
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: SB 277
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Urgency: No
Consultant: Lynn Lorber
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Fiscal: Yes

Subject: Public health: vaccinations

NOTE: This bill has been referred to the Committees on Health, Education and Judiciary. A "do pass" motion should include referral to the Committee on Judiciary.

NOTE: This bill was previously heard by this Committee on April 15, 2015. The authors will present proposed amendments to this bill during the April 22 hearing. The proposed amendments are as follows:

1. Broaden the exemption for home-schools by deleting reference to students being members of the same household or family.
2. Add an exemption for students who are enrolled in an independent study program that meets existing criteria for independent study programs.

SUMMARY

This bill removes the ability for parents to file a personal belief exemption from the requirement that children receive vaccines for specific communicable diseases prior to being admitted to any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center.

BACKGROUND

Current law:

Compulsory education

1. Provides that each child between the ages of 6 and 18 years is subject to compulsory full-time education, and requires attendance at the public full-time day school or continuation school or classes for the full schoolday.
2. Requires parents and guardians to send the student to school for the full schoolday. (Education Code § 48200)

Required immunizations

3. Prohibits the unconditional admission of a student to any private or public elementary or secondary school, child care center, day nursery, nursery school,

family day care home, or development center, unless, prior to the child's first admission to that institution, the child has been fully immunized. The following are the diseases for which immunizations shall be documented:

- A. Diphtheria.
 - B. Haemophilus influenzae type b.
 - C. Measles.
 - D. Mumps.
 - E. Pertussis (whooping cough).
 - F. Poliomyelitis.
 - G. Rubella.
 - H. Tetanus.
 - I. Hepatitis B.
 - J. Varicella (chickenpox).
 - K. Any other disease deemed appropriate by the California Department of Public Health, taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians. (Health and Safety Code § 120335)
4. Prohibits schools from unconditionally admitting or advancing any student to grade 7 unless the student has been fully immunized against pertussis, including all pertussis boosters appropriate for the student's age. Current law provides that full immunization against hepatitis B shall not be a condition by which a school admit or advance a student to the 7th grade. (HSC § 120335)
5. Authorizes school districts to permit specified licensed health practitioners to administer an immunizing agent to a student whose parent or guardian has consented in writing to the administration of the immunizing agent. (EC § 49403)

Personal belief exemption

6. Provides that immunization is not required for admission to a school or other institution if the parent or guardian files with the school a letter or affidavit that documents which immunizations have been given and which immunizations have not been given on the basis that they are contrary to his or her beliefs.

7. Requires, beginning January 1, 2014, a form prescribed by the California Department of Public Health (CDPH) to accompany the letter or affidavit.
8. Requires the CDPH form to include both of the following:
 - A. A signed attestation from the health care practitioner that indicates that the health care practitioner provided the parent or guardian with information regarding the benefits and risks of the immunization and the health risks of the communicable diseases to the child and the community.
 - B. A written statement signed by the parent or guardian that indicates that the signer has received the information provided by the health care practitioner.
 - C. Authorizes schools or other institutions, when there is good cause to believe that the child has been exposed to one of the communicable diseases, to temporarily exclude the child from attendance until the local health officer is satisfied that the child is no longer at risk of developing the disease. (HSC § 120365)

Medical exemption

9. Provides that a child is exempt from immunization requirements if the parent or guardian files with the school or other institution a written statement by a licensed physician to the effect that the physical condition of the child is such, or medical circumstances relating to the child are such that immunization is not considered safe, indicating the specific nature and probably duration of the medical condition or circumstances that contraindicate immunization. (HSC § 120370)

Conditional admission

10. Authorizes a school or other institution to admit a child who has not been fully immunized against one or more of the communicable diseases on condition that the child presents evidence that he or she has been fully immunized against all of these diseases within time periods designated by regulation of the California Department of Public Health (CDPH). (HSC § 120340)
11. Requires a school or other institution to exclude from further attendance any child who fails to obtain the required immunizations within no more than 10 schooldays following receipt of the notice that the child does not meet immunization requirements, unless the child is exempt for medical reasons or personal beliefs, until the child provides written evidence that he or she has received another dose of each required vaccine due at that time. Regulations require any child so excluded to be reported to the attendance supervisor or to the building administrator. (California Code of Regulations (CCR), Title 17, § 6055)

