

Date of Hearing: June 18, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

SB 234 (Skinner) – As Amended April 9, 2019

SENATE VOTE: 38-0

SUBJECT: Family daycare homes

SUMMARY: Adopts changes intended to facilitate an increase in the supply of licensed family child care homes in the state by treating small and large family child care homes more uniformly in statute governing the regulation of such homes by local ordinances and the State Fire Marshal. Specifically, **this bill:**

- 1) Makes Legislative findings related to the importance of child care to children and families and the state's shortage of regulated child care, as specified.
- 2) Establishes the promotion of the development and expansion of regulated child care as the purpose of the California Child Day Care Facilities Act (Act), and states Legislative findings and declarations that the state has a responsibility to carry out such promotion, as specified.
- 3) Clarifies the definitions of "family day care home," "small family day care home," and "large family day care home" by defining them each to mean a facility, versus a home as in current law, and by clarifying that the responsibilities of small and large family day care homes include the protection and supervision of children.
- 4) Clarifies that a small or large family day care home is where the day care provider resides and includes a dwelling that is rented, leased, or owned, and that such home can include a detached single-family dwelling, a townhouse, or a dwelling unit within a dwelling or within a covered multifamily dwelling in which the underlying zoning allows for residential uses.
- 5) Defines "restriction," for purposes of provisions of this bill and current law related to use or occupancy of a property, to mean a restriction imposed orally, in writing, or by conduct and that includes prohibition.
- 6) States that an attempt to deny, restrict, or encumber the conveyance, leasing, or mortgaging of real property for use or occupancy, and that a restriction related to the use or occupancy of the property, as a family day care home is void.
- 7) Prohibits a property owner or manager from refusing to sell or rent, or to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling or dwelling unit, as specified, to a person because that person is a family day care provider.
- 8) Requires the California Department of Social Services (CDSS) to, during the license application process for a small or large family day care home, notify the applicant that remedies and procedures relating to fair housing are available to family day care home providers and provider applicants and individuals who claim that certain protections contained in provisions of this bill and current law have been denied, as specified.

- 9) Stipulates that provisions of this bill and current law related to use and occupancy of a property do not alter the existing rights of landlords and tenants with respect to addressing and resolving issues related to noise, lease violations, nuisances, or conflicts between landlords and tenants.
- 10) Requires the use of a home as a family day care home in a residentially zoned area to be considered a residential use of property for the purposes of all local ordinances, regulations, and rules, and prohibits such use from fundamentally altering the nature of the underlying residential use.
- 11) Revises and recasts current law related to the use of, and requirements related to, small and large family day care homes by adopting the following changes to treat the two types of facilities more similarly, as specified:
 - a) Requires the use of a large family day care home to be considered a residential use of property for purposes of all local ordinances;
 - b) Prohibits a local jurisdiction from imposing a business license, fee, or tax for the privilege of operating a large family day care home; and,
 - c) Deletes provisions of current law establishing additional requirements for large family day care homes related to, among other things, permitting and fees.
- 12) Expands the requirement in current law that the State Fire Marshal adopt separate building standards, to be published in Title 24 of the California Code of Regulations, specifically relating to the subject of fire and life safety in large family day care homes to also include small family day care homes and, further, stipulates that the building standards that the State Fire Marshal is required by current law to adopt for family day care homes, as specified, shall include the number of required exits on each floor of a facility.
- 13) Requires the State Fire Marshal to:
 - a) By August 1, 2022, update the building and fire standards necessary to implement provisions of this bill and current law related to life and fire safety, as specified;
 - b) Prior to the publication of the updates required by this bill, but no later than July 1, 2020, issue guidance related to life and fire safety, as specified; and,
 - c) Update the regulations at least every three years and issue guidance on implementation in the years in which the regulations are not updated, as specified.
- 14) Makes technical changes.

EXISTING LAW:

- 1) Establishes the “Community Care Licensing Division” (CCLD) within CDSS and requires CDSS to license group care facilities, private foster family agencies, and foster family homes in order to place children who are in the child welfare system. Further requires, prior to licensure, a foster home provider to undergo a criminal background check, as specified. (HSC 1502 and 1522)

