

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

BILL NUMBER: SB 276  
AUTHOR: Pan  
BILL DATE: July 1, 2019, Amended  
SUBJECT: Immunizations: medical exemptions  
SPONSOR: American Academy of Pediatrics, California;  
California Medical Association; and Vaccinate  
California  
POSITION: Support

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require the California Department of Public Health (CDPH), by January 1, 2021, to develop and make available for use by physicians an electronic, standardized, and statewide medical exemption certification form. This bill would require CDPH to annually review immunization reports from all schools and institutions. Beginning January 1, 2021, this bill would require clinically trained staff members at CDPH to review exemptions from schools or institutions with immunization rates of less than 95% and exemptions from physicians who submit five or more medical exemptions in a calendar year. This bill would permit CDPH to deny or revoke a medical exemption determined to be inappropriate or invalid, as specified. This bill would establish an appeals process for medical exemptions that are denied or revoked and would create an independent review panel made up of three physicians for appeal purposes.

BACKGROUND:

SB 277 (Pan and Allen, Chapter 35, Statutes of 2015) eliminated the personal belief exemption from the requirement that children receive specified vaccines for certain infectious diseases prior to being admitted to any private or public elementary or secondary school, or day care center, as specified.

Existing law waives the existing immunization requirements if the parent or guardian files with the governing authority a medical exemption, which is 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 probable duration of the medical condition or circumstances including, but not limited to, family medical history, for which the physician does not recommend immunization.

Since the passage of SB 277 in 2015, the Medical Board of California (Board) has faced obstacles in investigating complaints related to medical exemptions. For all quality of care cases, the Board must obtain authorization from the patient or their parent or

guardian (if the patient is a minor) to release the medical records. For medical exemption cases, many times the parent or guardian does not want the Board to investigate the physician who issued their medical exemption, so the parent will not sign an authorization. This has created barriers to the Board investigating these cases because for most of these medical exemption cases, the Board does not have enough evidence to subpoena the medical records. Without the medical records, the Board's physician expert cannot review the case to determine if the physician acted within the standard of care.

According to the federal Centers for Disease Control and Prevention (CDC), from January 1 to April 19, 2019, 626 individual cases of measles have been confirmed in 19 states. This is the second-greatest number of cases reported in the U.S. since measles was eliminated in 2000. The states that have reported cases to CDC are Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Michigan, Missouri, Nevada, New Hampshire, New Jersey, New York, Oregon, Texas, and Washington. Two outbreaks have been highly publicized in the news: Washington and New York. In Clark County, Washington, there have been 73 confirmed cases since January 1. Of these cases, 53 were age one to ten years, 15 cases were 11 to 18 years, one case was 19 to 29 years, and four cases were 30 to 39 years. Sixty-three infected individuals were unimmunized. In New York City, as of April 18, 2019, there have been 359 confirmed cases of measles in Brooklyn and Queens since October.

SB 277 (Pan and Allen, Chapter 35, Statutes of 2015) eliminated all non-medical exemptions for immunizations required for school entry. While SB 277 was successful in raising immunization rates, the number of medical exemptions issued more than tripled since the law went into effect. Many of the exemptions are clustered in the same schools, creating concentrated pockets of unvaccinated individuals. At almost 60 schools in the state, more than 10% of kindergarteners had medical exemptions.

#### ANALYSIS:

This bill would require CDPH, by January 1, 2021, to develop and make available for use by physicians an electronic, standardized, statewide medical exemption certification form (exemption form) that would be required to be transmitted directly to CDPH's existing California Immunization Registry (CAIR). This bill would require the exemption form to be printed, signed, and submitted directly to the school or institution at which the child will attend, submitted directly to the governing authority of the school or institution, or submitted to that governing authority through the CAIR where applicable.

This bill would specify that beginning January 1, 2021, the exemption form is the only documentation of a medical exemption that the governing authority may accept. This bill would require the exemption form to require all of the following information, at a minimum:

- The name, California medical license number, business address, and telephone number of the physician who issued the medical exemption, and of the primary

care physician of the child, if different from the physician who issued the medical exemption.

