

Date of Hearing: April 21, 2015

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Cheryl Brown, Chair

AB 1261 (Burke) – As Introduced February 27, 2015

SUBJECT: Community-based adult services: adult day health care centers

SUMMARY: Establishes Community Based Adult Services Program benefits as statutorily authorized Medi-Cal benefits. Specifically, **this bill:**

Makes legislative findings and declarations that:

- 1) California supports the dignity, independence and choice of seniors and persons with disabilities to live in the most integrated setting appropriate, and to be free from institutionalization, unless necessary.
- 2) The populations of persons 65 and older, and those afflicted with Alzheimer's are anticipated to grow exponentially by mid-century compared to the general population, as will the costs associated with caring for them.
- 3) The US Census places the number of older adults in California as higher than any other state, and that the California Department of Aging now reports that those 60 and over make-up one-in-five Californians – 40 percent of whom are living with a disability, many of whom represent diverse ethnic and cultural heritage.
- 4) Adult Day Health Care (ADHC) was established in California in 1974 as a licensed alternative to nursing home care that afforded participants challenged with Alzheimer's disease, diabetes, high blood pressure, mental health needs, traumatic brain injuries, stroke or breathing problems (to name a few) the option to remain members of their communities by accessing necessary services and supports from a multidisciplinary team of professionals in a clinical day-time setting as needed, and then returning to home, rather than permanently moving into a nursing home.
- 5) ADHC also provides family caregivers support as a mechanism to reduce unnecessary institutionalization, and reducing the risk for abusive environments to develop.
- 6) ADHC services include health, therapeutic, and social services such as transportation; care otherwise only available to recipients in a nursing home; physical, occupational and speech therapy; health supervision, mental stimulation, and nutrition.
- 7) ADHC provides such services at an average annual cost of about \$9,312. Annual skilled nursing home care in California, an alternative to Community Based Adult Services (CBAS)/ADHC, currently averages about \$83,364 according to the California Medicaid Research Institute.
- 8) ADHC centers which provide CBAS services are licensed by the Department of Public Health and overseen by the Departments of Aging, and Health Care Services.
- 9) Since 1977 California has documented unmet needs for ADHC when a report identified a need for 600 sites statewide. At its peak, California supported 360 sites, providing care to

only 40,000 medically fragile Californians while approximately 300,000 individuals gained their care in nursing homes. By 2013, a total of 270 ADHC centers were in business serving just 28,777 people while annual nursing home census remains at about 300,000.

- 10) Residents in 32 of California's 58 counties do not have access to ADHC centers.
- 11) ADHC benefits were available as a Medi-Cal optional benefit, though eliminated as an initiative intended to help the state manage California's fiscal crisis in the Budget Act of 2011.
- 12) Consumers concerned about imminent institutionalization, sued to preserve the benefit citing ADHC as the only barrier to their eventual and undesired institutionalization, a process that the United State Constitution guarantees protection from, based upon the Olmstead Vs L.C. Supreme Court Decision.
- 13) Upon settlement, DHCS extended services to recipients via a waiver authorized under Section 1115 of the Social Security Act, through October 31, 2015.
- 14) Given California's anticipated demographic trends indicate growth of the 65+ population far more rapid than the growth of the general population through 2050, the need and demand for ADHC centers and the CBAS services that they provide is critical to a successful strategy to contain and control costs, and as a strategy to meet families' needs, and as a strategy to assure success of the Coordinated Care Initiative.
- 15) Codification of the CBAS program is necessary to provide the stability required to meet the growing needs of the expanding aged populations.
- 16) Adds language to the Welfare and Institutions Code describing CBAS benefits, eligibility criteria, beneficiary characteristics, provider characteristics and requirements, and declares them a permanent Medi-Cal benefit.

EXISTING LAW:

- 1) Establishes the Medi-Cal program, a free or low-cost health care service for families, seniors, persons with disabilities, children in foster care, pregnant women, and childless adults with incomes below 138 percent of federal poverty level (FPL). Benefits include ambulatory patient services, emergency services, hospitalization, maternity and newborn care, and long term services and supports. Medi-Cal is administered through federal-state-county partnerships with the federal Centers for Medicare and Medicaid Services (CMS), the California Department of Health Care Services (DHCS), and county welfare departments in each of the 58 counties.
- 2) Establishes the Coordinated Care Initiative in Alameda, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, and Santa Clara counties which begins the process of integrating the delivery of medical, behavioral, and long-term services and supports while attempting to integrate Medicare and Medi-Cal for people in both programs, known as "dual eligible" beneficiaries. Consumers at the local delivery points know the program as "Cal MediConnect," while policy makers in Sacramento know the program best as "Coordinated Care Initiative."

