

## Assembly Bill No. 572

### CHAPTER 648

An act to amend Sections 1570.2, 1570.7, 1570.9, 1572, 1574.5, and 1578.1 of the Health and Safety Code, and to amend Sections 14521, 14526.1, 14528.1, 14550, and 14550.5 of, and to add Section 14553.1 to, the Welfare and Institutions Code, relating to adult day health care.

[Approved by Governor September 30, 2008. Filed with  
Secretary of State September 30, 2008.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 572, Berg. Adult day health care services.

The California Adult Day Health Care Act provides for the licensure and regulation of adult day health centers, with administrative responsibility for this program shared between the State Department of Public Health, the State Department of Health Care Services, and the California Department of Aging pursuant to an interagency agreement. The Adult Day Health Medi-Cal Law establishes adult day health care services as a Medi-Cal benefit for Medi-Cal beneficiaries who meet certain criteria.

Existing law requires the interagency agreement to, among other things, specify that the California Department of Aging is responsible for making recommendations to the department regarding licensure, as specified. Existing law also requires the interagency agreement to specify that the department shall delegate to the California Department of Aging the responsibility of performing the financial reviews and the resolution of audit appeals that are necessary to ensure the program integrity.

This bill would eliminate the requirement that the interagency agreement contain the above statements.

The bill would impose new qualification requirements on specified adult day health care center employees, and would require all adult day health care centers to provide for various vacancy policies and procedures, as provided.

Existing law requires the State Department of Public Health, the State Department of Health Care Services, and the California Department of Aging to jointly develop and adopt regulations for the provision of different levels of care under the single adult day health care license.

This bill would delete this requirement.

Existing law provides that if an adult day health care center licensee provides adult day care or adult day support center services, the adult day health care license shall be the only license required to provide these additional services.

This bill would revise this provision to, instead, apply to an adult day health care center licensee that provides adult day program services.

The bill would also provide that an adult day health care center licensee shall not be required to meet the licensing and certification staffing requirements of the adult day health care center program during extended hours, as defined.

Existing law requires that adult day health care centers offer specified care services to each participant during each day of the participant's attendance at the center, including at least one meal per day, as prescribed.

This bill would specify that the meal must be provided unless the participant declines the meal or medical contraindications exist, as documented in the participant's health record, that prohibit the ingestion of the meal.

Existing law also requires that an adult day health care center provide transportation services to and from the homes of participants.

This bill would provide that these services may only exceed one hour when necessary to ensure regular and planned attendance at the adult day health care center and when there is documentation in the participant's health record that there is no medical contraindication.

This bill would require that adult day health care centers have both written policies and procedures for dealing with natural disaster and emergency situations.

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

SECTION 1. Section 1570.2 of the Health and Safety Code is amended to read:

1570.2. The Legislature hereby finds and declares that there exists a pattern of overutilization of long-term institutional care for elderly persons or adults with disabilities, and that there is an urgent need to establish and to continue a community-based system of quality adult day health care which will enable elderly persons or adults with disabilities to maintain maximum independence. While recognizing that there continues to be a substantial need for facilities providing custodial care, overreliance on this type of care has proven to be a costly panacea in both financial and human terms, often traumatic, and destructive of continuing family relationships and the capacity for independent living.

It is, therefore, the intent of the Legislature in enacting this chapter and related provisions to provide for the development of policies and programs that will accomplish the following:

(a) Ensure that elderly persons and adults with disabilities are not institutionalized inappropriately or prematurely.

(b) Provide a viable alternative to institutionalization for those elderly persons and adults with disabilities who are capable of living at home with the aid of appropriate health care or rehabilitative and social services.

(c) Establish adult day health centers in the community for this purpose, that will be easily accessible to all participants, including economically disadvantaged elderly persons and adults with disabilities, and that will

provide outpatient health, rehabilitative, and social services necessary to permit the participants to maintain personal independence and lead meaningful lives.

