

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: SB 276
AUTHOR: Pan
BILL DATE: May 17, 2019, Amended
SUBJECT: Immunizations: medical exemptions
SPONSOR: American Academy of Pediatrics, California;
California Medical Association; and Vaccinate
California

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require the California Department of Public Health (CDPH), by July 1, 2020, to develop a statewide standardized medical exemption request form, which shall be made available for use for physicians in California. This bill would specify that beginning January 1, 2021, this form shall be the only medical exemption documentation that a governing authority may accept, as specified. This bill would specify that a medical exemption request from must be approved or denied only by the State Public Health Officer or the public health officer's designee. This bill would require the form to include an authorization for the release of records related to the medical exemption by the physician to CDPH and the Medical Board of California (Board).

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 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 July 1, 2020, to develop a statewide standardized medical exemption request form, which shall be made available for use for physicians in California. This bill would specify that beginning January 1, 2021, this form shall be the only medical exemption documentation that a governing authority may accept. For medical exemptions that were authorized prior to the adoption of the statewide standardized form, the parent or guardian must submit a copy of the medical exemption to CDPH by December 31, 2020 in order for the medical exemption to remain valid.

This bill would specify that a medical exemption request from must be approved or denied only by the State Public Health Officer or the public health officer's designee, upon a determination that the request provides sufficient medical evidence that the immunization is contraindicated or there exists a specific precaution regarding a particular immunization, based on CDC guidelines.

This bill would require the form to contain the following information, at a minimum:

- The name, medical license number, business address, and telephone number of the licensed physician.

- The name of the child for whom the exemption is sought and the name of the child's parent or guardian.
- A statement certifying that the physician has personally examined the child.
- A description of the medical reason for which the exemption is sought.
- An authorization for the release of records related to the medical exemption by the physician to CDPH and the Board.

This bill would require, beginning January 1, 2021, for physicians to inform parents and guardians who request a medical exemption of the requirements in this bill. If the parent or guardian consents, the physician is required to examine the child and submit a completed medical exemption request form to CDPH. This bill would specify that a medical exemption request form may be submitted to CDPH at any time.

This bill would require the State Public Health Officer or designee to review the completed request form and provide the physician with notification approving or denying the medical exemption request. If the request is denied, the reason for the denial must be included in the notification. This bill would specify that the denial may be appealed to the State Public Health Officer. For the appeal, the physician may submit additional information to CDPH within 30 days from the notification.

This bill would require CDPH, by December 31, 2020, to create and maintain a database of medical exemption requests approved. CDPH must make the information in the database accessible to local public health officers.

This bill would specify that if the State Public Health Officer or a local public health officer determines that a medical exemption submitted to CDPH is fraudulent or inconsistent with applicable CDC guidelines, the State Public Health Officer or local public health officer may revoke the medical exemption. This bill would specify that CDPH, in consultation with local educational agencies and local public health officers, must develop a process for a parent or guardian to request a medical exemption and CDPH to expeditiously approve or deny the request and communicate its decision in a timely manner to the school district and the parent or guardian. This bill would specify that CDPH is not required to review or approve any medical exemption that is granted by a physician before January 1, 2021.

This bill will require the medical exemption request form to include an authorization to release medical records to the Board. This 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. This bill furthers the Board's mission of consumer protection and Board staff recommends that the Board take a support position on this bill.

FISCAL: None

SUPPORT: American Academy of Pediatrics, California (co-sponsor); California Medical Association (co-sponsor); Vaccinate California (co-sponsor); Advanced Medical Technology Association; AIDS Healthcare Foundation; American College of Cardiology, California Chapter; American College of Physicians, California Chapter; California Academy of Family Physicians; California Academy of Pain Medicine; California Association of Professional Scientists; California Hospital Association; California Immunization Coalition; California Life Sciences Association; California Optometric Association; California Orthopaedic Association; California School Nurses Organization; California State Association of Counties; Children's Defense Fund; Children's Specialty Care Coalition; County Health Executives Association of California; Health Officers Association of California; Infectious Disease Association of California; Kaiser Permanente; March of Dimes; Orthopedic Surgery Specialists Medical Group; Providence St. Joseph Health; and over 700 individuals.

OPPOSITION: A Voice for Choice Advocacy; Alliance for Natural Health USA; Association of American Physicians and Surgeons; California Health Coalition Advocacy; California Right to Life Committee, Inc.; Californians for Trusted Healthcare; Educate.Advocate.; Moms Across America; National Health Freedom Action; National Vaccine Information Center; Physicians for Informed Consent; Physicians' Association for Anthroposophic Medicine; Vaccine-Injury Awareness League; West Virginians for Health Freedom; and over 800 individuals.

