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**AB-2317 Child day care facilities: anaphylactic policy.** (2023-2024)

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**Assembly Bill No. 2317**

**CHAPTER 563**

An act to amend Section 1596.866 of, and to add Section 1596.7985 to, the Health and Safety Code, relating to child day care facilities.

[ Approved by Governor September 25, 2024. Filed with Secretary of State September 25, 2024. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2317, Stephanie Nguyen. Child day care facilities: anaphylactic policy.

Existing law, the California Child Day Care Facilities Act, provides for the licensure and regulation of child day care facilities by the State Department of Social Services. Under the act, "child day care facility" is defined to mean a facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. For purposes of the act, a child day care facility includes a day care center, an employer-sponsored child care center, and a family day care home. The act requires that, as a condition of licensure and in addition to any other required training, at least one director or teacher at each day care center, and each family day care home licensee who provides care, have at least 15 hours of health and safety training, covering specified components, including preventative health practices courses. Under existing law, a violation of the act is a crime.

This bill would require the State Department of Social Services, in consultation with the Emergency Medical Services Authority (EMSA) and State Department of Education, on or before July 1, 2027, to establish an anaphylactic policy that sets forth guidelines and procedures recommended for child day care personnel to prevent a child from suffering from anaphylaxis and to be used during a medical emergency resulting from anaphylaxis. The bill would authorize a child day care facility to implement the anaphylactic policy on and after January 1, 2028, and would, on and after January 1, 2028, require a child day care facility that adopts the anaphylactic policy to notify the parent or guardian of a child of the policy upon enrollment.

This bill would require EMSA to review minimum standards of training for the administration of epinephrine auto-injectors as necessary and notify the department if any changes to the training course, as specified.

The bill would require the State Department of Social Services and the State Department of Education, on or before September 1, 2027, to publish the anaphylactic policy on each of their internet websites.

This bill would require, on and after January 1, 2026, individuals required to receive health and safety training under the act obtain training in a pediatric first aid or pediatric cardiopulmonary resuscitation (CPR) course that includes instruction on the prevention and treatment of anaphylaxis. The bill would require, on and after January 1, 2028, a pediatric first aid and pediatric CPR training course to include instruction in the prevention and treatment of anaphylaxis, including the emergency use of epinephrine auto-injectors.

Because a willful or repeated violation of the bill by a child day care facility would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 1596.7985 is added to the Health and Safety Code, immediately following Section 1596.798, to read:

**1596.7985.** (a) (1) On or before July 1, 2027, the department, in consultation with the Emergency Medical Services Authority (EMSA) and the State Department of Education, shall establish an anaphylactic policy that sets forth guidelines and procedures recommended for child day care facility trained staff to prevent a child from suffering from anaphylaxis and to be used during a medical emergency resulting from anaphylaxis.

(2) On and after January 1, 2028, a child day care facility may implement the anaphylactic policy developed by the department pursuant to paragraph (1).

(3) On and after January 1, 2028, upon enrollment of a child at a child day care facility, and annually thereafter, the child day care facility shall notify the parent or guardian of the anaphylactic policy developed by the department pursuant to paragraph (1), if the facility has adopted a policy. The notice shall include contact information for a parent or guardian to engage further with the child day care facility to learn more about the policy and notification of the liability limitations set forth in Section 1799.102 of this code and Section 1714.23 of the Civil Code.

(4) The policy shall be developed in consultation with representatives from 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 day care facility administrators and staff.

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

(E) A certified provider organization.

(5) In developing the policy, the department shall consider existing requirements and current and best practices for child day care facilities on allergies and anaphylaxis. The department shall also consider any voluntary guidelines issued by the United States Department of Health and Human Services for managing food allergies in child day care facilities.

(6) The EMSA shall review minimum standards of training for the administration of epinephrine auto-injectors, as necessary, and notify the department if any changes to the training course described in subparagraph (C) of paragraph (7) are needed. Training established pursuant to this subdivision shall be consistent with the most recent Voluntary Guidelines for Managing Food Allergies In Schools and Early Care and Education Programs published by the federal Centers for Disease Control and Prevention and Section 1797.197a.

(7) The anaphylactic policy shall include all of the following:

(A) (i) A process for a child day care facility to solicit volunteers among its employees to be trained and to administer emergency epinephrine auto-injectors to provide emergency medical aid to a child in care who is suffering, or reasonably believed to be suffering, from anaphylaxis. The process to solicit volunteers shall include a statement that there shall be no retaliation against any employee who chooses not to volunteer or who rescinds their offer to volunteer, including after receiving training.

(ii) Trained staff may administer emergency epinephrine auto-injectors to provide medical aid to a child in care who is suffering, or reasonably believed to be suffering, from anaphylaxis at a child day care facility during operating hours.

