CHILD CARE LAW CENTER

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Analysis of 2014 Legislation Relevant to Child Care in California
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AB 1819 (Hall) Smoking Prohibition in Family Child Care Homes

AB 1819 prohibits smoking tobacco in the homes of licensed family child care homes at all times and in areas where children are present. Previously, smoking in licensed family child care homes was banned during the hours of operation and where children were present. The new law also requires child care providers to take "reasonable steps" to prevent guests from smoking at their home without their knowledge. Reasonable steps include posting "No Smoking" signs and asking guests to refrain from smoking. A person who willfully or repeatedly violates the law can be found guilty of a misdemeanor.

The intent of the bill is to reduce the negative impacts of third hand smoke. Third hand smoke is described as toxic chemicals left on surfaces, such as furniture, carpets, and walls, from smoking. Recent research from UC Berkeley finds that the lingering harmful residue from smoking becomes more noxious and potent over time, and is potentially more dangerous to a person's health than acute smoke or second hand smoke exposure. Children, particularly infants and toddlers, are at greater risk than adults of inhaling or swallowing harmful chemicals from third hand smoke as they often put their hands and toys in their mouths. Moreover, they are more vulnerable from the harmful effects of these chemicals due to their developing immune system.

AB 1819 becomes effective January 1, 2015

AB 1432 (Gatto) Training for School Employees on Mandated Child Abuse Reporting

AB 1432 requires mandated-reporter training for child care employees and contractors in programs operated by school districts and county offices of education, including State Preschool, Head Start, and before- and after-school programs.

The new law will provide for a state-approved training program to all employees and contractors who are mandated reporters of suspected child abuse who work at school districts, county offices of education, state special schools and diagnostic centers operated by the California Department of Education (CDE), and charter schools.

CDE, in consultation with the Office of Child Abuse Prevention in the California Department of Social Services (CDSS) must develop and disseminate information on detecting child abuse, and guidelines on reporting it, to all school districts, county offices of education and charter schools, and their school personnel. AB 1432 specifies that covered school employees and contractors take annual mandated reporter training within the first six weeks of every school year, or within the first six weeks of employment, and to submit proof that they have completed it.

Currently, child care providers are mandated reporters of suspected child abuse under the Child Abuse and Neglect Reporting Act, but they are not required to take training on how to identify or report signs

of child abuse. The new law will begin to change this by requiring training for those child care professionals employed at school districts and other public education facilities.

AB 2236 (Maienschein)—Civil Penalties for Licensed Care Facilities

AB 2236 increases the amount of civil penalties that the CDSS Community Care Licensing Division (CCLD) may impose when it determines that a child care facility's violation of licensing rules resulted in physical abuse, serious injury, or death to a child in care. The law extends the new, increased civil penalties to all facilities licensed by the CCLD, including residential care facilities as well as child day care centers and family day care homes. It adjusts the size of the new penalty based on the number of children for which the licensee, among all of his or her facilities, is licensed to care. Prior law did not distinguish civil penalties on the basis of outcome to the child or potential size of facility, and imposed a maximum civil penalty of $150 per day.

The amount of the new civil penalty for a violation resulting in the death of a child is $7,500 for a child care facility licensed to care for 30 or less children; $10,000 for a licensee licensed to care for 31 to 100, inclusive, children; and $15,000 for a licensee licensed to care for more than 100 children. For a violation that the department determines constitutes physical abuse or resulted in serious injury, the amount is $2,500 for a licensee licensed to care for 30 or less children; $5,000 for a licensee licensed to care for 31 to 100, inclusive, children; and $10,000 for a licensee licensed to care for more than 100 children. For the purposes of the penalties, "physical abuse" includes physical injury inflicted upon a child by another person by other than accidental means, and sexual abuse, neglect, or unlawful corporal punishment or injury as defined by provisions in the Child Abuse and Neglect Reporting Act, when the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency.

The law creates a process for heightened review of the civil penalties assessed for the death of, or serious bodily injury or physical injury to, a child at child care facility. The CCLD director must pre-approve the decision to issue the citation carrying the higher civil penalty. A licensee has 10 days from receipt of notice of the civil penalty assessment to submit a written request to CCLD for formal review of the penalty. A regional manager of CCLD has 60 days from the date of licensee's request to notify the licensee of his or her decision on review. The licensee may further appeal to the CCLD's program administrator and deputy director, and to an administrative law judge.

AB 1522 (Gonzalez)—Paid Sick Days

The Healthy Workplaces, Healthy Families Act of 2014 enacted by AB 1522 entitles employees of nearly all California workplaces, including child care centers and family child care homes, to a minimum of three paid sick days a year.

The law covers any employee who, on or after July 1, 2015, works in California for 30 or more days within a year from when they started employment. Employees accrue paid sick days at the rate of not less than one hour per every 30 hours worked, and are entitled to begin using the accrued sick days after 90 days of employment. Sick days accrued under the law carry over to the following year, but an employer is entitled to limit an employee's use of them to three days in each year of employment. An employer is not required to compensate the employee for unused sick days when the employment ends. The rate of sick pay is the employee's hourly wage. The law requires an employee to provide reasonable

advance notification of the need for leave, if foreseeable, and notice as soon as practicable, if unforeseeable. Eligible purposes for the leave include diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee's child (broadly defined) or grandchild. The law includes provisions to protect employee's exercise of the paid sick leave rights it creates, and to prevent retaliation.

In passing AB 1522, the Legislature found that paid sick days will have a positive impact on public health by lessening recovery time for sick workers and reducing the likelihood of their spreading illness. It further found that it will allow parents to provide personal care for their sick children, ensuring children's speedy recovery, preventing more serious illnesses, and improving children's overall mental and physical health. By making it easier for child care childcare workers, working parents, and the children they care for to stay home when they are ill, AB 1522 will improve the health and quality of child care and outcomes for children and working families. It will also, however, impose costs on tightly budgeted child care programs, and may create logistical challenges given legal requirements to maintain adequate staff ratios and to ensure that any substitute staff meet background check and other standards.

AB 1944 (Garcia) Preferred Child Care Placement of 11 and 12-Year Old Children

This law deletes the requirement that a parent of an 11 or 12 year old student provide certification that a before or after school program is not available, for the student to be eligible for subsidized child care.

Children who are otherwise eligible for state subsidized child care may continue to receive it through age 12. A provision in the 2004 Budget Act created a preference to place 11 and 12 year olds in after school programs rather than subsidized child care. The Legislature later expanded the provision to include before school programs. Parents eligible for state subsidized child care had to submit a written certification that the before or after school programs were "unavailable" as defined by law in order to continue to receive child care rather than the before or after school placement for their child. State subsidized child care program contractors could be sanctioned if they allowed parents of 11 and 12 year olds to continue to receive child care without this written certification. AB 1944 eliminated this written certification requirement. In doing so, it makes it easier for parents to exercise choice regarding child care placement for their 11 and 12 year old children.