

AMENDED IN SENATE MAY 30, 2013

AMENDED IN ASSEMBLY APRIL 11, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 518

**Introduced by Assembly Members Yamada and Blumenfield
(Coauthors: Assembly Members Ammiano, Brown, Chesbro, Garcia,
and Ting)**

February 20, 2013

An act to *add Sections 1596.3 and 1596.4 to the Health and Safety Code, and to add Article 7 (commencing with Section 14590.10) to Chapter 8.7 of Part 3 of Division 9 of, and to repeal Section 14590.20 of, the Welfare and Institutions Code, relating to ~~Medi-Cal~~ adult day health care.*

LEGISLATIVE COUNSEL'S DIGEST

AB 518, as amended, Yamada. ~~Community-based adult services.~~
services: adult day health care centers.

Existing law, the California Adult Day Health Care Act, provides for the licensure and regulation of adult day health care centers, with administrative responsibility shared between the State Department of Public Health, the State Department of Health Care Services, and the California Department of Aging pursuant to an interagency agreement. Existing law provides that a negligent, repeated, or willful violation of a provision of the California Adult Day Health Care Act is a misdemeanor.

This bill would require an adult day health care center licensed pursuant to the act to comply with specified staffing requirements, maintain policies and procedures for providing supportive health care

services to participants, and conduct and document training, as prescribed.

Because a negligent, repeated, or willful violation of these provisions would be a crime, the bill would impose a state-mandated local program.

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 specified, as a Medi-Cal benefit. The bill would require CBAS providers to meet specified requirements and would require the department to, commencing July 1, 2015, certify and enroll as new CBAS providers only those providers that are exempt from taxation as a nonprofit entity.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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 right for all to live in the most
- 4 integrated and community-based setting appropriate, and to be
- 5 free from unnecessary institutionalization.
- 6 (b) California’s adult day services have experienced significant
- 7 instability in recent years due to substantial policy reforms and
- 8 budget reductions.
- 9 (c) For many years, Adult Day Health Care (ADHC) was a state
- 10 plan optional benefit of the Medi-Cal program, offering seniors
- 11 and adults with significant disabilities and medical needs an

1 integrated medical and social services model of care that helped
2 these individuals continue to live outside of nursing homes or other
3 institutions.

4 (d) At its peak in 2004, over 360 adult day health care centers
5 provided care to over 40,000 medically fragile Californians.

6 (e) The Budget Act of 2011 and the related trailer bill, Chapter
7 3 of the Statutes of 2011, eliminated ADHC as a Medi-Cal benefit.
8 As codified in Article 6 (commencing with Section 14589) of
9 Chapter 8.7 of Part 3 of Division 9 of the Welfare and Institutions
10 Code, the Legislature’s intent in supporting the elimination of
11 ADHC was that it would be replaced by a smaller, less costly, yet
12 very similar, program. The Legislature sent Assembly Bill 96 of
13 the 2011–12 Regular Session to the Governor to create such a
14 program and the Governor vetoed the bill.

15 (f) Seven plaintiffs filed suit against the State Department of
16 Health Care Services seeking relief for violation of, among other
17 laws, due process guaranteed by the United States Constitution,
18 Title II of the federal Americans with Disabilities Act, and Title
19 XIX of the federal Social Security Act. On November 17, 2011,
20 the state and plaintiffs settled the lawsuit (Case No. C-09-03798
21 SBA, United States District Court, Northern District of California),
22 which is the basis for the existing Community-Based Adult
23 Services (CBAS) program, a smaller, less costly version of ADHC.

24 (g) Adult day services and CBAS programs remain a source of
25 necessary skilled nursing, therapeutic, personal care, supervision,
26 health monitoring, and caregiver support.

27 (h) The changes forecast in the state’s demographics demonstrate
28 a rapidly aging population, at least through the year 2050, thereby
29 increasing the need and demand for integrated, community-based
30 services.

31 (i) A well-defined and well-regulated system of CBAS is
32 essential in order to meet the rapidly changing needs of California’s
33 diverse and aging population.