POSITION: Recommendation: Support

AMENDED IN SENATE MAY 17, 2019
AMENDED IN SENATE APRIL 30, 2019
AMENDED IN SENATE APRIL 9, 2019
AMENDED IN SENATE MARCH 25, 2019

SENATE BILL

No. 276

Introduced by Senator Pan
(Principal coauthor: Assembly Member Gonzalez)
(Coauthor: Senator Wiener)
(Coauthor: Assembly Member Aguiar-Curry)

February 13, 2019

An act to amend Sections 120370 and 120375 of, and to add Section 120372 to, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

SB 276, as amended, Pan. Immunizations: medical exemptions.

Existing law prohibits the governing authority of a school or other institution from admitting for attendance any pupil who fails to obtain required immunizations within the time limits prescribed by the State Department of Public Health. Existing law exempts from those requirements a pupil whose parents have filed with the governing authority a written statement by a licensed physician to the effect that immunization is not considered safe for that child, indicating the specific nature and probable duration of their medical condition or circumstances, including, but not limited to, family medical history.

This bill would instead require the State Department of Public Health, by July 1, 2020, to develop and make available for use by licensed physicians and surgeons a statewide standardized medical exemption request form, which, commencing January 1, 2021, would be the only

medical exemption documentation that a governing authority may accept. The bill would require the State Public Health Officer or the public health officer's designee to approve or deny a medical exemption request, upon determining that the request provides sufficient medical evidence that the immunization is contraindicated or that a specific precaution regarding a particular immunization exists, based on guidelines of the federal Centers for Disease Control and Prevention (CDC). The bill would specify the information to be included in the medical exemption form. The bill would, commencing January 1, 2021, require a physician and surgeon to inform a parent or guardian of the bill's requirements and to examine the child and submit a completed medical exemption request form to the department, as specified. The bill would require the State Public Health Officer or designee to review the completed exemption request form and notify the physician and surgeon of the approval or denial of the request. The bill would require the reason for denial of a request to be included in the notification, and would authorize the physician and surgeon to submit additional information to the department for further review for purposes of filing an appeal if an exemption request is denied.

This bill would require the department, by December 31, 2020, to create and maintain a database of approved medical exemption requests, and to make the database accessible to local health officers. The bill would require a copy of a medical exemption granted prior to the availability of the standardized form to be submitted to the department for inclusion in the database by December 31, ~~2021~~, 2020, in order for the medical exemption to remain valid after the statewide standardized form has been adopted. The bill would authorize the State Public Health Officer or a local public health officer to revoke a medical exemption if the State Public Health Officer or local public health officer determines that the medical exemption is fraudulent or inconsistent with applicable CDC guidelines. The bill would require the department, in consultation with local educational agencies and local public health officers, to develop a process for a parent or guardian to request a medical exemption and the department to approve or deny the request and communicate its decision to the school district and the parent or guardian, as specified. The bill would also make conforming changes to existing law.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 120370 of the Health and Safety Code
2 is amended to read:

3 120370. (a) (1) If the parent or guardian files with the
4 governing authority a written statement by a licensed physician
5 and surgeon to the effect that the physical condition of the child
6 is such, or medical circumstances relating to the child are such,
7 that immunization is not considered safe, indicating the specific
8 nature and probable duration of the medical condition or
9 circumstances, including, but not limited to, family medical history,
10 for which the physician and surgeon does not recommend
11 immunization, that child shall be exempt from the requirements
12 of this chapter, except for Section 120380, and exempt from
13 Sections 120400, 120405, 120410, and 120415 to the extent
14 indicated by the physician and surgeon's statement.

15 (2) Commencing January 1, 2021, an exemption issued before
16 January 1, 2021, pursuant to this subdivision is valid only if the
17 parent or guardian has complied with paragraph (2) of subdivision
18 (c) of Section 120372.

19 (b) If there is good cause to believe that a child has been exposed
20 to a disease listed in subdivision (b) of Section 120335 and the
21 child's documentary proof of immunization status does not show
22 proof of immunization against that disease, that child may be
23 temporarily excluded from the school or institution until the local
24 health officer is satisfied that the child is no longer at risk of
25 developing or transmitting the disease.

26 SEC. 2. Section 120372 is added to the Health and Safety Code,
27 to read:

28 120372. (a) (1) By July 1, 2020, the department shall develop
29 and make available for use by licensed physicians and surgeons a
30 statewide standardized medical exemption request form.
31 Notwithstanding Section 120370, commencing January 1, 2021,
32 it shall be the only medical exemption documentation that a
33 governing authority may accept, except as provided in paragraph
34 (2) of subdivision (c). A medical exemption request form shall be
35 approved or denied only by the State Public Health Officer or the
36 public health officer's designee, upon a determination that the
37 request provides sufficient medical evidence that the immunization
38 is contraindicated or there exists a specific precaution regarding

1 a particular immunization, based on guidelines of the federal
2 Centers for Disease Control and Prevention (CDC).

3 (2) At a minimum, the form shall require all of the following
4 information:

5 (A) The name, medical license number, and business address
6 and telephone number, of the licensed physician and surgeon.

