

AMENDED IN SENATE AUGUST 4, 2014

AMENDED IN ASSEMBLY MAY 23, 2014

AMENDED IN ASSEMBLY APRIL 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1552

**Introduced by Assembly Member Lowenthal
(Coauthors: Assembly Members Ammiano, Bonta, Chesbro, Ting,
and Wieckowski)**

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 as a Medi-Cal ~~benefit~~. *benefit and would specify eligibility requirements for participation in the CBAS program.* The bill would require that CBAS providers be licensed as ADHC centers

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: $\frac{2}{3}$. 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 *federal Centers for Disease Control and Prevention*, in ~~2007~~, 2007
 9 individuals 65 years of age and over represented ~~12.6%~~ 12.6
 10 percent of the American population; by 2030 it is estimated the
 11 older adult population will reach ~~20%~~ 20 percent of the whole,
 12 with 70 million adults over 65 years of age. Many of these adults
 13 will experience disability and chronic conditions. The Alzheimer’s
 14 Association reports that over five million Americans are living
 15 with Alzheimer’s disease and that number will grow to 16 million
 16 by 2050, with the cost of caring for those individuals growing from
 17 \$203 billion in 2013 to \$1.2 trillion by mid-century.

18 (c) According to the United States Census, California’s older
 19 adult population is the country’s largest, with over four million
 20 seniors currently residing in the state. The California Department
 21 of Aging reports that one in every five Californians is now age 60
 22 or older and ~~40%~~ 40 percent of those individuals have a disability.
 23 The state’s population is also diverse: just under one-half million
 24 older adults in the state identify as Latino or Hispanic, 354,000
 25 identify as Asian, over 182,000 as African American, and over
 26 100,000 people as Native American, Pacific Islander, or multiracial.

27 (d) Adult Day Health Care (ADHC) was established in
 28 California in 1974 as a service designed to meet the needs of older

1 adults and adults with disabilities in community settings rather
2 than in institutional care. ADHC centers are licensed daytime
3 health facilities that provide integrated services from a
4 multidisciplinary team including nurses, social workers,
5 occupational therapists, and other professionals.

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

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

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

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

32 (i) ADHC centers are licensed by the State Department of Public
33 Health and overseen by the California Department of Aging and
34 the State Department of Health Care Services.

35 (j) In 1977, Senator Henry Mello issued a report that identified
36 the need for 600 ADHC centers statewide to meet the needs of
37 California’s elder population. At its peak in 2004, approximately
38 360 ADHC centers provided care to over 40,000 medically fragile
39 Californians. In December 2013, there were a total of 270 open
40 ADHC centers in California, including 245 serving the Medi-Cal

1 population, two centers serving private-pay clients, and 23 centers
2 associated with Programs of All-Inclusive Care for the Elderly.
3 Medi-Cal recipients receiving services at ADHC centers totaled
4 24,800 persons.

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

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

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

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

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

36 (p) Adult day services and CBAS programs remain a source of
37 necessary skilled nursing, therapeutic services, personal care,
38 supervision, health monitoring, and caregiver support. The state's
39 demographic forecast projects the continued growth of the aging

1 population at least through the year 2050, thereby increasing the
2 need and demand for integrated, community-based services.

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

7 (r) Ensuring that the CBAS program is codified beyond August
8 31, 2014, will enable thousands of disabled and frail Californians
9 who rely upon adult day health programs today, and those who
10 will need this service in the future, to be able to remain independent
11 and free of institutionalization for as long as possible.

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

15

16 Article 7. Community-Based Adult Services

17

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

31 (b) *CBAS shall be available to beneficiaries who meet or exceed*
32 *the medical necessity criteria established in Section 14526.1 and*
33 *for whom one of the following criteria is present:*

34 (1) *The beneficiary meets or exceeds the “Nursing Facility Level*
35 *of Care A” (NF-A) criteria as set forth in the California Code of*
36 *Regulations.*

37 (2) *Both of the following apply to the beneficiary:*

38 (A) (i) *The beneficiary has a diagnosed organic, acquired, or*
39 *traumatic brain injury or a chronic mental disorder, or both.*

1 (ii) For the purpose of this subparagraph, “chronic mental
2 disorder” means that the beneficiary has one or more of the
3 following diagnoses or their successor diagnoses included in the
4 most recent version of the Diagnostic and Statistical Manual of
5 Mental Disorders published by the American Psychiatric
6 Association:

