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Effective date: 8/16/19

SUMMARY OF EXPRESS TERMS

This emergency regulation will amend Subpart 66-1 (School Immunization Requirements) to conform to recent amendments to Sections 2164 and 2168 of the Public Health Law (PHL). In addition, these amendments make the regulations consistent with national immunization recommendations and guidelines. The regulations also define the phrase “may be detrimental to the child’s health” for purposes of medical exemptions to vaccination requirements. The regulations will be effective immediately.

Technical amendments throughout Section 66-1.1 update references to the “Advisory Committee on Immunization Practices” (ACIP) schedule to its current title, the “Advisory Committee on Immunization Practices Recommended Child and Adolescent Immunization Schedule for ages 18 years or younger.” Technical amendments also clarify the grades covered by the varicella, poliomyelitis and vaccine interval requirements.

Amendments to subdivision (g) of section 66-1.1 clarify that positive serologic tests for all three serotypes of poliomyelitis submitted to a New York State school prior to September 1, 2019 may be accepted as evidence of poliomyelitis immunity. However, serologic tests against poliomyelitis submitted on or after September 1, 2019 may not be accepted in place of poliomyelitis vaccination, in accordance with current ACIP guidance. Similar amendments are made to section 66-1.6 to incorporate these changes into the certificate of immunization.

A new subdivision (k) of section 66-1.1 adds a definition of laboratory confirmation of measles, mumps, rubella and varicella infections, and amendments to subdivision (g) of that section expand the definition of immunity to include laboratory confirmation against these diseases. Laboratory confirmation of immunity means a positive culture or polymerase chain reaction test against measles, mumps, rubella or varicella, or a positive blood test for Immunoglobulin M against measles or rubella, where such positive laboratory test is not otherwise explained by recent vaccination. Amendments to section 66-1.6 add laboratory confirmation of measles, mumps, rubella and varicella to the certificate of immunization.

A new subdivision (l) of section 66-1.1 defines “may be detrimental to the child’s health” to mean that a physician has determined that a child has a medical contraindication or precaution to a specific immunization consistent with ACIP guidance. Amendments to subparagraph (ii) of paragraph (4) of subdivision (c) of section 66-1.2 require that the reason why an immunization is detrimental to a child’s health be documented in the New York State Immunization Information System. Additionally, amendments to subdivision (c) of section 66-1.3 require the use of medical exemption forms approved by the New York State Department of Health or New York City Department of Education; a written statement from a physician is no longer allowed.

Finally, subdivision (d) of section 66-1.3 is repealed, and amendments to section 66-1.10 remove references to subdivision (d) of section 66-1.3.

Pursuant to the authority vested in the Commissioner of Health by sections 2164(10) and 2168(13) of the Public Health Law (PHL), sections 66-1.1, 66-1.2, 66-1.3, 66-1.6, and 66-1.10 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are hereby amended, to be effective upon filing with the Secretary of State, to read as follows:

Subdivisions (f), (g), (h), (i), and (j) of section 66-1.1 are amended, and new subdivisions (k), (l) and (m) are added, to read as follows:

- (f) *Fully immunized* means that an adequate dosage and number of doses of an immunizing agent licensed by the United States Food and Drug Administration has been received commensurate with the child's age, or the child has been demonstrated to have immunity as defined in this section.
- (1) For those immunizations required by section 2164 of the Public Health Law only, the number of doses that a child shall have at any given age, and the minimum intervals between these doses, shall be in accordance with the Advisory Committee on Immunization Practices Recommended Child and Adolescent Immunization [Schedules] Schedule for [Persons Aged 0 through] ages 18 [Years] years or younger, issued by the Advisory Committee on Immunization Practices (ACIP) as [set forth in *Morbidity and Mortality Weekly Reports* (MMWR) February 5, 2016 Volume 65 (No. 4)] referenced in Chapter 35 of the Laws of 2019 and posted on the Centers for Disease Control and Prevention website [at <http://www.cdc.gov/vaccines/schedules>]. The department will amend this section as necessary to reflect revised ACIP Recommended Immunization

Schedules]. Any child who completed an immunization series following minimum intervals prescribed in an ACIP Recommended Immunization Schedule pre-dating February [2016] 2019 shall continue to be deemed in compliance as long as the number of vaccine doses the child received conforms to the current ACIP Recommended Immunization Schedule. [The Advisory Committee on Immunization Practices Recommended Immunization Schedules for Persons Aged 0 through 18 Years issued by the ACIP as set forth in the MMWR February 5, 2016 Volume 65 (No. 4) is hereby incorporated by reference, with the same force and effect as if fully set forth at length herein. It is available for public inspection and copying at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, New York 12237. Copies are also available from the United States Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), Atlanta, Georgia 30333, and from the CDC website at [http://www.cdc.gov/vaccines/schedules/.](http://www.cdc.gov/vaccines/schedules/)]

- (i) For all vaccinations, except as provided in subparagraphs (ii) through (vii) [below] of this paragraph, children shall be assessed upon school entry or attendance, and annually thereafter, and be fully immunized commensurate with their age.
- (ii) Any child who has satisfied the immunization requirements in effect in regulation on June 30, 2014, entering [ninth through] twelfth grade (or comparable age level grade equivalents) in the [2016-2017] 2019-2020 school year only, shall be deemed in compliance with the immunization

requirements set forth in this section, including those set forth in subparagraphs (iii) through (vi) [below] of this paragraph, until such child graduates from school; provided, however, that such child shall comply with the meningococcal vaccination requirement set forth in subparagraph (vii) [below] of this paragraph.