Temporary exclusion

12. Authorizes a child for whom the immunization requirement has been waived, whenever there is good cause to believe that he or she has been exposed to one of the communicable diseases, to be temporarily excluded from the school or other institution until the local health officer is satisfied that the child is no longer at risk of developing the disease. (HSC § 120365)
13. Requires county offices of education and school districts to exclude any student who has not been immunized as required by the Health and Safety Code, and requires the school to notify the parent or guardian that they have two weeks to supply evidence either that the student has been fully immunized, or that the student is exempted from the immunization requirement. (EC § 48216)
14. Provides that an already admitted child who is subsequently discovered not to have received all the immunizations which were required before admission or who is subsequently discovered not to have complied with the requirements for conditional admission is to continue in attendance only if he or she receives all vaccine doses for which he or she is currently due and provides documentation of having received such doses no later than 10 school days after he or she or the parent or guardian is notified. Regulations require a school or other institution to notify the child or the parent or guardian of the time period (no longer than 10 school days) within which the doses must be received. (CCR § 6040)

ANALYSIS

This bill removes the ability for parents to file a personal belief exemption from the requirement that children receive vaccines for specific communicable diseases prior to being admitted to any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center. Specifically, this bill:

1. Deletes the exemption from immunization requirements for personal beliefs and requirement that a parent or guardian:
 - A. File a letter or affidavit stating which immunizations the child has not been given.
 - B. Also provide a form prescribed by the California Department of Public Health including both of the following:
 - (1) A signed attestation from the health care practitioner indicating that the health care practitioner provided information regarding the benefits and risks of the immunization and the health risks of the communicable diseases to the child and the community.

- (2) A written statement signed by the parent or guardian that the signer has received the information provided by the health care practitioner.
2. Exempts from immunization requirements a home-based private school if all of the students are residents of the household or are members of a single family.
3. Expands existing annual notification requirements for school districts to include notification to parents or guardians of the immunization rates for each of the required immunizations for the school in which a student is enrolled.

STAFF COMMENTS

1. ***Need for the bill.*** According to the authors, “In early 2015, California became the epicenter of a measles outbreak which was the result of unvaccinated individuals infecting vulnerable individuals including children who are unable to receive vaccinations due to health conditions or age requirements. According to the Centers for Disease Control and Prevention, there were more cases of measles in January 2015 in the United States than in any one month in the past 20 years. Measles has spread through California and the United States, in large part, because of communities with large numbers of unvaccinated people. Between 2000 and 2012, the number of Personal Belief Exemptions (PBE) from vaccinations required for school entry that were filed rose by 337%. In 2000, the PBE rate for Kindergartners entering California schools was under 1%. However, as of 2012, that number rose to 2.6%. From 2012 to 2014, the number of children entering Kindergarten without receiving some or all of their required vaccinations due to their parent’s personal beliefs increased to 3.15%. In certain pockets of California, exemption rates are as high as 21% which places our communities at risk for preventable diseases. Given the highly contagious nature of diseases such as measles, vaccination rates of up to 95% are necessary to preserve herd immunity and prevent future outbreaks.”
2. ***Recent amendments.*** This bill was amended on April 9 to include amendments discussed and informally adopted by the Senate Health Committee during the April 8 hearing. The amendments:
 - A. Exempt homeschools if all of the students are residents of the household or are members of a single family.
 - B. Reinsert and relocate current law regarding the authority for schools to temporarily exclude a child with a personal belief exemption when there is good cause to believe that child has been exposed to one of the communicable diseases.
3. ***Vaccine safety and related issues.*** This bill was heard by the Senate Health Committee on April 8. Please refer to the Senate Health Committee analysis for information regarding vaccine safety, the entities that recommend vaccines, the measles outbreak, and laws in other states.

4. ***Vaccination rates and community immunity.*** According to the United States Department of Health and Human Services, “when a critical portion of a community is immunized against a contagious disease, most members of the community are protected against that disease because there is little opportunity for an outbreak. Even those who are not eligible for certain vaccines, such as infants, pregnant women, or immunocompromised individuals, get some protection because the spread of contagious disease is contained. This is known as ‘community immunity.’”

According to California Department of Public Health (CDPH’s) 2014-15 Kindergarten Immunization Assessment Results, the statewide immunization coverage remained above 92% for each vaccine for all schools since last year. However, CDPH’s school level data files show that many individual schools have much lower rates of fully immunized students.

<http://www.cdph.ca.gov/programs/immunize/Pages/ImmunizationLevels.aspx>

The authors and proponents express concern about localized vaccination rates, rather than statewide rates. Some opponents of this bill suggest it would be more appropriate to provide additional resources and/or compliance incentives in geographic areas where community immunity levels have not been achieved.

