

AMENDED IN SENATE SEPTEMBER 4, 2015

AMENDED IN SENATE AUGUST 31, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1261

**Introduced by Assembly Member Burke
(Coauthor: Assembly Member Brown)**

February 27, 2015

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.

LEGISLATIVE COUNSEL'S DIGEST

AB 1261, as amended, Burke. 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 ~~in counties where CBAS existed on April 1, 2012, and as a Medi-Cal managed care benefit within a managed care plan's service area in which CBAS was not available as of April 1, 2012, as specified.~~ *and would require CBAS to be available as a covered service in contracts with managed health care plans, as specified.* The bill 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 these provisions be implemented only if federal financial participation is available.

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. 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
 9 individuals 65 years of age and over represented 12.6 percent of
 10 the American population; by 2030 it is estimated the older adult
 11 population will reach 20 percent of the whole, with 70 million
 12 adults over 65 years of age. Many of these adults will experience
 13 disability and chronic conditions. The Alzheimer’s Association
 14 reports that over five million Americans are living with
 15 Alzheimer’s disease and that number will grow to 16 million by
 16 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 60 years
 22 of age or older and 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 2012 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 28,777 persons.

5 (k) In 2015, 32 California counties do not have an adult day
6 health center, including Alpine, Amador, Calaveras, Colusa, Del
7 Norte, El Dorado, Glenn, Inyo, Kings, Lake, Lassen, Madera,
8 Mariposa, Mendocino, Modoc, Mono, Nevada, Placer, Plumas,
9 San Benito, San Joaquin, San Luis Obispo, Sierra, Siskiyou,
10 Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne,
11 and Yuba.

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

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

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

34 (o) The State Department of Health Care Services amended the
35 "California Bridge to Reform" Section 1115 Waiver to include
36 the new CBAS program, which was approved by the Centers for
37 Medicare and Medicaid Services on March 30, 2012, and renewed
38 on November 28, 2014. CBAS is operational under the Section
39 1115 Bridge to Reform Waiver through October 31, 2015.

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

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

11 (r) Ensuring that the key elements of the CBAS program are
 12 codified in state law stabilizes the program’s structure and
 13 eligibility framework in order to enable thousands of disabled and
 14 frail Californians who rely upon adult day health programs today,
 15 and those who will need this service in the future, to be able to
 16 continue to receive services that support them in remaining
 17 independent and free of institutionalization for as long as possible.

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

21
 22 Article 7. Community-Based Adult Services
 23

24 14590.10. (a) Notwithstanding the operational period of CBAS
 25 as specified in the Special Terms and Conditions of California’s
 26 Bridge to Reform Section 1115(a) Medicaid Demonstration
 27 (11-W-00193/9), ~~and notwithstanding the duration of the CBAS~~
 28 ~~settlement agreement, Case No. C-09-03798 SBA,~~ CBAS shall be
 29 a Medi-Cal benefit ~~in counties where CBAS existed on April 1,~~
 30 ~~2012. To the extent that the provision of CBAS is determined by~~
 31 ~~the State Department of Health Care Services to be both cost~~
 32 ~~effective and necessary to prevent avoidable institutionalization~~
 33 ~~of plan enrollees within a plan’s service area in which CBAS was~~
 34 ~~not available as of April 1, 2012, CBAS may be a Medi-Cal~~
 35 ~~managed care benefit, pursuant to Special Terms and Conditions~~
 36 ~~98(a)(ii), available to that plan’s enrollees at the discretion of the~~
 37 ~~plan when it contracts with a CBAS provider that has been certified~~
 38 ~~as such by the State Department of Health Care Services. CBAS~~
 39 ~~shall have and shall be available as a covered service in contracts~~
 40 ~~with managed health care plans with the standards, eligibility~~

1 criteria, and provisions that are ~~equivalent to those contained~~
 2 ~~described in the Special Terms and Conditions of the demonstration~~
 3 ~~on the date the act that added this section is chaptered. California's~~
 4 ~~Bridge to Reform Section 1115(a) Medicaid Demonstration~~
 5 ~~(11-W-00193/9) and any successor federal authorities.~~

6 (b) CBAS shall be available to beneficiaries who meet all of
 7 the following qualifications:

8 (1) The beneficiary is 18 years of age or older.

9 (2) The beneficiary derives his or her Medicaid eligibility from
 10 the state plan and is either aged, blind, or disabled, including those
 11 who are recipients of Medicare.

12 (3) The beneficiary is a Medi-Cal managed care plan member
 13 or is exempt from enrollment in Medi-Cal managed care.

14 (4) *The beneficiary resides within a geographic service area in*
 15 *which the CBAS benefit was available as of April 1, 2012, as more*
 16 *fully described in Special Terms and Conditions 95(b), or is*
 17 *determined to be eligible for the CBAS benefit by a managed care*
 18 *plan that contracts with CBAS providers pursuant to Special Terms*
 19 *and Conditions 95(b) and Special Terms and Conditions 98(a)(ii).*

20 ~~(4)~~

21 (5) The beneficiary shall meet or exceed the medical necessity
 22 criteria established in Section 14526.1 and for whom one of the
 23 following criteria is present:

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

27 (B) Both of the following apply to the beneficiary:

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

30 ~~(ii)~~ ~~For both.~~ For the purpose of this clause, “chronic mental
 31 disorder” means that the beneficiary has one or more of the
 32 following diagnoses or their successor diagnoses included in the
 33 most recent version of the Diagnostic and Statistical Manual of
 34 Mental Disorders published by the American Psychiatric
 35 Association:

36 ~~(ia)~~

37 (I) A pervasive developmental disorder.

