

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Alex Lee, Chair

AB 2866 (Pellerin) – As Introduced February 15, 2024

SUBJECT: Pool safety: State Department of Social Services regulated facilities

SUMMARY: Requires child daycare facilities regulated by the California Department of Social Services (CDSS) be subject to the Swimming Pool Safety Act. Specifically, **this bill:**

- 1) Requires a child daycare facility licensed by CDSS, as either a daycare center or a family daycare home with a swimming pool on the premises, to comply with all of the following requirements:
 - a) Require the swimming pool be equipped with at least two safety features, which includes one feature in both of the following categories:
 - i) Either an enclosure or mesh fence, as defined; and,
 - ii) Either a cover or an alarm, as defined.
 - b) Perform a daily inspection of all of the drowning prevention safety features before opening the facility and maintain a log of the inspections to be provided to CDSS during scheduled inspections.
- 2) Requires CDSS to update its regulations relating to the implementation of this section.
- 3) Repeals the exemption that any facility regulated by CDSS, even if the facility is also used as the private residence of the operator, is not subject to the Swimming Pool Safety Act. Further repeals provisions regarding pool safety in those facilities be regulated pursuant to regulations adopted therefor by CDSS.
- 4) Consistent with 1) and 2) above, requires when a building permit is issued for the construction of a new swimming pool or spa or the remodeling of an existing pool or spa at a private single-family home, the respective swimming pool or spa be equipped with at least two of the seven drowning prevention safety features, as specified.

EXISTING LAW:

State law:

- 1) Establishes the California Child Day Care Facilities Act, creating a separate licensing category for child daycare centers and family daycare homes within CDSS' existing licensing structure. (Health and Safety Code [HSC] § 1596.70 *et seq.*)
- 2) Defines the following terms:
 - a) “Child daycare 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 daycare facilities include daycare centers, employer-sponsored childcare centers, and family daycare homes. (HSC § 1596.750)
- b) “Daycare center” to include infant centers, preschools, extended daycare facilities, and school-age childcare centers. (HSC § 1596.76)
 - c) “Family daycare 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)
- 3) Requires any person or entity operating, as specified, a child daycare facility in California to have a current valid license from CDSS. (22 California Code of Regulations [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 daycare center. (HSC § 1597.13)
- 5) Establishes the “Swimming Pool Safety Act”, encompassing regulations and requirements aimed at enhancing safety in and around swimming pools. (HSC § 115920 *et seq.*)
- 6) Defines the following terms:
- a) “Swimming pool” or “pool” to mean any structure intended for swimming or recreational bathing that contains water over 18 inches deep, which includes in-ground and aboveground structures and includes, but is not limited to, hot tubs, spas, portable spas, and nonportable wading pools. (HSC § 115921(a))
 - b) “Enclosure” to mean a fence, wall, or other barrier that isolates a swimming pool from access to the home. (HSC § 115921(c))
 - c) “Approved safety pool cover” to mean a manually or power-operated safety pool cover that meets all of the performance standards of the American Society for Testing and Materials, in compliance with standard F1346-91. (HSC § 115921(d))
 - d) “Exit alarms” to mean devices that make audible, continuous alarm sounds when any door or window, that permits access from the residence to the pool area that is without any intervening enclosure, is opened or is left ajar. Exit alarms may be battery-operated or may be connected to the electrical wiring of the building. (HSC § 115921(e))
- 7) Requires an enclosure to have all of the following characteristics:
- a) Any access gates through the enclosure open away from the swimming pool, and are self-closing with a self-latching device placed no lower than 60 inches above the ground;
 - b) A minimum height of 60 inches;
 - c) A maximum height clearance from the ground to the bottom of the enclosure of two inches;