5. ***Compulsory education, public health and personal rights.*** Current law requires each child between the ages of 6 and 18 years to attend school for the full schoolday, and requires parents to compel children to attend school. Truancy laws provide various levels of intervention and punishment for both students and parents.

The United States Supreme Court has ruled that states may use their “police power” to require vaccinations, including vaccinations for children entering schools. <http://fas.org/sqp/crs/misc/RS21414.pdf>

The American Civil Liberties Union writes with concerns to this bill: “Unlike other states, public education is a fundamental right under the California Constitution. (*Serrano v. Priest*, 5 Cal.3d 584 (1971); *Serrano v. Priest*, 18 Cal.3d 728 (1976).) Equal access to education must therefore not be limited or denied unless the State demonstrates that its actions are “necessary to achieve a compelling state interest.”

The issues of police power, compelling state interest, and other legal matters may be more appropriately considered by the Senate Judiciary Committee. Considering the jurisdiction of the Senate Education Committee, this Committee may wish to consider issues specific to the role of schools in providing a safe and appropriate educational opportunity for each student.

6. ***What options will parents have?*** It appears that, if this bill were to become law, parents or guardians who do not vaccinate their children as required by the Health and Safety Code would be limited to homeschooling or risk violating truancy laws.

This bill affects private schools. The State compels each student to attend school and provides opportunities for attendance at public schools. Should this bill be limited to public schools to enable attendance at private schools that may choose to enroll students who are not fully vaccinated?

7. **Reasonable timeline?** This bill will become effective on January 1, 2016, if it becomes law. Will schools immediately require students to be fully vaccinated, or will existing personal belief exemptions be valid for the remainder of this school year? Will students who have no vaccinations have enough time to catch-up to full vaccination? The author may wish to consider a phased-in approach.
8. **Fiscal impact.** To the extent that parents remove their children from public schools, this bill could impose significant costs on school districts, as a portion of school funding is based on average daily attendance. However, to the extent that students are not absent due to illnesses, this bill could create cost savings to school districts.
9. **Personal belief exemption.** Children with a personal belief exemption are not necessarily without any vaccines, but likely are not fully vaccinated.

According to California Department of Public Health (CDPH's) 2014-15 Kindergarten Immunization Assessment Results, the statewide percentage of personal belief exemptions had consistently increased annually among all reporting schools until 2014-15, when there was a 19% decrease compared with last year. While public school personal belief exemption rates decreased by 21% (from 2.92% to 2.31%), private school personal belief exemption rates decreased only 9% (from 5.88% to 5.33%).

<http://www.cdph.ca.gov/programs/immunize/Documents/2014-15%20CA%20Kindergarten%20Immunization%20Assessment.pdf>

California's personal belief exemption covers all beliefs, including religious; there is not a separate exemption specific to religion. Therefore, this bill eliminates the ability of parents or guardians to seek exemption from immunization requirements based on religious beliefs.

Governor Brown included a signing message related to AB 2109 (Pan, Ch. 821, 2012), which reads in part:

I am signing AB 2109 and am directing the Department of Public Health to oversee this policy so parents are not overly burdened in its implementation. Additionally, I will direct the department to allow for a separate religious exemption on the form. In this way, people whose religious beliefs preclude vaccinations will not be required to seek a health care practitioner's signature.

It is unclear whether California Department of Public Health (CDPH) is working to develop a separate religious exemption.

10. **Medical exemption.** Current law exempts from immunization requirements children whose parent or guardian have filed with the school or other institution a written statement by a licensed physician to the effect that the physical condition or medical circumstances are such that immunization is not considered safe. Some opponents maintain that a medical exemption is very difficult to obtain, especially if the medical concern is not overtly severe. The decision whether to grant a medical exemption from immunizations is at the discretion of each physician. It is unclear if guidelines for physicians are available.
11. **Vaccination requirements.** The Centers for Disease Control and Prevention recommend a schedule of immunizations for children from birth through age 18. <http://www.cdc.gov/vaccines/schedules/downloads/child/0-18yrs-schedule.pdf>

The California Department of Public Health (CDPH) determines which immunizations children must have, and at what age, before being unconditionally admitted to a private or public school or licensed child care program.

