

LEGAL FACT SHEET

Immunization When No Parent is Available

Certain Persons Who Can Consent to Children's Immunization When Parents are Not Available.

Public Health

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

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.

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

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.

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.

LEGAL FACT SHEET

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 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.

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 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, 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. 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 or nine of this section apply to such child.

LEGAL FACT SHEET

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.

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, 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 of such person under subdivision two of this section and a form of 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.

9. This section shall not apply to children whose parent, parents, or guardian hold genuine and sincere religious beliefs which are contrary to the practices herein required, and no certificate shall be required as a prerequisite to such children being admitted or received into school or attending school.

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.

LEGAL FACT SHEET

Public Health

§2504. Enabling certain persons to consent for certain medical, dental, health and hospital services. 1. Any person who is eighteen years of age or older, or is the parent of a child or has married, may give effective consent for medical, dental, health and hospital services for himself or herself, and the consent of no other person shall be necessary.

2. Any person who has been married or who has borne a child may give effective consent for medical, dental, health and hospital services for his or her child. Any person who has been designated pursuant to title fifteen-A of article five of the general obligations law as a person in parental relation to a child may consent to any medical, dental, health and hospital services for such child for which consent is otherwise required which are not: (a) major medical treatment as defined in subdivision (a) of section 80.03 of the mental hygiene law; (b) electroconvulsive therapy; or (c) the withdrawal or discontinuance of medical treatment which is sustaining life functions.

3. Any person who is pregnant may give effective consent for medical, dental, health and hospital services relating to prenatal care.

4. Medical, dental, health and hospital services may be rendered to persons of any age without the consent of a parent or legal guardian when, in the physician's judgment an emergency exists and the person is in immediate need of medical attention

and an attempt to secure consent would result in delay of treatment which would increase the risk to the person's life or health.

5. Where not otherwise already authorized by law to do so, any person in a parental relation to a child as defined in section twenty-one hundred sixty-four of this chapter and, (i) a grandparent, an adult brother or sister, an adult aunt or uncle, any of whom has assumed care of the child and, (ii) an adult who has care of the child and has written authorization to consent from a person in a parental relation to a child as defined in section twenty-one hundred sixty-four of this chapter, may give effective consent for the immunization of a child. However, a person other than one in a parental relation to the child shall not give consent under this subdivision if he or she has reason to believe that a person in parental relation to the child as defined in section twenty-one hundred sixty-four of this chapter objects to the immunization.

6. Anyone who acts in good faith based on the representation by a person that he is eligible to consent pursuant to the terms of this section shall be deemed to have received effective consent.

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