

AMENDED IN ASSEMBLY AUGUST 31, 2009

AMENDED IN SENATE JUNE 1, 2009

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~~
~~An act 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: 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 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, ~~2011~~ 2012, and would make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: 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.~~

1 ~~(e) “Core staff” includes the positions of program director,~~
2 ~~registered nurse, social services director, activity director, and~~
3 ~~program aide.~~

4 ~~(d) “Department” or “state department” means the State~~
5 ~~Department of Public Health.~~

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

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

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

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

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

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

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

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

- 1 (m) ~~“Program director” shall be a person with both of the~~
2 ~~following:~~
- 3 (1) ~~One of the following backgrounds:~~
- 4 (A) ~~A person with a bachelor’s degree and a minimum of two~~
5 ~~years of experience in a management, supervisory, or~~
6 ~~administrative position.~~
- 7 (B) ~~A person with a master’s degree and a minimum of one year~~
8 ~~of experience in a management, supervisory, or administrative~~
9 ~~position.~~
- 10 (C) ~~A registered nurse with a minimum of two years experience~~
11 ~~in a management, supervisory, or administrative position.~~
- 12 (2) ~~Appropriate skills, knowledge, and abilities related to the~~
13 ~~health, and mental, cognitive, and social needs of the participant~~
14 ~~group being served by the adult day health center.~~
- 15 (n) ~~“Restorative therapy” means physical, occupational, and~~
16 ~~speech therapy, and psychiatric and psychological services that~~
17 ~~are planned and provided by a licensed or certified therapist. The~~
18 ~~therapy and services may also be provided by an assistant or aide~~
19 ~~under the appropriate supervision of a licensed therapist, as~~
20 ~~determined by the licensed therapist. The therapy and services are~~
21 ~~provided to restore function, when there is an expectation that the~~
22 ~~condition will improve significantly in a reasonable period of time,~~
23 ~~as determined by the multidisciplinary assessment team.~~
- 24 (o) ~~“Short-term absence” or “short-term vacancy” means an~~
25 ~~absence or vacancy lasting one month or less, and includes sick~~
26 ~~leave and vacations. An adult day health care center shall ensure~~
27 ~~that appropriate staff is designated to serve in these positions during~~
28 ~~the short-term absence or vacancy and that the center’s policies~~
29 ~~and procedures are specific regarding coverage of short-term~~
30 ~~absences or vacancies.~~
- 31 (p) ~~“Social services director” shall be a person who meets one~~
32 ~~of the following:~~
- 33 (1) ~~The person holds a master’s degree in social work from an~~
34 ~~accredited school of social work.~~
- 35 (2) ~~The person holds a master’s degree in psychology,~~
36 ~~gerontology, or counseling from an accredited school and has one~~
37 ~~year of experience providing social services in one or more of the~~
38 ~~fields of aging, health, or long-term care services.~~
- 39 (3) ~~The person is licensed by the Board of Behavioral Sciences.~~

1 ~~(4) The person holds a bachelor’s degree in social work from~~
2 ~~an accredited school with two years of experience providing social~~
3 ~~services in one or more of the fields of aging, health, or long-term~~
4 ~~care services.~~

5 ~~SEC. 2.~~

6 *SECTION 1.* Section 14571.2 of the Welfare and Institutions
7 Code is amended to read:

8 14571.2. (a) Subject to the provisions of this section, the
9 department shall establish, effective August 1, ~~2011~~ 2012, a
10 reimbursement methodology and a reimbursement limit for adult
11 day health care services on a prospective cost basis for services
12 that are provided to each participant, pursuant to his or her
13 individual plan of care. The prospective reimbursement
14 methodology shall be determined by the department after
15 consultation with the California Association for Adult Day Services
16 and other interested stakeholders.

17 (b) The following definitions shall apply for purposes of this
18 section:

19 (1) “Daily core services” means the services described in Section
20 14550.5.

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

- 25 (A) Physical therapy services.
- 26 (B) Occupational therapy services.
- 27 (C) Speech and language pathology services.
- 28 (D) Mental health services.
- 29 (E) Registered dietician services.
- 30 (F) Transportation services.

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

38 (1) Fixed or capital-related costs representing depreciation,
39 leases and rentals, interest, leasehold improvements, and other
40 amortization.