- 3) Authorizes DHCS to enter into contracts with managed care organizations to provide services to Medi-Cal enrollees.
- 4) Requires specified Medi-Cal recipients to enroll in Medi-Cal managed care plans in the eight counties participating in the Coordinated Care Initiative/Cal Medi-Connect.
- 5) Provides for CBAS benefits under the “California Bridge to Reform” waiver authorized by Section 1115 of the Social Security Act which promotes states to test innovative payment and service delivery models to reduce program expenditures while preserving or enhancing the quality of care.

FISCAL EFFECT: Unknown.

COMMENTS:

Author’s Comment: Over 30,000 frail Californians and their families depend upon the adult day health care services provided through the CBAS program. While the current federal waiver ensures that the program will continue for the next few years, the waiver did not include language to ensure that providers will be reimbursed at levels that are not less than current Medi-Cal fee-for-service rates, and state law has not been updated to reflect the program requirements under the waiver and guarantee legislative oversight. AB 1261 preserves access to the adult day health care services and gives providers a reliable rate structure to ensure program sustainability.

Background: For many years, Adult Day Health Care (ADHC) was a state plan optional benefit of the Medi-Cal program. The program was eliminated in 2011 as a result of the state budget crisis. A subsequent class action lawsuit, *Esther Darling, et al. v. Toby Douglas, et al.*, challenged the elimination of ADHC as a violation of the Supreme Court decision *Olmstead v. L.C.* The state settled the lawsuit, agreeing to replace ADHC services with a new program called CBAS effective April 1, 2012, to provide necessary medical and social services to individuals with intensive health care needs.

The Department of Health Care Services (DHCS) amended the “California Bridge to Reform” 1115 Waiver to include the new CBAS program, which was approved by the Centers for Medicare and Medicaid Services on March 30, 2012. Today, in counties that have implemented Medi-Cal managed care, CBAS is available as a managed care benefit. In counties that have not implemented Medi-Cal managed care, or for individuals that are exempt from enrollment in Medi-Cal managed care, CBAS is provided as a fee-for-service Medi-Cal benefit.

While the waiver covers services, state statutes have not been updated to reflect the new parameters of the CBAS program under the waiver. In addition, the transition to managed care coverage for CBAS has led to rate uncertainty. While the original settlement and draft waiver language included provisions to ensure that CBAS services provided through managed care plans were reimbursed at rates that are not less than Medi-Cal fee-for-service rates, the final waiver application and consequently the approved waiver requirements did not include the rate language.

Arguments in Support: Disability Rights California writes that AB 1261 preserves an essential health benefit to over 28,000 Medi-Cal recipients with serious health conditions that place them at risk of losing their independence and facing life in a nursing home - a life-style they do not wish to endure, and one that will ultimately cost the state more. CBAS serves as an important

service that demonstrates the state's commitment to the principles of the Olmstead decision, and the objectives of the nascent Coordinated Care Initiative in counties where it is underway.

The Alzheimer's Association writes that AB 1261 offers important stabilization of the CBAS service delivery system, an essential service for people with Alzheimer's disease, and the families who care for them. The Alzheimer's Association cites Medicaid claims data showing that costs are 19 times higher for individuals with cognitive impairments.

Justice in Aging (formerly National Senior Citizens Law Center) cites AB 1261 as an important effort to assure that California implements the Supreme Court's Olmstead decision to ensure frail California seniors and people with disabilities can live on their own with dignity and independence, rather than costly nursing home care.

Arguments in Opposition: None.

Dual Referral:

AB 1261 was heard by the Assembly Health Committee on April 14, 2015, and passed by a vote of 16-0-3. (Ayes: Bonta, Maienschein, Burke, Chávez, Chiu, Gomez, Gonzalez, Lackey, Nazarian, Patterson, Ridley-Thomas, Rodriguez, Santiago, Thurmond, Waldron, Wood. Noes: None. No Vote Recorded: Bonilla, Roger Hernández, Steinorth).