- (iii) Any child entering or attending kindergarten through twelfth grade must have received the following vaccine doses, with the minimum intervals between these doses as established by the Advisory Committee on Immunization Practices Recommended Child and Adolescent Immunization [Schedules] Schedule for [Persons Aged 0 through] ages 18 [Years incorporated by reference herein] years or younger:
 - (a) Two adequate doses of measles containing vaccine, two adequate doses of mumps containing vaccine, and at least one adequate dose of rubella containing vaccine; and
 - (b) Five adequate doses of diphtheria and tetanus toxoids and acellular pertussis vaccine. If, however, the fourth dose of diphtheria and tetanus toxoids and acellular pertussis vaccine was given at [forty-eight] 48 months of age or older, only four adequate doses of vaccine are required. The final dose of vaccine must be received no sooner than [forty-eight] 48 months of age. Doses given after age seven should start with one dose of Tdap.
- (iv) [For poliomyelitis vaccination, beginning on or after July 1, 2014, children shall be assessed upon entry or attendance to kindergarten and sixth grade,

and/or their equivalent grades, and must have received four] Four adequate doses of poliomyelitis vaccine. If, however, the third adequate dose of poliomyelitis vaccine was given at [forty-eight] 48 months of age or older, only three adequate doses of vaccine are required. The final dose of vaccine must be received no sooner than [forty-eight] 48 months of age. [As the students enrolling in kindergarten and sixth grade move up a grade level each year, the students enrolling in those higher grades, or grade equivalent, must be appropriately immunized against poliomyelitis.] Beginning on or after September 1, 2016, children shall be assessed upon entry or attendance to child-caring centers, day-care agencies, nursery schools and pre-kindergarten programs and must be fully immunized against poliomyelitis commensurate with their age.

(v) [For varicella vaccination, beginning on and after July 1, 2014, children shall be assessed upon entry or attendance to kindergarten and sixth grade, and/or their equivalent grades, and must have received two] Two adequate doses of varicella vaccine. [As the students enrolling in kindergarten and sixth grade move up a grade level each year, the students enrolling in those higher grades, or grade equivalent, must be appropriately immunized against varicella.]

(vi) By entry to sixth grade or a comparable age level grade equivalent, any child [eleven] 11 years of age or older must have received one dose of a booster immunization containing tetanus and diphtheria toxoids and acellular pertussis vaccine.

(vii) For meningococcal vaccination, beginning on and after September 1, 2016, children shall be assessed upon entry or attendance to seventh grade, or a comparable age level grade equivalent, and must have received one adequate dose of vaccine upon such entry or attendance. Children shall be assessed upon entry or attendance to twelfth grade, or a comparable age level grade, and must have received two adequate doses of meningococcal vaccine upon such entry or attendance. If, however, the first dose of meningococcal vaccine was given at [sixteen] 16 years of age or older, then only one adequate dose of meningococcal vaccine is required for twelfth grade.

(2) If a child is not fully immunized, catch-up immunization must then take place according to the Advisory Committee on Immunization Practices Recommended Child and Adolescent Immunization [Schedules] Schedule for [Persons Aged 0 through] ages 18 [Years incorporated by reference in this subdivision] years or younger.

(g) *Immunity* means that:

(1) for measles, mumps, and rubella, [hepatitis B, and all three serotypes of poliomyelitis found in the polio vaccines,] a child has had a positive serologic test, as defined in subdivision (h) of this section [66-1.1(h)], for those diseases, or laboratory confirmation of disease, as defined in subdivision (k) of this section;
[or]

- (2) for varicella, a child has either had a positive serologic test, as defined in subdivision (h) of this section [66-1.1(h),]; laboratory confirmation of disease, as defined in subdivision (k) of this section; or had the disease as verified by a physician, nurse practitioner, or physician's assistant statement[.];
- (3) for hepatitis B, a child has had a positive serologic test, as defined in subdivision (h) of this section; or
- (4) for poliomyelitis, positive serologic tests, as defined in subdivision (h) of this section, for all three serotypes of poliomyelitis, submitted to a New York State school prior to September 1, 2019. Serologic tests against poliomyelitis submitted on or after September 1, 2019 will not be accepted in place of poliomyelitis vaccination.
- (h) *Serologic test* means a positive blood test for Immunoglobulin G (IgG) or for hepatitis B, a blood test for hepatitis B surface antibody, as determined by the testing lab's criteria. Serology results reported as equivocal are not acceptable proof of immunity. A positive serologic test can be accepted in place of vaccination only for the following diseases: measles, mumps, rubella, varicella, and hepatitis B [and all three serotypes of poliomyelitis found in the polio vaccines].
- (i) [*Grace period*] *Age appropriate* means that vaccine doses administered within [4] four calendar days of the recommended minimum age or interval will be considered valid.
- (j) *In process* means that:

