

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Lisa Calderon, Chair

AB 2827 (Quirk-Silva) – As Amended March 17, 2022

SUBJECT: Child daycare facilities

SUMMARY: Requires the California Department of Social Services (CDSS), by January 1, 2024, to revise its regulations to permit children with exceptional needs who are enrolled in separate programs or classrooms from nondisabled children to use outdoor play spaces simultaneously with nondisabled children without first seeking a waiver of Title 22 of the California Code of Regulations Section (CCR) regarding outdoor space and to specify any health and safety requirements that shall be met when simultaneous use of outdoor play spaces occurs. Additionally, requires CDSS to implement these provisions by an all-county letter issued by January 1, 2024.

EXISTING LAW:

- 1) Establishes the California Child Daycare Facilities Act, creating a separate licensing category for child daycare centers and family daycare homes within CDSS’s existing licensing structure. (Health and Safety Code Section [HSC] 1596.70 *et seq.*)
- 2) Defines “child daycare facility” to mean a facility that provides nonmedical care to children under 18 years of age, as specified, including daycare centers, employer-sponsored childcare centers, and family daycare homes. (HSC 1596.750)
- 3) Defines “children with exceptional needs” to mean either of the following:
 - a) Infants and toddlers under three years of age who have been determined to be eligible for early intervention services pursuant to the California Early Intervention Services Act, including an infant or toddler with a developmental delay or established risk condition, or who is at high risk of having a substantial developmental disability.
 - b) Children 3 to 21 years of age who have been determined to be eligible for special education and related services by an individualized education program team, including children with intellectual disabilities, hearing impairments, speech or language impairments, visual impairments, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, who need special education and related services. (Welfare and Institutions Code Section [WIC] 10213.5 (1))
- 4) Establishes regulations for licensed childcare centers. (22 CCR , Division 12, Chapter 1)
- 5) Provides all of the following requirements for the outdoor activity space for a childcare facility:
 - a) At least 75 square feet of outdoor activity space per child, as specified
 - b) Be situated to provide a shaded rest area and to permit children to reach the space safely

- c) Equipment and activity areas arranged so that there is no hazard from conflicting activities
 - d) Maintained surface in a safe condition and free of hazards
 - e) Areas around and under high climbing equipment, swings, slides, and other similar equipment shall be cushioned with material that absorbs falls
 - f) Sandboxes shall be inspected daily
 - g) Playgrounds shall be enclosed by a fence at least four feet high to protect children and to keep them in the outdoor activity area
 - h) Any construction or equipment that could pose a hazard in the space shall be made inaccessible to children in care (22 CCR 101238.2)
- 6) 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, under the following circumstances:
- a) Such alternatives shall be carried out with provisions for safe and adequate services, and shall in no instance be detrimental to the health and safety of any child in care.
 - b) The applicant or licensee shall submit to CDSS a written request for a waiver or an exception and substantiating evidence supporting the request.
 - c) Within 30 days of the receipt of a request for a waiver or an exception, CDSS shall notify the applicant or licensee in writing of the approval or denial of the request, or of the need for additional information to substantiate the request. Further, the department shall maintain and make available for review, at the childcare center, a copy of the written approval or denial. (22 CCR 101175)

FISCAL EFFECT: Unknown

COMMENTS:

Community care licensing and childcare facilities: The Community Care Licensing Division (CCLD) within CDSS has the responsibility of licensing and monitoring facilities that fall within its jurisdiction, such as residential care facilities for the elderly, out-of-home placements for foster youth, and childcare facilities, among others. CCLD is also responsible for ensuring that these facilities comply with all applicable laws and regulations as well as for overseeing any necessary corrective actions in the event of noncompliance.

CCLD has the responsibility of licensing and monitoring the state's 12,768 daycare centers, with a capacity to serve 663,454 children. There are an additional 2,201 licensed school-age daycare facilities with a capacity to serve 139,610 children. CCLD is required to conduct unannounced site visits of all licensed child daycare facilities and homes. CCLD conducts random inspections of 30% of facilities annually, and each facility must be visited at least once every three years; some exceptions triggering more frequent inspections exist.

The licensure, maintenance, and operation of child daycare centers and family daycare homes in the State are governed by the California Child Daycare Facilities Act. This law and the attendant regulations found in the California Code of Regulations Title 22 establish, among other things, general health and safety requirements, staff-to-child ratios, and provider training requirements.

Title 22 regulations: California Code of Regulations Title 22, Division 12—commonly referred to as “Title 22 regulations”—establishes regulations for licensed childcare facilities in California (Chapter 1 establishes licensing requirements for childcare centers and Chapter 2 establishes regulations for family daycare homes). Regulations pertaining to childcare centers cover a wide range of health and safety standards for both infant care centers and school-age childcare centers, including, among many other things, discipline, food service, teacher-child ratios, and facility space requirements—including the square footage, access, and maintenance requirements for outdoor activity space.

CDSS has the authority to approve the use of alternate requirements than those stated in the code of regulations, including space requirements, if a licensee submits a written request for a waiver. Any alternative must be carried out with provisions for safe and adequate services and must not be detrimental to the health and safety of any child in care.

Need for this bill: If a licensed childcare center serving nondisabled children wants to share its outdoor space with a program that serves children with exceptional needs, the childcare center would have to submit a waiver to request the ability to share the outdoor space. The outdoor space would still have to adhere to the requirements listed in the Title 22 regulations for outdoor space (ex. 75 square feet per child of outdoor activity space) and the licensed facility must still maintain approved ratios; however, with an approved waiver the outdoor space could be shared between the separate programs. This bill would allow children with exceptional needs to play and interact with their peers during outdoor activities without placing unnecessary requirements on the childcare facility, while still maintaining health and safety standards.

According to the author, “As an elementary school teacher for over 30 years, I think it is important that every child has the opportunity to learn in a diverse environments in order for them to be exposed and develop an understanding and respect for each other's differences as well as similarities. As a State, we should be able to foster that without barriers or processes that hinder students or programs. Instead of requiring a waiver, clear standards should be in place for all programs to adhere, to in order to ensure the health and safety of all children.”

Staff Comments: This bill would require rather than permit CDSS to implement these provisions via an all-county letter. The department often uses an all-county letter to implement provisions, but occasionally uses other methods to implement provisions.

Recommended Committee Amendments: To afford CDSS the ability to implement these provisions in the most efficient manner as determined by the department, committee staff recommends the following amendments:

Beginning on line 18 on page 2 of the bill, strike “shall” and insert “may”

Beginning on line 19 on page 2 of the bill, after “letter” insert “or similar instruction. The all-county letter or similar instruction shall be”

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

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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