- The name of the child for whom the exemption is sought, the name and address of the child's parent or guardian, and the name and address of the child's school or other institution.
- A statement certifying that the physician has conducted a physical examination and evaluation of the child consistent with the relevant standard of care and complied with all applicable requirements of this section.
- Whether the physician who issued the medical exemption is the child's primary care physician. If the issuing physician is not the child's primary care physician, the issuing physician shall also provide an explanation as to why the issuing physician, and not the primary care physician, is filling out the exemption form.
- How long the physician has been treating the child.
- A description of the medical basis for which the exemption for each individual immunization is sought. Each specific immunization shall be listed separately and space on the form shall be provided to allow for the inclusion of descriptive information for each immunization for which the exemption is sought.
- Whether the medical exemption is permanent or temporary, including the date upon which a temporary medical exemption will expire. A temporary exemption shall not exceed one year.
- An authorization for CDPH to contact the issuing physician for purposes of this section and for the release of records related to the medical exemption CDPH, the Board, and the Osteopathic Medical Board of California.
- A certification by the issuing physician, under penalty of perjury, that the statements and information contained in the form are true, accurate, and complete.

This bill would prohibit an issuing physician from charging for filling out an exemption form and for a physical examination related to the renewal of a temporary medical exemption.

This bill would require, beginning January 1, 2021, if a parent or guardian requests a licensed physician to submit a medical exemption, the physician must inform the parent or guardian of the requirements of this bill. If the parent or guardian consents, the physician must examine the child and submit a completed exemption form to CDPH. An exemption form may be submitted to the department at any time.

This bill would require CDPH, by January 1, 2021, to create a standardized system to monitor immunization levels in schools and institutions, and to monitor patterns of unusually high medical exemption form submissions by a particular physician.

This bill would specify that if a medical exemption has been authorized prior to the passage of this bill, a parent or guardian would be required to submit, by January 1, 2021, a copy of the medical exemption to CDPH for inclusion in a state database in order for the medical exemption to remain valid.

This bill would require CDPH, at a minimum, to annually review immunization reports from all schools and institutions. This bill would require a clinically trained immunization CDPH staff member, who is either a physician or a registered nurse (RN), to review all medical exemptions from any of the following:

- Schools or institutions with an overall immunization rate of less than 95 percent.
- Physicians who have submitted five or more medical exemptions in a calendar year.
- Schools or institutions that do not provide reports of vaccination rates to CDPH.

This bill would require CDPH to identify those medical exemptions that do not meet applicable CDC, federal Advisory Committee on Immunization Practices (ACIP), or American Academy of Pediatrics (AAP) criteria for appropriate medical exemptions. CDPH may contact the primary care physician or the issuing physician to request additional information to support the medical exemption.

This bill would allow CDPH, based on the medical discretion of the clinically trained immunization staff member, to accept a medical exemption that is based on other contraindications or precautions, including consideration of family medical history, if the issuing physician provides written documentation to support the medical exemption that is consistent with the relevant standard of care.

This bill would specify that a medical exemption that the reviewing CDPH immunization staff member determines to be inappropriate or otherwise invalid would also be required to be reviewed by the State Public Health Officer, who is a physician, or another physician from CDPH's immunization program designated by the State Public Health Officer. Pursuant to this review, the State Public Health Officer or designee may revoke the medical exemption.

This bill would require CDPH to notify the parent or guardian, issuing physician, the school or institution, and the local public health officer with jurisdiction over the school or institution of a denial or revocation. This bill would specify that if a medical exemption is revoked, the child shall continue in attendance at his or her school. However, within 30 calendar days of the revocation, the child shall begin the immunization schedule required for conditional admittance, unless an appeal is filed within that 30-day time period. If an appeal is filed, the child shall continue in attendance at his or her school and shall not be required to comply with immunization requirements unless and until the revocation is upheld on appeal.

This bill would specify that if CDPH determines that a physician's practice is contributing to a public health risk in one or more communities, CDPH shall report the physician to the Board or the Osteopathic Medical Board of California, as appropriate. This bill would prohibit CDPH from accepting a medical exemption from the physician until the physician demonstrates to CDPH that the public health risk no longer exists, but in no event shall the physician be barred from submitting these forms for less than two years.

This bill would specify that if there is a pending accusation against a physician with the Board or the Osteopathic Medical Board of California relating to immunization standards of care, CDPH shall not accept a medical exemption from the physician unless and until the accusation is resolved in favor of the physician.

This bill would require CDPH to notify the Board or the Osteopathic Medical Board of California, as appropriate, of any physician who has five or more medical exemption forms in a calendar year that are revoked.

This bill would allow a clinically trained CDPH immunization program staff member who is a physician or an RN to review any exemption in the CAIR or other state database as necessary to protect public health.