- 2) Defines a “community care facility” as any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children, and includes: residential facilities, adult day programs, foster family agencies, group homes, and children’s crisis residential programs, among others. (HSC 1502 *et seq.*)
- 3) Establishes the “California Child Day Care Facilities Act”, creating a separate licensing category for child day care centers and family day care homes within CDSS’s existing licensing structure. (Health and Safety Code [HSC] 1596.70 *et seq.*)
- 4) Defines “family day care home” to mean a home that regularly provides care, protection, and supervision for up to 14 children in the provider’s own home for periods of less than 24 hours per day, as specified. (HSC 1596.78 (a))
- 5) Defines a “small family day care home” to mean a home that provides family day care for up to 8 children, as specified. (HSC 1596.78 (c))
- 6) Defines a “large family day care home” to mean a home that provides family day care for 7 to 14 children, as specified. (HSC 1596.78 (b))
- 7) States Legislative intent that family day care homes be situated in normal residential settings and establishes limitations on the prohibition or restriction of use of single-family residences for family day care homes, as specified. (HSC 1597.40)
- 8) Establishes processes and requirements related to the licensure of family day care homes, as specified. (HSC 1597.54)
- 9) Sets forth requirements and prohibitions related to the regulation of small family day care homes, including the following:
 - a) Requires the use of a single family residence as a small family day care home to be considered a residential use of property for the purposes of all local ordinances;
 - b) Prohibits a local jurisdiction from imposing a business license, fee, or tax for the privilege of operating a small family day care home;
 - c) Prohibits use of a single family dwelling for purposes of a small family day care home from constituting a change of occupancy, as specified; and,
 - d) Prohibits a small family day care home from being subject to certain oversight and regulation related to the State Fire Marshal, except that it shall contain a fire extinguisher, smoke detector, and one or more functioning carbon monoxide detectors, as specified. (HSC 1597.45)
- 10) Sets forth requirements and prohibitions related to the regulation of large family day care homes, including the following:

- a) Disallows a city, county, or city and county from prohibiting large family day care homes on lots zoned for single-family dwellings, but requires such a jurisdiction to do one of the following:
 - i) Classify these homes as a permitted use of residential property for zoning purposes;
 - ii) Grant a nondiscretionary permit to use a lot zoned for a single-family dwelling to a large family day care home that complies with local ordinances, as specified; or,
 - iii) Require a large family day care home to apply for a permit to use a lot zoned for single-family dwellings, as specified;
 - b) Exempts large family day care homes from the requirements of the California Environmental Quality Act (CEQA);
 - c) Prohibits use of a single family dwelling for purposes of a large family day care home from constituting a change of occupancy, as specified;
 - d) Requires a large family day care home to have one or more functioning carbon monoxide detectors, as specified;
 - e) Requires the State Fire Marshal to adopt separate building standards specifically relating to the fire and life safety in large family day care homes, to be published in Title 24 of the California Code of Regulations, and requires large family day care homes to be considered as single-family residences for purposes of the State Uniform Building Standards Code and local building and fire codes, with the exception of these additional building standards adopted by the State Fire Marshal, as specified. (HSC 1597.46)
- 11) Prohibits provisions of law establishing requirements and prohibitions related to the regulation of family day care homes from being construed as precluding any city, county, or other local public entity from placing certain restrictions and requirements related to property, standards, and nuisance abatement on family day care facilities, provided such restrictions and requirements do not distinguish family day care facilities from other single-family residences, as specified. (HSC 1597.47)

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, this bill will result in negligible state costs.

COMMENTS:

Community care licensing and child care facilities: The CCLD within CDSS is charged with licensing and regulating a variety of community care facilities, defined in the California Health and Safety Code as “any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children” (HSC 1502). Community care facilities include an array of programs and settings, such as foster family agencies, foster family homes, adult day programs, social rehabilitation facilities, transitional shelters, group homes, runaway and homeless youth shelters, residential care facilities for the elderly, and others.

Pursuant to the Act, which creates a separate licensing category for child day care centers and family child care homes within CDSS's existing licensing structure, CCLD also licenses and regulates child care centers and family child care homes, and all child care programs must meet licensing requirements established in Title 22 of the California Code of Regulations. The Act defines a "family day care home" to mean a home that regularly provides care, protection, and supervision for up to 14 children in the provider's own home for periods of less than 24 hours per day. Family child care homes are broken out in this Act into small and large family child care homes, with small family child care homes providing care for up to eight children, and large family child care homes providing care for between seven and 14 children.

The Act sets forth a number of separate requirements and prohibitions for small family child care homes and large family child care homes. Generally, small family child care homes operated in single family residences are required to be considered a residential use of property for the purposes of all local ordinances, and local jurisdictions may not impose business license requirements, fees, or taxes on them. Additionally, small family child care homes are exempt from being subject to certain oversight and regulation by the State Fire Marshal – however, they must contain a fire extinguisher, smoke detector, and one or more functioning carbon monoxide detectors.

Large family child care homes, however, are subject to different requirements and prohibitions. While local jurisdictions may not prohibit large family child care homes on lots zoned for single-family dwellings, jurisdictions are required to either: classify these homes as a permitted use of residential property for zoning purposes; grant a nondiscretionary permit to use a lot zoned for a single-family dwelling to a large family child care home that complies with local ordinances, as specified; or, require a large family child care home to apply for a permit to use a lot zoned for single-family dwellings, as specified. Additionally, the State Fire Marshal is required to adopt separate building standards specifically relating to the fire and life safety in large family child care homes. Large family child care homes are to be considered as single-family residences for purposes of the State Uniform Building Standards Code and local building and fire codes, with the exception of the additional building standards adopted by the State Fire Marshal.

As of June 10, 2019, in California, there are 16,111 licensed small family child care homes with a total capacity to serve 128,103 children, and 12,071 licensed large family child care homes with a capacity of to serve 167,680 children.