- d) Gaps or voids, if any, that do not allow passage of a sphere equal to or greater than four inches in diameter; and,
 - e) An outside surface free of protrusions, cavities, or other physical characteristics that would serve as handholds or footholds that could enable a child below the age of five to climb over. (HSC § 115923)
- 8) Requires, whenever a building permit is issued for the construction of a new swimming pool or spa or the remodeling of an existing swimming pool or spa at a private single-family home, the respective pool or spa be equipped with specified safety features. (HSC § 115922(a))
- 9) Requires local building code officials to inspect drowning-prevention features installed to comply with requirements and to give final approval for the completion of construction or remodeling if no violations are found. (HSC § 115922(b))
- 10) Requires all licensees to ensure the inaccessibility of pools, including swimming pools (in-ground and above-ground), fixed-in-place wading pools, hot tubs, spas, fish ponds, or similar bodies of water, through a pool cover by surrounding the pool with a fence. Provides further guidance on fencing requirements. (22 CCR §§ 101238(e); 102417(5))
- 11) Notwithstanding the requirements of 22 CCR Section 101238(e), fencing is not required for inflatable or other portable plastic wading pools with sides low enough for children using the pool(s) to step out unassisted. These pools shall be emptied after each use. (22 CCR § 101238.5(a))
- 12) Requires CDSS to issue a Notice of Operation in Violation of Law if it is found and documented that continued operation of the family childcare home will be dangerous to the health and safety of the children. Situations endangering the health and safety of the children shall include, but not be limited to: unfenced or accessible pools or other bodies of water. (22 CCR § 102357(3)(E))
- 13) Requires daycare center directors and licensees of a family daycare home to ensure that at least one staff member who has a current course completion card in pediatric first aid and pediatric cardiopulmonary resuscitation (CPR) issued by the American Red Cross, the American Heart Association, or by a training program that has been approved by the Emergency Medical Services Authority be on site at all times when children are present at the facility, and be present with the children when children are offsite from the facility for facility activities. (HSC § 1596.866(b))

Federal law:

- 14) Establishes the federal “Virginia Graeme Baker Pool and Spa Safety Act” (VGB Act) to prevent drain entrapment and child drowning in swimming pools and spas by requiring each public pool and spa in the United States to be equipped with specified anti-entrapment devices or systems, and requires each state to meet specified minimum state law requirements regarding pool and spa safety standards. (15 United States Code § 8001 *et seq.*)

FISCAL EFFECT: Unknown, this bill has not been analyzed by a fiscal committee.

COMMENTS: Childhood drowning is preventable. There are proven strategies and choices to prevent drowning-related injuries and death.

Background: *Licensed Childcare.* The California Child Day Care Facilities Act governs the licensure, maintenance, and operation of child daycare centers and family daycare 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. Daycare centers include infant centers, preschools, extended daycare facilities, and school-age childcare centers. CDSS' Community Care Licensing Division (CCLD) has the responsibility of licensing and monitoring the state's 10,481 childcare centers and 25,205 family childcare homes, according to 2021 data. As of January 2024, 158,959 children were served in licensed family childcare homes, 124,708 in childcare centers, and 82,704 in license-exempt settings in fiscal year 2022-23.

Drowning Fatalities and Near-Drowning Injuries. Swimming pools provide recreational opportunities but also pose significant risks, especially to children. According to the Centers for Disease Control and Prevention (CDC), drowning is identified as the primary cause of death for children between the ages of one and four in the United States (U.S.), surpassing all other causes. Among children aged five to 14, drowning ranks as the second leading cause of unintentional injury-related deaths after motor vehicle crashes in the U.S. Additionally, the CDC highlights that for every child under the age of 18 who succumbs to drowning, another seven require emergency medical attention for nonfatal drowning incidents, often resulting in hospitalization.

In California, the Department of Developmental Services (DDS) also identifies drowning as the leading cause of injury-related death among children under the age of five. According to data from the California Department of Public Health's EpiCenter, from 2010 to 2014, over 160 children aged one to four experienced fatal drownings, predominantly occurring in residential pools. Additionally, between 2010 and 2015, more than 740 children aged one to four were hospitalized following near-drowning incidents, with the primary reason for hospitalization being brain injury caused by oxygen deprivation, also referred to as asphyxiation.