34 (j) Codifying the CBAS settlement agreement will ensure that
35 thousands of disabled and frail Californians who relied upon adult
36 day health programs will be able to remain independent and free
37 of institutionalization for as long as possible.

38 *SEC. 2. Section 1596.3 is added to the Health and Safety Code,*
39 *to read:*

1 1596.3. (a) An adult day health care center shall be staffed in
2 accordance with all of the following:

3 (1) An administrator or program director shall be on duty at
4 all times. For purposes of this section, “on duty” means physically
5 present in the center at all times during the center’s program hours
6 in which participants are present. An adult day health care center
7 shall have a policy for coverage of the administrator or program
8 director during times of his or her absence.

9 (2) (A) The registered nurse (RN) ratio at an adult day health
10 care center shall be one RN for every 40 participants. A half-time
11 licensed vocational nurse (LVN) shall be staffed for every
12 increment of 10 participants in average daily attendance exceeding
13 40 participants.

14 (B) Except as specified in subparagraph (C), at least one RN
15 shall be physically present in the center at all times during the
16 center’s program hours in which participants are present. An adult
17 day health care center may supplement the RN staff with LVN staff
18 as described in this subparagraph with at least one RN physically
19 present in the center at times during the center’s program hours
20 in which participants are present.

21 (C) For short intervals, not to exceed 60 minutes, an LVN may
22 be physically present with the RN immediately available by
23 telephone if needed.

24 (3) The program aid or nurse assistant staffing shall be at a
25 ratio of one program aid or nurse assistant on duty for up to 16
26 participants present in the building. Any number of participants
27 up to the next 16 requires an additional program aid or nurse
28 assistant.

29 (b) An adult day health care center’s staffing requirements shall
30 be based on the average of the previous quarter’s average daily
31 attendance (ADA). The ADA may be tied to various shifts within
32 the day or various days of the week so long as the adult day health
33 care center can demonstrate that it is consistent.

34 SEC. 3. Section 1596.4 is added to the Health and Safety Code,
35 to read:

36 1596.4. (a) An adult day health care center shall maintain
37 policies and procedures for providing supportive health care
38 services to participants, including those participants with special
39 needs.

1 (b) Training of adult day health care center staff shall include
2 an initial orientation for new staff, review of all updated policies
3 and procedures, hands-on instruction for new equipment and
4 procedures, and regular updates on state and federal requirements,
5 such as abuse reporting and fire safety.

6 (c) Training shall be conducted and documented on a quarterly
7 basis and shall include supporting documentation on the
8 information taught, attendees, and the qualifications of the
9 instructors.

10 ~~SEC. 2.~~

11 SEC. 4. Article 7 (commencing with Section 14590.10) is added
12 to Chapter 8.7 of Part 3 of Division 9 of the Welfare and
13 Institutions Code, to read:

14

15 Article 7. Community-Based Adult Services

16

17 14590.10. It is the intent of the Legislature in enacting this
18 article and related provisions to provide for the development of
19 Medi-Cal policies and programs that continue to accomplish all
20 of the following:

21 (a) Ensure that elderly persons and adults with disabilities are
22 not institutionalized inappropriately or prematurely.

23 (b) Provide a viable alternative to institutionalization for those
24 elderly persons and adults with disabilities who are capable of
25 living at home with the aid of appropriate health care or
26 rehabilitative and social services.

27 (c) Promote adult day health options, including
28 Community-Based Adult Services (CBAS), that will be easily
29 accessible to economically disadvantaged elderly persons and
30 adults with disabilities, and that will provide outpatient health,
31 rehabilitative, and social services necessary to permit the
32 participants to maintain personal independence and lead meaningful
33 lives.

34 (d) Ensure that all laws, regulations, and procedures governing
35 CBAS are enforced equitably regardless of organizational
36 sponsorship and that all program flexibility provisions are
37 administered equitably.

