

AMENDED IN SENATE MARCH 9, 2009

SENATE BILL

No. 117

Introduced by Senator Corbett
(Principal coauthor: Assembly Member Chesbro)

February 2, 2009

An act to amend Section 1570.7 of the Health and Safety Code, *and to amend Section 14571.2 of the Welfare and Institutions Code*, relating to adult day health care.

LEGISLATIVE COUNSEL'S DIGEST

SB 117, as amended, Corbett. Adult day health care ~~services~~. *services: Medi-Cal reimbursement methodology and limit.*

The California Adult Day Health Care Act provides for the licensure and regulation of adult day health centers, with administrative responsibility for the program shared ~~between~~ *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.

The act defines core staff for purposes of the act to include, among others, a social worker, as defined.

This bill would replace the term social worker with social services director.

Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which basic health care services are provided to qualified low-income persons.

The Adult Day Health Medi-Cal Law establishes adult day health care services as a Medi-Cal benefit for Medi-Cal beneficiaries who meet certain criteria. Under existing law, participation in an adult day

health care program requires prior authorization by the State Department of Health Care Services.

Existing law requires the department, effective August 1, 2010, to establish a reimbursement methodology and a reimbursement limit for adult day health care services on a prospective cost basis for services that are provided to each participant, pursuant to his or her individual plan of care, as specified. Existing law requires that these provisions be implemented only to the extent that federal financial participation is available.

This bill would, instead, provide that the requirement that the department establish a reimbursement methodology and reimbursement limit be effective August 1, 2013, and would make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

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

- 1 SECTION 1. Section 1570.7 of the Health and Safety Code is
- 2 amended to read:
- 3 1570.7. As used in this chapter and in any regulations
- 4 promulgated thereunder:
- 5 (a) “Adult day health care” means an organized day program
- 6 of therapeutic, social, and skilled nursing health activities and
- 7 services provided pursuant to this chapter to elderly persons or
- 8 adults with disabilities with functional impairments, either physical
- 9 or mental, for the purpose of restoring or maintaining optimal
- 10 capacity for self-care. Provided on a short-term basis, adult day
- 11 health care serves as a transition from a health facility or home
- 12 health program to personal independence. Provided on a long-term
- 13 basis, it serves as an alternative to institutionalization in a long-term
- 14 health care facility when 24-hour skilled nursing care is not
- 15 medically necessary or viewed as desirable by the recipient or his
- 16 or her family.
- 17 (b) “Adult day health center” or “adult day health care center”
- 18 means a licensed and certified facility that provides adult day health
- 19 care.
- 20 (c) “Core staff” includes the positions of program director,
- 21 registered nurse, social services director, activity director, and
- 22 program aide.

1 (d) “Department” or “state department” means the State
2 Department of Public Health.

3 (e) “Director” means the State Public Health Officer.

4 (f) “Elderly” or “older person” means a person 55 years of age
5 or older, but also includes other adults who are chronically ill or
6 impaired and who would benefit from adult day health care.

7 (g) “Extended hours” means those hours of operation prior to
8 or following the adult day health care program hours of service,
9 as designated by the adult day health care center in its plan of
10 operation, during which the adult day health care center may
11 operate an adult day program, or an Alzheimer’s day care resource
12 center, or both.

13 (h) “Hours of service” means the program hours defined and
14 posted by the adult day health care center for the provision of adult
15 day health care services, pursuant to Section 14550 of the Welfare
16 and Institutions Code, which shall be no less than four hours,
17 excluding transportation.

18 (i) “Individual plan of care” means a plan designed to provide
19 recipients of adult day health care with appropriate treatment in
20 accordance with the assessed needs of each individual.

21 (j) “License” means a basic permit to operate an adult day health
22 care center. With respect to a health facility licensed pursuant to
23 Chapter 2 (commencing with Section 1250), “license” means a
24 special permit, as defined by Section 1251.5, empowering the
25 health facility to provide adult day health care services.

26 (k) “Long-term absence” or “long-term vacancy” means an
27 absence or vacancy lasting, or likely to last, more than one month.
28 An adult day health care center’s policies and procedures shall be
29 specific regarding coverage in the situation for long-term absences
30 or vacancies.

31 (l) “Maintenance program” means procedures and exercises
32 that are provided to a participant, pursuant to Section 1580, in
33 order to generally maintain existing function. These procedures
34 and exercises are planned by a licensed or certified therapist and
35 are provided by a person who has been trained by a licensed or
36 certified therapist and who is directly supervised by a nurse or by
37 a licensed or certified therapist.

38 (m) “Program director” shall be a person with both of the
39 following:

40 (1) One of the following backgrounds:

1 (A) A person with a bachelor’s degree and a minimum of two
2 years of experience in a management, supervisory, or
3 administrative position.

