

AMENDED IN SENATE AUGUST 23, 2011

AMENDED IN ASSEMBLY MAY 9, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 784**

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**Introduced by Assembly Members ~~Member Yamada and Knight~~**

February 17, 2011

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~~An act to add Section 14589.6 to the Welfare and Institutions Code, relating to care facilities. An act to amend Sections 1570.2, 1570.7, 1578, and 1585.5 of, and to add Sections 1584.5, 1587, and 1587.5 to, the Health and Safety Code, relating to care facilities, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 784, as amended, Yamada. Adult day health care.

Existing law, the California Adult Day Health Care Act, provides for the licensure and regulation of adult day health care centers, with administrative responsibility for the adult day health care program shared among the State Department of Public Health, the State Department of Health Care Services, and the California Department of Aging pursuant to an interagency agreement. *Existing law provides that a negligent, repeated, or willful violation of a provision of the California Adult Day Health Care Act is a misdemeanor.*

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. *Existing law, the Adult Day Health Medi-Cal Law, establishes adult day health care services as a Medi-Cal*

*benefit and requires adult day health centers to offer, and provide directly on the premises, specified services.* Existing law, with prescribed implementation, to the extent permitted by federal law, excludes adult day health care from coverage under the Medi-Cal program and provides that it is the intent of the Legislature to adopt legislation during the 2011–12 Regular Session creating a new program to provide a well-defined scope of services, as specified, to eligible beneficiaries in the absence of such community-based services.

This bill would, to the extent that funds are available, require that equivalent services provided at 2 specified veterans homes of California be considered for inclusion in the new program. This bill would require that this provision be implemented in a manner that is equitable with regard to other enrollees of the new program.

*This bill would require an adult day health care center to have a prescribed program plan, as defined. This bill would provide the minimum staffing requirements for an adult day health care center.*

*Existing law requires an adult day health care center to provide services to each participant pursuant to an individual plan of care, as defined, designed to maintain or restore each participant's optimal capacity for self-care.*

*This bill would require this plan to be designed by the multidisciplinary team, composed, at a minimum, as prescribed. This bill would require an adult day health care center to provide certain services, as needed, to implement participants' individual plans of care in accordance with the program plan.*

*By changing the definition of a crime, this bill would create 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.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

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

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

3     1570.2. The Legislature hereby finds and declares that there  
4 exists a pattern of overutilization of ~~long-term~~ institutional care  
5 for elderly ~~persons or~~ *persons*, adults with disabilities, *and acutely*  
6 *or chronically ill adults* and that there is an urgent need to establish  
7 and to continue a community-based system of quality adult day  
8 health care which will enable elderly ~~persons or~~ *persons*, adults  
9 with disabilities, *and acutely or chronically ill adults* to maintain  
10 maximum independence. While recognizing that there continues  
11 to be a substantial need for facilities providing *24-hour* custodial  
12 care, overreliance on this type of care has proven to be a costly  
13 panacea in both financial and human terms, often traumatic, and  
14 destructive of continuing family relationships and the capacity for  
15 independent living.

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

19     (a) Ensure that elderly ~~persons and~~ *persons*, adults with  
20 disabilities, *and acutely or chronically ill adults* are not  
21 institutionalized inappropriately or prematurely.

22     (b) Provide a viable alternative to ~~institutionalization~~ *the*  
23 *utilization of institutional services* for those elderly ~~persons and~~  
24 *persons*, adults with disabilities, *and acutely or chronically ill*  
25 *adults* who are capable of living at home with the aid of appropriate  
26 health care or rehabilitative and social services.

27     (c) Establish adult day health centers in the community for this  
28 purpose, that will be easily accessible to all participants, including  
29 economically disadvantaged elderly ~~persons and~~ *persons*, adults  
30 with disabilities, *and acutely or chronically ill adults* and that will  
31 provide *person-centered* outpatient health, rehabilitative, and social  
32 services necessary to permit the participants to *gain or maintain*  
33 personal independence and lead meaningful lives.