38 (e) Ensure programmatic standards are codified to offer certainty
39 to providers—and, regulators, *beneficiaries and their families,*
40 *caregivers, and communities.*

1 (f) Compliance with the Special Terms and Conditions of
 2 California’s Bridge to Reform Section 1115(a) Medicaid
 3 Demonstration (11-W-00193/9), including, but not limited to, all
 4 of the following:

- 5 (1) Processes and criteria to determine eligibility for receiving
 6 CBAS.
- 7 (2) Processes and criteria to reauthorize eligibility for CBAS.
- 8 (3) Utilization of the CBAS assessment tool.
- 9 (4) Provisions relating to enrollee due process.
- 10 (5) Requirements that plans contract with CBAS providers and
 11 pay providers at the prevailing Medi-Cal fee-for-service rate.
- 12 (6) Appeals and other state and federal protections.
- 13 (7) Aid-paid-pending that provides for payment of services
 14 during any appeal process, and CBAS provider qualifications.

15 14590.11. For purposes of this article, all of the following terms
 16 shall have the following meanings:

17 (a) “Community-Based Adult Services” or “CBAS” means an
 18 outpatient, facility-based program that delivers nutrition services,
 19 professional nursing care, therapeutic activities, facilitated
 20 participation in group or individual activities, social services,
 21 personal care services, and, when specified in the individual plan
 22 of care, physical therapy, occupational therapy, speech therapy,
 23 behavioral health services, registered dietician services, and
 24 transportation.

25 (b) “Department” means the State Department of Health Care
 26 Services.

27 14590.12. Notwithstanding the operational period of CBAS
 28 as specified in the Special Terms and Conditions of California’s
 29 Bridge to Reform Section 1115(a) Medicaid Demonstration
 30 (11-W-00192/9), and notwithstanding the duration of the CBAS
 31 settlement agreement, Case No. C-09-03798 SBA, CBAS shall be
 32 a Medi-Cal benefit, *and shall be included as a covered service in*
 33 *contracts with all managed health care plans, with standards,*
 34 *eligibility criteria, and provisions that are at least equal to those*
 35 *contained in the Special Terms and Conditions of the*
 36 *demonstration on the date the act that added this section is*
 37 *chapters. Any modifications to the CBAS program that differ*
 38 *from the Special Terms and Conditions of the demonstration shall*
 39 *be permitted only if they offer more protections or permit greater*
 40 *access to CBAS.*

1 14590.13.— An individual shall be eligible for CBAS if he or
2 she meets medical necessity criteria as set forth by the state and
3 meets one of the following criteria:

4 (a) Meets “Nursing Facility Level of Care A” (NF-A) criteria,
5 as set forth in the California Code of Regulations, or above NF-A
6 level of care.

7 (b) Has a moderate to severe cognitive disorder such as
8 dementia, including dementia characterized by the descriptors of,
9 or equivalent to, stages 5, 6, or 7 of the Alzheimer’s type.

10 (c) Has a moderate to severe cognitive disorder such as
11 dementia, including dementia of the Alzheimer’s type and needs
12 assistance or supervision with two of the following:

13 (1) Bathing.

14 (2) Dressing.

15 (3) Self-feeding.

16 (4) Toileting.

17 (5) Ambulation.

18 (6) Transferring.

19 (7) Medication management.

20 (8) Hygiene.

21 (d) Has a developmental disability. “Developmental disability”
22 means a disability that originates before the individual reaches 18
23 years of age, continues or can be expected to continue indefinitely,
24 and constitutes a substantial disability, as defined in the California
25 Code of Regulations, for that individual.

26 (e) (1) Has a chronic mental disorder or acquired, organic, or
27 traumatic brain injury. “Chronic mental disorder” means the
28 enrollee has one or more of the following diagnoses or its successor
29 diagnoses included in the most recent version of the Diagnostic
30 and Statistical Manual of Mental Disorders published by the
31 American Psychiatric Association:

32 (A) Pervasive developmental disorders.

33 (B) Attention deficit and disruptive behavior disorders.

34 (C) Feeding and eating disorder of infancy, childhood, or
35 adolescence.