- (1) a child has received at least the first dose in each immunization series required by section 2164 of the Public Health Law (except in the case of live vaccines in which a child should wait 28 days after one live vaccine administration before receiving another live vaccine, if the vaccines were not given on the same day) and has age appropriate appointments to complete the immunization series according to the Advisory Committee on Immunization Practices Recommended Child and Adolescent Immunization [Schedules] Schedule for [Persons Aged 0 through] ages 18 [Years incorporated by reference at subdivision (f) of this section] years or younger; or
- (2) a child is obtaining serologic tests within [30] 14 days of notification of the parent/guardian that such testing is requested; or
- (3) a child's serologic test(s) are negative, and therefore the child in question has appointments to be immunized within 30 days of notification of the parent/guardian to complete, or begin completion, of the immunization series based on the Advisory Committee on Immunization Practices Recommended Child and Adolescent Immunization [Schedules] Schedule for [Persons Aged 0 through] ages 18 [Years incorporated by reference at subdivision (f) of this section] years or younger.
- (4) Children who are not fully immunized can only continue to attend school if they are in the process of completing the immunization series based on the Advisory Committee on Immunization Practices Recommended Child and Adolescent Immunization [Schedules] Schedule for [Persons Aged 0 through] ages 18 [Years incorporated by reference at subdivision (f) of this section] years or younger. If a

child does not receive subsequent doses of vaccine in an immunization series according to the age appropriate ACIP catch-up schedule, including at appropriate intervals, the child is no longer in process and must be excluded from school within 14 days of the missed dose, if not otherwise exempt in accordance with section 66-1.3 of this Subpart.

(k) *Laboratory confirmation of disease* means, for measles, mumps, rubella or varicella, a positive laboratory test, either culture or polymerase chain reaction, detecting either the virus or viral-specific nucleic acid in a clinical specimen from the child or, for measles or rubella, a positive blood test for Immunoglobulin M (IgM) where such positive laboratory test is not otherwise explained by recent vaccination.

(l) *May be detrimental to the child's health* means that a physician has determined that a child has a medical contraindication or precaution to a specific immunization consistent with ACIP guidance or other nationally recognized evidence-based standard of care.

(m) *Attend or admit* means enrolled in, or admitted to, a school for the purpose of participating in or receiving services at such school, including but not limited to special education or related services, participating in intra-scholastic or interscholastic sports, or other school-sponsored events or activities; or being transported on a school bus or vehicle with other school children; except where such services, transportation, events, or activities are open to the general public.

Subparagraph (ii) of paragraph (4) of subdivision (c) of section 66-1.2 is hereby amended to read as follows:

- (ii) For individuals exempt from administration of vaccines, providers must submit patient information, including the reason [for the exemption] that such immunization may be detrimental to the child's health, as defined in subdivision (l) of this section, to the statewide immunization information system within 14 days following the in-person clinical interaction that occurs at or after what would normally have been the due date for administration of an age-appropriate immunization to that child, according to current national immunization recommendations.

Subdivision (c) of section 66-1.3 is hereby amended to read as follows:

- (c) A signed, completed [sample] medical exemption form [issued] approved by the NYSDOH or [NYCDOHMH or a signed statement] NYC Department of Education from a physician licensed to practice medicine in New York State certifying that immunization may be detrimental to the child's health, containing sufficient information to identify a medical contraindication to a specific immunization and specifying the length of time the immunization is medically contraindicated. The medical exemption must be reissued annually. The principal or person in charge of the school may require additional information supporting the exemption.

Subdivision (d) of section 66-1.3 is repealed.

Section 66-1.6 is hereby amended to read as follows:

The certificate of immunization required in section 66-1.3(a) of this Subpart shall be prepared and signed by a health practitioner licensed in New York State and shall specify the products administered and the dates of administration. It may also show physician, nurse practitioner, or physician assistant-verified history of varicella disease and/or [laboratory evidence of immunity to] positive serologic tests for measles, mumps, rubella, varicella, and/or Hepatitis B [and all 3 serotypes of poliomyelitis contained in the polio vaccines] and/or laboratory confirmation of disease for measles, mumps, rubella and/or varicella. Certificates of immunization issued prior to September 1, 2019 may also show positive serologic tests for all 3 serotypes of poliomyelitis contained in the polio vaccines. A record issued by NYSIIS, the CIR, an official immunization registry from another state, an electronic health record, and/or an official record from a foreign nation may be accepted as a certificate of immunization without a health practitioner's signature.

Section 66-1.10 is hereby amended to read as follows:

- (a) For those diseases listed in PHL [§] section 2164 only, in the event of an outbreak, as defined in section 2.2(d) of this Title, of a vaccine-preventable disease in a school, the commissioner, or his or her designee, or in the City of New York, the Commissioner of Health of the New York City Department of Health and Mental Hygiene, may order the appropriate school officials to exclude from attendance all students who either have been exempted from immunization under section 66-1.3(c) [or (d)] of this Subpart, or are in the process of receiving required immunizations pursuant to section 66-1.3(b) of this Subpart.

- (b) The exclusion shall continue until the commissioner or his or her designee, or in the City of New York, the Commissioner of Health of the New York City Department of Health and Mental Hygiene, determines that the danger of transmission has passed.
- (c) Schools must maintain a list of susceptible students who should be excluded from attendance in the event of an outbreak of vaccine preventable disease. This list must include all students who have been excused from immunization under section 66-1.3(c) [or (d)] of this Subpart and students who are in the process of completing immunization series or awaiting the results of serologic testing for any vaccine preventable disease specified under section 66-1.3(b) of this Subpart. The list shall be updated each time a new student enrolls in the school or a student's immunization status changes.

Regulatory Impact Statement

Statutory Authority:

The Commissioner of Health is authorized pursuant to Section 2164(10) of the Public Health Law (PHL) to adopt and amend rules and regulations necessary to effectuate the provisions and purposes of Section 2164 of the PHL. The Commissioner of Health is authorized pursuant to Section 2168(13) of the PHL to adopt and amend rules and regulations necessary to effectuate the provisions of Section 2168 of the PHL.

