

**ASSEMBLY BILL**

**No. 1552**

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**Introduced by Assembly Member Lowenthal**

January 27, 2014

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An act to add Article 7 (commencing with Section 14590.10) to Chapter 8.7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to adult day health care, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1552, as introduced, Lowenthal. Community-based adult services: adult day health care centers.

Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which health care services are provided to qualified, low-income persons. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing law provides, to the extent permitted by federal law, that adult day health care (ADHC) be excluded from coverage under the Medi-Cal program.

This bill would establish the Community-Based Adult Services (CBAS) program, as a Medi-Cal benefit. The bill would require that CBAS be provided and available at licensed ADHC centers that are certified by the California Department of Aging as CBAS providers. The bill would require CBAS providers to meet specified licensing requirements and to provide care in accordance with specified regulations.

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

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) California supports the dignity, independence, and choice  
4 of seniors and persons with disabilities to live in the most integrated  
5 setting appropriate, in their own home or a community-based  
6 setting, and to be free from unnecessary institutionalization.

7 (b) The American population is swiftly aging. According to the  
8 Centers for Disease Control, in 2007, individuals 65 years of age  
9 and over represented 12.6% of the American population; by 2030  
10 it is estimated the older adult population will reach 20% of the  
11 whole, with 70 million adults over 65 years of age. Many of these  
12 adults will experience disability and chronic conditions. The  
13 Alzheimer's Association reports that over five million Americans  
14 are living with Alzheimer's disease and that number will grow to  
15 16 million by 2050, with the cost of caring for those individuals  
16 growing from \$203 billion in 2013 to \$1.2 trillion by mid-century.

17 (c) According to the United States Census, California's older  
18 adult population is the country's largest, with over four million  
19 seniors currently residing in the state. The California Department  
20 of Aging reports that one in every five Californians is now age 60  
21 or older and 40% of those individuals have a disability. The state's  
22 population is also diverse: just under one-half million older adults  
23 in the state identify as Latino or Hispanic, 354,000 identify as  
24 Asian, over 182,000 as African American, and over 100,000 people  
25 as Native American, Pacific Islander, or multiracial.

26 (d) Adult Day Health Care (ADHC) was established in  
27 California in 1974 as a service designed to meet the needs of older  
28 adults and adults with disabilities in community settings rather  
29 than in institutional care. ADHC centers are licensed daytime  
30 health facilities that provide integrated services from a  
31 multidisciplinary team including nurses, social workers,  
32 occupational therapists, and other professionals.

33 (e) ADHC centers serve frail elders and other adults with  
34 disabilities, chronic conditions, and complex care needs, such as  
35 Alzheimer's disease or other dementia, diabetes, high blood

1 pressure, mental health diagnoses, traumatic brain injury, and  
2 people who have had a stroke or breathing problems or who cannot  
3 take medications properly.

4 (f) ADHC centers also offer caregiver support, addressing  
5 research findings that identify caregiver stress as a leading cause  
6 of placement in a nursing facility, as well as putting the aging or  
7 disabled adult at increased risk for abuse or neglect.

8 (g) ADHC services include health, therapeutic, and social  
9 services including transportation; skilled nursing care; physical,  
10 occupational, and speech therapy; medical social work services;  
11 therapeutic exercise activities; protective supervision; activities  
12 of daily living, brain-stimulating activities, and a nutritionally  
13 balanced hot meal. Services are provided in accordance with a  
14 person-centered care plan designed after a three-day  
15 interdisciplinary team assessment that includes a home visit and  
16 communication with the participant's primary care physician.

17 (h) ADHC participants, who are at-risk of institutionalization,  
18 receive services in the center and return to their own homes at  
19 night. According to a recent study by the California Medicaid  
20 Research Institute, the statewide weighted average annual per  
21 person nursing home cost for Medi-Cal/Medicare recipients in  
22 California is \$83,364, while the average annual expenditure per  
23 person for ADHC for this population is \$9,312.

24 (i) ADHC centers are licensed by the State Department of Public  
25 Health and overseen by the California Department of Aging and  
26 the State Department of Health Care Services.

27 (j) In 1977, Senator Henry Mello issued a report that identified  
28 the need for 600 ADHC centers statewide to meet the needs of  
29 California's elder population. At its peak in 2004, approximately  
30 360 ADHC centers provided care to over 40,000 medically fragile  
31 Californians. In December 2013, there were a total of 270 open  
32 ADHC centers in California, including 245 serving the Medi-Cal  
33 population, two centers serving private-pay clients, and 23 centers  
34 associated with Programs of All-Inclusive Care for the Elderly.  
35 Medi-Cal recipients receiving services at ADHC centers totaled  
36 24,800 persons.

37 (k) In 2014, 32 California counties do not have an adult day  
38 health center.

39 (l) For many years, ADHC was a state plan optional benefit of  
40 the Medi-Cal program, offering an integrated medical and social

1 services model of care that helped individuals continue to live  
2 outside of nursing homes or other institutions.

3 (m) California’s adult day services have experienced significant  
4 instability in recent years due to California’s fiscal crisis and  
5 subsequent budget reductions. The Budget Act of 2011 and the  
6 related trailer bill, Chapter 3 of the Statutes of 2011, eliminated  
7 ADHC as a Medi-Cal optional State Plan benefit.

