STATE OF NEW YORK

4767

2021-2022 Regular Sessions

IN ASSEMBLY

February 8, 2021

Introduced by M. of A. DiPIETRO -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to allowing persons in parental relation to a child to choose to immunize such child; to amend the education law, in relation to making changes relating thereto; and to repeal subdivision 6-a of section 310 of the education law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 2, 3, 5 and 6 of section 2164 of the public health law, subdivisions 2, 3, and 5 as amended by chapter 401 of the laws of 2015, subdivision 6 as amended by chapter 35 of the laws of 2019, are amended to read as follows:

2. [~~a.~~] Every person in parental relation to a child in this state shall have **the choice to have** administered to such child an adequate dose or doses of an immunizing 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 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 unassigned 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 council.~~

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

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~~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 meningococcal 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 planning council.~~]

3. The person in parental relation to any such child who has not previously [~~received~~] **chosen for such child to receive** 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, and hepatitis B as provided in subdivision two of this section.

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 to any such child shall give a certificate of such immunization to the person in parental relation to such child. **If any person in parental relation to such child chooses to have administered such immunization, such person shall submit a certificate of such immunization to the school to verify that such child has received the recommended immunization if an outbreak described in subdivision seven of this section occurs.**

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, 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~~] **No school shall require a child to receive immunization against poliomyelitis, mumps, measles, diphtheria, Haemophilus influenzae type b (Hib), rubella, varicella, pertussis, tetanus, pneumococcal disease, meningococcal disease, or hepatitis B prior to being admitted or penalize a child because such child has not received the recommended immunizations**. In the event that such person does not wish to [~~select a health practitioner to administer the~~] **have such child administered with a** 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~~] **to fill out stating such person's choice not to have such child administered with the immunization**. [~~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.~~]

§ 2. Subdivision 7 of section 2164 of the public health law, as amended by chapter 35 of the laws of 2019, 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; 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~~] A child who lacks certification of immunization may be excluded from school only if such child lacks an immunization for which there is an active case of a disease in that child's school that the immunization is intended to prevent and the department or local health authority has declared an outbreak of that disease for an area that includes such child's school. The department or local department of health shall notify the proper school administrator responsible for excluding such child from school attendance under this subdivision.

§ 3. 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; 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~~] A child who lacks

certification of immunization may be excluded from school only if such child lacks an immunization for which there is an active case of a disease in that child's school that the immunization is intended to prevent and the department or local health authority has declared an outbreak of that disease for an area that includes such child's school. The department or local department of health shall notify the proper school administrator responsible for excluding such child from school attendance under this subdivision.

§ 4. Subdivisions 8 and 8-a of section 2164 of the public health law, as amended by chapter 401 of the laws of 2015, are amended and a new subdivision 9 is added to read as follows:

8. If any physician licensed to practice medicine in this state certifies that any 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~~] such physician shall give a certificate stating which immunization may be detrimental to a child's health to the person in parental relation to such child. The person in parental relation to such child shall submit such certificate to such child's school to be placed in the child's school record to verify such child has not received such immunization if an outbreak described in subdivision seven of this section occurs.

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 of immunization 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, 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 who have completed the recommended immunizations or have submitted a certificate stating immunization may be detrimental to such child's health 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~~] department, 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~~] forward a report of the name and address of such child who have not completed the recommended immunizations and has filed the required form, pursuant to subdivision six of this section, to the local health authority and to the department.

9. A school and its employees are immune from civil liability for decisions concerning admitting and excluding a child that are based on a good faith implementation of the requirements of subdivision seven of this section.

§ 5. Subdivision 6-a of section 310 of the education law is REPEALED.

§ 6. Subparagraph 1 of paragraph (b) of subdivision 5 of section 3208 of the education law, as amended by chapter 352 of the laws of 2005, is amended to read as follows:

(1) A physical examination pursuant to the provisions of sections nine hundred one, nine hundred three and nine hundred four of this chapter[~~, including proof of immunization as required by section twenty-one hundred sixty-four of the public health law~~].