For child care: <http://www.shotsforschool.org/child-care/>

For K-12 schools: <http://www.shotsforschool.org/k-12/>

12. **Hepatitis B.** Some opponents of this bill question the need for the Hepatitis B vaccination, and point to the right of attendance for students who are infected with HIV. According to the Centers for Disease Control and Prevention, children can become infected by contact with blood and body fluids through breaks in the skin such as bites, cuts, or sores; by contact with objects that have blood or body fluids on them such as toothbrushes, razors; by having unprotected sex; and by sharing drug needles. Is there a reasonable analogy between allowing the attendance of a student infected with HIV and allowing the attendance of a student who has not been fully vaccinated against Hepatitis B? Do parents need to worry about students being exposed to Hepatitis B while at school or child care?
13. **Reporting.** This bill requires school districts to include in the annual notification to parents at the beginning of the school year the immunization rates for each of the required immunizations for the school in which a student is enrolled.

Schools and licensed child care providers annually submit rates of immunizations to the CDPH. Data submitted includes the rates for each required vaccine, personal belief exemptions, permanent medical exemptions, and conditional entrants.

<http://www.cdph.ca.gov/programs/immunize/Pages/ImmunizationRatesatCaliforniaSchools.aspx>

The authors may wish to consider instead requiring the annual notification to parents to include a link to the CDPH website and a date when the current data will be available on CDPH's website.

14. ***Related and prior legislation.******RELATED LEGISLATION***

SB 792 (Mendoza, 2015) prohibits a person from being employed at a day care center or family day care home, if that person has not been immunized against influenza, pertussis, and measles. SB 792 is scheduled to be heard by the Senate Health Committee on April 15.

PRIOR LEGISLATION

AB 2109 (Pan, Ch. 821, 2012) requires, beginning January 1, 2014, a separate form prescribed by the California Department of Public Health (CDPH) to accompany a letter or affidavit from a parent or guardian to exempt a child from immunization requirements on the basis that the immunization is contrary to beliefs of the child's parent or guardian.

SB 614 (Kehoe, Ch. 123, 2011) authorizes a student in grades 7- 12 to conditionally attend school for up to 30 calendar days beyond the student's first day of attendance for the 2011-12 school year, if that student has not been fully immunized with all pertussis boosters appropriate for the student's age if specified conditions are met.

AB 354 (Arambula, Ch. 434, 2010) allows CDPH to update vaccination requirements for children entering schools and child care facilities and adds the American Academy of Family Physicians to the list of entities whose recommendations CDPH must consider when updating the list of required vaccinations. AB 354 requires students entering grades 7-12 to receive a TDaP booster prior to admittance to school.

SB 1179 (Aanestad, 2008) deleted CDPH's authority to add diseases to the list of those requiring immunizations prior to entry to any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center. SB 1179 failed passage in the Senate Health Committee.

AB 2580 (Arambula, 2008) required students entering grade 7 to be fully immunized against pertussis. AB 2580 was held on the Senate Appropriations Committee's suspense file.

SB 676 (Ridley-Thomas, of 2007) required students entering grade 7 to be fully immunized against pertussis. SB 676 was held on the Assembly Appropriations Committee's suspense file.

SB 533 (Yee, 2007) added pneumococcus to the list of required immunizations for children. SB 533 was vetoed by the Governor, whose veto message read:

While I am a strong proponent of prevention and support efforts to improve vaccine rates for children, I am unable to sign this bill as California's public health experts believe it is

not needed. The Department of Public Health can already require that young children receive the pneumococcal vaccine. California's vaccine experts have not established a mandate as they believe it is not needed. Approximately 86 percent of children are already being vaccinated under a voluntary system.

SUPPORT (As of April 10; most are specific to the prior version of the bill)

California Association for Nurse Practitioners
 California Chapter of the American College of Emergency Physicians
 California Coverage & Health Initiatives
 California Medical Association
 California Primary Care Association
 California School Boards Association
 California School Nurses Organization
 CAPG
 Children Now
 Children's Defense Fund-California
 County Health Executives Association of California
 Health Officers Association of California
 Kaiser Permanente
 Los Angeles County Board of Supervisors
 Reed Union School District
 The Children's Partnership
 Vaccinate California
 Numerous individuals

OPPOSITION (As of April 10; most are specific to the prior version of the bill)

Association of American Physicians and Surgeons
 AWAKE California
 California Chiropractic Association
 California Coalition for Health Choice
 California Nurses for Ethical Standards
 Californians for Freedom of Choice
 Educate Advocate
 Homeschool Association of California
 National Autism Association of California
 Pacific Justice Institute
 ParentalRights.Org
 Plumas Charter School
 Safe Minds
 Standing Tall Chiropractic
 The Canary Party
 Unblind My Mind
 Numerous individuals