

# STATE OF NEW YORK

8378

2021-2022 Regular Sessions

## IN ASSEMBLY

October 20, 2021

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

AN ACT to amend the public health law, in relation to requiring immunization against COVID-19

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 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:

2 § 2164. Definitions; immunization against poliomyelitis, mumps, measles, diphtheria, rubella, varicella, Haemophilus influenzae type b (Hib), pertussis, tetanus, pneumococcal disease, meningococcal disease, 3 [and] hepatitis B, and COVID-19. 1. As used in this section, unless the context requires otherwise:

4 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.

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

6 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.

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

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

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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 immunizing agent against poliomyelitis, mumps, measles, diphtheria, rubella, varicella, Haemophilus influenzae type b (Hib), pertussis, tetanus, pneumococcal disease, ~~[and]~~ hepatitis B, and COVID-19, 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 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 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 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 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, ~~[and]~~ hepatitis B, and COVID-19, 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 COVID-19 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, COVID-19, and, where applicable, Haemophilus influenzae type b (Hib), meningococcal disease, and pneumococcal disease, the principal,

1 teacher, owner or person in charge of the school shall inform such  
2 person of the necessity to have the child immunized, that such immuniza-  
3 tion may be administered by any health practitioner, or that the child  
4 may be immunized without charge by the health officer in the county  
5 where the child resides, if such person executes a consent therefor. In  
6 the event that such person does not wish to select a health practitioner  
7 to administer the immunization, he or she shall be provided with a form  
8 which shall give notice that as a prerequisite to processing the appli-  
9 cation for admission to, or for continued attendance at, the school such  
10 person shall state a valid reason for withholding consent or consent  
11 shall be given for immunization to be administered by a health officer  
12 in the public employ, or by a school physician or nurse. The form shall  
13 provide for the execution of a consent by such person and it shall also  
14 state that such person need not execute such consent if subdivision  
15 eight of this section applies to such child.

16 7. (a) No principal, teacher, owner or person in charge of a school  
17 shall permit any child to be admitted to such school, or to attend such  
18 school, in excess of fourteen days, without the certificate provided for  
19 in subdivision five of this section or some other acceptable evidence of  
20 the child's immunization against poliomyelitis, mumps, measles, diphthe-  
21 ria, rubella, varicella, hepatitis B, pertussis, tetanus, COVID-19, and,  
22 where applicable, Haemophilus influenzae type b (Hib), meningococcal  
23 disease, and pneumococcal disease; provided, however, such fourteen day  
24 period may be extended to not more than thirty days for an individual  
25 student by the appropriate principal, teacher, owner or other person in  
26 charge where such student is transferring from out-of-state or from  
27 another country and can show a good faith effort to get the necessary  
28 certification or other evidence of immunization or where the parent,  
29 guardian, or any other person in parental relationship to such child can  
30 demonstrate that a child has received at least the first dose in each  
31 immunization series required by this section and has age appropriate  
32 appointments scheduled to complete the immunization series according to  
33 the Advisory Committee on Immunization Practices Recommended Immuniza-  
34 tion Schedules for Persons Aged 0 through 18 Years.

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

39 8. If any physician licensed to practice medicine in this state certi-  
40 fies that such immunization may be detrimental to a child's health, the  
41 requirements of this section shall be inapplicable until such immuniza-  
42 tion is found no longer to be detrimental to the child's health.

43 8-a. Whenever a child has been refused admission to, or continued  
44 attendance at, a school as provided for in subdivision seven of this  
45 section because there exists no certificate provided for in subdivision  
46 five of this section or other acceptable evidence of the child's immuni-  
47 zation against poliomyelitis, mumps, measles, diphtheria, rubella, vari-  
48 cella, hepatitis B, pertussis, tetanus, COVID-19, and, where applicable,  
49 Haemophilus influenzae type b (Hib), meningococcal disease, and pneumo-  
50 coccal disease, the principal, teacher, owner or person in charge of the  
51 school shall:

52 a. forward a report of such exclusion and the name and address of such  
53 child to the local health authority and to the person in parental  
54 relation to the child together with a notification of the responsibility  
55 of such person under subdivision two of this section and a form of  
56 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.

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

11. 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, COVID-19, 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.

§ 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, COVID-19, varicella, hepatitis B, pneumococcal disease, 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.

1 § 4. This act shall take effect on the thirtieth day after the date  
2 upon which an immunizing agent against COVID-19 for which the United  
3 States Food and Drug Administration has issued a biologics license is  
4 recommended by majority vote of the advisory committee on immunization  
5 practices of the Centers for Disease Control and Prevention; provided  
6 that:

7 (a) the commissioner of health shall notify the legislative bill  
8 drafting commission upon the occurrence of both such approval and such  
9 recommendation in order that the commission may maintain an accurate and  
10 timely effective data base of the official text of the laws of the state  
11 of New York in furtherance of effectuating the provisions of section 44  
12 of the legislative law and section 70-b of the public officers law; and

13 (b) the amendments to subdivision 7 of section 2164 of the public  
14 health law made by section one of this act shall be subject to the expi-  
15 ration and reversion of such subdivision pursuant to section 4 of chap-  
16 ter 35 of the laws of 2019 when upon such date the provisions of section  
17 two of this act shall take effect.

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