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

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

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

9 *SEC. 2. Section 1570.7 of the Health and Safety Code, as*  
 10 *amended by Chapter 119 of the Statutes of 2011, is amended to*  
 11 *read:*

12 1570.7. As used in this chapter and in any regulations  
 13 promulgated thereunder:

14 (a) ~~“Adult day health care” means an organized day program~~  
 15 ~~of therapeutic, social, and skilled nursing health activities and~~  
 16 ~~services provided pursuant to this chapter to elderly persons or~~  
 17 ~~adults with disabilities with functional impairments, either physical~~  
 18 ~~or mental, outpatient program utilizing a patient-centered~~  
 19 ~~multidisciplinary team approach to manage physical, cognitive,~~  
 20 ~~and behavioral health conditions for the purpose of restoring or~~  
 21 ~~maintaining an individual’s optimal capacity for self-care health~~  
 22 ~~and functioning. Provided on a short-term basis, adult day health~~  
 23 ~~care serves as a transition site for transitioning from a health~~  
 24 ~~facility or home health program to personal independence to the~~  
 25 ~~community with the goal of preventing avoidable emergency~~  
 26 ~~department visits and inpatient readmissions and restoring optimal~~  
 27 ~~health. Provided on a long-term basis over a longer term, it serves~~  
 28 ~~as an alternative to deter institutionalization in a long-term health~~  
 29 ~~care facility when 24-hour skilled nursing care is not medically~~  
 30 ~~necessary or viewed as desirable by the recipient or his or her~~  
 31 ~~family and overuse of more costly medical resources.~~

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

34 (c) “Average daily attendance” means the average number of  
 35 participants attending the adult day health care center daily,  
 36 calculated over the past month.

37 ~~(e)~~

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

40 ~~(d)~~

- 1 (e) “Department” or “state department” means the State  
2 Department of Public Health.
- 3 ~~(e)~~
- 4 (f) “Director” means the State Public Health Officer.
- 5 ~~(f)~~
- 6 (g) “Elderly” or “older person” means a person 55 years of age  
7 or older, ~~but also includes other adults who are acutely or~~  
8 ~~chronically ill or impaired disabled and who would benefit from~~  
9 ~~adult day health care.~~
- 10 ~~(g)~~
- 11 (h) “Extended hours” means those hours of operation prior to  
12 or following the adult day health care program hours of service,  
13 as designated by the adult day health care center in its plan of  
14 operation, during which the adult day health care center may  
15 operate an adult day program, or an Alzheimer’s day care resource  
16 center, or both.
- 17 (i) “Full-time” means the total program hours of service per  
18 week.
- 19 (j) “Half-time” means 50 percent of full-time.
- 20 (k) “Hours of operation” means the regular hours during which  
21 the adult day health care center is open and any staff are on the  
22 premises, including, but not limited to, hours during which no  
23 participants are scheduled to attend but the doors are open to  
24 conduct business operations.
- 25 ~~(h)~~
- 26 (l) “Hours of service” means the program hours defined and  
27 posted by the adult day health care center *during which core staff*  
28 *and participants are present* for the provision of adult day health  
29 care services, ~~pursuant to Section 14550 of the Welfare and~~  
30 ~~Institutions Code, which shall be no less than four hours, excluding~~  
31 ~~transportation.~~
- 32 ~~(i)~~
- 33 (m) “Individual plan of care” means a plan designed to provide  
34 recipients of adult day health care with appropriate treatment in  
35 accordance with the assessed needs of each individual *participant*  
36 *within the facility’s scope of services, as defined in the program*  
37 *plan.*
- 38 (n) “Institutional services” includes any 24-hour health facility  
39 and a hospital emergency department.
- 40 ~~(j)~~

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

6 ~~(k)~~

7 (p) "Long-term absence" or "long-term vacancy" means ~~an a~~  
8 ~~staff absence or vacancy lasting, or likely expected to last, more~~  
9 ~~longer than one month. An adult day health care center's policies~~  
10 ~~and procedures shall be specific regarding coverage in the situation~~  
11 ~~for long-term absences or vacancies.~~

12 ~~(t)~~

13 (q) "Maintenance program" means procedures and exercises  
14 that are ~~provided to a participant, pursuant to Section 1580, in~~  
15 ~~order to generally maintain existing function performed repetitively~~  
16 ~~to maintain a level of functioning when a patient's restoration~~  
17 ~~potential is insignificant in relation to the therapy required to~~  
18 ~~achieve that potential, when it has been determined that the~~  
19 ~~treatment goals will not materialize, or when the therapy performed~~  
20 ~~is considered to be a general exercise program. These procedures~~  
21 and exercises are planned by a licensed or certified therapist and  
22 are provided by a person who has been trained by a licensed or  
23 certified therapist and who is directly supervised by a nurse ~~or by~~  
24 ~~a licensed or certified therapist.~~

25 (r) "Personal health care provider" means the participant's  
26 personal physician, physician's assistant, or nurse practitioner,  
27 operating within his or her scope of practice.

28 (s) "Program aide" means a person, supervised by the program  
29 director or other members of the multidisciplinary team, whose  
30 job duties include, but are not limited to, provision of personal  
31 care, assistance with activities, transportation, or other services,  
32 as assigned.

