

# STATE OF NEW YORK

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45

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

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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 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.

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

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

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, 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.

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.

d. Every person in parental relation to a child in this state entering or having entered a licensed and registered child daycare home, program or facility shall have administered to such child an adequate dose or doses of immunizing agents against influenza virus 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 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, influenza virus, and hepatitis B 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, 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 disease, influenza virus, and pneumococcal disease, the principal,  
9 teacher, owner or person in charge of the school shall inform such  
10 person of the necessity to have the child immunized, that such immunization  
11 may be administered by any health practitioner, or that the child  
12 may be immunized without charge by the health officer in the county  
13 where the child resides, if such person executes a consent therefor. In  
14 the event that such person does not wish to select a health practitioner  
15 to administer the immunization, he or she shall be provided with a form  
16 which shall give notice that as a prerequisite to processing the application  
17 for admission to, or for continued attendance at, the school such  
18 person shall state a valid reason for withholding consent or consent  
19 shall be given for immunization to be administered by a health officer  
20 in the public employ, or by a school physician or nurse. The form shall  
21 provide for the execution of a consent by such person and it shall also  
22 state that such person need not execute such consent if subdivision  
23 eight of this section applies to such child.

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

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

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

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

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