Legislative Objectives:

The legislative objective of PHL § 2164 includes the protection of the health of residents of the state by assuring that children are immunized according to current recommendations before attending day care, pre-kindergarten, or school, to prevent the transmission of vaccine preventable disease and accompanying morbidity and mortality. The legislative objective of PHL § 2168 is to establish a comprehensive database of complete, accurate and secure immunization records.

Chapter 35 of the Laws of 2019 amended both PHL §§ 2164 and 2168, repealing the exemption from vaccination requirements for children whose parents had non-medical objections to immunizations.

Needs and Benefits:

There currently exist outbreaks of measles in New York City and in the Counties of Rockland, Orange, and Westchester, and cases have also been identified in the County of

Sullivan. Measles is a viral disease transmitted via the airborne route when a person with measles coughs or sneezes. It is one of the most contagious diseases known. Following exposure to the virus about 90% of people who are susceptible will develop measles.

Measles can be a very serious disease. This is especially true for children less than 5 years of age, adults who are over 20 years of age, pregnant women and those who are immunocompromised. Common complications include ear infection and diarrhea. Severe complications include pneumonia and encephalitis. About one child out of 1,000 will get encephalitis, which can result in seizures. Deafness and other complications can occur. For every 1,000 cases of measles, one or two children will die, despite the best medical care. Measles can also cause premature birth in pregnant women.

The measles vaccine is very effective and remains the best protection against the disease. One dose of measles vaccine is about 93% effective at preventing the measles if exposed to the virus. Two doses are about 97% effective. The measles vaccine is also safe and serious side effects are rare.

According to the Centers for Disease Control (CDC), sustaining a high vaccination rate among school children is vital to the prevention of disease outbreaks, including the reestablishment of diseases that have been largely eradicated in the United States, such as measles. According to State data from 2017-2018, there are at least 280 schools in New York with an immunization rate below 85%, including 211 schools below 70%, far below the CDC's goal of at least a 95% vaccination rate to maintain herd immunity.

Endemic measles transmission had been eliminated in the United States. However, because some individuals have chosen not to receive the vaccine and to not have their children

vaccinated, outbreaks stemming from imported cases have occurred and new cases continue to occur in multiple counties across New York State.

In response to the current measles outbreak, the Legislature enacted Chapter 35 of the Laws of 2019, which repealed non-medical exemptions to the vaccination requirements for admission to day care, pre-kindergarten, or school. By increasing the number of children immunized against vaccine-preventable diseases like measles, this legislation will prevent outbreaks and protect both the immunized children and those members of the community who cannot be vaccinated for medical reasons.

This emergency regulation conforms existing regulations with the provisions Chapter 35 of the Laws of 2019, by eliminating any reference to non-medical exemptions to vaccination rules for school admissions.

In addition, this emergency regulation clarifies that a child may only receive a medical exemption from vaccination requirements when there is a medical contraindication or precaution to a specific immunization consistent with ACIP guidance. The regulation further requires that such contraindication be documented on forms approved by the Department of Health (Department) or the New York City Department of Education, and that they be documented in the New York State Immunization Information System. Although most physicians act in good faith and only issue medical exemptions for true medical contraindications to vaccination, as demonstrated by the experience of California, a small number may issue medical exemptions for non-medical reasons. In 2015, the State of California removed non-medical exemptions to school immunization requirements without taking steps to strengthen the rules governing medical exemptions. Over the next three years, the use of medical exemptions to school immunization requirements more than tripled. By providing clear, evidence-based guidance to

physicians, this emergency regulation will help prevent medical exemptions being issued for non-medical reasons.

Finally, this regulation makes several technical amendments to conform with current guidance from the CDC's Advisory Committee on Immunization Practices (ACIP), including clarifying the grades covered by varicella, poliomyelitis and vaccine interval requirements; removing poliovirus from the list of diseases for which a positive serologic test is acceptable proof of immunity; and permitting laboratory confirmation of immunity to measles, mumps, rubella and varicella infections.

Costs:

Costs to the Regulated Entity:

Chapter 35 of the Laws of 2019 eliminates non-medical exemptions to school vaccination requirements. This created additional administrative work for the schools and day care businesses that are regulated under PHL § 2164. This regulation implements the law but does not impose any additional costs. Regulated entities that were already in compliance with the law will not have significant additional costs.

Costs to Local Government:

This regulation will affect schools, many of which are operated by local governments. The costs are as described above.

Costs to the Department of Health:

The Department intends to implement Chapter 35 of the Laws of 2019 and this regulation within existing appropriations.

Local Government Mandates:

Schools must already comply with Chapter 35 of the Laws of 2019.

Paperwork:

Children who previously had non-medical exemptions to school vaccination requirements will now have to provide regulated entities with evidence of immunity or a medical exemption. Regulated entities will need to maintain new paperwork for students who previously had religious exemptions.

Duplication:

These amendments do not duplicate, overlap or conflict with any Federal and State laws.

Alternatives:

An alternative would be not to amend the regulation to align with the Public Health Law as enacted by the Legislature. This alternative was rejected as unacceptable and inconsistent with the Department's duty to execute and implement the laws of New York State.

Federal Standards:

The Centers for Disease Control and Prevention maintains immunization schedules and guidelines for when immunization may be detrimental to a child's health because a child has a medical contraindication or precaution to a specific immunization.

Compliance Schedule:

There is no compliance schedule imposed by these amendments, which shall be effective upon filing with the Secretary of State.