(d) Include the services of adult day health centers as a benefit under the Medi-Cal Act, that shall be an initial and integral part in the development of an overall plan for a coordinated, comprehensive continuum of optional long-term care services based upon appropriate need.

(e) Establish a rural alternative adult day health care program designed to meet the special needs and requirements of rural areas to enable the implementation of subdivisions (a) through (d), inclusive, for all Californians in need of those services.

(f) Ensure that all laws, regulations, and procedures governing adult day health care be enforced equitably regardless of organizational sponsorship and that all program flexibility provisions be administered equitably.

SEC. 2. Section 1570.7 of the Health and Safety Code is amended to read:

1570.7. As used in this chapter and in any regulations promulgated thereunder:

(a) “Adult day health care” means an organized day program of therapeutic, social, and skilled nursing health activities and services provided pursuant to this chapter to elderly persons or adults with disabilities with functional impairments, either physical or mental, for the purpose of restoring or maintaining optimal capacity for self-care. Provided on a short-term basis, adult day health care serves as a transition from a health facility or home health program to personal independence. Provided on a long-term basis, it serves as an alternative to institutionalization in a long-term health care facility when 24-hour skilled nursing care is not medically necessary or viewed as desirable by the recipient or his or her family.

(b) “Adult day health center” or “adult day health care center” means a licensed and certified facility that provides adult day health care.

(c) “Core staff” includes the positions of program director, registered nurse, social worker, activity director, and program aide.

(d) “Department” or “state department” means the State Department of Public Health.

(e) “Director” means the State Public Health Officer.

(f) “Elderly” or “older person” means a person 55 years of age or older, but also includes other adults who are chronically ill or impaired and who would benefit from adult day health care.

(g) “Extended hours” means those hours of operation prior to or following the adult day health care program hours of service, as designated by the adult day health care center in its plan of operation, during which the adult day health care center may operate an adult day program, or an Alzheimer’s day care resource center, or both.

(h) “Hours of service” means the program hours defined and posted by the adult day health care center for the provision of adult day health care services, pursuant to Section 14550 of the Welfare and Institutions Code, which shall be no less than four hours, excluding transportation.

(i) “Individual plan of care” means a plan designed to provide recipients of adult day health care with appropriate treatment in accordance with the assessed needs of each individual.

(j) “License” means a basic permit to operate an adult day health care center. With respect to a health facility licensed pursuant to Chapter 2 (commencing with Section 1250), “license” means a special permit, as defined by Section 1251.5, empowering the health facility to provide adult day health care services.

(k) “Long-term absence” or “long-term vacancy” means an absence or vacancy lasting, or likely to last, more than one month. An adult day health care center’s policies and procedures shall be specific regarding coverage in the situation for long-term absences or vacancies.

(l) “Maintenance program” means procedures and exercises that are provided to a participant, pursuant to Section 1580, in order to generally maintain existing function. These procedures and exercises are planned by a licensed or certified therapist and are provided by a person who has been trained by a licensed or certified therapist and who is directly supervised by a nurse or by a licensed or certified therapist.

(m) “Program director” shall be a person with both of the following:

(1) One of the following backgrounds:

(A) A person with a bachelor’s degree and a minimum of two years of experience in a management, supervisory, or administrative position.

(B) A person with a master’s degree and a minimum of one year of experience in a management, supervisory, or administrative position.

(C) A registered nurse with a minimum of two years experience in a management, supervisory, or administrative position.

(2) Appropriate skills, knowledge, and abilities related to the health, and mental, cognitive, and social needs of the participant group being served by the adult day health center.

(n) “Restorative therapy” means physical, occupational, and speech therapy, and psychiatric and psychological services that are planned and provided by a licensed or certified therapist. The therapy and services may also be provided by an assistant or aide under the appropriate supervision of a licensed therapist, as determined by the licensed therapist. The therapy and services are provided to restore function, when there is an expectation that the condition will improve significantly in a reasonable period of time, as determined by the multidisciplinary assessment team.

