

Date of Hearing: January 9, 2024

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Alex Lee, Chair

AB 772 (Jackson) – As Amended January 3, 2024

**SUBJECT:** Child Day Care Facilities

**SUMMARY:** Exempts “drop-in” day care centers from verifying, maintaining records, or requiring a physician’s assessment upon admission of a child.

**EXISTING LAW:**

- 1) Establishes the “California Child Day Care Facilities Act”, creating a separate licensing category for child day care centers and family day care homes within the California Department of Social Services’ (CDSS) existing licensing structure. (Health and Safety Code [HSC] § 1596.70 *et seq.*)
- 2) Defines the following terms:
  - a) “Child day care facility” to mean a facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child day care facilities include day care centers, employer-sponsored child care centers, and family day care homes. (HSC § 1596.750)
  - b) “Day care center” to include infant centers, preschools, extended day care facilities, and school age child care centers. (HSC § 1596.76)
  - c) “Infant” as a child under two years of age and “infant care center” to mean any child care center, or part thereof, where less than 24-hours per day of nonmedical care and supervision are provided to infants in a group setting. (Title 22 California Code of Regulations [CCR] § 101152(i)(1) and (2))
  - d) "Preschool age children" to mean children who are enrolled in a licensed child day care center and who are not enrolled in either an infant care center or school-age child day care center. (HSC § 1597.059(b))
  - e) “Family day care home” to mean a facility that regularly provides care, protection, and supervision for 14 or fewer children, including children under 10 years of age who reside at the home, in the provider’s own home, for periods of less than 24 hours per day, while the parents or guardians are away. (HSC § 1596.78)
  - f) "School-age child" to mean any child who has either entered the first grade or higher or who is in a child care program that provides care and supervision exclusively to children enrolled in kindergarten and higher, and defines a "school-age child care center" to mean any child care center, or part thereof, where less than 24-hour per day nonmedical care and supervision are provided to school-age children in a group setting. (22 CCR § 101152(s)(1) and (2))

- g) "Combination center" to mean any combination of a child care center, infant care center, school-age child care center, and child care center for mildly ill children that is owned and operated by one licensee at a common address. (22 CCR § 101152 (c)(10))
- 3) Requires any person or entity operating, as specified, a child day care facility in California to have a current valid license from CDSS. (22 CCR § 101156(a))
- 4) Directs CDSS, and any local agency with which it contracts for purposes of licensing activities, to conduct an initial site visit and grant or deny an application for license within 30 days of receiving a complete licensing application for a day care center. (HSC § 1597.13)
- 5) Requires child day care centers to obtain a written medical assessment of the child within 30 calendar days following the enrollment of a child that cannot be more than one year of age when obtained. Further requires the medical assessment to provide the following:
- a) A record of any infectious or contagious disease that would preclude care of the child by the licensee;
  - b) Results of a test for tuberculosis (TB);
  - c) Identification of the child's special problems and needs;
  - d) Identification of any prescribed medications being taken by the child;
  - e) Ambulatory status; and,
  - f) Health information, such as dietary restrictions and allergies, instructions for action to be taken in case the child's authorized representative, or the physician designated by the authorized representative, cannot be reached in an emergency; and, a signed consent form for emergency medical treatment unless the child's authorized representative has signed a statement. (22 CCR § 101221(b)(8); 22 CCR § 101220; HSC § 1597.05)
- 6) Authorizes CDSS to require child day care centers to obtain a current written medical assessment if such an assessment is necessary to verify the appropriateness of a child's placement. Further provides that if a medical assessment is not available for a child and cannot be obtained within 30 days of admission:
- a) Requires a medical appointment date to be obtained from the authorized representative, which includes, but is not limited to, a parent, legal guardian, a conservator or a public placement agency, upon the child's admission; and,
  - b) Requires a TB test to be obtained on the child within 30 days of admission. (22 CCR § 101220)
- 7) Requires child day care facilities that are licensed by CDSS to require proof of each child's immunizations, including for TB, and to maintain files of this proof on the premises. (17 CCR § 6000; 22 CCR § 101220.1)
- 8) Exempts drop-in day care centers from being required to verify children's immunizations or TB testing or maintain files regarding children's immunizations or TB testing and specifies

that these day care centers are not exempt from any other licensure requirements. (HSC § 1596.799)

- 9) Permits child day care facilities to exempt a child from immunization requirements provided that one of the following criteria is met:
  - a) A physician provides a written statement that an immunization(s) should not be given to the child and specifies how long this exemption is expected to be needed; and,
  - b) The child's authorized representative provides a written statement that immunizations are contrary to their personal or religious beliefs. (22 CCR § 101220.1)

**FISCAL EFFECT:** This bill has been keyed non-fiscal by the Legislative Counsel.

**COMMENTS:** *Licensed Child Care.* The California Child Day Care Facilities Act governs the licensure, maintenance, and operation of child day care centers and family day care homes in the state. This law and the associated regulations found in Title 22 of the CCR establish, among other things, general health and safety requirements, staff-to-child ratios, and provider training requirements. Day care centers include, infant centers, preschools, extended day care facilities, and school age child care centers. CDSS's Community Care Licensing Division (CCLD) has the responsibility of licensing and monitoring the state's 10,481 day care centers, which, as of January 2021, provided 705,734 child care slots (47,497 of which were for infants). There are an additional 1,040 licensed school-age day care facilities, which provided 76,941 slots as of that same date.