8 (n) A class action lawsuit, Esther Darling, et al. v. Toby Douglas,  
9 et al., challenged the elimination of ADHC as a violation of the  
10 Supreme Court decision in *Olmstead v. L.C.* The state settled the  
11 lawsuit, agreeing to replace ADHC services with a new program  
12 called Community-Based Adult Services (CBAS), effective April  
13 1, 2012, to provide necessary medical and social services to  
14 individuals with intensive health care needs. CBAS is a managed  
15 care benefit, administered through California’s Medi-Cal Managed  
16 Care Organizations. For CBAS-eligible individuals who do not  
17 qualify for managed care enrollment and who have an approved  
18 medical exemption or who reside in Shasta, Humboldt, Butte, or  
19 Imperial counties, where managed care is currently not available,  
20 CBAS services are provided as a Medi-Cal fee-for-service benefit.

21 (o) The State Department of Health Care Services amended the  
22 “California Bridge to Reform” 1115 Waiver to include the new  
23 CBAS program, which was approved by the Centers for Medicare  
24 and Medicaid Services on March 30, 2012. CBAS is operational  
25 under the 1115 Bridge to Reform waiver through August 31, 2014.  
26 There is no cap on enrollment for this waiver service.

27 (p) Adult day services and CBAS programs remain a source of  
28 necessary skilled nursing, therapeutic services, personal care,  
29 supervision, health monitoring, and caregiver support. The state’s  
30 demographic forecast projects the continued growth of the aging  
31 population at least through the year 2050, thereby increasing the  
32 need and demand for integrated, community-based services.

33 (q) Continuation of a well-defined and well-regulated system  
34 of CBAS programs is essential in order to meet the rapidly  
35 changing needs of California’s diverse and aging population and  
36 the state’s goals for the Coordinated Care Initiative.

37 (r) Ensuring that the CBAS program is codified beyond August  
38 31, 2014, will enable thousands of disabled and frail Californians  
39 who rely upon adult day health programs today, and those who

1 will need this service in the future, to be able to remain independent  
2 and free of institutionalization for as long as possible.

3 SEC. 2. Article 7 (commencing with Section 14590.10) is  
4 added to Chapter 8.7 of Part 3 of Division 9 of the Welfare and  
5 Institutions Code, to read:

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Article 7. Community-Based Adult Services

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10 14590.10. (a) Notwithstanding the operational period of CBAS  
11 as specified in the Special Terms and Conditions of California's  
12 Bridge to Reform Section 1115(a) Medicaid Demonstration  
13 (11-W-00192/9), and notwithstanding the duration of the CBAS  
14 settlement agreement, Case No. C-09-03798 SBA, CBAS shall be  
15 a Medi-Cal benefit, and shall be included as a covered service in  
16 contracts with all managed health care plans, with standards,  
17 eligibility criteria, and provisions that are at least equal to those  
18 contained in the Special Terms and Conditions of the demonstration  
19 on the date the act that added this section is chaptered. Any  
20 modifications to the CBAS program that differ from the Special  
21 Terms and Conditions of the demonstration shall be permitted only  
22 if they offer more protections or permit greater access to CBAS.

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(b) (1) CBAS providers shall be enrolled as California's Bridge  
to Reform Section 1115(a) Medicaid Demonstration  
(11-W-00192/9) providers and shall meet the standards specified  
in this chapter and Chapter 5 (commencing with Section 54001)  
of Division 3 of Title 22 of the California Code of Regulations.

(2) CBAS providers shall meet all applicable licensing,  
Medi-Cal, and California's Bridge to Reform Section 1115(a)  
Medicaid Demonstration (11-W-00192/9) standards, including,  
but not limited to, licensing provisions in Division 2 (commencing  
with Section 1200) of the Health and Safety Code, including  
Chapter 3.3 (commencing with Section 1570) of Division 2 of the  
Health and Safety Code, and shall provide services in accordance  
with Chapter 10 (commencing with Section 78001) of Division 5  
of Title 22 of the California Code of Regulations.

(c) (1) CBAS shall be provided and available at licensed Adult  
Day Health Care centers that are certified by the California  
Department of Aging as CBAS providers and shall be provided  
pursuant to a participant's individualized plan of care, as developed  
by the center's multidisciplinary team.

1 (2) In counties where the State Department of Health Care  
 2 Services has implemented Medi-Cal managed care, CBAS shall  
 3 be available as a Medi-Cal managed care benefit pursuant to  
 4 Section 14186.3, except that for individuals who qualify for CBAS,  
 5 but who are not qualified for, or who are exempt from, enrollment  
 6 in Medi-Cal managed care, CBAS shall be provided as a  
 7 fee-for-service Medi-Cal benefit.

8 (3) In counties that have not implemented Medi-Cal managed  
 9 care, CBAS shall be provided as a fee-for-service Medi-Cal benefit  
 10 to all eligible Medi-Cal beneficiaries who qualify for CBAS.

11 (d) For purposes of this section, “Community-Based Adult  
 12 Services” or “CBAS” means an outpatient, facility-based program  
 13 that delivers nutrition services, professional nursing care,  
 14 therapeutic activities, facilitated participation in group or individual  
 15 activities, social services, personal care services, and, when  
 16 specified in the individual plan of care, physical therapy,  
 17 occupational therapy, speech therapy, behavioral health services,  
 18 registered dietician services, and transportation.

19 SEC. 3. This act is an urgency statute necessary for the  
 20 immediate preservation of the public peace, health, or safety within  
 21 the meaning of Article IV of the Constitution and shall go into  
 22 immediate effect. The facts constituting the necessity are:

23 In order to allow sufficient time to implement these provisions  
 24 and to ensure the continuity of Community-Based Adult Services  
 25 in California and the health and safety of program participants, it  
 26 is necessary that this act take effect immediately.