Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 2042 (Villapudua) – As Amended March 28, 2022

[This bill was double-referred to the Assembly Human Services Committee and was heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: Child daycare facilities: anaphylactic policy

SUMMARY: Requires, by July 1, 2023, the State Department of Social Services (DSS) 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 resulting from anaphylaxis, and requires a child daycare facility to implement the anaphylactic policy by January 1, 2024. Specifically, **this bill**:

1) Requires the DSS to, on or before July, 1, 2023, to establish an anaphylactic policy that sets guidelines and procedures to be followed by child daycare personnel to prevent a child from suffering anaphylaxis and to be used during a medical emergency caused by anaphylaxis.

2) Requires the policy to be developed in consultation with representative from all of the following:

    a) Pediatric physicians and other health care providers with expertise in treating children with anaphylaxis;

    b) Parents of children with life-threatening allergies;

    c) Child daycare administrators and personnel; and

    d) Not-for-profit corporations that represent allergic individuals at risk for anaphylaxis.

3) Requires the DSS to consider existing requirements and current and best practices for child daycare providers on allergies and anaphylaxis. Requires the DSS to consider voluntary guidelines issued by the United States Department of Health and Human Services for managing food allergies in child daycare facilities.

4) Requires the anaphylactic policy to include the following:

    a) A procedure and treatment plan, including emergency protocols and responsibilities, for child daycare personnel responding to a child suffering from anaphylaxis;

    b) A training course for child daycare personnel for preventing and responding to anaphylaxis;

    c) Appropriate guidelines for each child daycare facility in developing individual emergency health care plans for children with severe allergies;

    d) A communication plan to distribute information by the DSS regarding food and other allergies that could result in anaphylaxis;

e) Strategies to reduce the risk of exposure to items that can cause anaphylaxis; and

f) A communication plan for discussion with children that have developed adequate verbal and comprehension skills, and with parents or guardians of children about strategies to avoid exposure to unsafe food.

5) Requires trained personnel to carry undesignated stock epinephrine, to administer an appropriate weight-based dosage to a child believed to be having an anaphylactic reaction, and requires child daycare personnel who provide, administer, or assist in the administration of, or prescribe, epinephrine, to not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the administration of epinephrine consistent with the anaphylactic policy.

6) Provides protection from liability for child daycare personnel that provide, administer, or assist in administration of epinephrine, or who prescribe epinephrine, for any civil damages for ordinary negligence resulting from administration of epinephrine.

7) Requires the DSS to create informational materials on the anaphylactic policy and to distribute the information on or before September 1, 2023 to daycare facilities as well as to post the materials on the DSS web site.

8) Requires the DSS to update the policy at least once every three years.

9) Requires a child daycare facility to implement the anaphylactic policy by January 1, 2024.

10) Requires, by January 1, 2024, upon enrollment of a child at a child daycare facility, and annually thereafter, a child daycare provider to notify the parent or guardian of the anaphylactic policy and to include contact information for a parent or guardian to learn more about the policy from the daycare provider.

EXISTING LAW:

State Law:

1) Requires school districts, county offices of education (COEs), and charter schools to provide emergency epinephrine auto-injectors to school nurses or trained personnel who have volunteered to provide emergency medical aid to persons suffering or reasonably believed to be suffering from an anaphylactic reaction. (Education Code (EC) 49414)

2) Authorizes non-medical school personnel to administer the following medications to a pupil in an emergency, after receiving specified training:

a) Emergency epinephrine auto-injectors; and

b) Emergency glucagon, in the absence of a credentialed school nurse or other licensed nurse onsite at the school, may be administered to pupils with diabetes suffering from severe hypoglycemia. (EC 49414, 49414.5)

3) Requires a qualified health supervisor at a school district, COE, or charter school to obtain, at minimum, one regular and one junior epinephrine auto-injector, and requires the schools to be responsible for stocking and restocking the epinephrine auto-injectors.

4) Requires a school district, COE, or charter school to ensure that employees who volunteer to provide emergency epinephrine auto-injectors to a child be provided defense and indemnification for any and all civil liability.

