~~and~~] pneumococcal
8 disease and human papillomavirus (HPV), the principal, teacher, owner or
9 person in charge of the school shall:

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

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

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

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

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

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

52 (a) The commissioner shall develop and supervise the execution of a
53 program of immunization, surveillance and testing, to raise to the high-
54 est reasonable level the immunity of the children of the state against
55 communicable diseases including, but not limited to, influenza, poliomy-
56 yelitis, 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.