

AMENDED IN ASSEMBLY APRIL 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1552

Introduced by Assembly Member Lowenthal

January 27, 2014

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 amended, 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~~, *program* as a Medi-Cal benefit. The bill would require that CBAS ~~be provided and available at~~ *providers be* licensed as ADHC centers ~~that are~~ *and* 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. *The bill would require that those provisions be implemented only to the extent that federal financial participation is available.*

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

Vote: 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.

1 (e) ADHC centers serve frail elders and other adults with
2 disabilities, chronic conditions, and complex care needs, such as
3 Alzheimer’s disease or other dementia, diabetes, high blood
4 pressure, mental health diagnoses, traumatic brain injury, and
5 people who have had a stroke or breathing problems or who cannot
6 take medications properly.

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

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

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

27 (i) ADHC centers are licensed by the State Department of Public
28 Health and overseen by the California Department of Aging and
29 the State Department of Health Care Services.

30 (j) In 1977, Senator Henry Mello issued a report that identified
31 the need for 600 ADHC centers statewide to meet the needs of
32 California’s elder population. At its peak in 2004, approximately
33 360 ADHC centers provided care to over 40,000 medically fragile
34 Californians. In December 2013, there were a total of 270 open
35 ADHC centers in California, including 245 serving the Medi-Cal
36 population, two centers serving private-pay clients, and 23 centers
37 associated with Programs of All-Inclusive Care for the Elderly.
38 Medi-Cal recipients receiving services at ADHC centers totaled
39 24,800 persons.

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

3 (l) For many years, ADHC was a state plan optional benefit of
4 the Medi-Cal program, offering an integrated medical and social
5 services model of care that helped individuals continue to live
6 outside of nursing homes or other institutions.

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

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

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

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

37 (q) Continuation of a well-defined and well-regulated system
38 of CBAS programs is essential in order to meet the rapidly
39 changing needs of California's diverse and aging population and
40 the state's goals for the Coordinated Care Initiative.

1 (r) Ensuring that the CBAS program is codified beyond August
 2 31, 2014, will enable thousands of disabled and frail Californians
 3 who rely upon adult day health programs today, and those who
 4 will need this service in the future, to be able to remain independent
 5 and free of institutionalization for as long as possible.

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

9

10 Article 7. Community-Based Adult Services

11

12 14590.10. (a) Notwithstanding the operational period of CBAS
 13 as specified in the Special Terms and Conditions of California’s
 14 Bridge to Reform Section 1115(a) Medicaid Demonstration
 15 ~~(11-W-00192/9)~~, (11-W-00193/9), and notwithstanding the duration
 16 of the CBAS settlement agreement, Case No. C-09-03798 SBA,
 17 CBAS shall be a Medi-Cal benefit, and shall be included as a
 18 covered service in contracts with all managed health care plans,
 19 with standards, eligibility criteria, and provisions that are at least
 20 equal to those contained in the Special Terms and Conditions of
 21 the demonstration on the date the act that added this section is
 22 chaptered. Any modifications to the CBAS program that differ
 23 from the Special Terms and Conditions of the demonstration shall
 24 be permitted only if they offer more protections or permit greater
 25 access to CBAS.

26 (b) (1) ~~CBAS providers shall be enrolled as California’s Bridge~~
 27 ~~to Reform Section 1115(a) Medicaid Demonstration~~
 28 ~~(11-W-00192/9) providers licensed as adult day health care centers~~
 29 ~~and certified by the California Department of Aging as CBAS~~
 30 ~~providers, and shall meet the standards specified in this chapter~~
 31 ~~and Chapter 5 (commencing with Section 54001) of Division 3 of~~
 32 ~~Title 22 of the California Code of Regulations.~~

33 (2) ~~CBAS providers shall meet all applicable licensing,~~
 34 ~~Medi-Cal, and California’s Bridge to Reform Section 1115(a)~~
 35 ~~Medicaid Demonstration (11-W-00192/9) licensing and Medi-Cal~~
 36 ~~standards, including, but not limited to, licensing provisions in~~
 37 ~~Division 2 (commencing with Section 1200) of the Health and~~
 38 ~~Safety Code, including Chapter 3.3 (commencing with Section~~
 39 ~~1570) of Division 2 of the Health and Safety Code, and shall~~
 40 ~~provide services in accordance with Chapter 10 (commencing with~~

1 Section 78001) of Division 5 of Title 22 of the California Code of
2 Regulations.

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

8 *(3) CBAS providers shall comply with the provisions of
9 California’s Bridge to Reform Section 1115(a) Medicaid
10 Demonstration (11-W-00193/9) and any successor demonstration.*

11 ~~(2)~~
12 *(c) (1) In counties where the State Department of Health Care
13 Services has implemented Medi-Cal managed care, CBAS shall
14 be available as a Medi-Cal managed care benefit pursuant to
15 Section 14186.3, except that for individuals who qualify for CBAS,
16 but who are not qualified for, or who are exempt from, enrollment
17 in Medi-Cal managed care, CBAS shall be provided as a
18 fee-for-service Medi-Cal benefit.*

19 ~~(3)~~
20 *(2) In counties that have not implemented Medi-Cal managed
21 care, CBAS shall be provided as a fee-for-service Medi-Cal benefit
22 to all eligible Medi-Cal beneficiaries who qualify for CBAS.*

23 *(d) For purposes of this section, “Community-Based Adult
24 Services” or “CBAS” means an outpatient, facility-based program
25 program, provided pursuant to a participant’s individualized plan
26 of care, as developed by the center’s multidisciplinary team, that
27 delivers nutrition services, professional nursing care, therapeutic
28 activities, facilitated participation in group or individual activities,
29 social services, personal care services, and, when specified in the
30 individual plan of care, physical therapy, occupational therapy,
31 speech therapy, behavioral health services, registered dietician
32 services, and transportation.*

33 *(e) This section shall be implemented only to the extent that
34 federal financial participation is available.*

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

39 In order to allow sufficient time to implement these provisions
40 and to ensure the continuity of Community-Based Adult Services

- 1 in California and the health and safety of program participants, it
- 2 is necessary that this act take effect immediately.

O