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

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

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

11 (5) Cost components required to comply with licensing and
12 certification laws and regulations.

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

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

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

33 (f) By July 1, 2010, the department shall develop, after
34 consultation with the California Association for Adult Day
35 Services, all of the following:

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

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

1 (3) The reimbursement rates for transportation services.
2 Payments for transportation services shall be subject to the limit
3 on the daily reimbursement and shall be reimbursed whether the
4 center provides transportation directly, by use of contracted
5 transportation, or both. The department shall review methodologies
6 for payment for transportation services. The review of payment
7 methodologies shall include a survey of other states' adult day
8 health care transportation systems, and transportation reports or
9 expert consultation relevant to nonemergency medical
10 transportation services in the community.

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

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

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

19 (C) Medical necessity and eligibility requirements and
20 documentation.

21 (2) By January 1, 2011, the department, after consultation with
22 the California Association for Adult Day Services, shall establish
23 facility peer groupings as specified in subdivision (m).

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

29 (i) (1) By March 30, ~~2011~~ 2012, a preliminary estimate of the
30 reimbursement limit, the reimbursement rate for individual adult
31 health care services, and separately billable services shall be
32 established and provided to the California Association for Adult
33 Day Services and other interested stakeholders. The department
34 shall allow an appropriate stakeholder comment period following
35 this action.

36 (2) The information supplied to all interested stakeholders in
37 paragraph (1) shall be compared to what would have been paid
38 under the rate methodology in effect for the ~~2010-11~~ 2011-12
39 fiscal year.

1 (3) Based on the rate comparisons, a methodology to provide
2 for a multiyear phase in of the new prospective payment may be
3 implemented.

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

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

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

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

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

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

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

1 reimbursement limit established in the facility's peer group
2 pursuant to subdivision (d).

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

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

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

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

17 (1) Section 1861 of the Social Security Act (42 U.S.C. Sec.
18 1395x) and Title XVIII of the Social Security Act (42 U.S.C. Sec.
19 1395 et seq.).

20 (2) Sections 413.9, 433.32, and 483.10 of, Part 413 of, Title 42
21 of the Code of Federal Regulations.

22 (3) Centers for Medicare and Medicaid Services Publication
23 15-1 (federal Department of Health and Human Services Manual).

24 (4) Chapter 5 (commencing with Section 54001) of Division 3
25 of, and Chapter 10 (commencing with Section 78001) of Division
26 5 of, Title 22 of the California Code of Regulations.

27 (5) Sections 14170 and 14171.

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

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

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

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

1 (4) The department shall analyze and evaluate the data obtained
2 through peer grouping analysis in order to determine if additional
3 peer groupings or data elements are necessary for refinement of
4 the peer groupings.

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

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

15 (A) The results of settled appeals. The department shall consider
16 only the findings of audit appeal reports that are issued more than
17 180 days prior to the beginning of the new rate year.

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

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

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

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

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

33 (2) Adjusted costs shall be divided into categories and treated
34 as follows:

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

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

1 (C) Labor costs, which shall be defined as a ratio of salary,
2 wage, and benefits costs to the total costs of each adult day health
3 care center, shall be updated based upon the labor study conducted
4 by the department and using industry-specific wage data as reported
5 by the adult day health care centers. The separately billable services
6 shall be updated by applying the median market-based rate specific
7 to the specialty service category.

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

12 (3) Prior to the implementation of this methodology, the
13 department shall take measures to ensure appropriate training of
14 state audit staff.

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

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

23 (q) (1) Notwithstanding Chapter 3.5 (commencing with Section
24 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
25 the department shall implement this section by means of a provider
26 bulletin or similar instruction without taking regulatory action. By
27 August 1, ~~2014~~ 2015, the department shall adopt regulations in
28 accordance with the requirements of Chapter 3.5 (commencing
29 with Section 11340) of Part 1 of Division 3 of Title 2 of the
30 Government Code.

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

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

36 (s) The department may file a state plan amendment to
37 implement the requirements of this section. Immediately upon
38 filing any such state plan amendment, the department shall provide

- 1 the fiscal committees of the Legislature with a copy of the state
- 2 plan amendment.

O