

# STATE OF NEW YORK

45

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. HOYLMAN, KRUEGER -- read twice and ordered printed,  
and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to mandatory influenza vaccine for persons attending daycare

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, subdivision 6 as amended by chapter 35 of  
3 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 influenza virus, and hepatitis B. 1. As used in this section, unless the  
8 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  
22 designated the person pursuant to title fifteen-A of article five of the  
23 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, Haemophilus influenzae type b (Hib), pertussis, tetanus,  
7 pneumococcal disease, and hepatitis B, which meets the standards  
8 approved by the United States public health service for such biological  
9 products, and which is approved by the department under such conditions  
10 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, which meets the  
17 standards approved by the United States public health service for such  
18 biological products, and which is approved by the department under such  
19 conditions as may be specified by the public health council.

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

31 d. Every person in parental relation to a child in this state entering  
32 or having entered a licensed and registered child daycare home, program  
33 or facility shall have administered to such child an adequate dose or  
34 doses of immunizing agents against influenza virus as recommended by the  
35 advisory committee on immunization practices of the centers for disease  
36 control and prevention, which meets the standards approved by the United  
37 States public health service for such biological products, and which is  
38 approved by the department under such conditions as may be specified by  
39 the public health and planning council.

40 3. The person in parental relation to any such child who has not  
41 previously received such immunization shall present the child to a  
42 health practitioner and request such health practitioner to administer  
43 the necessary immunization against poliomyelitis, mumps, measles,  
44 diphtheria, Haemophilus influenzae type b (Hib), rubella, varicella,  
45 pertussis, tetanus, pneumococcal disease, meningococcal disease, infl-  
46 enza virus, and hepatitis B as provided in subdivision two of this  
47 section.

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

53 5. The health practitioner who administers such immunizing agent  
54 against poliomyelitis, mumps, measles, diphtheria, Haemophilus influ-  
55 zae type b (Hib), rubella, varicella, pertussis, tetanus, pneumococcal  
56 disease, meningococcal disease, influenza virus, and hepatitis B to any

1 such child shall give a certificate of such immunization to the person  
2 in parental relation to such child.

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

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

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

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

46 8-a. Whenever a child has been refused admission to, or continued  
47 attendance at, a school as provided for in subdivision seven of this  
48 section because there exists no certificate provided for in subdivision  
49 five of this section or other acceptable evidence of the child's immunization  
50 against poliomyelitis, mumps, measles, diphtheria, rubella, varicella,  
51 hepatitis B, pertussis, tetanus, and, where applicable, Haemophilus  
52 influenzae type b (Hib), meningococcal disease, influenza virus, and  
53 pneumococcal disease, the principal, teacher, owner or person in charge  
54 of the school shall:

55 a. forward a report of such exclusion and the name and address of such  
56 child to the local health authority and to the person in parental

1 relation to the child together with a notification of the responsibility  
2 of such person under subdivision two of this section and a form of  
3 consent as prescribed by regulation of the commissioner, and  
4 b. provide, with the cooperation of the appropriate local health  
5 authority, for a time and place at which an immunizing agent or agents  
6 shall be administered, as required by subdivision two of this section,  
7 to a child for whom a consent has been obtained. Upon failure of a local  
8 health authority to cooperate in arranging for a time and place at which  
9 an immunizing agent or agents shall be administered as required by  
10 subdivision two of this section, the commissioner shall arrange for such  
11 administration and may recover the cost thereof from the amount of state  
12 aid to which the local health authority would otherwise be entitled.  
13 10. The commissioner may adopt and amend rules and regulations to  
14 effectuate the provisions and purposes of this section.  
15 11. Every school shall annually provide the commissioner, on forms  
16 provided by the commissioner, a summary regarding compliance with the  
17 provisions of this section.  
18 § 2. This act shall take effect one year after it shall have become a  
19 law.