The importance of home-based care: Access to home-based child care can be especially important for families with lower incomes, who are more likely to work nontraditional work hours and have a need for care providers offering flexible schedules on nights and weekends. United States Department of Labor data from 2013, for example, indicated that 40% of people classified as "working poor" – i.e., individuals spending at least 27 weeks in the labor force yet still earning incomes below the federal poverty level – worked in service occupations. Service sector jobs can often involve nontraditional and less predictable work schedules. Correspondingly, family child care homes are more likely to serve the needs of families with parents that work nontraditional hours. A 2017 California Child Care Resource and Referral Network report found that 41% of licensed family child care homes in California offered evening, overnight, and/or weekend care, while only 3% of child care centers did the same.

Need for this bill: Families benefit in at least two fundamental ways from access to child care: it can both provide children with early learning and development experiences in safe, nurturing environments, and it can also enable parents to engage in employment and education as they work to support their families. Lack of accessible child care can often leave families with difficult choices that can impede parents' education, training, and employment, and ultimately hinder income growth. When a parent is faced with the decision of whether or not to quit a job and stay home to provide care for their child or children, it is often not just a matter of which will be more affordable – foregone wages or the cost of child care – because opportunity costs and longer-term impacts are also often involved. In a June 21, 2016, article examining the costs of interrupting a career to provide child care, authors writing for the Center for American Progress comment, “When parents leave the workforce, the long-term financial penalty can exceed annual child care payments, even with today’s high cost of child care. For some families, a full-time, at-home caregiver is an optimal and financially viable choice. But increasingly, single parents are the sole breadwinners and two-parent families need both incomes to make ends meet. In addition to lost wages, parents who interrupt their career earn less when they return to the workforce and those effects also reduce their retirement savings and social security benefits.” While the provisions of this bill do not affect only subsidized child care or child care for families with lower incomes, it is likely that lower income working families – families who frequently work nontraditional hours – could benefit greatly from the improved access to child care resulting from this bill’s goal of increasing the supply local family child care homes.

According to the author, “Family child care is vitally important for families and our communities, but child care has increasingly become too expensive and difficult for parents to find. Finding quality, affordable child care close to home shouldn’t have to feel like winning the lottery, but for too many parents, it does. Licensed child care is available for only 23% of children with working parents, and the numbers keep getting worse. Cities and counties have put up too many barriers the creation and expansion of family day care homes. Many family child care providers have also been forced to shut down due to property owners unlawfully prohibiting family child care. This legislation helps struggling families who are too often asked to sacrifice their child’s well-being and get the child care they need to support their families. This legislation will especially help women, including family child care providers and many of whom are women of color.”

Double referral: This bill will be referred to the Assembly Judiciary Committee should it pass out of this committee.

RELATED AND PRIOR LEGISLATION:

AB 452 (Mullin and McCarty) of 2019 establishes, upon appropriation by the Legislature, the “California Childcare Facilities Grant Fund” to replace the Child Care Facilities Revolving Fund and to supply grants to providers of publicly-funded child care for the improvement or construction of facilities to house programs for infants and toddlers. AB 452 is currently awaiting hearing in the Senate Education Committee.

AB 2386 (Mullin), Chapter 503, Statutes of 2014, required all community care facilities, including child care and adult care facilities and residential care facilities for the elderly to have one or more carbon monoxide detectors installed in the facility.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Child Care Resource and Referral Network (Sponsor)
Child Care Law Center (Sponsor)
Service Employees International Union California (Sponsor)
UDW/AFSCME Local 3930 (Sponsor)
Alexander Child Care and Preschool
American Federation of State, County and Municipal Employees, AFL-CIO
BANANAS
California Alternative Payment Program Association
California Child Care Coordinators Association
California Family Child Care Network
California Hawaii State Conference of The NAACP
California Labor Federation, AFL-CIO
California Rural Legal Assistance Foundation
California Women's Law Center
Center for Law and Social Policy
Children Now
City of San Jose
Community Action Partnership of San Luis Obispo County, Inc.
County of Alameda
Equal Rights Advocates
EveryChild California
Family Child Care Association of San Francisco
First 5 California
First 5 Santa Clara County
Fun and Learning Childcare
GRACE Institute - End Child Poverty In California
Growthspurts Child Development Facility
Honorable Eric Guerra, Councilmember, City Of Sacramento
Jericare
Kidango
Legal Aid at Work
Marin County Child Care Commission
Marin Family Child Care Association
Modern Education Family Childcare
MomsRising
National Council of Jewish Women
National Women's Law Center
Parent Voices California
Public Counsel
San Francisco Child Care Planning and Advisory Council
Solano Family & Children's Services
Solutions Provider Network, County of Sacramento
Stronger California Advocates Network
The Future Supporting Family Child Care

Western Center on Law & Poverty, Inc.
Wonderschool
7 Private Citizens

Opposition

None on file

Analysis Prepared by: Daphne Hunt / HUM. S. / (916) 319-2089