Drowning injuries can cause serious health outcomes, including brain damage, paralysis, seizures, memory loss, and long-term disability. DDS reported that as of December 2016 the agency was providing care for more than 755 near-drowning victims with severe brain damage resulting from the near-drowning. Several factors contribute to a greater risk of drowning among children, including a lack of swimming ability, inadequate or absent pool fencing, insufficient supervision, and failure to utilize life jackets.

Pool Safety Regulations. Regulations aim to mitigate these risks by establishing standards for pool safety features and practices. At the federal level, organizations such as the Consumer Product Commission (CPSC) play a central role in establishing and enforcing standards for swimming pools and related equipment. The CPSC's guidelines cover a wide range of safety measures, including pool fencing, drain covers, alarm systems, and safety barriers.

At the state level, swimming pool safety is often regulated through legislation and building codes that mandate specific safety features and practices for both public and private swimming pools. For example, whenever a building permit is granted for the construction of a new swimming pool or spa, or for the renovation of an existing one in a private single-family residence, it is mandatory for the pool or spa to be equipped with designated safety features.

At the local level, building code officials are required to conduct inspections on the installed drowning prevention features to ensure compliance with the stipulated requirements. Final approval for the completion of construction or renovation is only granted if no violations are detected during these inspections.

While the International Building Code and the majority of U.S. states require only one barrier to restrict access to residential pools, the California Swimming Pool Safety Act, signed into law in 1995, requires the installation of a two-stage safety system in residential pools, which requires the pool to be equipped with either an enclosure or mesh fence, along with either a cover or a safety alarm, as defined in existing law. The second safety feature provides additional assurance for families who may overlook replacing an alarm or a removable fence, or who cannot promptly address a malfunctioning latch or alarm. Apart from physical safety features, regulations specify that daycare center directors and licensees of family daycare homes are required to have at least one staff member be certified in pediatric first aid and CPR, and remain on-site at all times.

Pool Safety in Childcare Facilities. Childcare facilities serve as environments where children spend a significant amount of time under the care of providers. Ensuring safety within these facilities is paramount to protecting the well-being of the children in their care. Childcare facilities are responsible for implementing measures to prevent accidents and injuries, including those related to swimming pool safety. Children in daycare settings may be more vulnerable to accidents or drowning incidents due to factors such as limited supervision among caregivers. The combination of childcare responsibilities and managing a swimming pool requires heightened vigilance and adherence to safety protocols.

Historically, regulations governing swimming pool safety in daycare facilities have been less stringent compared to other types of public or private pools. For instance, despite the implementation of the two-stage safety system in the Swimming Pool Safety Act, an exemption was granted for facilities regulated by CDSS, including daycare facilities, group homes, and senior facilities. According to CDSS regulations, only a fence is required to prevent accidental drowning. While existing regulations have contributed to improvements in swimming pool safety over the years, this bill aims to address gaps in regulations and enhance safety standards for swimming pools not only in childcare facilities but across all DSS-regulated facilities by updating existing standards to align with the Swimming Pool Safety Act. Specifically, this bill establishes a dual-step system whereby, in the event of a failure of one safety measure, a secondary safety measure can prevent drowning. Furthermore, this bill requires a daily assessment log to record the adherence of facilities to the two-step system, ensuring that the pool is adequately secured and monitored. By prioritizing swimming pool safety, not only do these measures contribute to the professional reputation and credibility of daycare providers, but daycare facilities can create safer environments for children to learn and play, reducing the risk of accidents and ensuring a secure childcare experience.