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

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

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

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

21 (o) “Short-term absence” or “short-term vacancy” means an
22 absence or vacancy lasting one month or less, and includes sick
23 leave and vacations. An adult day health care center shall ensure
24 that appropriate staff is designated to serve in these positions during
25 the short-term absence or vacancy and that the center’s policies
26 and procedures are specific regarding coverage of short-term
27 absences or vacancies.

28 (p) “Social services director” shall be a person who meets one
29 of the following:

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

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

36 (3) The person is licensed by the ~~California Board of Behavioral~~
37 *sciences Board of Behavioral Sciences*.

38 (4) The person holds a bachelor’s degree in social work from
39 an accredited school with two years of experience providing social

1 services in one or more of the fields of aging, health, or long-term
2 care services.

3 *SEC. 2. Section 14571.2 of the Welfare and Institutions Code*
4 *is amended to read:*

5 14571.2. (a) Subject to the provisions of this section, the
6 department shall establish, effective August 1, ~~2010~~ 2013, a
7 reimbursement methodology and a reimbursement limit for adult
8 day health care services on a prospective cost basis for services
9 that are provided to each participant, pursuant to his or her
10 individual plan of care. The prospective reimbursement
11 methodology shall be determined by the department after
12 consultation with the California Association for Adult Day Services
13 and other interested stakeholders.

14 (b) The following definitions shall apply for purposes of this
15 section:

16 (1) “Daily core services” means the services described in Section
17 14550.5.

18 (2) “Separately billable services” means services designated by
19 the department, after consultation with the California Association
20 for Adult Day Services, and shall include, but not be limited to,
21 the following:

- 22 (A) Physical therapy services.
- 23 (B) Occupational therapy services.
- 24 (C) Speech and language pathology services.
- 25 (D) Mental ~~health~~ *health* services.
- 26 (E) Registered dietician services.
- 27 (F) Transportation services.

28 (c) The prospective reimbursement methodology for the daily
29 core services provided by each adult day health care center shall
30 be determined by the department based on the reasonable cost of
31 providing all of the adult day health care services included within
32 the core services and adjusted to the particular rate year. Services
33 and costs included in the calculation of the daily core services rate
34 shall include, but not be limited to, all of the following:

35 (1) Fixed or capital-related costs representing depreciation,
36 leases and rentals, interest, leasehold improvements, and other
37 amortization.

38 (2) Labor costs other than those for the separately billable
39 services, including direct and indirect labor and contracted staff
40 hours required by law or regulation.

1 (3) All other costs exclusive of fixed or capital-related costs,
2 leases or rentals, interest, leasehold improvements, and other
3 amortization.

4 (4) Add-ons, adjustments, and audit adjustments determined
5 annually in the calculation of the core rate to allow for changes
6 specified in subdivision (h), until those changes are reflected in
7 the cost report.

8 (5) Cost components required to comply with licensing and
9 certification laws and regulations.

10 (d) (1) The daily reimbursement rates for the separately billable
11 services shall be determined based upon the reasonable cost of
12 providing each service, how each of the individual billable services
13 is defined, and which professional is providing the service, subject
14 to the scope of his or her license. These reimbursement rates shall
15 not exceed the Medi-Cal rates for the same service on file at the
16 time the service is rendered.

17 (2) In establishing the total reimbursement limit, direct patient
18 care labor costs may be paid at a specified discrete percentile to
19 ensure maintenance of quality of care.

20 (e) The department shall determine a reimbursement limit
21 applicable to each adult day health center peer group established
22 pursuant to subdivision (m), taking into account total overall
23 average costs per day of attendance for providing the entire array
24 of adult day health care services, including the daily core services
25 and the separately billable services. The department shall determine
26 a reimbursement limit applicable to each adult day health care
27 center peer group established pursuant to subdivision (m) based
28 on cost containment principles applied to other acute care and
29 long-term care providers.

30 (f) By July 1, ~~2007~~ 2010, the department shall develop, after
31 consultation with the California Association for Adult Day
32 Services, all of the following:

33 (1) An adult day health care center cost report meeting the
34 requirements of subdivision (j) and a list of individual components
35 to be included in the core rate calculation.

36 (2) The methodology and documentation necessary to establish
37 the reimbursement rate for the separately billable services.

38 (3) The reimbursement rates for transportation services.
39 Payments for transportation services shall be subject to the limit
40 on the daily reimbursement and shall be reimbursed whether the

1 center provides transportation directly, by use of contracted
2 transportation, or both. The department shall review methodologies
3 for payment for transportation services. The review of payment
4 methodologies shall include a survey of other states' adult day
5 health care transportation systems, and transportation reports or
6 expert consultation relevant to nonemergency medical
7 transportation services in the community.