(o) “Short-term absence” or “short-term vacancy” means an absence or vacancy lasting one month or less, and includes sick leave and vacations. An adult day health care center shall ensure that appropriate staff is designated to serve in these positions during the short-term absence or vacancy and that the center’s policies and procedures are specific regarding coverage of short-term absences or vacancies.

(p) “Social worker” shall be a person who meets one of the following:

(1) The person holds a master’s degree in social work from an accredited school of social work.

(2) The person holds a master's degree in psychology, gerontology, or counseling from an accredited school and has one year of experience providing social services in one or more of the fields of aging, health, or long-term care services.

(3) The person is licensed by the California Board of Behavioral sciences.

(4) The person holds a bachelor's degree in social work from an accredited school with two years of experience providing social services in one or more of the fields of aging, health, or long-term care services.

SEC. 3. Section 1570.9 of the Health and Safety Code is amended to read:

1570.9. In the event of conflict between the provisions of this chapter and the provisions of Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), or Chapter 3 (commencing with Section 1500) of this division, this chapter shall be deemed controlling. Except as provided in Section 1507, no facility which provides a specialized program of both medical and nonmedical care for the elderly or adults with disabilities on an outpatient basis shall be licensed as a health facility, clinic, or community care facility under this division, but shall be subject to licensure exclusively in accordance with the provisions of this chapter.

Review of the need and desirability of proposals for adult day health centers shall be governed by the provisions of this chapter and shall not be subject to review under Part 1.5 (commencing with Section 437) of Division 1.

SEC. 4. Section 1572 of the Health and Safety Code is amended to read:

1572. (a) The functions and duties of the State Department of Public Health provided for under this chapter shall be performed by the California Department of Aging commencing on the date those functions are transferred from the State Department of Public Health to the California Department of Aging. The authority, functions, and responsibility for the administration of the adult day health care program by the California Department of Aging and the State Department of Public Health shall be defined in an interagency agreement between the two departments and the State Department of Health Care Services that specifies how the departments will work together.

(b) The interagency agreement shall specify that the California Department of Aging is designated by the department as the agency responsible for community long-term care programs. At a minimum, the interagency agreement shall clarify each department's responsibilities on issues involving licensure and certification of adult day health care providers, payment of adult day health care claims, prior authorization of services, promulgation of regulations, and development of adult day health care Medi-Cal rates. This agreement shall also include provisions whereby the department and the California Department of Aging shall collaborate in the development and implementation of health programs and services for older persons and functionally impaired adults.

(c) The Director of the California Department of Aging shall make recommendations regarding licensure to the Licensing and Certification

Division in the State Department of Public Health. The recommendation shall be based on all of the following criteria:

(1) An evaluation of the ability of the applicant to provide adult day health care in accordance with the requirements of this chapter and regulations adopted hereunder.

(2) Other criteria that the director deems necessary to protect public health and safety.

SEC. 5. Section 1574.5 of the Health and Safety Code is amended to read:

1574.5. (a) All adult day health care centers shall maintain compliance with licensing and certification requirements. These requirements shall not prohibit program flexibility for the use of alternate concepts, methods, procedures, techniques, equipment, number and qualifications of personnel, or the conducting of pilot projects, if these alternatives or pilot projects are carried out with provisions for safe and adequate care and with the prior written approval of the state department. This approval shall provide for the terms and conditions under which permission to use an alternative or pilot program is granted. Particular attention shall be given to encourage the development of models appropriate to rural areas. The department may allow the substitution of work experience for academic requirements for the position of program director, administrator, or activity coordinator.

(b) The applicant or licensee may submit a written request to the department for program flexibility, and shall submit with the request substantiating evidence supporting the request.

(c) Any approval by the department granted under this section, or a true copy thereof, shall be posted immediately adjacent to the center's license.