7 (B) The name of the child for whom the exemption is sought
8 and the name of the child's parent or guardian.

9 (C) A statement certifying that the licensed physician and
10 surgeon has personally examined the child.

11 (D) A description of the medical reason for which the exemption
12 is sought.

13 (E) *An authorization for the release of records related to the*
14 *medical exemption by the physician and surgeon to the department*
15 *and the California Medical Board.*

16 (b) (1) Commencing January 1, 2021, if a parent or guardian
17 requests a licensed physician and surgeon to request a medical
18 exemption for the parent's or guardian's child, the physician and
19 surgeon shall inform the parent or guardian of the requirements
20 of this section. If the parent or guardian consents, the physician
21 and surgeon shall examine the child and submit a completed
22 medical exemption request form to the department. *A medical*
23 *exemption request form may be submitted to the department at any*
24 *time.*

25 (2) The State Public Health Officer or designee shall review the
26 completed request form and provide the physician and surgeon
27 with notification approving or denying the medical exemption
28 request. If the medical exemption request is denied, the reason for
29 the denial shall be included in the notification.

30 (3) The denial of a request for a medical exemption may be
31 appealed to the State Public Health Officer.

32 (4) For purposes of filing an appeal, the physician and surgeon
33 may submit additional information to the department within 30
34 days from the notification for further review by the State Public
35 Health Officer or designee.

36 (c) (1) By December 31, 2020, the department shall create and
37 maintain a database of medical exemption requests approved
38 pursuant to this section. The department shall make the information
39 in the database accessible to local public health officers.

1 (2) If a medical exemption has been authorized pursuant to
2 Section 120370 prior to the adoption of the statewide standardized
3 form, the parent or guardian shall submit, by December 31, 2020,
4 a copy of that medical exemption to the department for inclusion
5 in the database in order for the medical exemption to remain valid.

6 (d) If the State Public Health Officer or a local public health
7 officer determines that a medical exemption submitted to the
8 department is fraudulent or inconsistent with applicable CDC
9 guidelines, as specified in paragraph (1) of subdivision (a), the
10 State Public Health Officer or local public health officer may
11 revoke the medical exemption.

12 (e) The department, in consultation with local educational
13 agencies and local public health officers, shall develop a process
14 for a parent or guardian to request a medical exemption and the
15 department to expeditiously approve or deny the request and
16 communicate its decision in a timely manner to the school district
17 and the parent or guardian.

18 (f) In administering this section, the department shall comply
19 with all applicable state and federal privacy laws, including, but
20 not limited to, the Confidentiality of Medical Information Act (Part
21 2.6 (commencing with Section 56) of Division 1 of the Civil Code),
22 the federal Health Insurance Portability and Accountability Act
23 of 1996 (Public Law 104-191), and Sections 827, 5328, and 10850
24 of the Welfare and Institutions Code.

25 (g) *This section does not require the department to review or*
26 *approve any medical exemption that is granted by a physician and*
27 *surgeon before January 1, 2021.*

28 SEC. 3. Section 120375 of the Health and Safety Code is
29 amended to read:

30 120375. (a) The governing authority of each school or
31 institution included in Section 120335 shall require documentary
32 proof of each entrant's immunization status. The governing
33 authority shall record the immunizations of each new entrant in
34 the entrant's permanent enrollment and scholarship record on a
35 form provided by the department. The immunization record of
36 each new entrant admitted conditionally shall be reviewed
37 periodically by the governing authority to ensure that within the
38 time periods designated by regulation of the department the entrant
39 has been fully immunized against all of the diseases listed in

1 Section 120335, and immunizations received after entry shall be
2 added to the pupil's immunization record.

3 (b) The governing authority of each school or institution
4 included in Section 120335 shall prohibit from further attendance
5 any pupil admitted conditionally who failed to obtain the required
6 immunizations within the time limits allowed in the regulations
7 of the department until that pupil has been fully immunized against
8 all of the diseases listed in Section 120335, unless the pupil is
9 exempted under Section 120370 or 120372.

10 (c) The governing authority shall file a written report on the
11 immunization status of new entrants to the school or institution
12 under their jurisdiction with the department and the local health
13 department at times and on forms prescribed by the department.
14 As provided in paragraph (4) of subdivision (a) of Section 49076
15 of the Education Code, the local health department shall have
16 access to the complete health information as it relates to
17 immunization of each student in the schools or other institutions
18 listed in Section 120335 in order to determine immunization
19 deficiencies.

20 (d) The governing authority shall cooperate with the county
21 health officer in carrying out programs for the immunization of
22 persons applying for admission to any school or institution under
23 its jurisdiction. The governing board of any school district may
24 use funds, property, and personnel of the district for that purpose.
25 The governing authority of any school or other institution may
26 permit any licensed physician or any qualified registered nurse to
27 administer immunizing agents to any person seeking admission to
28 any school or institution under its jurisdiction.