8 (g) (1) By January 1, ~~2008~~ *2011*, the department shall facilitate
9 the training of providers in collaboration with the California
10 Association for Adult Day Services. The adult day health care
11 centers shall be trained in the all of the following elements:

12 (A) The use of the modified cost report, supplemental reports,
13 and the accounting and reporting manual.

14 (B) Plan of care documentation required to support the
15 separately billable rate components.

16 (C) Medical necessity and eligibility requirements and
17 documentation.

18 (2) By January 1, ~~2008~~ *2011*, the department, after consultation
19 with the California Association for Adult Day Services, shall
20 establish facility peer groupings as specified in subdivision (m).

21 (h) By July 1, ~~2008~~ *2011*, the department, after consultation
22 with the California Association for Adult Day Services, shall
23 establish a methodology for calculation of the reimbursement limit,
24 rates for the daily core services, and applicable percentiles limiting
25 specific cost categories within the core rate.

26 (i) (1) By March 30, ~~2010~~ *2013*, a preliminary estimate of the
27 reimbursement limit, the reimbursement rate for individual adult
28 health care services, and separately billable services shall be
29 established and provided to the California Association for Adult
30 Day Services and other interested stakeholders. The department
31 shall allow an appropriate stakeholder comment period following
32 this action.

33 (2) The information supplied to all interested stakeholders in
34 paragraph (1) shall be compared to what would have been paid
35 under the rate methodology in effect for the ~~2009-10~~ *2012-13*
36 fiscal year.

37 (3) Based on the rate comparisons, a methodology to provide
38 for a multiyear phasein of the new prospective payment may be
39 implemented.

1 (4) At the time of implementation, no adult day health care
2 center's payment shall be decreased by more than 10 percent below
3 the rate paid in the rate year immediately preceding the first year
4 that the rate methodology prescribed in this section is implemented.
5 In the second and third rate years, no adult day health care center
6 reimbursement rate shall be decreased by more than 10 percent
7 below the adult day health care center's reimbursement rate on
8 file at the time of the application of the next year's reimbursement
9 rate.

10 (j) (1) The department, with input from the California
11 Association for Adult Day Services and all interested stakeholders,
12 shall develop the cost reporting form and determine the costs that
13 are to be included and excluded from the annual cost reporting
14 methodology.

15 (2) Cost reporting shall be consistent with Section 1861 of the
16 federal Social Security Act (42 U.S.C. Sec. 1395x) and Part 413
17 of Title 42 of the Code of Federal Regulations.

18 (3) Cost reporting shall include itemization of the costs of all
19 adult day health care services such that information necessary to
20 determine costs associated with the core bundle of services and
21 each of the separately billable services can be collected.

22 (4) The cost report or supplemental report to the cost report, as
23 determined by the frequency the data will be required for
24 calculation of the core rate, shall collect staffing level and salary
25 data for all direct and indirect patient care staff, arranged through
26 either employment or contract.

27 (5) All adult day health care centers participating in the
28 Medi-Cal program shall maintain books and records according to
29 generally accepted accounting principles and the uniform
30 accounting systems adopted by the state, and shall submit annual
31 cost reports directly to the department.

32 (k) (1) The department may exclude any cost report or portion
33 thereof that it deems to be inaccurate, incomplete, or
34 unrepresentative, consistent with the policies established in
35 paragraph (2) of subdivision (j). For facilities that fail to file cost
36 reports with the department pursuant to this section, the department
37 shall reimburse those facilities at 10 percent below the lowest
38 reimbursement limit established in the facility's peer group
39 pursuant to subdivision (d).

1 (2) Cost report data shall be validated by using comparisons to
2 salary surveys and health industry administrative data maintained
3 by the Office of Statewide Health Planning and Development and
4 other state agencies. If cost report data is not statistically valid for
5 a given peer group, survey statistics shall be used as a proxy to
6 substitute for the cost report data.

7 (3) Cost report data for any adult day health care center that has
8 closed or is no longer a Medi-Cal participating facility shall be
9 excluded from the rate calculation.

10 (4) The specific process for maintaining cost data and submitting
11 cost reports shall be developed after consultation with the
12 California Association for Adult Day Services.

13 (l) Field audits shall be performed by the department in
14 accordance with all of the following laws and regulations:

15 (1) Section 1861 of the Social Security Act (42 U.S.C. Sec.
16 1395x) and Title XVIII of the Social Security Act (42 U.S.C. Sec.
17 1395 et seq.).

18 (2) Sections 413.9, 433.32, and 483.10 of, and ~~433.32, and Part~~
19 ~~413, of 413 of~~, Title 42 of the Code of Federal Regulations.

20 (3) Centers for Medicare and Medicaid Services Publication
21 15-1 (federal Department of Health and Human Services Manual).