SEC. 6. Section 1578.1 of the Health and Safety Code is amended to read:

1578.1. (a) Notwithstanding subdivisions (b) and (c) of Section 1570.7 or any other provision of law, if an adult day health care center licensee also provides adult day program services, the adult day health care license shall be the only license required to provide these additional services. Costs shall be allocated among the programs in accordance with generally accepted accounting practices.

(b) The department, unless otherwise specified by the interagency agreement entered into pursuant to Section 1572 shall evaluate the program services provided for in subdivision (a) for quality of care and compliance with program requirements, concurrent with inspections of the adult day health care facility, using a single survey process.

(c) The department and the California Department of Aging shall jointly develop and adopt regulations pursuant to Section 1580 for the provision of different levels of care under the single adult day health care license.

SEC. 7. Section 14521 of the Welfare and Institutions Code is amended to read:

14521. It is the intent of the Legislature in enacting this chapter to establish adult day health care as a Medi-Cal benefit and allow persons eligible to receive the benefits under Chapter 7 (commencing with Section

14000) of this part, and who have medical or psychiatric impairments, to receive adult day health care services. It is the intent of the Legislature in authorizing this Medi-Cal benefit to establish and continue a community-based system of quality adult day health care services that will accomplish all of the following:

- (a) Ensure that elderly persons and adults with disabilities will not be institutionalized prematurely and inappropriately.
- (b) Provide appropriate health and social services designed to maintain elderly persons in their own communities.
- (c) Establish adult day health care centers in locations easily accessible to persons who are economically disadvantaged.
- (d) Encourage the establishment of rural alternative adult day health care centers that are designed to make adult day health care accessible to elderly persons and adults with disabilities living in rural areas.

SEC. 8. Section 14526.1 of the Welfare and Institutions Code is amended to read:

14526.1. (a) Initial and subsequent treatment authorization requests may be granted for up to six calendar months.

(b) Treatment authorization requests shall be initiated by the adult day health care center, and shall include all of the following:

(1) The signature page of the history and physical form that shall serve to document the request for adult day health care services. A complete history and physical form, including a request for adult day health care services signed by the participant's personal health care provider, shall be maintained in the participant's health record. This history and physical form shall be developed by the department and published in the inpatient/outpatient provider manual. The department shall develop this form jointly with the statewide association representing adult day health care providers.

(2) The participant's individual plan of care, pursuant to Section 54211 of Title 22 of the California Code of Regulations.

(c) Every six months, the adult day health care center shall initiate a request for an updated history and physical form from the participant's personal health care provider using a standard update form that shall be maintained in the participant's health record. This update form shall be developed by the department for that use and shall be published in the inpatient/outpatient provider manual. The department shall develop this form jointly with the statewide association representing adult day health care providers.

(d) Authorization or reauthorization of an adult day health care treatment authorization request shall be granted only if the participant meets all of the following medical necessity criteria:

(1) The participant has one or more chronic or post acute medical, cognitive, or mental health conditions that are identified by the participant's personal health care provider or other health professionals and are documented in the participant's health record and require treatment, monitoring, or intervention without which the participant's condition will

likely deteriorate and require emergency department visits, hospitalization, or other institutionalization.

(2) The participant's condition or conditions result in both of the following:

(A) Limitations in the performance of two or more activities of daily living or instrumental activities of daily living, as those terms are defined in Section 14522.3, or one or more from each category.

(B) A need for assistance or supervision in performing the activities identified in subparagraph (A) as related to the condition or conditions specified in paragraph (1) of subdivision (d).

(3) The participant's network of nonadult day health care center supports is insufficient to maintain the individual in the community, demonstrated by at least one of the following:

(A) The participant lives alone and has no family or caregivers available to provide sufficient and necessary care or supervision.

(B) The participant resides with one or more related or unrelated individuals, but they are unwilling or unable to provide sufficient and necessary care or supervision to the participant.