(iii) Section 1799.102 of this code and Section 1714.23 of the Civil Code apply to trained staff of a child day care facility, as defined in Section 1596.750, who administer emergency epinephrine auto-injectors to a child in care pursuant to this section.

(B) (i) A procedure and treatment plan, including emergency protocols and responsibilities, for trained staff responding to a child suffering, or reasonably believed to be suffering, from anaphylaxis.

(ii) The procedure and treatment plan shall ensure trained staff have access to an appropriate weight-based dosage epinephrine auto-injector, if applicable, as specified in Section 49414 of the Education Code.

(iii) The procedure and treatment plan shall ensure trained staff have access to epinephrine auto-injectors stored in a secure place at the site.

(C) A training course for child day care facility staff shall include, but not be limited to, the following:

(i) Techniques for preventing, recognizing the symptoms of, and responding to anaphylaxis.

(ii) Standards and procedures for the storage, restocking, and emergency use of epinephrine auto-injectors.

(iii) Emergency followup procedures, including calling the emergency 911 telephone number and contacting, if possible, the child's parent or guardian and physician.

(iv) Instruction on how to determine whether to use a pediatric or adult epinephrine auto-injector.

(v) Written materials covering the information required by this subparagraph.

(D) Appropriate guidelines for each child day care facility to develop an individual emergency plan for children with a food or other allergy that could result in anaphylaxis.

(E) A process for a child day care facility to obtain either of the following from the parent or guardian of each child in care:

(i) Prior written consent to the emergency administration of epinephrine auto-injectors by trained staff to the child who is suffering, or reasonably believed to be suffering, from anaphylaxis.

(ii) A written statement objecting to the emergency administration of epinephrine auto-injectors by trained staff to the child who is suffering, or reasonably believed to be suffering, from anaphylaxis.

(F) Strategies for the reduction of the risk of exposure to children of anaphylactic causative agents, including food and other allergens.

(b) (1) On or before September 1, 2027, the department and the State Department of Education shall publish the anaphylactic policy developed pursuant to paragraph (1) of subdivision (a) on each of the departments' internet websites.

(2) The anaphylactic policy shall be updated by the department as necessary, in consultation with the EMSA and the State Department of Education.

(c) This section shall not be construed to preempt, modify, or amend a child day care facility's requirement to comply with existing federal and state disability laws, or the requirements related to a child's individualized family service plan or individualized education program.

(d) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer the changes made by this section through letters or similar written instructions that shall have the same force and effect as regulations until regulations are adopted.

(e) For the purposes of this section, the following terms have the following meanings:

(1) "Anaphylaxis" means a potentially life-threatening hypersensitivity or allergic reaction to a substance.

(A) Symptoms of anaphylaxis may include shortness of breath, wheezing, difficulty breathing, difficulty talking or swallowing, hives, itching, swelling, shock, or asthma.

(B) Causes of anaphylaxis may include, but are not limited to, insect stings or bites, foods, drugs, and other allergens, as well as idiopathic or exercise-induced anaphylaxis.

(2) "Epinephrine auto-injector" means a disposable delivery device designed for the automatic injection of a premeasured dose of epinephrine into the human body to prevent or treat a life-threatening allergic reaction.

(3) "Trained staff" means an employee of a child day care facility, as defined in Section 1596.750, who has volunteered to administer epinephrine auto-injectors to a person if the child in care is suffering, or reasonably believed to be suffering, from

anaphylaxis, has been designated by the licensee, and has received training pursuant to subparagraph (C) of paragraph (7) of subdivision (a).

**SEC. 2.** Section 1596.866 of the Health and Safety Code is amended to read:

**1596.866.** (a) (1) In addition to other required training, at least one director or teacher at each day care center, and each family day care home licensee who provides care, shall have at least 15 hours of health and safety training, and if applicable, at least one additional hour of training pursuant to clause (ii) of subparagraph (C) of paragraph (2).

(2) The health and safety training shall include the following components:

(A) Pediatric first aid.

(B) Pediatric cardiopulmonary resuscitation (CPR).

(C) (i) A preventive health practices course or courses that include instruction in the recognition, management, and prevention of infectious diseases, including immunizations, prevention of childhood injuries, and, for licenses issued on and after July 1, 2020, instruction in the prevention of lead exposure that is consistent with the most recent State Department of Public Health's training curriculum on childcare lead poisoning prevention.

(ii) For licenses issued on or after January 1, 2016, at least one director or teacher at each day care center, and each family day care home licensee who provides care, shall have at least one hour of childhood nutrition training as part of the preventive health practices course or courses.

(3) The training may include instruction in sanitary food handling, emergency preparedness and evacuation, and caring for children with special needs.

(4) (A) (i) On and after January 1, 2026, persons described in paragraph (1) of subdivision (a) shall obtain training in a pediatric first aid or pediatric CPR course that includes instruction in the prevention and treatment of anaphylaxis, including the emergency use of epinephrine auto-injectors, subject to the requirements of Section 1797.197a.