38 ~~(ib)~~

39 (II) An attention deficit and disruptive behavior disorder.

40 ~~(ic)~~

- 1 (III) A feeding and eating disorder of infancy, childhood, or
- 2 adolescence.
- 3 ~~(id)~~
- 4 (IV) An elimination disorder.
- 5 ~~(ie)~~
- 6 (V) A schizophrenia and other psychiatric disorder.
- 7 ~~(if)~~
- 8 (VI) A mood disorder.
- 9 ~~(ig)~~
- 10 (VII) An anxiety disorder.
- 11 ~~(ih)~~
- 12 (VIII) A somatoform disorder.
- 13 ~~(ii)~~
- 14 (IX) A factitious disorder.
- 15 ~~(ij)~~
- 16 (X) A dissociative disorder.
- 17 ~~(ik)~~
- 18 (XI) Paraphilia.
- 19 ~~(il)~~
- 20 (XII) An eating disorder.
- 21 ~~(im)~~
- 22 (XIII) An impulse control disorder not elsewhere classified.
- 23 ~~(in)~~
- 24 (XIV) An adjustment disorder.
- 25 ~~(io)~~
- 26 (XV) A personality disorder.
- 27 ~~(ip)~~
- 28 (XVI) A medication-induced movement disorder.
- 29 (ii) The beneficiary needs assistance or supervision as described
- 30 in subclause (I) or (II).
- 31 (I) The beneficiary needs assistance or supervision with at least
- 32 two of the following:
- 33 (ia) Bathing.
- 34 (ib) Dressing.
- 35 (ic) ~~Feeding himself or herself.~~ *Self-feeding.*
- 36 (id) Toileting.
- 37 (ie) Ambulating.
- 38 (if) ~~Transferring himself or herself.~~ *Transferring.*
- 39 (ig) Medication management.
- 40 (ih) Hygiene.

1 (II) The beneficiary needs assistance or supervision with at least
2 one of the activities identified in subclause (I) and needs assistance
3 with at least one of the following:

- 4 (ia) Money management.
- 5 (ib) Accessing community and health resources.
- 6 (ic) Meal preparation.
- 7 (id) Transportation.

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

12 (D) The beneficiary has a mild cognitive disorder such as
13 dementia, including dementia of the Alzheimer's type, and needs
14 assistance or supervision with at least two of the activities described
15 in subclause (I) of clause (ii) of subparagraph (B). *following*
16 *activities:*

- 17 (i) *Bathing.*
- 18 (ii) *Dressing.*
- 19 (iii) *Self-feeding.*
- 20 (iv) *Toileting.*
- 21 (v) *Ambulating.*
- 22 (vi) *Transferring.*
- 23 (vii) *Medication management.*
- 24 (viii) *Hygiene.*

25 (E) ~~(i)~~ The beneficiary has a developmental disability.
26 ~~(ii)~~ *For disability.* For the purpose of this subparagraph,
27 "developmental disability" means a disability that originates before
28 the individual attains 18 years of age, continues, or can be expected
29 to continue, indefinitely, and constitutes a substantial disability
30 for that individual as defined in Section 54001 of Title 17 of the
31 California Code of Regulations.

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

37 (2) CBAS providers shall meet all applicable licensing and
38 Medi-Cal standards, including, but not limited to, licensing
39 provisions in Division 2 (commencing with Section 1200) of the
40 Health and Safety Code, including Chapter 3.3 (commencing with

1 Section 1570) of Division 2 of the Health and Safety Code, and
2 shall provide services in accordance with Chapter 10 (commencing
3 with Section 78001) of Division 5 of Title 22 of the California
4 Code of Regulations.

5 (3) CBAS providers shall comply with the provisions of
6 California’s Bridge to Reform Section 1115(a) Medicaid
7 Demonstration (11-W-00193/9) and any successor ~~demonstration~~.
8 *federal authorities*.

9 (d) ~~(4)~~—In counties where the State Department of Health Care
10 Services has implemented Medi-Cal managed care, CBAS shall
11 be available as a Medi-Cal managed care benefit pursuant to
12 Section 14186.3, except that for individuals who qualify for CBAS,
13 but who are not qualified for, or who are exempt from, enrollment
14 in Medi-Cal managed care, CBAS shall be provided as a
15 fee-for-service Medi-Cal benefit.

16 ~~(2) For Medi-Cal CBAS services provided through managed~~
17 ~~care health plans, the plans shall reimburse contracted providers~~
18 ~~at rates that are not less than Medi-Cal fee-for-service (FFS) rates,~~
19 ~~as published and revised by the State Department of Health Care~~
20 ~~Services, including retroactive payment of any rate increment~~
21 ~~based on State Department of Health Care Services retroactive~~
22 ~~rate adjustments, for equivalent services on the date the services~~
23 ~~were provided.~~

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

34 (f) This section shall be implemented only ~~if to the extent that~~
35 ~~any necessary federal approvals are obtained and~~ federal financial
36 participation is ~~available~~. *available and is not jeopardized.*