36 (D) Elimination disorders.

37 (E) Schizophrenia and other psychiatric disorders.

38 (F) Mood disorders.

39 (G) Anxiety disorders.

40 (H) Somatoform disorders.

- 1 ~~(I) Factitious disorders.~~
2 ~~(J) Dissociative disorders.~~
3 ~~(K) Paraphilias.~~
4 ~~(L) Gender identify disorder.~~
5 ~~(M) Eating disorders.~~
6 ~~(N) Impulse control disorders not elsewhere classified.~~
7 ~~(O) Adjustment disorders.~~
8 ~~(P) Personality disorders.~~
9 ~~(Q) Medication-induced movement disorders.~~
10 ~~(2) In addition to the presence of a chronic mental disorder or~~
11 ~~acquired, organic, or traumatic brain injury, the enrollee needs~~
12 ~~assistance or supervision with one of the following:~~
13 ~~(A) Two of the following:~~
14 ~~(i) Bathing.~~
15 ~~(ii) Dressing.~~
16 ~~(iii) Self-feeding.~~
17 ~~(iv) Toileting.~~
18 ~~(v) Ambulation.~~
19 ~~(vi) Transferring.~~
20 ~~(vii) Medication management.~~
21 ~~(viii) Hygiene.~~
22 ~~(B) One need set forth in subparagraph (A) and one of the~~
23 ~~following:~~
24 ~~(i) Money management.~~
25 ~~(ii) Accessing community and health resources.~~
26 ~~(iii) Meal preparation.~~
27 ~~(iv) Transportation.~~
28 ~~(f) Meets criteria as established by Article 2 (commencing with~~
29 ~~Section 14525).~~
30 *14590.13. The following individuals shall meet criteria for*
31 *eligibility for CBAS if they meet the criteria of any one or more of*
32 *the following categories:*
33 *(a) Individuals who meet both of the following:*
34 *(1) "Nursing Facility Level of Care A" (NF-A) criteria, as set*
35 *forth in the California Code of Regulations, or above NF-A.*
36 *(2) Meet ADHC eligibility and medical necessity criteria*
37 *contained in subdivisions (a), (c), (d), and (e) of Section 14525,*
38 *paragraphs (1), (3), (4), and (5) of subdivision (d) of Section*
39 *14526.1, and subdivision (e) of Section 14526.1.*

- 1 (b) (1) *Individuals who have an organic, acquired, or traumatic*
2 *brain injury or chronic mental illness. “Chronic mental illness”*
3 *means the enrollee has one or more of the following diagnoses or*
4 *its successor diagnoses included in the most recent version of the*
5 *Diagnostic and Statistical Manual of Mental Disorders published*
6 *by the American Psychiatric Association:*
- 7 (A) *Pervasive developmental disorders.*
 - 8 (B) *Attention deficit and disruptive behavior disorders.*
 - 9 (C) *Feeding and eating disorder of infancy, childhood, or*
10 *adolescence.*
 - 11 (D) *Elimination disorders.*
 - 12 (E) *Other disorders of infancy, childhood, or adolescence.*
 - 13 (F) *Schizophrenia and other psychotic disorders.*
 - 14 (G) *Mood disorders.*
 - 15 (H) *Anxiety disorders.*
 - 16 (I) *Somatoform disorders.*
 - 17 (J) *Factitious disorders.*
 - 18 (K) *Dissociative disorders.*
 - 19 (L) *Paraphilias.*
 - 20 (M) *Gender identity disorders.*
 - 21 (N) *Eating disorders.*
 - 22 (O) *Impulse-control disorders not elsewhere classified.*
 - 23 (P) *Adjustment disorders.*
 - 24 (Q) *Personality disorders.*
 - 25 (R) *Medication-induced movement disorders.*
- 26 (2) *In addition to the presence of a chronic mental illness or*
27 *acquired, organic, or traumatic brain injury, the individual meets*
28 *ADHC eligibility and medical necessity criteria contained in*
29 *Section 14525 and subdivisions (d) and (e) of Section 14526.1.*
- 30 (3) *Notwithstanding subdivision (b) of Section 14525 and*
31 *subparagraph (A) of paragraph (2) of subdivision (d) of Section*
32 *14526.1, the individuals must demonstrate a need for assistance*
33 *or supervision with at least one of the following:*
- 34 (A) *Two of the following Activities of Daily Living/Instrumental*
35 *Activities of Daily Living: bathing, dressing, self-feeding, toileting,*
36 *ambulation, transferring, medication management, and hygiene.*
 - 37 (B) *One Activity of Daily Living/Instrumental Activity of Daily*
38 *Living listed in subparagraph (A), and money management,*
39 *accessing resources, meal preparation, or transportation.*