(C) The participant has family or caregivers available, but those individuals require respite in order to continue providing sufficient and necessary care or supervision to the participant.

(4) A high potential exists for the deterioration of the participant's medical, cognitive, or mental health condition or conditions in a manner likely to result in emergency department visits, hospitalization, or other institutionalization if adult day health care services are not provided.

(5) The participant's condition or conditions require individualized adult day health care services specified in subdivisions (a) to (d), inclusive, of Section 14550.5, on each day of attendance, that are needed in addition to any other health care support the participant is currently receiving in his or her place of residence and designed to maintain the ability of the participant to remain in the community and avoid emergency department visits, hospitalizations, or other institutionalization.

(e) Reauthorization of an adult day health care treatment authorization request shall be granted when the criteria specified in subdivision (d) have been met and the participant's condition would likely deteriorate if the adult day health care services were denied.

SEC. 9. Section 14528.1 of the Welfare and Institutions Code is amended to read:

14528.1. (a) The personal health care provider, as defined in Section 14552.3, shall have and retain responsibility for the participant's medical care.

(b) If the participant does not have a personal health care provider during the initial assessment process to determine eligibility for adult day health care, the adult day health care center staff physician may conduct the initial history and physical for the participant.

(c) The adult day health care center shall make all reasonable efforts to assist the participant in establishing a relationship with a personal health care provider.

(d) If the adult day health care center is unable to locate a personal health care provider for the participant, or if the participant refuses to establish a relationship with a personal health care provider, the adult day health care center shall do both of the following:

(1) Document the lack of personal health care provider relationship in the participant's health record.

(2) Continue to document all efforts taken to assist the participant in establishing a relationship with a personal health care provider.

(e) (1) A personal physician for one or more of an adult day health care center's enrolled participants may serve as the adult day health care staff physician.

(2) When a personal physician serves as the staff physician, the physician shall have a personal care services arrangement with the adult day health care center that meets the criteria set forth in Section 1395nn(e)(3)(A) of Title 42 of the United States Code.

(3) A personal care physician, an adult day health care staff physician, or an immediate family member of the personal care physician or adult day health care staff physician, shall comply with ownership interest restrictions as provided under Section 654.2 of the Business and Professions Code.

SEC. 10. Section 14550 of the Welfare and Institutions Code is amended to read:

14550. Adult day health care centers shall offer, and shall provide directly on the premises, at least the following services:

(a) Rehabilitation services, including the following:

(1) Occupational therapy as an adjunct to treatment designed to restore impaired function of patients with physical or mental limitations.

(2) Physical therapy appropriate to meet the needs of the patient.

(3) Speech therapy for participants with speech or language disorders.

(b) Medical services supervised by either the participant's personal physician or a staff physician, or both, which emphasize prevention treatment, rehabilitation, and continuity of care and also provide for maintenance of adequate medical records. To the extent otherwise permitted by law, medical services may be provided by nurse practitioners, as defined in Section 2835 of the Business and Professions Code, operating within the existing scope of practice, or under standardized procedures pursuant to Section 2725 of the Business and Professions Code, or by registered nurses practicing under standardized procedures pursuant to Section 2725 of the Business and Professions Code.

(c) Nursing services, including the following:

(1) Nursing services rendered by a professional nursing staff, who periodically evaluate the particular nursing needs of each participant and provide the care and treatment that is indicated.

(2) Self-care services oriented toward activities of daily living and personal hygiene, such as toileting, bathing, and grooming.

(d) Nutrition services, including the following:

(1) The program shall provide a minimum of one meal per day which is of suitable quality and quantity as to supply at least one-third of the daily nutritional requirement, unless the participant declines the meal or medical contraindications exist, as documented in the participant's health record, that prohibit the ingestion of the meal at the adult day health care center. Additionally, special diets and supplemental feedings shall be available if indicated.