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Regulatory Flexibility Analysis for Small Businesses and Local Governments

Effect of Rule:

This emergency regulation will apply to private schools, including parochial schools, and day care, some of which may be small businesses, as well as public schools operated by local governments. These regulated entities will be required to change their policies and procedures for school attendance to comply with PHL § 2164 and these regulations.

This emergency regulation will also apply to physicians who may also be considered small businesses. In order to reduce the risk of medical exemptions being issued for non-medical reasons, physicians will be required to document the reason for granting medical exemptions in the New York State Immunization Information Systems (NYSIIS) and use medical exemption forms approved by the Department or the New York City Department of Education.

Compliance Requirements:

All day care, pre-kindergarten, private and public schools must already comply with the requirements of Chapter 35 of the Laws of 2019. All physicians providing medical exemptions must comply with the requirement to document such exemptions as described above.

Professional Services:

There are no additional professional services required as a result of this regulation.

Compliance Costs:

Chapter 35 of the Laws of 2019 eliminated the non-medical exemption to school vaccination requirements. This created additional administrative work for the schools and day

care businesses that are regulated under PHL § 2164. This regulation implements the law but does not impose any additional costs. Regulated entities that were already in compliance with the law will not have significant additional costs. Physicians will not incur any additional costs.

Economic and Technological Feasibility:

This proposal is economically and technically feasible, as it does not require any special technology and does not impose an unreasonable financial burden on private schools, day care centers, public schools, or physicians.

Minimizing Adverse Impact:

The Department will work with regulated entities to ensure that they are aware of the requirements and have the information necessary to comply.

Small Business and Local Government Participation:

Small business, local government, and the public are invited to comment during the Codes and Regulations Committee meeting of the Public Health and Health Planning Council.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on a party subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one is not included. As this proposed regulation does not create a new penalty or sanction, no cure period is necessary.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including in rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (<http://quickfacts.census.gov>).

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

This regulation will apply all day care, pre-kindergarten, and private and public schools, including parochial schools, as well as all physicians, throughout New York, including in rural areas.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

This emergency regulation will apply to public schools and private schools, including parochial schools, and day care in rural areas. These regulated entities will be required to change their policies and procedures for school attendance to comply with PHL § 2164 and these regulations.

This emergency regulation will also apply to physicians in rural areas. In order to reduce the risk of medical exemptions being issued for non-medical reasons, physicians will be required to document the reason for granting medical exemptions in the New York State Immunization Information Systems (NYSIIS) and use medical exemption forms issued by the Department or the New York City Department of Education.

There are no additional professional services required as a result of this regulation.

Costs:

Chapter 35 of the Laws of 2019 eliminated the non-medical exemption to school vaccination requirements. This created additional administrative work for the schools and day care businesses that are regulated under PHL § 2164. This regulation implements the law but does not impose any additional costs. Regulated entities that were already in compliance with the law will not have significant additional costs. Physicians will not incur any additional costs.

Minimizing Adverse Impact:

The Department will work with regulated entities in rural areas to ensure that they are aware of the requirements and have the information necessary to comply.

Rural Area Participation:

Small business, local government, and the public are invited to comment during the Codes and Regulations Committee meeting of the Public Health and Health Planning Council.

JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act (SAPA). It is apparent, from the nature of the proposed amendment, that it will have no impact on jobs and employment opportunities.

EMERGENCY JUSTIFICATION

Compliance with the requirements of the State Administrative Procedure Act for filing of a regulation on a non-emergency basis including the requirement for a period of time for public comment cannot be met because to do so would be detrimental to the health and safety of the general public, particularly children.

There currently exist outbreaks of measles in New York City and in the Counties of Rockland, Orange, and Westchester, and cases have also been identified in the County of Sullivan and Greene. Measles is a viral disease transmitted via the airborne route when a person with measles coughs or sneezes. It is one of the most contagious diseases known. Following exposure to the virus about 90% of people who are susceptible will develop measles.

Measles virus can remain active and contagious for up to 2 hours in the air or on surfaces. People can contract measles by walking into a room where an individual infected with measles has been, being in an elevator after someone with measles has been there, or being next to a person with measles who sneezes or coughs.

Measles is characterized by a period of fever, which can be as high as 105 degrees F, with cough, coryza, and/or conjunctivitis. A red rash typically presents 2-4 days later and lasts 5-6 days. Hence, non-immune persons who are exposed to, and become infected with, measles are contagious for four days before the rash appears.

The rash usually starts on the face and proceeds down the body to involve the extremities last and may include the palms and soles. The rash is usually discrete but may become confluent on the upper body; it resolves in the same order that it appeared. Koplik's spots (punctate blue-white spots on the bright red background of the buccal mucosa) may be present, often before the rash develops, but are often not seen and are not required for the diagnosis of measles.

Measles can be a very serious disease. This is especially true for children less than 5 years of age, adults who are over 20 years of age, pregnant women and those who are immunocompromised. Common complications include ear infection and diarrhea. Severe complications include pneumonia and encephalitis. About one child out of 1,000 will get encephalitis, which can result in seizures. Deafness and other complications can occur. For every 1,000 cases of measles, one or two children will die, despite the best medical care. Measles can also cause premature birth in pregnant women.

The measles vaccine is very effective and remains the best protection against the disease. One dose of measles vaccine is about 93% effective at preventing the measles if exposed to the virus. Two doses are about 97% effective.