33 ~~(m)~~

34 (t) "Program director" shall be a person with both of the  
35 following:

36 (1) One of the following backgrounds:

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

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

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

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

9 (u) *“Program plan” means a written description of the adult*  
10 *day health care center’s philosophy, objectives, and processes for*  
11 *providing required services to the participant populations.*

12 ~~(n)~~

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

22 ~~(o)~~

23 (w) *“Short-term absence” or “short-term vacancy” means an a*  
24 *staff absence or vacancy lasting, or expected to last, one month or*  
25 *less, and includes sick leave and vacations. An adult day health*  
26 *care center shall ensure that appropriate staff is designated to serve*  
27 *in these positions during the short-term absence or vacancy and*  
28 *that the center’s policies and procedures are specific regarding*  
29 *coverage of short-term absences or vacancies vacations, but does*  
30 *not include periods during which staff are absent from the facility*  
31 *performing program-related duties.*

32 ~~(p)~~

33 (x) *“Social worker” shall be a person who meets one of the*  
34 *following:*

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

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

1 (3) The person is licensed by the California Board of Behavioral  
2 Sciences.

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

7 *SEC. 3. Section 1578 of the Health and Safety Code is amended*  
8 *to read:*

9 1578. (a) A provider may share space with another licensed  
10 health facility, community care facility, senior center, or other  
11 appropriate structure, upon the approval of the department, based  
12 upon a determination of all of the following:

13 (a)

14 (1) The use of the shared space does not jeopardize the welfare  
15 of the participant or other clients.

16 (b)

17 (2) The shared use does not exceed occupancy capacity  
18 established for fire safety.

19 (c)

20 (3) The space used by the adult day health care center is not  
21 essential to meet the other program’s licensing requirements.

22 (d)

23 (4) Each entity schedules services and activities at separate  
24 times. This subdivision shall not apply to space used for meals or  
25 for space used by another licensed adult day services program.

26 ~~For~~

27 (b) *For* purposes of this section, “shared space” means the  
28 mutual use of exits and entrances, offices, hallways, bathrooms,  
29 treatment rooms, and dining rooms by an adult day health care  
30 center and another program *pursuant to Section 1578.1.*

31 *SEC. 4. Section 1584.5 is added to the Health and Safety Code,*  
32 *to read:*

33 1584.5. *An adult day health care center shall have a program*  
34 *plan that shall contain all of the following:*

35 (a) *The total number of participants the center proposes to*  
36 *serve, or currently serves, daily.*

37 (b) *A profile of the participant population the center proposes*  
38 *to serve, or currently serves, that includes a description of the*  
39 *specific medical, social, and other needs of each population.*

1 (c) A description of the specific services provided to address  
2 the medical, social, and other needs of each participant population  
3 that the center proposes to serve, or currently serves, as specified  
4 in subdivision (b).

5 (d) A description of the specialized professional and program  
6 staff that will provide, or currently provides, the adult day health  
7 care center's program services, as specified in subdivision (c),  
8 and that staff's responsibilities. The plan shall demonstrate that  
9 the adult day health care center is organized and staffed to carry  
10 out the requirements as specified in the regulations adopted  
11 pursuant to Section 1580.

12 (e) An in-service training plan for each center staff member to  
13 commence within the first six months of employment. The training  
14 plan shall address, at a minimum, the specific medical, social, and  
15 other needs of each participant population the center proposes to  
16 serve, as specified in subdivision (b).

17 (f) An example of a one-week schedule of daily program  
18 services.

19 (g) A plan for a behavior modification program if such a  
20 program will be used as a basic intervention for meeting the needs  
21 of a special population, such as persons with developmental  
22 disabilities or persons with mental disabilities. The plan, as applied  
23 to persons with developmental disabilities, shall be consistent with  
24 Section 4503 of the Welfare and Institutions Code.

25 SEC. 5. Section 1585.5 of the Health and Safety Code is  
26 amended to read:

27 1585.5. (a) Adult day health care centers shall provide services  
28 to each participant pursuant to an individual plan of care designed  
29 by the multidisciplinary team to maintain or restore each  
30 participant's optimal capacity for self-care.

31 (b) The multidisciplinary team shall be composed of, at a  
32 minimum, the staff physician or the participant's personal health  
33 care provider, the registered nurse, the social worker, the program  
34 director, and, as needed, an occupational therapist, physical  
35 therapist, or speech and language pathologist. The  
36 multidisciplinary team shall assess the needs of the participant  
37 and develop the participant's individual plan of care.