1 (4) For eligibility purposes, applicants or recipients do not need
2 to show a need for a service at the center providing CBAS services
3 to be included in the qualifying Activities of Daily
4 Living/Instrumental Activities of Daily Living, including money
5 management, accessing resources, meal preparation, and
6 transportation.

7 (c) Individuals who meet both of the following:

8 (1) Have moderate to severe Alzheimer's Disease or other
9 dementia, characterized by the descriptors of, or equivalent to,
10 Stages 5, 6, or 7 Alzheimer's Disease.

11 (2) Meet ADHC eligibility and medical necessity criteria
12 contained in subdivisions (a), (c), (d), and (e) of Section 14525,
13 paragraphs (1), (3), (4), and (5) of subdivision (d) of Section
14 14526.1, and subdivision (e) of Section 14526.1.

15 (d) (1) Individuals who meet both of the following:

16 (A) Have mild cognitive impairment, including moderate
17 Alzheimer's Disease or other dementia, characterized by the
18 descriptors of, or equivalent to, Stage 4 Alzheimer's Disease.

19 (B) Meet ADHC eligibility and medical necessity criteria
20 contained in Section 14525 and subdivisions (d) and (e) of Section
21 14526.1.

22 (2) Notwithstanding subdivision (b) of Section 14525 and
23 subparagraph (A) of paragraph (2) of subdivision (d) of Section
24 14526.1, the individual must demonstrate a need for assistance or
25 supervision with two of the following Activities of Daily
26 Living/Instrumental Activities of Daily Living: bathing, dressing,
27 self-feeding, toileting, ambulation, transferring, medication
28 management, and hygiene.

29 (3) For eligibility purposes, applicants or recipients do not need
30 to show a need for a service at the center providing CBAS services
31 to be included in the qualifying Activities of Daily
32 Living/Instrumental Activities of Daily Living.

33 (e) Individuals who meet both of the following:

34 (1) Have a developmental disability and meet the criteria for
35 regional center eligibility. "Developmental disability" means a
36 disability that originates before the individual reaches 18 years
37 of age, continues or can be expected to continue indefinitely, and
38 constitutes a substantial disability, as defined in the California
39 Code of Regulations, for that individual.

1 (2) *Meet ADHC eligibility and medical necessity criteria*
2 *contained in subdivisions (a), (c), (d), and (e) of Section 14525,*
3 *paragraphs (1), (3), (4), and (5) of subdivision (d) of Section*
4 *14526.1, and subdivision (e) of Section 14526.1.*

5 14590.14. (a) CBAS shall be provided and available at licensed
6 Adult Day Health Care centers that are certified by the department
7 as CBAS providers and shall be provided pursuant to a participant's
8 Individualized Plan of Care, as developed by the center's
9 multidisciplinary team. Medi-Cal managed care plans shall contract
10 for CBAS with any willing Adult Day Health Care center that is
11 certified by the department as a CBAS provider.

12 (b) In counties where the department has implemented Medi-Cal
13 managed care, CBAS shall be available only as a Medi-Cal
14 managed care benefit pursuant to Section 14186.3, except that for
15 individuals who qualify for CBAS, but are exempt from enrollment
16 in Medi-Cal managed care, CBAS shall be provided as a
17 fee-for-service Medi-Cal benefit.