22 (4) Chapter 5 (commencing with Section 54001) of Division 3
23 of ~~Title 22 of~~, and Chapter 10 (commencing with Section 78001)
24 of Division 5 of, *Title 22 of* the California Code of Regulations.

25 (5) Sections 14170 and 14171.

26 (6) Relevant portions of the California Medicaid State Plan.

27 (m) (1) In accordance with field audit requirements, adult day
28 health care centers shall be placed in a minimum of three
29 designated peer groupings. Each adult day health care center in
30 each of the designated peer groupings shall be audited on an annual
31 basis.

32 (2) If for any reason a field audit was not performed, the average
33 audit adjustment of the peer grouping shall be applied.

34 (3) The peer groupings shall include, at minimum, geographic
35 differences and size of facility. The need for additional groupings
36 shall be periodically reevaluated to ensure that the peer groupings
37 remain relevant on a statewide basis.

38 (4) The department shall analyze and evaluate the data obtained
39 through peer grouping analysis in order to determine if additional

1 peer groupings or data elements are necessary for refinement of
2 the peer groupings.

3 (5) After analyzing the data pursuant to paragraph (4), the
4 department may increase the number of peer groupings or change
5 the criteria to reflect pertinent factors affecting peer grouping costs.

6 (n) (1) An audit adjustment or adjustments, either specific to
7 an adult day health care center or by peer grouping, reflecting the
8 difference between reported and audited costs and participant days
9 for field audited centers, shall be applied to all adult day health
10 care centers for purposes of establishing the core services
11 reimbursement rate and the reimbursement limit for the following
12 rate year. Audit adjustments shall include all of the following:

13 (A) The results of settled appeals. The department shall consider
14 only the findings of audit appeal reports that are issued more than
15 180 days prior to the beginning of the new rate year.

16 (B) In the case of peer grouping audit adjustments, audited costs
17 shall be modified by a factor reflecting share-of-cost overpayments
18 and share-of-cost underpayments.

19 (C) The results of federal audits, when reported to the state,
20 shall be applied in determining audit adjustments.

21 (D) (i) An adjustment or adjustments to reported costs of adult
22 day health care centers shall be made to reflect changes in state or
23 federal laws and regulations that would affect those costs, including
24 increases in the minimum wage or increases in minimum staffing
25 requirements.

26 (ii) The costs described in clause (i) shall be reflected as an
27 add-on to the new rate or rates.

28 (iii) To the extent not prohibited by federal law or regulations,
29 add-ons to the rate or rates shall continue until those costs are
30 included in cost reports used to set the new rate or rates.

31 (2) Adjusted costs shall be divided into categories and treated
32 as follows:

33 (A) Fixed or capital-related costs shall include costs that
34 represent depreciation, leases and rentals, interest, leasehold
35 improvements, and other amortization. No update shall be applied.

36 (B) Property taxes, where identified, shall be updated at a rate
37 of 2 percent annually.

38 (C) Labor costs, which shall be defined as a ratio of salary,
39 wage, and benefits costs to the total costs of each adult day health
40 care center, shall be updated based upon the labor study conducted

1 by the department and using industry-specific wage data as reported
2 by the adult day health care centers. The separately billable services
3 shall be updated by applying the median market-based rate specific
4 to the specialty service category.

5 (D) All other costs shall include all other costs less fixed or
6 capital-related costs, property taxes, and labor costs. This cost
7 category shall be updated using the California Consumer Price
8 Index.

9 (3) Prior to the implementation of this methodology, the
10 department shall take measures to ensure appropriate training of
11 state audit staff.

12 (o) The department shall provide updates on the rate
13 methodology to the appropriate fiscal and policy committees of
14 the Legislature. The appropriation for services paid under this rate
15 methodology shall be included in the annual Budget Act.

16 (p) Adult day health care centers may appeal findings that result
17 in an adjustment to the rate or rates pursuant to Section 14171 and
18 to Article 1.5 (commencing with Section 51016) of Chapter 3 of
19 Division 3 of Title 22 of the California Code of Regulations.

20 (q) (1) Notwithstanding Chapter 3.5 (commencing with Section
21 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
22 the department shall implement this section by means of a provider
23 bulletin or similar instruction without taking regulatory action. By
24 August 1, ~~2013~~ 2015, the department shall adopt regulations in
25 accordance with the requirements of Chapter 3.5 (commencing
26 with Section 11340) of Part 1 of Division 3 of Title 2 of the
27 Government Code.

28 (2) The department shall notify and consult with interested
29 stakeholders in implementing, interpreting, or making specific the
30 provisions described in this section.

31 (r) The department shall implement this section only to the
32 extent that federal financial participation is obtained.

33 (s) The department may file a state plan amendment to
34 implement the requirements of this section. Immediately upon
35 filing any such state plan amendment, the department shall provide
36 the fiscal committees of the Legislature with a copy of the state
37 plan amendment.

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