(2) Dietary counseling and nutrition education for the participant and his or her family shall be a required adjunct of such service. Dietary counseling and nutrition education may be provided by a professional registered nurse, unless the participant is receiving a special diet prescribed by a physician, or a nurse determines that the services of a registered dietician are necessary.

(e) Psychiatric or psychological services which include consultation and individual assessment by a psychiatrist, clinical psychologist, or a psychiatric social worker, when indicated, and group or individual treatment for persons with diagnosed mental, emotional, or behavioral problems.

(f) Social work services to participants and their families to help with personal, family, and adjustment problems that interfere with the effectiveness of treatment.

(g) Planned recreational and social activities suited to the needs of the participants and designed to encourage physical exercise, to prevent deterioration, and to stimulate social interaction.

(h) Transportation service for participants, when needed, to and from their homes utilizing specially equipped vehicles to accommodate participants' needs. The transportation service may only exceed one hour when necessary to ensure regular and planned attendance at the adult day health care center and when there is documentation in the participant's health record that there is no medical contraindication.

(i) Written policies and procedures for dealing with natural disaster and emergency situations.

SEC. 11. Section 14550.5 of the Welfare and Institutions Code is amended to read:

14550.5. Adult day health care centers shall offer, and provide directly on the premises, in accordance with the participant's individual plan of care, and subject to authorization pursuant to Section 14526, the following core services to each participant during each day of the participant's attendance at the center:

(a) One or more of the following professional nursing services:

(1) Observation, assessment, and monitoring of the participant's general health status and changes in his or her condition, risk factors, and the participant's specific medical, cognitive, or mental health condition or conditions upon which admission to the adult day health care center was based.

(2) Monitoring and assessment of the participant's medication regimen, administration and recording of the participant's prescribed medications,

and intervention, as needed, based upon the assessment and the participant's reactions to his or her medications.

(3) Oral or written communication with the participant's personal health care provider, other qualified health care or social service provider, or the participant's family or other caregiver, regarding changes in the participant's condition, signs, or symptoms.

(4) Supervision of the provision of personal care services for the participant, and assistance, as needed.

(5) Provision of skilled nursing care and intervention, within scope of practice, to participants, as needed, based upon an assessment of the participant, his or her ability to provide self-care while at the adult day health care center, and any health care provider orders.

(b) One or both of the following core personal care services or social services:

(1) One or both of the following personal care services:

(A) Supervision of, or assistance with, activities of daily living or instrumental activities of daily living.

(B) Protective group supervision and interventions to assure participant safety and to minimize the risk of injury, accident, inappropriate behavior, or wandering.

(2) One or more of the following social services provided by the adult day health care center social worker or social worker assistant:

(A) Observation, assessment, and monitoring of the participant's psychosocial status.

(B) Group work to address psychosocial issues.

(C) Care coordination.

(c) At least one of the following therapeutic activities provided by the adult day health care center activity coordinator or other trained adult day health care center personnel:

(1) Group or individual activities to enhance the social, physical, or cognitive functioning of the participant.

(2) Facilitated participation in group or individual activities for those participants whose frailty or cognitive functioning level precludes them from active participation in scheduled activities.

(d) One meal per day of attendance, in accordance with Section 54331 of Title 22 of the California Code of Regulations, unless the participant declines the meal or medical contraindications exist, as documented in the participant's health record, that prohibit the ingestion of the meal.

SEC. 12. Section 14553.1 is added to the Welfare and Institutions Code, to read:

14553.1. The adult day health care center's policies and procedures shall include provisions for the following:

(a) Designating the staff who will serve in the required positions during a short-term absence or short-term vacancy, as defined in subdivision (o) of Section 1570.7 of the Health and Safety Code, of required staff.

- (b) Providing coverage for required staff in the event of a long-term absence or long-term vacancy, as defined in subdivision (k) of Section 1570.7 of the Health and Safety Code.
- (c) Ensuring continuity of services for participants during staff absences.