State law and regulations dictate that infant care centers serve children under the age of two, preschool child care centers serve children between the ages of two and when they start school, and school-age child care centers serve children who have entered the first grade or are in a child care program exclusively for children in kindergarten and above. A "combination center" is any combination of an infant center, preschool child care center, school-age child care center and child care center for mildly ill children that is owned and operated by one licensee at a common address. In California, separate licenses are currently required for serving infants, preschoolers, and school-age children, although a center may be licensed to care for all three groups at one site (*AB 605, Mullin, Chapter 574, Statutes of 2018*). Depending on their age, children receive care in separate areas at the center for safety and activity reasons.

Drop-in day care centers are not defined in existing law or regulations, but are statutorily described as child care that does not require a contract or agreement between any parent and center for the regular care of a child, and for which there is no prearranged schedule of care for any child. This allows parents or guardians to find the care they need when they need it most, which includes during the day, evenings, and weekends, with no reservations required.

*Licensing Requirements.* To be granted a valid license as a child day care center, current law and regulations require, among other things, licensed child day care facilities to verify and maintain each child's immunization records, including TB testing, and to submit a physician's assessment. A medical assessment must be performed by or under the supervision of a licensed medical professional, be obtained within 30 calendar days of the child's enrollment and cannot be more than one year of age when obtained. State law has exempted drop-in child care centers from the immunization and TB verification requirement since 1995 (*AB 301, Alpert, Chapter 473, Statutes of 1995*), but has not explicitly exempted drop-in day care centers from other licensing

requirements, including the physician's assessment. The exemption for drop-in child care centers to verify immunizations had sunset in 2001, but was re-instated in 2002 after KidsPark – a chain of eight hourly drop-in child care centers that serves 7,000 families – requested the exemption language be included in a separate bill in 2001 (*AB 182, Vargas, 2001; AB 3049, Committee on Health, Chapter 536, Statutes of 2002*). A Senate Health and Human Service Committee analysis on AB 182, stated, “There has been no evidence of any problem resulting from [the immunization verification] exemption at KidsPark or any other drop-in center.” Apart from statutory exemptions, regulations stipulate that child day care centers may seek written departmental approval for a waiver or an exception to use alternate concepts, programs, services, procedures, techniques, equipment, space, personnel qualifications or staffing ratios as long as there is no instance that such alternative be detrimental to the health and safety of any child in care.

This bill surfaced when a drop-in day care center relocated their San Jose center in February 2023. The drop-in day care center was asked by the regional office that licenses the San Jose region to collect physician's assessments and was informed that a waiver for this requirement would not be issued because it is a statutory requirement. The drop-in day care center moved forward and requested an exemption with CDSS to be allowed to use the drop-in day care center's online or paper registration form to collect health assessment information in lieu of a physician's assessment. CDSS denied the request. The drop-in day care center then appealed CDSS' decision, maintaining, among other things, that in the past, they were able to operate without collecting physician's assessments. This prompted CDSS to review past waivers for the physician's assessment requirement to determine if any might have been granted without proper authority, and should therefore be rescinded.

The provisions of this bill seek to exempt the physician's assessment requirement for drop-in child care centers to ensure children receive continuity of care when parents or guardians face unexpected schedule changes and need to drop off their child(ren) without a reservation. This bill also aims to require caregivers using these exempt drop-in day care centers to sign a form acknowledging that they understand the center is not required to verify a physician's assessment. While parents would be placing their children in facilities where a physician's assessment has not been verified, the parents would be doing so with full knowledge of that fact, providing more parental choice around meeting their child care needs.

**Author's Statement:** According to the author, “[This bill] seeks to break down a barrier for working families, the backbone of this state's economy, to have access to child care by adding physician's assessments to the list of exemptions for non-contract child day care centers, alongside children's immunizations and tuberculosis testing to simplify access to care for working families.”

**Equity Implications:** The provisions of this bill seek to ensure equity by supporting non-traditional child care providers who provide much-needed child care to families and children on any day of the week. As previously discussed, drop-in child care centers offer an alternate child care model for children and families who have unpredictable schedules and need last-minute child care, which could be for an hour or the full day. This especially affects working parents who require child care during nontraditional working hours or during summer or holiday breaks. Drop-in child care is a crucial support, particularly for those parents who may work evenings, or for those who work multiple jobs.

