

# STATE OF NEW YORK

1945

2023-2024 Regular Sessions

## IN SENATE

January 17, 2023

Introduced by Sens. HOYLMAN-SIGAL, 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 chapter 401 of the laws of 2015, subdivision 6 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, influenza virus, and hepatitis B. 1. As used in this section, unless the context requires otherwise:

3 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.

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

5 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.

6 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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1 2. a. Every person in parental relation to a child in this state shall  
2 have administered to such child an adequate dose or doses of an immuniz-  
3 ing agent against poliomyelitis, mumps, measles, diphtheria, rubella,  
4 varicella, Haemophilus influenzae type b (Hib), pertussis, tetanus,  
5 pneumococcal disease, and hepatitis B, which meets the standards  
6 approved by the United States public health service for such biological  
7 products, and which is approved by the department under such conditions  
8 as may be specified by the public health council.

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

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

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

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

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

51 5. The health practitioner who administers such immunizing agent  
52 against poliomyelitis, mumps, measles, diphtheria, Haemophilus influen-  
53 zae type b (Hib), rubella, varicella, pertussis, tetanus, pneumococcal  
54 disease, meningococcal disease, influenza virus, and hepatitis B to any  
55 such child shall give a certificate of such immunization to the person  
56 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, influenza virus, 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. 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, influenza virus, 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.

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.

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 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, influenza virus, 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 to the local health authority and to the person in parental relation to the child together with a notification of the responsibility

1 of such person under subdivision two of this section and a form of  
2 consent as prescribed by regulation of the commissioner, and

3 b. provide, with the cooperation of the appropriate local health  
4 authority, for a time and place at which an immunizing agent or agents  
5 shall be administered, as required by subdivision two of this section,  
6 to a child for whom a consent has been obtained. Upon failure of a local  
7 health authority to cooperate in arranging for a time and place at which  
8 an immunizing agent or agents shall be administered as required by  
9 subdivision two of this section, the commissioner shall arrange for such  
10 administration and may recover the cost thereof from the amount of state  
11 aid to which the local health authority would otherwise be entitled.

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

14 11. Every school shall annually provide the commissioner, on forms  
15 provided by the commissioner, a summary regarding compliance with the  
16 provisions of this section.

17 § 2. This act shall take effect one year after it shall have become a  
18 law.