This bill would allow a medical exemption that is revoked to be appealed by a parent or guardian to the Secretary of California Health and Human Services (CHHS). This bill would specify that parents or guardians may provide necessary information for purposes of the appeal. This bill would require the Secretary of CHHS to establish an independent expert review panel, consisting of three licensed physicians who have relevant knowledge, training, and experience relating to primary care or immunization to review appeals. This bill would require CHHS to establish the process and guidelines for the appeals process. This bill would require CHHS to post this information on CHHS' website. This bill would require CHHS to establish requirements, including conflict-of-interest standards that a physician must meet in order to qualify to serve on the panel.

This bill would require the independent expert review panel to evaluate appeals consistent with CDC, ACIP, or AAP guidelines or the relevant standard of care, as applicable. This bill would require the independent expert review panel to submit its determination to the Secretary of CHHS. This bill would require the Secretary of CHHS to adopt the determination of the independent expert review panel and promptly issue a written decision to the child's parent or guardian. This bill would specify that the decision shall not be subject to further administrative review.

This bill would specify that a child whose medical exemption revocation is appealed shall continue in attendance and shall not be required to begin the immunization required for conditional admittance, provided that the appeal is filed within 30 calendar days of revocation of the medical exemption. This bill would specify that CDPH and CHHS appeals process is exempt from the rulemaking and administrative adjudication provisions in the Administrative Procedure

This bill would require CDPH, the Board, and the Osteopathic Medical Board of California to enter into a memorandum of understanding or similar agreement to ensure compliance with the requirements of this section.

This bill would require CDPH and the independent expert review panel to comply with all applicable state and federal privacy and confidentiality laws. This bill would require CDPH to establish the process and guidelines for review of medical exemptions. This

bill would require CDPH to communicate the process to providers and post this information on CDPH's website.

This bill would specify if CDPH or CHHS determines that contracts are required to implement this bill, CDPH may award these contracts on a single-source or sole-source basis. This bill would allow CDPH to implement and administer the requirements in this bill through provider bulletins, or similar instructions, without taking regulatory action.

This bill will require the medical exemption request form to include an authorization to release medical records to the Board, which will remove the obstacles the Board is currently facing in medical exemption cases and allow the Board to receive the medical records so the Board's experts can review these cases and opine if the physician followed the standard of care; as such, the Board has taken a support position on SB 276.

FISCAL: Minimal and absorbable

SUPPORT: American Academy of Pediatrics, California (co-sponsor); California Medical Association (co-sponsor); Vaccinate California (co-sponsor); AIDS Healthcare foundation; American College of Physicians, California Chapter; California Academy of Eye Physicians and Surgeons; California Academy of Family Physicians; California Academy of Pain Medicine; California Academy of Preventive Medicine; California Association of Hospitals and Health Systems; California Chapter American College of Cardiology; California Children's Hospital Association; California Hospital Association; California Immunization Coalition; California Life Sciences Association; California Optometric Association; California Orthopedic Association; California School Nurses Organization; California Society for Allergy, Asthma and Immunology; California Society of Health System Pharmacists; California Society of Physical Medicine and Rehabilitation; California State Association of Counties; California State PTA; Children Now; Children's Defense Fund; Children's Specialty Care Coalition; County Health Executives Association of California; County of Los Angeles Board of Supervisors; County of Marin; County of Santa Clara; Donate Life California; Health Officers Association of California; Infectious Disease Association of California; Infectious Disease Association of California; Kaiser Permanente; LA Care Health Plan; March of Dimes; Parent's For Choice; Sonoma County Health Action Committee for Healthcare Improvement; and Sutter Health

OPPOSITION: A Voice for Choice Advocacy; Advocates for Physicians' Rights; Alliance for Natural Health USA; Amy's Chocolate; Animal Wellness & Veterinary Pain Management, Inc.; Association of American

Physicians and Surgeons; Autism International Association, Inc.; Breath Bodyworks Holistic Healing Network; California Health Coalition Advocacy; California Right to Life Committee, Inc.; Californians for Trusted Healthcare; Children's Health Coalition; Concerned Physicians Opposed to SB 276; Drjockers.Com; Eagle Forum of California; Educate.Advocate.; Families for Early Autism Treatment; Matrix Mothers; Moms Across America; National Health Freedom Action; National Vaccine Information Center; Orange County Health Choice; Parentalrights.Org; Parents United 4 Kids; Physicians Association for Anthroposophical Medicine; Physicians for Informed Consent; Progressives for Choice; Raphael Medicine and Therapies Pc; SCV for Parental Rights; U Turn for Christ; Vaccine-Injury Awareness League; West Coast Elite Dance; West Virginians for Health Freedom; and Numerous Individuals.