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

21 14590.15. All Medi-Cal managed care plans shall, at a
22 minimum, do all of the following:

23 (a) Authorize the number of days of service of CBAS to be
24 provided at the same amount and duration as would have otherwise
25 been authorized and provided in Medi-Cal on a fee-for-service
26 basis. For beneficiaries receiving services on a fee-for-service
27 basis as authorized by the department on or before June 30, 2012,
28 the plan shall not reduce or otherwise limit the services without
29 conducting a face-to-face evaluation.

30 (b) Contract with any willing CBAS provider in the plan's
31 service area at no less than the prevailing Medi-Cal fee-for-service
32 rates to provide CBAS. Plans shall include all contracting CBAS
33 providers in its enrollee information material. This subdivision
34 shall not prevent a plan from paying CBAS providers above the
35 prevailing Medi-Cal fee-for-service rates.

36 (c) Meet on a regular basis with CBAS providers and member
37 representatives on CBAS issues, including the service authorization
38 process and provider payments.

39 14590.16. (a) CBAS providers shall meet all applicable
40 licensing, Medi-Cal, and California's Bridge to Reform Section

1 1115(a) Medicaid Demonstration (11-W-00192/9) standards,
2 including, but not limited to, licensing provisions in Division 2
3 (commencing with Section 1200) of the Health and Safety Code,
4 including Chapter 3.3 (commencing with Section 1570) of Division
5 2 of the Health and Safety Code, and shall provide services in
6 accordance with Chapter 10 (commencing with Section 78001) of
7 Division 5 of Title 22 of the California Code of Regulations.

8 (b) CBAS providers shall be enrolled as California's Bridge to
9 Reform Section 1115(a) Medicaid Demonstration (11-W-00192/9)
10 providers and shall meet the standards specified in this chapter
11 and Chapter 5 (commencing with Section 54001) of Division 3 of
12 Title 22 of the California Code of Regulations.

13 14590.17. Commencing July 1, 2015, the department shall
14 certify and enroll as new CBAS providers only those providers
15 that are exempt from taxation under Section 501(c)(3) of the
16 Internal Revenue Code.

17 14590.18. On or before March 1, 2014, and after consultation
18 with providers and consumer representatives, each Medi-Cal
19 managed care plan shall develop and publish an implementation
20 plan that describes the processes and criteria to determine member
21 eligibility for receiving CBAS and reauthorization of services, and
22 the criteria for determining the number of days of service to be
23 provided. In no instance shall a plan make eligibility for services
24 more restrictive or administratively burdensome than under the
25 terms of the CBAS settlement agreement.

26 14590.19. On or before July 1, 2014, and after consultation
27 with CBAS providers, managed care plans, consumers, and
28 consumer representatives, the department shall submit to *the*
29 appropriate legislative budget and policy committees for review
30 and comment a quality assurance proposal, which shall specify
31 how the department will address quality assurance in the CBAS
32 program ~~under managed care~~.

33 14590.20. (a) Unless otherwise specified, in the event of a
34 conflict between any provision of this article and the Special Terms
35 and Conditions of California's Bridge to Reform Section 1115(a)
36 Medicaid Demonstration (11-W-00193/9), the Special Terms and
37 Conditions shall control.

38 (b) This section shall become inoperative on August 31, 2014,
39 and, as of January 1, 2015, is repealed, unless a later enacted
40 statute, that becomes operative on or before January 1, 2015,

1 deletes or extends the dates on which it becomes inoperative and
2 is repealed.

3 *SEC. 5. No reimbursement is required by this act pursuant to*
4 *Section 6 of Article XIII B of the California Constitution because*
5 *the only costs that may be incurred by a local agency or school*
6 *district will be incurred because this act creates a new crime or*
7 *infraction, eliminates a crime or infraction, or changes the penalty*
8 *for a crime or infraction, within the meaning of Section 17556 of*
9 *the Government Code, or changes the definition of a crime within*
10 *the meaning of Section 6 of Article XIII B of the California*
11 *Constitution.*

O