5) Authorizes a state agency, the California Department of Education (CDE), or a public school to accept gifts, grants, and donations to support the administration or training of emergency epinephrine auto-injectors including from a manufacturer or wholesaler of epinephrine auto-injectors. (EC 49414)

6) Authorizes a pharmacy to provide epinephrine auto-injectors to a school district, COE, or charter school if certain conditions are met. (Business and Professions Code (BPC) 4119.2)

Federal law:

7) Requires the United States Secretary of Health and Human Services, in consultation with the United States Secretary of Education, to develop guidelines to be used on a voluntary basis to develop plans for individuals to manage the risk of food allergy and anaphylaxis in schools and early childhood education programs and make such guidelines available to LEAs, schools, early childhood education programs, and other interested entities and individuals, to be implemented on a voluntary basis only. (Section 112 of the Food and Drug Administration (FDA) Food Safety Modernization Act, 2011.12)

8) Requires school districts to provide a free appropriate public education to each qualified person with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the person's disability, which includes reasonable accommodations required for the management of chronic medical conditions. (Section 504 of the Rehabilitation Act of 1973)

9) Prohibits discrimination by a daycare center or educational entity when admitting a child with disabilities into the program. (Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181 et seq.))

FISCAL EFFECT: Unknown

COMMENTS:

Key provisions. This bill requires the DSS to adopt a policy regarding food allergies and the administration of epinephrine by non-medical personnel in child daycares by July 1, 2023. The policy is required to be developed with input from medical professionals, parents, daycare providers, and other stakeholders. The bill requires all licensed daycare facilities to implement the anaphylactic policy by January 1, 2024.

The policy is to include a procedure and treatment plan that includes training for daycare personnel for preventing and responding to anaphylaxis, the authority to carry an undesignated stock of weight-based dosages of epinephrine, and in the event anaphylaxis does occur, personnel who provide, administer, assist in the administration of epinephrine, or prescribe

epinephrine, as well as liability protections for the employees for civil damages for ordinary negligence.

The Committee may wish to consider whether all daycare facilities, which range from small family daycare homes to larger childcare centers, will have the capacity to implement this policy in the specified timeframe.

Need for the bill. According to the author, "AB 2042 will increase awareness for the signs and symptoms, among daycare settings, of potentially life-threatening food or venom allergic reactions known as "anaphylaxis". Anaphylaxis is of particular and growing concern in these settings as the rate of anaphylaxis is higher in children ages 0-to-4 than in any other age group. Furthermore, California health claims data points to a tremendous rise in anaphylaxis over the past 15 years (approximately 316%) which has led to an average of one in five children with a food allergy reporting one or more allergy-related emergency room visits in the previous year.

AB Bill 2042 is otherwise known as Elijah's Law (passed in the state of New York in 2019) in tribute to Elijah Silvera who suffered with milk allergies and unfortunately lost his life due to anaphylaxis while under the care of daycare provider who fed him a cheese sandwich. Enacting Elijah's Law in California will help to ensure daycare providers are further equipped to:

- Help prevent possibly life-threatening allergic reactions due to food or venom allergies;
- Through additional training, better recognize the signs and symptoms of anaphylaxis; and,
- Should an anaphylactic reaction occur, have the means to treat this condition by utilizing an appropriate weight-based dosage of epinephrine.

To ensure the health and well-being of the 976,000+ California children cared for in the approximately 13,000 daycare settings throughout the state, we should enact AB 2042. In so doing, AB 2042 will enable the Department of Social Services to collaborate with their licensed daycare providers to implement a comprehensive, coordinated approach of guidelines and procedures to help make sure we don't lose another infant or toddler to anaphylaxis."

What is anaphylaxis? According to the Mayo Clinic, allergies take place when an individual's immune system reacts to a foreign substance, produces antibodies to identify a particular allergen as harmful, and responds to the allergy, which can then manifest in the skin, digestive system, or airways. Anaphylaxis occurs when a person is exposed to something that they are allergic to and it causes a severe, potentially life-threatening reaction to the allergy. This type of reaction can cause an individual to go into shock, a sudden drop in blood pressure, and swelling of the airway, which blocks breathing. Anaphylaxis requires administration of epinephrine and a follow-up trip to the emergency room. The onset of symptoms usually occur within minutes, but can be delayed up to 30 minutes and, although rare, even hours after exposure. Nationally, pediatric emergency room visits for children with anaphylaxis increased from 5.7 to 11.7 per 10,0000 visits from 2009 to 2013. (Farbman, 2016)

Incidence of severe food allergy among children and youth. According to the Asthma and Allergy Foundation of America, approximately 5.6 million children or 7.6% have food allergies. In 2018, 4.8 million children under 18 years had food allergies over the previous 12 months.