The measles vaccine is safe and serious side effects are rare. Fever is the most common side effect of the MMR vaccine. About 1 in 10 people will get a fever about a week to a week and a half after vaccination. The fever usually lasts for a day or two and then gets better on its own. About 1 in 20 people will develop a red rash about a week to a week and a half after MMR or MMRV vaccine. The rash may look like measles but usually is much milder. There has never been a documented case of a vaccinated person spreading measles as a result of receiving the MMR vaccine. Severe allergic reactions rarely occur after the MMR vaccine.

Despite the safety of the vaccine, because of underlying conditions or factors, some individuals are not able to receive measles vaccination such as those who are immunocompromised, women known to be pregnant or attempting to become pregnant, young infants, or those who have a medical contraindication. Additionally, children under 5 years of age are typically not fully immunized based on routine immunization schedules. Importantly, these non-immune, under-vaccinated or higher risk individuals are at risk of contracting measles,

may frequent healthcare settings, and are also most at risk for severe complications from measles.

Endemic measles transmissions have been eliminated in the United States. However, because some individuals have chosen not to receive the vaccine and to not have their children vaccinated, outbreaks stemming from imported cases have occurred and new cases continue to occur in multiple counties across New York State.

Chapter 35 of the Laws of 2019 was enacted in response to the current measles outbreak, to increase the number of students immunized against this preventable disease. These regulations are necessary in order to execute and implement this new law and, as such, delaying these regulations would increase the risk of new outbreaks of measles or the spread of existing outbreaks, placing children, and adults who lack immunity to measles, at greater risk of illness and potentially severe complications including death.



**Department
of Health**

**Office of Children
and Family Services**

**State Education
Department**

Effective June 13, 2019, Chapter 35 of the Laws of 2019 repealed non-medical exemptions from vaccination for children attending school.

This document is in follow-up to [FAQs issued on June 18, 2019](#) and on [June 22, 2019](#). The Department of Health filed emergency regulations on August 16, 2019 to implement the statutory amendments to the Public Health Law and adhere to the legislative intent of the statutory amendments, which is to protect the public health. This guidance is intended to assist schools in implementing the statutory and regulatory amendments.

The [2019-20 School Year New York State Immunization Requirements for School Entrance/Attendance](#) is available online.

The Centers for Disease Control and Prevention Advisory Committee on Immunization Practices (ACIP) [catch-up immunization schedule](#) is available online.

VACCINATION REQUIREMENTS APPLICABLE TO ALL STUDENTS

Public Health Law §2164, as amended by Chapter 35 of the Laws of 2019, applies to students attending all schools as defined in Public Health Law §2164 to include any public, private or parochial child-caring center, day nursery, day care agency, nursery school, kindergarten, elementary, intermediate, or secondary school.

Public Health Law §2164, as amended by Chapter 35 of the Laws of 2019, prohibits a school from permitting any child to be admitted to such school, or to attend such school, in excess of 14 days without sufficient evidence that the child has received all age-appropriate required vaccinations. The 14 days may be extended to not more than 30 days where the student is transferring from out of state or from another country and can show a good faith effort to get the necessary evidence **or** where the parent, guardian or any other person in parental relationship can demonstrate that a child has received the first age-appropriate dose in each immunization series and that they have age-appropriate scheduled appointments for follow-up doses to complete the immunization series in accordance with the CDC's Advisory Committee on Immunization Practices Recommended Immunization Schedules for Persons Aged 0 through 18.

I. All Students

A. Application of Statute.

(1) Does this apply to students attending an independent preschool?

Yes.

(2) Does this apply to students attending approved State-operated and State-supported schools, approved private residential and non-residential schools for the education of students with disabilities, and Special Act School Districts?

Yes.

Students placed by a Committee on Special Education (CSE) on a day or residential basis in one of these settings must comply with the mandatory vaccination laws.

Students placed residentially by a State Agency, Court, or Local Social Services District in a childcare institution with an affiliated approved private residential school or Special Act School District must comply with mandatory vaccination laws.

(3) Does this apply to students who are receiving homebound instruction, commonly referred to as home/hospital-instruction (students who are receiving homebound instruction are not the same as students who are homeschooled under [8 NYCRR §100.10](#))?

Yes. Homebound instruction is a form of tutorial services, provided to public or nonpublic students, by the public school district of residence. These services are provided to students who are unable to attend their public or nonpublic school because of physical, mental, or emotional illness or injury.

(4) When are schools required to assess compliance with the immunization requirements for students participating in interscholastic athletics whose season commences in August 2019?

For students participating in interscholastic athletics in August 2019, schools can consider the beginning of the academic year to be the start of the 14-day time period. For students not attending year-round instruction, the 14-day time period commences on the first day of instruction for the school year (July for students attending summer school or September for students not attending summer school) or first enrollment during the school year. See FAQ issued on June 22, 2019.

(5) If a parent chooses not to vaccinate his/her child, what are the options for the child's education in New York?

Parents who choose not to vaccinate their children, and whose children do not have a valid medical exemption, still must ensure that children of compulsory school age are educated and, thus, would need to provide home instruction (“homeschooling”) for those children.

Information regarding compulsory school age is available here:

<http://www.p12.nysed.gov/ss/lawsregs/>.

B. Homeschooled Students (8 NYCRR §100.10)

- (1) If I provide homeschooling for my child, will he or she be allowed to attend State tests (e.g. 3-8 State assessments, Regents examinations) held at the school if he/she is not immunized?**

No. Only those students who have been vaccinated consistent with Public Health Law §2164 or have a valid medical exemption will be allowed to take such examinations at the school.

