

Assembly Bill No. 1552

Passed the Assembly August 22, 2014

Chief Clerk of the Assembly

Passed the Senate August 21, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 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.

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

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

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

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

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

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

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

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

(g) ADHC services include health, therapeutic, and social services including transportation; skilled nursing care; physical, occupational, and speech therapy; medical social work services;

therapeutic exercise activities; protective supervision; activities of daily living, brain-stimulating activities, and a nutritionally balanced hot meal. Services are provided in accordance with a person-centered care plan designed after a three-day interdisciplinary team assessment that includes a home visit and communication with the participant's primary care physician.

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

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

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

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

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

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

(n) A class action lawsuit, Esther Darling, et al. v. Toby Douglas, et al., challenged the elimination of ADHC as a violation of the Supreme Court decision in *Olmstead v. L.C.* The state settled the

lawsuit, agreeing to replace ADHC services with a new program called Community-Based Adult Services (CBAS), effective April 1, 2012, to provide necessary medical and social services to individuals with intensive health care needs. CBAS is a managed care benefit, administered through California’s Medi-Cal Managed Care Organizations. For CBAS-eligible individuals who do not qualify for managed care enrollment and who have an approved medical exemption or who reside in a county where managed care is currently not available, CBAS services are provided as a Medi-Cal fee-for-service benefit.

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

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

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

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

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

Article 7. Community-Based Adult Services

14590.10. (a) Notwithstanding the operational period of CBAS as specified in the Special Terms and Conditions of California’s

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

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

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

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

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

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

(I) A pervasive developmental disorder.

(II) An attention deficit and disruptive behavior disorder.

(III) A feeding and eating disorder of infancy, childhood, or adolescence.

(IV) An elimination disorder.

(V) A schizophrenia and other psychiatric disorder.

(VI) A mood disorder.

(VII) An anxiety disorder.

(VIII) A somatoform disorder.

(IX) A factitious disorder.

(X) A dissociative disorder.

(XI) Paraphilia.

(XII) An eating disorder.

(XIII) An impulse control disorder not elsewhere classified.

(XIV) An adjustment disorder.

(XV) A personality disorder.

(XVI) A medication-induced movement disorder.

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

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

(I) Bathing.

(II) Dressing.

(III) Feeding himself or herself.

(IV) Toileting.

(V) Ambulating.

(VI) Transferring himself or herself.

(VII) Medication management.

(VIII) Hygiene.

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

(I) Money management.

(II) Accessing community and health resources.

(III) Meal preparation.

(IV) Transportation.

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

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

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

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

(c) (1) CBAS providers shall be licensed as adult day health care centers and certified by the California Department of Aging as CBAS 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 and Medi-Cal 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.

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

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

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

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

(f) This section shall be implemented only if federal financial participation is available.

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

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

Approved _____, 2014

Governor