Foods are the leading cause of anaphylaxis in children. Milk is the most common allergen for children, followed by egg and peanut. (Gupta, 2018)

An international study of food allergies concluded that the best available evidence indicates that food allergy has increased in many westernized countries. (Tang, 2016) According to the CDC, food allergies among children increased by 50% between 1997 and 2011. Today, one in 13 children has food allergies, and nearly 40% of these children have already experienced a severe allergic reaction. Many of these reactions happen at school.

Epinephrine auto-injectors. An epinephrine auto-injector (commonly called an "epi-pen" because its size and shape is similar to a writing pen) is a disposable medical drug delivery device that delivers a single measured dose of epinephrine, most frequently for the treatment of acute allergic reactions to avoid or treat the onset of anaphylactic shock. Anaphylactic shock can quickly cause death if untreated. Epinephrine auto-injectors can be obtained by prescription only.

California law has been amended to, among other things, permit school districts or COEs to provide emergency epinephrine auto-injectors to trained personnel, and to permit trained personnel to utilize the auto-injectors to provide emergency medical aid to persons suffering from an anaphylactic reaction. This bill seeks to extend these provisions to child daycare providers by providing them access to stock undesignated epinephrine medication for trained personnel to utilize in the event of emergency anaphylaxis.

California's child daycare system. California has a multifaceted system of licensed child daycares. The Early Childhood Development Act of 2020 authorized the transfer of most childcare programs to the DSS from the California Department of Education (CDE) effective July 1, 2021. The CDE continues to operate the California State Preschool Program (CSPP), which is administered through local educational agencies (LEAs), colleges, community-action agencies, and private nonprofit agencies. CSPP serves eligible children ages three and four for both part-day and full-day services and is the largest state-funded preschool program in the nation.

Under DSS, California offers multiple types of subsidized childcare and development programs: voucher-based childcare, direct contracts – Title 5 subsidized childcare, and the California Head State Collaboration Office. Childcare may be offered through these programs at a childcare center or in a family childcare home.

DSS's Community Care Licensing Division (CCLD) has the responsibility of licensing and monitoring the state's 12,768 daycare centers, which have 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.

Licensed childcare facilities are subject to federal and state disability laws. According to the DSS, 'Best practices related to the provision of incidental medical services (IMS) in childcare centers and family childcare homes," posted on February 4th, 2022, licensed childcare centers and providers are places of public accommodation and are subject to federal and state disability laws including the Americans with Disabilities Act (ADA), the California Unruh Civil Rights Act, and the California Disabled Persons Act. Child daycare providers of children with disabilities who have an individualized educational plan (IEP) (3 years of age and older) or an individualized family services plan (IFSP)(0-36 months of age) are required to provide

modifications for children with disabilities. Licensed childcare centers and providers are responsible for ensuring that each child's needs can be met when the child is admitted under their care and throughout their attendance at that facility. Childcare providers may be required to undertake an individualized assessment if the provider receives a request to provide IMS which is the administration of medication to a child, as an accommodation to a child with disabilities.

Section 504 of the 1973 Rehabilitation Act applies to schools and programs that receive federal money and entitles students to accommodations for a wide range of health conditions, including life-threatening food allergy. The U.S. Department of Education's Office for Civil Rights lists allergy as an example of a hidden disability for the purpose of Section 504, and further explains how a food allergy, for many children, would be considered a disability under 504. Protections under Section 504 have been reinforced by the Americans with Disabilities Act of 1990 (ADA) and the ADA Amendments Act of 2008.

As stated in the DSS provider information notice 'Best practices', state law permits Incidental Medical Services (IMS) in childcare centers and family childcare homes in the case of emergency, including the administration of an epinephrine auto-injector to prevent or treat a life-threatening allergic reaction. Although DSS clearly states that childcare providers permits IMS in the case of administering of an epinephrine auto-injector to treat an allergic reaction, it is not explicitly required in state law.

Recommended Committee amendments. Staff recommends this bill to be amended as follows:

1. Recommend, rather than require providers to implement the anaphylactic policy to be developed by DSS.

2. Require the DSS to consult with specific labor organizations and the California Department of Education in developing the policy.