- (2) May groups of parents provide homeschooling collectively by engaging the services of a tutor to provide group instruction to their children?**

Parents providing homeschooling to their child may arrange to have their child instructed in a group situation for particular subjects but not for a majority of the home instruction program. Where groups of parents organize to provide group instruction by a tutor for a majority of the instructional program, they are operating a nonpublic school and are no longer providing home instruction.

- (3) Can a homeschooled student who is not immunized audit or intermittently attend some classes at a nonpublic school without the required immunizations?**

No. Homeschooled students who are not immunized consistent with Public Health Law §2164 or who do not have a valid medical exemption cannot audit or intermittently attend some classes at a nonpublic school.

- (4) Can students who are not immunized and do not have a valid medical exemption be transported using school transportation with other students?**

No, students who have not been immunized consistent with the requirements of Public Health Law §2164 and do not have a valid medical exemption may not be transported on a school bus or vehicle with other students.

- (5) If a school district provides bus transportation to students attending another school (i.e., a nonpublic school), is the school district that provides the bus transportation responsible for ensuring that the students from other schools have all their required immunizations?**

No. Each school arranging for bus transportation through their school district of location is responsible for ensuring that the children enrolled in or attending such school receive the required immunizations or valid medical exemptions in accordance with the law.

II. STUDENTS WITH DISABILITIES

A. Are students with disabilities who have not been immunized entitled to special education services?

Parents who choose not to vaccinate a student with a disability must still ensure that children of compulsory school age are educated and, thus, would need to provide homeschooling for those children. Where students with disabilities are provided homeschool instruction under [8 NYCRR §100.10](#), such students are eligible to receive special education services from their school district. Under Education Law §3602-c(2-c), these students are entitled to receive special education services in accordance with an individualized education services program (IESP) from the public school district in which the home school is located. Where the student is educated at home, the school district of location is the same as the student's school district of residence.

B. Is it considered a change in placement when a student with a disability, who previously attended public school under a non-medical exemption from vaccination requirements, is now being homeschooled because the student does not meet vaccination requirements under State law?

No. It is not considered a change in placement when a student with a disability who previously attended public school under a non-medical exemption from vaccination requirements is now being homeschooled solely because the student does not meet the vaccination requirements under Public Health Law §2164.

C. What are the requirements for a homeschooled child to receive special education services?

To be eligible to receive special education services, a homeschooled student must:

- be entitled to attend the public schools without payment of tuition pursuant to Education Law §3202(1); and
- have an individualized home instruction plan that the superintendent of schools of the school district in which the homeschool is located has determined to be in compliance with §100.10 of the Regulations of the Commissioner of Education.

D. What is the difference between an IESP and an individualized education program (IEP)?

For homeschooled students who are students with disabilities, the committee on special education (CSE) would develop an individualized education services program (IESP) for the student. An IESP is developed in the same manner as an IEP, but an IESP is developed in consideration of the parents' decision to educate their child at home.

E. Where are special education services provided to homeschooled students with an IESP?

A board of education determines the location where special education services will be made available to homeschooled students, which could include delivery of services by school staff or contractors in the child's home, on school property or at another location. However, for a homeschooled student's special education services to be delivered at a public, private or parochial school, the child must either be immunized consistent with Public Health Law §2164(7) or have a valid medical exemption in order to receive special education services in a school setting.

Students who are not immunized and do not have a valid medical exemption could receive their special education services in their home or at another location (e.g. therapy provider's office; or public gathering sites that are open and accessible to the general public, such as community centers).

If special education services are provided at a location other than the student's home the district would remain responsible for providing transportation. (See also Section I.(A), Question #4: "[S]tudents who have not been immunized consistent with the requirements of Public Health Law §2164 and do not have a valid medical exemption may not be transported on a school bus with other students.")

F. What is the deadline for parents of homeschooled students to submit a written request for special education services?

For homeschooled students who are students with disabilities, the parent must request special education services in writing to the board of education of the school district of location by June 1 preceding the school year for which the request for services is made. However, for a student who is first identified as a student with a disability after the first day of June preceding the school year for which the request is made and prior to the first day of April of such current school year, the parent must submit the written request for services within 30 days after the student was first identified. A request may also be submitted within 30 days of a change in the student's school district of residence.

G. Are there any exceptions to the June 1 deadline for requesting services?

If a parent does not file a written request by June 1, nothing prohibits a school district from exercising its discretion to provide services subsequently requested for a student, provided that such discretion is exercised equally among all students with disabilities who file after the June 1 deadline. For the 2019-20 school year, school districts are encouraged to honor parent requests for special education services for homeschooled children who may be impacted by the repeal of religious exemptions to vaccination requirements.

H. What options do parents have if they disagree with the recommendations on an IESP?

Parents of homeschooled students with disabilities who disagree with the IESP recommendation of the CSE would be entitled to the due process procedures set forth in Education Law §4404.

I. Can parents of homeschooled children choose which services they want their child to receive or must parents accept all or none of the services recommended on an IESP?

Parents must submit a request in writing if they want special education services provided to their child. Unless otherwise indicated, the parent's written request is for all services on the IESP. However, a parent could request that only specific services be provided (e.g., speech therapy). The school district should maintain documentation of the parent's request.

III. PRESCHOOL STUDENTS WITH DISABILITIES

A. Does Chapter 35 of the Laws of 2019 apply to students attending preschool special education programs approved pursuant to §4410 of NYS Education Law?