Additionally, unlike traditional day care centers with a stable population who may see a few changes every month, drop-in day care centers may not see a family after their first visit or their second visit may be months apart. Thus, requesting families who use drop-in day care centers to submit a physician's assessment decreases their access to much-needed child care because a family will not have this paperwork readily available since most times they are dropping in for care on an unplanned basis. Research shows that caregivers who struggle to arrange child care are more likely to have negative effects on their employment, such as more missed days of work, job loss, which can lead to loss of insurance coverage for their children, and financial stress. Child care-related employment disruption was higher among caregivers from low-income families, and children from racial and ethnic minority groups.

Regulations provide that if a medical assessment is not available for a child and cannot be obtained within 30 days of admission, then a medical appointment date is required to be obtained upon the child's admission to day care and a TB test is required to be obtained on the child within 30 days of admission. However, this requirement assumes that working parents have established insurance, the ability to take days off work to obtain the physician's assessment, and sufficient funds to pay the co-pay. The health information provided in a physician's assessment, including, but not limited to, dietary restrictions and allergies, is information the parent can relay to child care providers. A physician's assessment would not only increase administrative load for child care providers by having to track and maintain these records, but also consequently result in drop-in day care centers turning away hundreds of families in need of urgent care per day. For families who only come in once and forget the paper would simply not return. All other child care centers and family day care homes can enforce the policy because if parents do not bring in the paperwork, the child is not permitted to return. By exempting the physician's assessment verification requirement, this bill aims to increase child care access and ensure drop-in child care centers remain open.

**Policy Considerations:** Existing law refers to the terms, "physician's assessment" or "physician's report," but does not statutorily define them, whereas CDSS expanded the definition of "medical assessment" in two different regulatory code sections regarding child care center general licensing requirements:

- *22 CCR, Article 6, § 101220(b) - Child's Medical Assessments:* The medical assessment shall provide the following:
  - A record of any infectious or contagious diseases that would preclude care of the child by the licensee;
  - Results of a test for TB;
  - Identification of the child's special problems and needs;
  - Identification of any prescribed medications being taken by the child; and,
  - Ambulatory status.
- *22 CCR, Article 6, § 101221 – Child's Records:* The medical assessment includes ambulatory status as specified above, and the following health information:
  - Dietary restrictions and allergies;

- Instructions for action to be taken in case the child’s authorized representative, or the physician designated by the authorized representative, cannot be reached in an emergency; and,
- A signed consent form for emergency medical treatment unless the child’s authorized representative has signed a statement.

*Should this bill move forward, the author may wish to amend this bill and work with CDSS to define a “physician’s assessment.” The definition may be in accordance with CCR.*

Furthermore, existing law statutorily defines “records” as types of records requiring information from sources not in the control of the facilities, and includes, but are not limited to, all of the following:

- a) Physical examination reports by physicians and surgeons;
- b) Confirmation of required immunizations; and,
- c) Submission of official data describing the educational qualifications of the facility staff.

However, regulations define “child’s records” to contain information, among other things, records of current medications, including the name of the prescribing physician, and instructions, if any, regarding control and custody of medications.

*Should this bill move forward, the author may wish to amend this bill and work with CDSS to define “child’s records.” The definition may be in accordance with CCR.*

Additionally, “day care centers” is defined in statute and regulations to include, infant centers, preschools, extended day care facilities, and school age child care centers, but does not make any explicit reference to “drop-in day care centers”. This type of child care is described in existing code as, “any day care center that exclusively offers a program of services for which there is no contract or agreement between any parent and the center for the regular care of any child, and for which there is no prearranged schedule of care for any child...”

*Should this bill move forward, the author may wish to consider explicitly listing “drop-in day care centers” in the definition of “day care centers.” The author may also wish to consider defining this type of care more broadly.*

#### **RELATED AND PRIOR LEGISLATION:**

**AB 605 (Mullin), Chapter 574, Statutes of 2018**, through the adoption of regulations, created a day care center license option to serve infant, toddler, preschool, and school-age children by January 1, 2021, and required all day care centers to be licensed as child care centers by January 1, 2024.

**AB 1897 (Mullin) of 2016**, was similar to this bill and would have created an optional birth-to-entering-first-grade day care center license option. *AB 1897 was held on the Assembly Appropriations Committee suspense file.*

*AB 3049 (Committee on Health), Chapter 536, Statutes of 2002*, among other things, reinstated an exemption for drop in day care centers from requirement that the center verify a children's immunization or TB testing and maintain files regarding the children's immunizations or TB testing.

*AB 182 (Vargas) of 2001*, among other things, would have reinstated an exemption for drop-in day care centers from immunization and TB testing verification requirements. *AB 182 failed passage in the Senate Health Committee.*

*AB 301 (Alpert), Chapter 473, Statutes of 1995*, exempted drop in day care centers from an immunization or TB testing requirement, and contained a sunset date for the exemption of January 1, 2001.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

None on file

**Opposition**

None on file

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