Recent California Drowning Fatality Incidence. In 2023, two infants, Lillian Hanan, 1, and Payton Cobb, 1, fell into the San Jose Happy Happy Daycare pool and fatally drowned. A third child, 2, was hospitalized and survived. According to DSS' CCLD, licensing program analysts conducted a pre-licensing inspection of the home in 2020. During this inspection, they instructed the daycare to implement modifications to the pool area and guarantee its security by installing a fence, per regulations. Subsequently, after an inspection in 2021, the facility was granted a license. According to police reports, one day before the drowning, the homeowner's husband watered plants behind the pool gate and failed to close the gate after watering the plants. The

gate was not checked on by either of the co-owners of Happy Happy Daycare. After the children arrived at the daycare, one of the co-owners opened a door to the backyard and told the children to go outside. After leaving the children unsupervised for just a few minutes, the co-owner stepped back outside and found an infant floating in the shallow end, prompting her to remove him and attempt CPR. Two more infants were found in the deep end of the pool, and CPR was also attempted.

This bill seeks to prevent incidents such as these preventable accidental drownings among children in daycare facilities by implementing a two-step safety measure in the event that one of the safety measures fails. By adhering to stricter safety standards and conducting regular inspections, daycare providers protect children and minimize risks.

Author’s Statement: According to the Author, “On Monday October 2, 2023 1-year-old Payton Cobb and 18-month-old Lillian Hanan lost their lives in a horrific event. These children were at a licensed home daycare located in San Jose when three toddlers accessed the swimming pool located on the premises unsupervised. After being transported to the hospital in critical condition, two of the children were pronounced dead.

“[This bill] will create a multi-faceted safety requirement to update the existing standards to allow for better drowning prevention standards. The bill would require an updated safety requirement for an enclosure or fence that meet current standards as well as either a pool cover or alarm system. This would create a two-step system that in the event of a failure a secondary safety precaution will be able to prevent a drowning. Additionally, [this bill] will create a requirement for a daily assessment log to document that the pool at facilities are being secured and properly monitored by the two step system in accordance with the law before the center opens.”

Equity Implications: Subsidized childcare predominately serves low-income families and children of color. To safeguard the health and well-being of up to 283,667 California children under the care of licensed childcare centers and family daycare homes across the state, enacting this bill is a life-saving measure.

Daycare facilities may incur initial costs associated with the installation of additional safety features and the maintenance of daily assessment logs, which will significantly impact daycare facilities located in under-resourced communities that may face higher cost pressures, and inadvertently decrease the number of licensed daycare facilities. However, these investments in swimming pool safety are outweighed by the potential costs associated with preventable accidents and injuries, including legal liabilities and reputational damage.

This bill aims to enhance swimming pool safety standards in daycare facilities to protect the well-being of children. Specifically, installing a two-step safety system and conducting regular inspections will significantly reduce the risk of drowning incidents among children across all licensed daycare facilities.

Double referral: Should this bill pass out of this committee, it will be referred to the Assembly Health Committee.

RELATED OR PRIOR LEGISLATIONS:

SB 442 (Newman), Chapter 670, Statutes of 2017, required newly constructed or remodeled swimming pools at private single-family residences to incorporate at least two of seven specified drowning-prevention safety features. It also required home inspections conducted as part of the transfer of a property with a pool to include an assessment of whether the pool is equipped with adequate safety features.

AB 2977 (Mullin), Chapter 478, Statutes of 2006, required new and remodeled pools and spas to provide at least one safety feature from a list of eligible features, add mesh fences and swimming pool alarms to the list of enumerated drowning prevention safety features, and requires remodeled pools and spas to cover drains with an anti-entrapment grate.

AB 389 (Arambula) of 2006, would have authorized the encouraged the Department of Health Services (DHS) to produce and place on its website a document explaining the child drowning hazards of home swimming pools and spas, safety measures and drowning hazard prevention measures if such a document has not been donated to DHS, or if DHS has not approved a donated document. *AB 389 was held in the Senate Rules Committee.*

AB 24 (Negrete McLeod), Chapter 433, Statutes of 2003, allowed for the creation and distribution of a brochure containing information regarding swimming pool and spa safety.

AB 3305 (Setencich), Chapter 925, Statutes of 1996, established the Swimming Pool Safety Act.

REGISTERED SUPPORT / OPPOSITION:**Support**

American Academy of Pediatrics, California
Association of Regional Center Agencies

Opposition

None on file.

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