Previous Legislation:

- 1) AB 1552 (Lowenthal) – vetoed by the Governor in 2014 – would have codified the CBAS program to reflect the waiver requirements.
- 2) AB 518 (Yamada) – held in Senate Health in 2013 – extends the CBAS program as a Medi-Cal benefit through Medi-Cal managed care, however, allows only non-profit providers to enroll as CBAS providers.
- 3) SB 1008 (Committee on Budget and Fiscal Review), Chapter 33, Statutes of 2012 and SB 1036 (Committee on Budget and Fiscal Review), Chapter 45, Statutes of 2012 authorize the Coordinated Care Initiative (CCI) as an eight-county pilot project to: i) integrate Medi-Cal and Medicare benefits under managed care for dual eligibles; and, ii) integrate Long Term Services and Supports (LTSS) under managed care for dual eligibles and Medi-Cal-only Seniors and People with Disabilities (SPD).
- 4) AB 96 (Committee on Budget) – vetoed by the Governor in 2011 – would have established the Keeping Adults Free of Institutions (KAFI) program, and required Department of Health Care Services (DHCS) to submit an application to Centers for Medicare and Medicaid Services (CMS) to implement the program.
- 5) AB 97 (Committee on Budget), Chapter 3, Statutes of 2011, among other provisions eliminates Adult Day Health Care (ADHC) as a Medi-Cal benefit.
- 6) SB 208 (Steinberg), Chapter 714, Statutes of 2010, contains the provisions implementing Section 1115(b) Medicaid Demonstration Waiver from CMS entitled “A Bridge to Reform Waiver.” Among the provisions, this waiver authorized mandatory enrollment into a

Managed Care Plan (MCP) of over 600,000 low-income Seniors and People with Disabilities who were eligible for Medi-Cal only (not Medicare) in 16 counties.

- 7) AB 2073 (Lowenthal) – held in Assembly Appropriations in 2013 – narrowed eligibility for Adult Day Health Care to conform to the court's decision in Cota (formerly “Brantley”) v. Maxwell-Jolly, 656 F. Supp. 2d 1161 (N.D. Cal. 2009) (Cota v. Maxwell-Jolly) and achieve the same level of savings.
- 8) ABX4 - 5 (Evans), Chapter 5, Statutes of 2009-10 Fourth Extraordinary Session; enacted new, more restrictive eligibility criteria. The narrowed eligibility was eventually challenged in court in Cota (formerly “Brantley”) v. Maxwell-Jolly.
- 9) SB 117 (Corbett), Chapter 165, Statutes of 2009, extended the deadline by which the Department of Health Care Services was required to establish a new Medi-Cal rate reimbursement methodology for Adult Day Health Care, from August 1, 2010 to August 1, 2012.
- 10) AB 572 (Berg), Chapter 648, Statutes of 2008 clarified requirements pertaining to Adult Day Health Care hours of service, core staff, and staff absences, transportation services, and meal requirements.
- 11) SB 1755 (Chesbro), Chapter 691, Statutes of 2006, established new eligibility criteria for Adult Day Health Care (ADHC) services for the purposes of Medi-Cal reimbursement, required the Department of Health Services, (now DHCS), to establish a cost-based Medi-Cal reimbursement methodology for ADHC services, and established daily core services to be provided by ADHC centers to each participant.

REGISTERED SUPPORT / OPPOSITION:

Support

Adult Day Health Care of Mad River
Alzheimer’s Association
Ararat Adult Day Health Care Center
Association of California Healthcare Districts (ACHD)
Avenidas
Bay Area Community Services
California Association for Adult Day Services (CAADS)
California Association of Public Authorities (CAPA)
California Commission on Aging (CCoA)
California Medical Association (CMA)
Casa Pacifica Adult Day Health Care Center
Congress of California Seniors
Disability Rights California
Justice in Aging
LeadingAge California
Meals-on-Wheels Greater San Diego, Inc.
New Life Adult Day Health Care
Partners in Care Foundation

San Fernando Valley Adult Day Health Care, LLC
San Francisco Department of Aging and Adult Services
San Ysidro Health Center
Sunny Cal Adult Day Health Care Center, Inc.
Sunny Day Adult Community Based Adult Services
United Domestic Workers of America (UDW)
Two individuals.

Opposition

None on file.

Analysis Prepared by: Robert MacLaughlin / AGING & L.T.C. / (916) 319-3990