- 7 (I) A pervasive developmental disorder.
- 8 (II) An attention deficit and disruptive behavior disorder.
- 9 (III) A feeding and eating disorder of infancy, childhood, or
10 adolescence.
- 11 (IV) An elimination disorder.
- 12 (V) A schizophrenia and other psychiatric disorder.
- 13 (VI) A mood disorder.
- 14 (VII) An anxiety disorder.
- 15 (VIII) A somatoform disorder.
- 16 (IX) A factitious disorder.
- 17 (X) A dissociative disorder.
- 18 (XI) Paraphilia.
- 19 (XII) An eating disorder.
- 20 (XIII) An impulse control disorder not elsewhere classified.
- 21 (XIV) An adjustment disorder.
- 22 (XV) A personality disorder.
- 23 (XVI) A medication-induced movement disorder.

24 (B) The beneficiary needs assistance or supervision as described
25 in clause (i) or (ii).

26 (i) The beneficiary needs assistance or supervision with at least
27 two of the following:

- 28 (I) Bathing.
- 29 (II) Dressing.
- 30 (III) Feeding himself or herself.
- 31 (IV) Toileting.
- 32 (V) Ambulating.
- 33 (VI) Transferring himself or herself.
- 34 (VII) Medication management.
- 35 (VIII) Hygiene.

36 (ii) The beneficiary needs assistance or supervision with at least
37 one of the activities identified in clause (i) and needs assistance
38 with at least one of the following:

- 39 (I) Money management.
- 40 (II) Accessing community and health resources.

1 (III) Meal preparation.

2 (IV) Transportation.

3 (3) The beneficiary has a moderate to severe cognitive disorder
4 such as dementia, including dementia characterized by the
5 descriptors of, or equivalent to, Stages 5, 6, or 7 of the Alzheimer’s
6 type.

7 (4) The beneficiary has a mild cognitive disorder such as
8 dementia, including dementia of the Alzheimer’s type, and needs
9 assistance or supervision with at least two of the activities
10 described in clause (i) of subparagraph (B) of paragraph (2).

11 (5) (A) The beneficiary has a developmental disability.

12 (B) For the purpose of this paragraph, “developmental
13 disability” means a disability that originates before the individual
14 attains 18 years of age, continues, or can be expected to continue,
15 indefinitely, and constitutes a substantial disability for that
16 individual as defined Section 54001 of Title 17 of the California
17 Code of Regulations.

18 ~~(b)~~

19 (c) (1) CBAS providers shall be licensed as adult day health
20 care centers and certified by the California Department of Aging
21 as CBAS providers, and shall meet the standards specified in this
22 chapter and Chapter 5 (commencing with Section 54001) of
23 Division 3 of Title 22 of the California Code of Regulations.

24 (2) CBAS providers shall meet all applicable licensing and
25 Medi-Cal standards, including, but not limited to, licensing
26 provisions in Division 2 (commencing with Section 1200) of the
27 Health and Safety Code, including Chapter 3.3 (commencing with
28 Section 1570) of Division 2 of the Health and Safety Code, and
29 shall provide services in accordance with Chapter 10 (commencing
30 with Section 78001) of Division 5 of Title 22 of the California
31 Code of Regulations.

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

35 ~~(e)~~

36 (d) (1) In counties where the State Department of Health Care
37 Services has implemented Medi-Cal managed care, CBAS shall
38 be available as a Medi-Cal managed care benefit pursuant to
39 Section 14186.3, except that for individuals who qualify for CBAS,
40 but who are not qualified for, or who are exempt from, enrollment

1 in Medi-Cal managed care, CBAS shall be provided as a
2 fee-for-service Medi-Cal benefit.

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

6 ~~(d)~~

7 (e) For purposes of this section, “Community-Based Adult
8 Services” or “CBAS” means an outpatient, facility-based program,
9 provided pursuant to a participant’s individualized plan of care,
10 as developed by the center’s multidisciplinary team, that delivers
11 nutrition services, professional nursing care, therapeutic activities,
12 facilitated participation in group or individual activities, social
13 services, personal care services, and, when specified in the
14 individual plan of care, physical therapy, occupational therapy,
15 speech therapy, behavioral health services, registered dietician
16 services, and transportation.

17 ~~(e)~~

18 (f) This section shall be implemented only ~~to the extent that if~~
19 federal financial participation is available.

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

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

O