

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES  
Corey A. Jackson, Chair  
SB 722 (Ochoa Bogh) – As Introduced February 16, 2023

**SENATE VOTE:** 40-0

**SUBJECT:** Daycare facilities: incidental medical services plans

**SUMMARY:** Requires the California Department of Social Services (CDSS), by January 1, 2025, to create a template for plans of operations, and for incidental medical services plans (ICMP); requires CDSS to remove any requirements in regulations, notices, or practices for ICMPs or plans of operation to be approved before a child with exceptional needs may attend a child daycare or child development program; and, provides immunity to childcare providers in connection with administering medication.

**EXISTING LAW:**

- 1) Establishes the “California Child Day Care Facilities Act” with the purpose to streamline the administration of childcare licensing and thereby increase the efficiency and effectiveness of this system. (Health and Safety Code Section [HSC] 1596.70 *et seq.*)
- 2) Defines “child day care facility” as a facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child day care facility includes day care centers, employer-sponsored child care centers, and family day care homes. (HSC 1596.750)
- 3) Requires CDSS to develop guidelines and procedures to permit licensed child day care centers serving preschool-age children and licensed child day care centers serving infants to create a special toddler program component for children between the ages of 18 months and three years and requires this optional toddler program to meet certain requirements, as specified. Further requires the toddler program to be considered an extension of the infant center or preschool license. (HSC 1596.955, 1596.956)
- 4) Defines “children with exceptional needs” as either of the following:
  - a) Children under three years of age who have been determined to be eligible for early intervention services, as provided. These children include an infant or toddler with a developmental delay or established risk condition, or who is at high risk of having a substantial developmental disability, as defined. These children shall have active individualized family service plans and shall be receiving early intervention services; or,
  - b) Children 3 to 21 years of age, inclusive, who have been determined to be eligible for special education and related services by an individualized education program team according to the special education requirements, as specified, and who meet certain eligibility criteria. These children shall have an active individualized education program and shall be receiving early intervention services or appropriate special education. (Education Code Section [EDC] 8205(h))

- 5) Requires a percentage of part-time and full-day California State Preschool Program (CSPP) contractor's funded enrollment be set aside specifically to allow children with exceptional needs, including children with severe disabilities, to be enrolled in income order, but without regard to enrollment priorities, until the set aside is filled. (EDC 8208(c)(1) & (d)(2)(A))
- 6) Requires children with exceptional needs must be educated in the least restrictive environment. (EDC 8208(c)(3) & 20 United States Code Section [U.S.C.] 1412(a)(5)(A))
- 7) Requires each child care center licensee to have and keep on file a current written, definitive plan of operation. A copy of the plan shall be submitted to CDSS with the license application. The plan and related materials shall contain specified elements, including program methods and goals; administrative organization; staffing plan, qualifications, and duties; sample menus; and a rate-setting policy. Any proposed changes in the plan of operation that affect services to children shall be subject to CDSS approval prior to implementation and shall be reported, as specified. The child care center shall operate in accordance with the terms specified in the plan of operation. (22 California Code of Regulations [CCR] 101173)
- 8) Authorizes CDSS to approve the use of alternate concepts, programs, services, procedures, techniques, equipment, space, personnel qualifications or staffing ratios, or the conduct of experimental or demonstration projects, as specified. Further, requires the applicant or licensee to submit a written request for a waiver or an exception and substantiating evidence supporting the request to CDSS, as provided. (22 CCR 101175)
- 9) Requires CDSS to set criteria for, and permits the department to grant specific waivers of, the prioritization categories for agencies that wish to serve specific populations, including children with exceptional needs, as specified. (Welfare and Institutions Code Section 10271(b)(3))
- 10) Establishes the federal "Individuals with Disabilities Education Act" (IDEA), which ensures that children with disabilities and the families of such children have access to a free appropriate public education and to improve educational results for children with disabilities. (20 U.S.C 1400, *et seq.*)

**FISCAL EFFECT:** According to the Senate Appropriations Committee on May 8, 2023, "unknown, one-time General Fund costs, likely hundreds of thousands, for CDSS to develop the template forms and revise its regulations."

**COMMENTS:**

**Background:** *CDSS and Childcare Licensing.* The California Child Day Care Facilities Act and the attendant 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.

CDSS is responsible for licensing and regulatory oversight of childcare providers to ensure facilities are upholding all applicable health and safety standards. To fulfill CDSS' responsibilities, the department conducts in-person and online orientations, pre-licensing inspections, unannounced facility inspections, complaint investigations, consultations, education and technical support, and follow-up inspections.

State law and regulations dictate that infant care centers serve children under two years old, preschool child care centers serve children between the ages of two years old 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 required for serving infant, preschool, and school age children. Thus, owner/operators of combination centers serving more than one population must get multiple licenses and undergo separate inspection and compliance processes for each license.