Yes.

B. If a parent chooses not to immunize a preschool child, does this impact the preschool special education services that the child may receive?

Preschool students with disabilities continue to be entitled to special education programs and services through an IEP developed by the committee on preschool special education (CPSE). The IEP will identify the location where special education services will be provided to preschool students with disabilities.

If the CPSE recommends special education services that can only be delivered in an approved preschool special education program, the child must either be immunized consistent with Public Health Law §2164 or have a valid medical exemption in order to attend or be admitted to that program and receive those special education services.

C. What options do parents have if they disagree with the recommendations on an IEP?

Parents of preschool students with disabilities who disagree with the IEP recommendation of the CPSE would be entitled to the due process procedures set forth in Education Law §4404.

Immunization Requirements for School Attendance Medical Exemption Statement for Children 0-18 Years of Age

NOTE: THIS EXEMPTION FORM APPLIES ONLY TO IMMUNIZATIONS REQUIRED FOR SCHOOL ATTENDANCE

Instructions:

1. Complete information (name, DOB etc.).
2. Indicate which vaccine(s) the medical exemption is referring to.
3. Complete contraindication/precaution information.
4. Complete date exemption ends, if applicable.
5. Complete medical provider information. Retain copy for file. Return original to facility or person requesting form.

-
1. Patient's Name _____
 2. Patient's Date of Birth _____
 3. Patient's Address _____
 4. Name of Educational Institution _____
-

Guidance for medical exemptions for vaccination can be obtained from the contraindications, indications, and precautions described in the vaccine manufacturers' package insert and by the most recent recommendations of the Advisory Committee on Immunization Practices (ACIP) available in the Centers for Disease Control and Prevention publication, Guide to Vaccine Contraindications and Precautions. This guide can be found at the following website: <http://www.cdc.gov/vaccines/recs/vac-admin/contraindications.htm>.

Please indicate which vaccine(s) the medical exemption is referring to:

- | | |
|---|---|
| <input type="checkbox"/> Haemophilus Influenzae type b (Hib) | <input type="checkbox"/> Measles, Mumps, and Rubella (MMR) |
| <input type="checkbox"/> Polio (IPV or OPV) | <input type="checkbox"/> Varicella (Chickenpox) |
| <input type="checkbox"/> Hepatitis B (Hep B) | <input type="checkbox"/> Pneumococcal Conjugate Vaccine (PCV) |
| <input type="checkbox"/> Tetanus, Diphtheria, Pertussis (DTaP, DTP, Tdap) | <input type="checkbox"/> Meningococcal Vaccine (MenACWY) |

Please describe the patient's contraindication(s)/precaution(s) here: _____

Date exemption ends (if applicable) _____

A New York State licensed physician must complete this medical exemption statement and provide their information below:

Name (print) _____ NYS Medical License # _____

Address _____

Telephone _____

Signature _____ Date _____

For Institution Use ONLY: Medical Exemption Status Accepted Not Accepted Date: _____



MEDICAL REQUEST FOR IMMUNIZATION EXEMPTION

FOR DOE USE ONLY

Student's name _____ DOB ___/___/___

OSIS #

ATS DBN

FOR THE USE OF REQUESTING MEDICAL PROFESSIONAL

INSTRUCTIONS: This form is to be completed by the student's treating physician who must be licensed in NYS. The medical basis for exemption must be based on guidance from the Centers for Disease Control and Prevention (CDC), Advisory Committee on Immunization Practices (ACIP), and the American Academy of Pediatrics (AAP) Red Book.

Failure to provide contact information and/or sufficient documentation will delay the review process. Requests for additional information, made either by telephone or in writing must be received by the Office of School Health within 2 weeks or the request for medical exemption will be denied.

I request a medical exemption for (student's name) _____ for the following required immunization(s) and certify that the particular immunization will be detrimental to the child's health:

Hepatitis B DTaP/Tdap Polio MMR Varicella MenACWY For children up to the 5th birthday: PCV13 Hib

NOTE:

- Exemption from MMR based on egg allergy will not be accepted. Guidelines are explicit that egg allergy, even if anaphylactic, is not a valid contraindication.
- Autism and/or developmental delay in the child or family member is not a valid reason for exemption for any vaccine and will not be accepted.
- Contact with immunosuppressed persons by a healthy individual is not a valid contraindication for exemption and will not be accepted.
- Pregnancy in the household or contact with a pregnant woman is not a valid contraindication for exemption and will not be accepted.
- Medical exemptions are no more than one year and must be renewed at the start of each school year.

Explanation: _____

I am the student's physician **PRINT CLEARLY**

NAME

Physician's original signature _____ Degree: _____ License #

- ____ Physician
- ____ Fellow
- ____ Resident

Stamp

Contact information

Direct telephone line ___/___/___ ext ___/___/___ Cell ___/___/___

Date _____

PARENT/GUARDIAN CONSENT FOR RELEASE OF INFORMATION

I authorize _____ (health professional) to provide physicians and nurses of the New York City Department of Health and Mental Hygiene and the New York City Department of Education and their medical consultants with information contained in my child's medical record, including, but not limited to, copies of laboratory and or other examinations supporting this request for medical exemption for required immunizations.

Parent/Guardian's signature _____

Parent/Guardian's name (PRINT) _____ Date _____

FOR OFFICE OF SCHOOL HEALTH USE ONLY

Exemption ____ APPROVED ____ DENIED Length of exemption: _____

Physician comments: _____

Reviewed by: _____ Date: _____