(ii) Persons who, on or before December 31, 2025, have completed a course or courses in pediatric first aid and pediatric CPR that did not include instruction in the prevention and treatment of anaphylaxis, including the emergency use of epinephrine auto-injectors, shall comply with clause (i) for the next renewal period.

(iii) (I) It is the intent of the Legislature that the training required by this section will be adopted into the existing training requirements for a child day care facility and will not require additional hours.

(II) Notwithstanding the provisions in subclause (I) of this clause and clauses (i) and (ii) of this subparagraph, in the event any additional training hours are required by these provisions, reimbursement of a family child care provider, as defined in Section 10421 of the Welfare and Institutions Code, for any additional training hours shall be determined pursuant to the procedures set forth in Chapter 25 (commencing with Section 10420) of Part 1.8 of Division 9 of the Welfare and Institutions Code.

(B) On and after January 1, 2028, a pediatric first aid and pediatric CPR training course shall include instruction in the prevention and treatment of anaphylaxis, including the emergency use of epinephrine auto-injectors, subject to the requirements of Section 1797.197a.

(b) Day care center directors and licensees of family day care homes shall ensure that at least one staff member who has a current course completion card in pediatric first aid and pediatric CPR issued by the American Red Cross, the American Heart Association, or by a training program that has been approved by the Emergency Medical Services Authority pursuant to this section and Section 1797.191 shall be onsite at all times when children are present at the facility, and shall be present with the children when children are offsite from the facility for facility activities. Nothing in this subdivision shall be construed to require, in the event of an emergency, additional staff members, who are onsite when children are present at the facility, to have a current course completion card in pediatric first aid and pediatric CPR.

(c) (1) The completion of health and safety training by all personnel and licensees described in subdivision (a) shall be a condition of licensure.

(2) Training in pediatric first aid and pediatric CPR by persons described in subdivisions (a) and (b) shall be current at all times. Training in preventive health practices, as described in subparagraph (C) of paragraph (2) of subdivision (a), is a one-time only requirement for persons described in subdivision (a).

(3) The department shall issue a provisional license for otherwise qualified applicants who are not in compliance with this section. This provisional license shall expire 90 days after the date of issuance and shall not be extended.

(4) A notice of deficiency shall be issued by the department at the time of a site visit to a licensee who is not in compliance with this section. The licensee shall, at the time the notice is issued, develop a plan of correction to correct the deficiency within 90 days of receiving the notice. The facility's license may be revoked if it fails to correct the deficiency within the 90-day period. Section 1596.890 shall not apply to this paragraph.

(d) Completion of the training required pursuant to subdivisions (a) and (b) shall be demonstrated, upon request of the licensing agency, by the following:

(1) Current pediatric first aid and pediatric CPR course completion cards issued by the American Red Cross, the American Heart Association, or by a training program approved by the Emergency Medical Services Authority pursuant to Section 1797.191.

(2) (A) A course completion card for a preventive health practices course or courses, as described in subparagraph (C) of paragraph (2) of subdivision (a), issued by a training program approved by the Emergency Medical Services Authority pursuant to Section 1797.191.

(B) Persons who, before September 21, 1998, have completed a course or courses in preventive health practices, as described in clause (i) of subparagraph (C) of paragraph (2) of subdivision (a), and have a certificate of completion of a course or courses in preventive health practices, or certified copies of transcripts that identify the number of hours and the specific course or courses taken for training in preventive health practices, shall be deemed to have met the training in preventive health practices.

(3) In addition to training programs specified in paragraphs (1) and (2), training programs or courses in pediatric first aid, pediatric CPR, and preventive health practices offered or approved by an accredited college or university are considered approved sources of training that may be used to satisfy the training requirements of paragraph (2) of subdivision (a). Completion of this training shall be demonstrated to the licensing agency by a certificate of course completion, course completion cards, or certified copies of transcripts that identify the number of hours and the specified course or courses taken for the training, as defined in paragraph (2) of subdivision (a).

(e) The training required under subdivision (a) shall not be provided by a home study course. This training may be provided through in-service training, workshops, or classes. This subdivision shall not be interpreted to prohibit approved online courses in pediatric first aid or preventive health practices.

(f) All personnel and licensees described in subdivisions (a) and (b) shall maintain current course completion cards for pediatric first aid and pediatric CPR issued by the American Red Cross, the American Heart Association, or by a training program approved by the Emergency Medical Services Authority pursuant to Section 1797.191, or shall have current certification in pediatric first aid and pediatric CPR from an accredited college or university in accordance with paragraph (3) of subdivision (d).

(g) The department shall have the authority to grant exceptions to the requirements imposed by this section in order to meet the requirements of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

(h) The department shall adopt regulations to implement this section. Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer the changes made by this section through letters or similar written instructions that shall have the same force and effect as regulations until regulations are adopted.

**SEC. 3.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.