§ 7. Subdivision 3 of section 3304 of the education law, as added by section 1 of part A of chapter 328 of the laws of 2014, is amended to read as follows:

3. [~~Notwithstanding any provisions of subdivision seven of section twenty-one hundred sixty-four of the public health law to the contrary, compacting~~] **Compacting** states shall give thirty days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the interstate commission, for students transferring from a school in a sending state to obtain any immunizations [~~required~~] **recommended** by the receiving state. [~~For a series of immunizations, initial vaccinations must be obtained within thirty days or within such time as is reasonably determined under the rules promulgated by the interstate commission.~~]

§ 8. Paragraph (l) of subdivision 1 of section 206 of the public health law, as added by chapter 207 of the laws of 2004, is amended to read as follows:

(l) establish and operate such adult and child immunization programs as are necessary to prevent or minimize the spread of disease and to protect the public health. Such programs may include the purchase and distribution of vaccines to providers and municipalities, the operation of public immunization programs, quality assurance for immunization related activities and other immunization related activities. The commissioner may promulgate such regulations as are necessary for the implementation of this paragraph. Nothing in this paragraph shall authorize mandatory immunization of adults or children[~~, except as provided in sections twenty-one hundred sixty-four and twenty-one hundred sixty-five of this chapter~~].

§ 9. Paragraph (c) of subdivision 1 and subdivision 2 of section 613 of the public health law, paragraph (c) of subdivision 1 as amended by section 24 of part E of chapter 56 of the laws of 2013, subdivision 2 as amended by chapter 538 of the laws of 1989, are amended to read as follows:

(c) The commissioner shall invite and encourage the active assistance and cooperation in such education activities of: the medical societies, organizations of other licensed health personnel, hospitals, corporations subject to article forty-three of the insurance law, trade unions, trade associations, parents and teachers and their associations, organizations of child care resource and referral agencies, the media of mass communication, and such other voluntary groups and organizations of citizens as he or she shall deem appropriate. The public health and health planning council, the department of education, the department of family assistance, and the department of mental hygiene shall provide the commissioner with such assistance in carrying out the program as he or she shall request. All other state agencies shall also render such assistance as the commissioner may reasonably require for this program. Nothing in this subdivision shall authorize mandatory immunization of adults or children[~~, except as provided in sections twenty-one hundred sixty-four and twenty-one hundred sixty-five of this chapter~~].

2. The commissioner shall set such standards as he **or she** shall deem necessary for the proper, safe, and efficient administration of the program. He **or she** shall direct an annual survey to determine the immunization level of children entering school, and shall conduct annually an audit of such survey and an audit of the immunization level of children attending school. State aid provided by this article shall be reduced by ten percent, provided however that state aid for essential public health activities shall not be reduced, unless a municipality has submitted, in cooperation with local school districts, a plan within ninety days after the commissioner shall have certified to such municipality the results of his survey of the immunization level of children entering schools in such local school districts. Such plan shall be submitted for the next ensuing school year and a subsequent plan shall be submitted annually thereafter [~~for assuring that immunizing agents are administered to pre-school children within a reasonable time prior to but, in any event, no later than their entrance into school, and to students generally, as required pursuant to section twenty-one hundred sixty-four of this chapter~~]. Such plan shall include the manner in which immunization activities are coordinated among the local health authority and the school districts. Such reduction in state aid and the requirement that a municipality submit an immunization plan shall not be applicable to any municipality where ninety percent or more of its children entering school are immunized. The determination of the percentage of immunization shall be made by the commissioner based upon his audit of immunization surveys.

§ 10. Paragraph (f) of subdivision 5 of section 2168 of the public health law, as amended by chapter 35 of the laws of 2019, is amended to read as follows:

(f) The immunization status of [~~children exempt from immunizations~~] **a child who acquires a certificate stating immunization may be detrimental to such child's health** pursuant to subdivision eight of section twenty-one hundred sixty-four of this title shall be reported by the health care provider.

§ 11. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that the amendments to subdivision 7 of section 2164 of the public health law made by section two 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 three of this act shall take effect; and provided further, that the amendments to subparagraph 1 of paragraph (b) of subdivision 5 of section 3208 of the education law made by section six of this act shall not affect the expiration of such section and shall be deemed to expire therewith.