*Children with Exceptional Needs.* Early intervention for children with exceptional needs are particularly important because research shows that when developmental delays are recognized and addressed at the youngest age possible, then delays can be ameliorated. The IDEA guarantees early intervention services for infants and toddlers in a preschool setting. IDEA also requires that children are able to learn amongst peers without early interventions. Integrated settings allow for language and behavior models, which benefit development. CSPP contractors are required to set aside enrollment priority for these children. However, similar to the experiences across the board in childcare, there is a lack of availability, which make accessing these services difficult and further delays interventions.

*Plans of Operation and Incidental Medical Services Plans (IMSP).* As a part of licensing requirements, childcare providers must submit a plan of operations to CDSS for approval. The plan of operations includes staffing, admissions, rates, schedules, food menus, and use of space. Furthermore, if a childcare provider is enrolling a child with exceptional needs that require medications or equipment, the plan must also include an IMSP. Because children are continuously enrolling, this requires childcare providers to revise its IMSP when a new child that needs medication is admitted. There is currently not a template for providers to follow. CDSS published a Provider Information Notice in February 2022 intended to provide information and best practices for administering IMSP in childcare facilities, which could guide a facility through making an IMSP.

**Author’s Statement:** According to the Author, “Disproportionate access to early learning and childcare (ELC) programs limits social and emotional growth opportunities for children with disabilities and contributes to the K-12 academic achievement gap between students with and without disabilities. The latest student assessment from the California Department of Education (CDE) revealed students with disabilities performed 97.3 and 130.8 points below the state standard in English language arts and math, respectively. [This bill] will eliminate state-imposed barriers to childcare for children with disabilities by requiring the Department of Social Services (DSS) to create templates for the documents required of ELC providers and allow children with disabilities to attend ELC programs while the Department reviews such documents.”

**Need for this bill:** Currently, childcare providers are reporting difficulty in submitting plans to CDSS and it taking months of back and forth before it is approved. The delay in approval plans is reportedly causing a delay in enrollment for a child with exceptional needs. Due to the lack of conformity in the IMSP, childcare providers struggle to submit an appropriate plan, creating an extended period of time working with CDSS to find an appropriate plan or solution. This bill seeks to rectify that issue by standardizing a template.

**Equity Implications:** A report published by the Children’s Equity project in November 2020 noted that there are significant access disparities between children with disabilities and children without. The report states, “Nationally, fewer than half of preschoolers with disabilities receive their services in regular early childhood programs.... Barriers to inclusion that have been cited in research include the ableist attitudes and beliefs; inadequate workforce preparation, development, and support; the intersection between race, disability categories, and placement decisions; a lack of will to change the status quo and policy misperceptions on the parts of administrators and systems leaders; and a lack of coordination between early childhood and IDEA systems.”

Lack of access further impacts the ability for parents to work, and more specifically women more often take on that role, when sufficient childcare is unavailable. 2016–18 National Survey of Children’s Health data show that parents with children with disabilities are three times more likely to have “job disruptions because of problems with child care.”

As mentioned in the author’s statement, a recent CDE assessment revealed students with disabilities performed 97.3 and 130.8 points below the state standard in English language arts and math, respectively.

**Policy Considerations:** This bill provides immunity to a childcare provider who completes and submits all sections of an IMSP template from professional review or criminal and civil liability for the administration of a medication, unless administration of the medication constitutes gross negligence or willful or malicious conduct. California law provides immunity in some cases in emergency cases. This bill goes beyond emergencies and provides liability protections in routine daily tasks before an IMSP is even approved by CDSS. As noted in the Senate Judiciary Committee analysis:

*“...immunity from liability disincentivizes careful planning and acting on the part of individuals and entities. When one enjoys immunity from civil liability, it is relieved of the responsibility to act with due regard and an appropriate level of care in the conduct of its activities. Immunity provisions are also disfavored because they, by their nature, preclude parties from recovering when they are injured, and force injured parties to absorb losses for which they are not responsible. Liability acts not only to allow a victim to be made whole, but to encourage appropriate compliance with legal requirements.”*

### **Proposed Committee Amendments:**

To address the policy concerns about immunity raised above, the Committee proposes the following amendments:

On page 2, strike out lines 14 to 20, inclusive

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

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

**AB 2042 (Villapudua) of 2022**, would have required CDSS to establish an anaphylactic policy that sets guidelines and procedures to be followed by child daycare personnel to prevent a child

from suffering from anaphylaxis and to be used during a medical emergency by July 1, 2024.  
*AB 2042 was vetoed by Governor Newsom.*

***SB 217 (Portantino) of 2019***, as introduced, would have created the “Early Intervention Grant Program” to increase inclusive access to early education programs for children with exceptional needs and expand eligibility for transitional kindergarten to include children with exceptional needs turning five-years-old at any time during the school year. *SB 217 was substantially amended to include language unrelated to early education.*

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Office of the Riverside County Superintendent of Schools (Co-Sponsor)  
Santa Clara County Office of Education (Co-Sponsor)  
California County Superintendents  
Santa Clara County School Boards Association

### **Opposition**

None on file

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