3. Clarify that the epinephrine is to be administered using an auto-injector.

4. Require the policy to include processes for child daycare personnel to volunteer to receive training on anaphylaxis and in administering an epinephrine auto-injector.

5. Clarify the indemnification for child daycare employees who participate and adhere to the policy.

6. Require the DSS to consider developing the anaphylactic training course in multiple languages.

7. Require the employee training to be provided at no cost and during regular work hours.

8. Require the DSS to consider making the training available online.

9. Clarify that the anaphylactic policy must comply with all relevant federal and state disability laws.

Arguments in support. The Food Allergy & Anaphylaxis Network (FAACT) writes, "Food allergies affect as many as 32 million Americans, including 6 million children. The prevalence of

food allergies appears to be increasing among children under the age of 18, and there is NO cure. Infants and toddlers are particularly at risk of a life-threatening allergic reaction because they are unable to communicate about their symptoms. Without proper training, it may be difficult for daycare providers to recognize the signs and symptoms of anaphylaxis – and act in a life-threatening emergency. Managing a food allergy on a daily basis involves constant vigilance – something infants and toddlers are unable to do on their own. It is critical that special considerations be put in place for daycare settings. Every childcare provider must have policies and procedures in place to prevent anaphylaxis – and have the training to recognize and treat symptoms should an event occur by administering the appropriate weight-based dosage of auto-injectable epinephrine to infants and toddlers under their care."

Arguments in opposition The California School Employees Association (CSEA) writes, "The California School Employees Association (CSEA) has taken an Oppose Unless Amended position on AB 2042 because it lacks important safety protections for classified employees. AB 2042 would require the DSS to create an anaphylaxis plan for childcare providers. CSEA recognizes the intent of this legislation and supports providing students with lifesaving emergency care. However, this bill lacks important protections for childcare providers. Classified employees are not usually medical professionals. They do not necessarily have the training necessary to diagnose children with anaphylaxis, and most school employees have never administered epinephrine. Therefore, they must be provided with the proper training by a medical professional. Additionally, the training must be provided during paid time."

Related legislation. AB 2640 (Valladares) of the 2021-22 Session would require the CDE to create the "California Food Allergy Resource Guide" for voluntary use by LEAs to protect pupils with food allergies within schools and early education centers.

AB 3342 (Bauer-Kahan) of the 2019-20 Session would have required the DSS to authorize child daycare facilities to keep emergency epinephrine auto-injectors onsite to be administered by trained, volunteer personnel to provide emergency medical aid to a person who is suffering, or reasonably believed to be suffering, from an anaphylactic reaction; would also have required the DSS to develop a training program for the participating personnel, which would include components, including, but not limited to, techniques for recognizing symptoms of anaphylaxis and emergency follow-up procedures. This bill was held in the Assembly Human Services Committee.

AB 1386 (Low) Chapter 374, Statutes of 2016, permits a pharmacy to furnish epinephrine auto-injectors to an authorized entity if they are furnished exclusively for use at or in connection with an authorized entity; an authorized health care provider provides a prescription; and, the records are maintained by the authorized entity for three years. Specifies that authorized entities include, but are not limited to, daycare facilities, colleges and universities, summer and day camps, sports leagues, scout troops, before and after school programs, recreational parks and other places where children and adults could come into contact with potentially life-threatening allergens.

SB 738 (Huff) Chapter 132, Statutes of 2015, provides qualified immunity to physicians who issue prescriptions for epinephrine auto-injectors to school districts for emergency use on individuals afflicted with anaphylactic reaction.

SB 1266 (Huff) Chapter 321, Statutes of 2014, requires school districts, COEs, and charter schools to provide emergency epinephrine auto-injectors to school nurses or trained personnel

who have volunteered. Authorizes school nurses or trained personnel to use the epinephrine auto-injectors to provide emergency medical aid to persons suffering, or reasonably believed to be suffering, from an anaphylactic reaction.

REGISTERED SUPPORT / OPPOSITION:

Support

Natalie Giorgi Sunshine Foundation (Sponsor)
Allergy and Asthma Network
Asthma and Allergy Foundation of America
Food Allergy and Anaphylaxis Connection Team
One individual

Oppose

California School Employees Association

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