38 SEC. 6. Section 1587 is added to the Health and Safety Code,  
39 to read:

1 1587. (a) *The minimum staffing requirements for an adult day*  
2 *health care center shall be as follows:*

3 (1) *A full-time program director shall be employed to implement*  
4 *the program plan, and supervise and coordinate staff.*

5 (2) *Program aides shall be employed in a sufficient number to*  
6 *meet the personal care and supervision needs of the participants*  
7 *during program hours of service or extended program hours, but*  
8 *in no event shall the program aides employed be fewer than a ratio*  
9 *of one-half aide for every increment of eight participants being*  
10 *cared for during program hours of service. Program aides shall*  
11 *be qualified by education, training, and experience to perform the*  
12 *duties assigned and meet the needs of the program.*

13 (3) *A full-time registered nurse shall be employed to oversee*  
14 *the provision of nursing services. A half-time vocational nurse*  
15 *shall be provided for each increment of 10 in average daily*  
16 *attendance exceeding 40, calculated monthly, and which has been*  
17 *sustained over each of the prior three calendar months.*

18 (4) *A full-time social worker shall be employed to provide direct*  
19 *skilled social work services and to oversee the provision of social*  
20 *services. A half-time social work assistant shall be provided for*  
21 *each increment of 10 in average daily attendance exceeding 40,*  
22 *calculated monthly, and which has been sustained over each of*  
23 *the prior three calendar months.*

24 (5) *A full-time activity director shall be employed to direct the*  
25 *activity program. The activity director may be counted in the ratio*  
26 *for calculating the necessary direct care staff defined in subdivision*  
27 *(b).*

28 (6) *A licensed nurse shall be on duty during the defined program*  
29 *hours of service.*

30 (b) *The adult day health care center's policies and procedures*  
31 *shall be specific regarding the provision of adequate staffing for*  
32 *coverage with qualified personnel for long-term and short-term*  
33 *absences or vacancies. Regardless of the reason for the staff*  
34 *absence or vacancy, the adult day health care center shall provide*  
35 *sufficient staffing to ensure participant safety and shall designate*  
36 *appropriate substitute staff as needed.*

37 SEC. 7. *Section 1587.5 is added to the Health and Safety Code,*  
38 *to read:*

39 1587.5. *The minimum services that shall be provided by an*  
40 *adult day health care center, as needed, to implement participants'*

1 individual plans of care, in accordance with the program plan,  
2 are as follows:

3 (a) Occupational therapy services.

4 (b) Pharmacist consulting services to assist with implementation  
5 of the center's medication policies and procedures and to consult  
6 on individual participant drug regimens.

7 (c) Physical therapy services.

8 (d) Psychiatric or psychological consulting services provided  
9 by a qualified licensed practitioner.

10 (e) Skilled dietary consulting services.

11 (f) Speech and language pathology services.

12 SEC. 8. No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 the only costs that may be incurred by a local agency or school  
15 district will be incurred because this act creates a new crime or  
16 infraction, eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section 17556 of  
18 the Government Code, or changes the definition of a crime within  
19 the meaning of Section 6 of Article XIII B of the California  
20 Constitution.

21 SEC. 9. This act is an urgency statute necessary for the  
22 immediate preservation of the public peace, health, or safety within  
23 the meaning of Article IV of the Constitution and shall go into  
24 immediate effect. The facts constituting the necessity are:

25 In order to ensure that adult day health care centers may remain  
26 open, providing services to elderly persons, adults with disabilities,  
27 and acutely or chronically ill adults with the elimination of adult  
28 day health care as a Medi-Cal benefit, it is necessary that this act  
29 take effect immediately.

30 SECTION 1. ~~Section 14589.6 is added to the Welfare and~~  
31 ~~Institutions Code, to read:~~

32 ~~14589.6. (a) If exclusion of adult day health care from coverage~~  
33 ~~under the Medi-Cal program is implemented pursuant to Section~~  
34 ~~14589.5, and a new program is enacted to provide a well-defined~~  
35 ~~scope of services to eligible beneficiaries who meet a high medical~~  
36 ~~acuity standard and are at a significant risk of institutionalization~~  
37 ~~in the absence of such community-based services, then equivalent~~  
38 ~~services provided at the William J. "Pete" Knight Veterans Home~~  
39 ~~of California, Lancaster, and the Veterans Home of California,~~  
40 ~~Ventura, shall be considered for inclusion in the new program.~~

- 1     ~~(b) This section shall be implemented only to the extent that~~
- 2     ~~funds are available and in a manner that is equitable with regard~~
- 3     ~~to other potential enrollees of the new program.~~