

Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Mariko Yamada, Chair

AB 1552 (Lowenthal) – As Amended: April 10, 2014

SUBJECT: Medi-Cal: Community Based Adult Services: Urgency

SUMMARY: Establishes the Community Based Adult Services (CBAS) program services and a benefit in the Medi-Cal program, and calls for immediate implementation. Specifically, this bill:

- 1) Establishes CBAS program services as a benefit to eligible and qualified low-income beneficiaries of the Medi-Cal program.
- 2) Requires that those services be provided at licensed adult day health care (ADHC) centers which are certified as providers by the California Department of Aging (CDA), and must follow the provisions of California's Bridge to Reform Waiver.
- 3) Declares the act as an urgency measure in order to ensure sufficient time to implement these provisions, to ensure continuity of care, and to ensure that the health and safety of participants are protected.
- 4) Makes legislative findings and declarations.

EXISTING LAW:

- 1) In partnership with the federal government, establishes the Medi-Cal program, to provide various health and long-term services to low-income women and children, seniors, and people with disabilities.
- 2) Authorizes the Department of Health Care Services (DHCS) to enter into contracts with Managed Care Plans (MCPs) to provide services to Medi-Cal enrollees.
- 3) Requires eligible families, children, seniors, and people with disabilities to enroll in a Medi-Cal MCP for health care services in specified counties.
- 4) Establishes the Coordinated Care Initiative (CCI) that required DHCS to seek federal approval to establish demonstration sites in up to eight counties to better serve the state's eligible seniors and persons with disabilities by integrating delivery of medical, behavioral, and long-term care services, and to identify strategies to integrate Medicare and Medi-Cal for people in both programs.
- 5) Authorizes DHCS to require seniors and people with disabilities (SPDs) who are eligible for Medi-Cal only to enroll in Medi-Cal Managed Care plans for Long-Term Services and Supports.
- 6) As a condition of a settlement agreement, (Case No. C-09-03798 SBA), requires the state to provide CBAS to eligible participants through the end of August of this year.

FISCAL EFFECT: Unknown

COMMENTS:

Author's Statement: "AB 1552 ensures that thousands of frail Californians who rely upon adult day health programs today, and those who will need this service in the future, will be able to remain independent and free of institutionalization for as long as possible."

Background: As stated in the findings and declarations of AB 1552: The American population is swiftly aging. According to the Centers for Disease Control, in 2007, individuals 65 years of age and over represented 12.6% of the American population; by 2030 it is estimated the older adult population will reach 20% of the whole, with 70 million adults over 65 years of age. Many of these adults will experience disability and chronic conditions. The Alzheimer's Association reports that over five million Americans are living with Alzheimer's disease and that number will grow to 16 million by 2050, with the cost of caring for those individuals growing from \$203 billion in 2013 to \$1.2 trillion by mid-century.

According to the California Department of Finance Demographic Unit, California's 65+ population will reach 5 million this year. The California Department of Aging reports that one in every five Californians is now age 60 or older and 40% of those individuals have a disability.

Community Based Adult Services: CBAS is a Medi-Cal Managed Care benefit available to eligible Medi-Cal beneficiaries enrolled in Medi-Cal Managed Care. Eligibility to participate in CBAS is determined by the beneficiary's Medi-Cal Managed Care Plan. Other Medi-Cal beneficiaries ineligible to enroll in Medi-Cal Managed Care may receive CBAS. CBAS services include an individual assessment, professional nursing services, physical, occupational and speech therapies, mental health services, therapeutic activities, social services, personal care, a meal, nutritional counseling, and transportation to and from the participant's residence and the CBAS center. CBAS replaced Adult Day Health Care (ADHC) services which were an optional benefit under the Medi-Cal Program through February 29, 2012.

Purpose of the Bill: AB 1552 extends the Community-Based Adult Services (CBAS) program beyond the August 31, 2014 waiver expiration. In counties that have implemented Medi-Cal managed care, CBAS will be 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 will be provided as a fee-for-service Medi-Cal benefit.

Currently, no legislative statute authorizes CBAS. The program operates under authority of a court directive scheduled to expire in August 2014, along with an administrative request granted by the federal government through an existing "Section 1115" waiver of the Social Security Act. An 1115 waiver allows states to experiment, pilot or demonstrate projects which are likely to assist in promoting the objectives of the Medicaid program. The 1115 waivers are flexible, so states have room to develop Medicaid Plans that suit their state's health care goals.

Without legislative action, the future of the CBAS program is uncertain after the court directive issued in December of 2011, expires in August of 2014. At that time, program participants risk losing the vital health and social services provided by CBAS, and the state risks further costly court battles and more expensive institutional placements for CBAS participants. Placing the court-ordered CBAS program into statute assures medically fragile Californians and their

families' certainty and access to a range of social and health supports delivered in a clinical setting that avoids costlier institutional placements. Like daycare for children in working families, this daytime care model for frail, elder or functionally impaired adults is essential in order to meet the moral, ethical, and legal duties of caregiving families.

History: 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 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. CBAS is operational under the 1115 Bridge to Reform waiver through August 31, 2014.

The California Department of Aging and the Department of Health Services facilitated a stakeholder process since October of 2013 to develop recommendations for future CBAS efforts. Six work group meetings attended by managed care plan representatives, providers, advocates, legislative staff, and administrative staff, which developed recommendations to delete obsolete provisions related to ADHC-to-CBAS transition, continue access monitoring, create new special terms and conditions (STC) and standards of participation (SOP) clarifying relationships between managed care plans and providers, conditions for grievances and appeals, administrative issues related to care planning, and allowances for growth of new centers. Draft language for these changes is being reviewed by the administration, and may be available to work group participants and others for review and comment shortly.

Support: Supporters argue that as the state implements health care reform and becomes reliant upon managed, outcome-driven care, it is essential that integrated community-based programs remain key partners in the changing system. The Multipurpose Senior Services Program Site Association argues that CBAS services are essential for their clientele who are frail elders eligible for skilled nursing care, but choose to live in less costly settings.

Previous Hearing: AB 1552 passed Assembly Committee on Health April 8, 2014 by a vote of 18-0.

Previous and Related Legislation:

AB 518 (Yamada) establishes CBAS as a Medi-Cal benefit and a covered service in managed care plan contracts, establishes eligibility criteria for CBAS and staffing standards for ADHC centers, and requires new CBAS providers, as a condition of participation, to be nonprofit. AB 518 is in the Senate Health Committee, where testimony was taken on June 12, 2013, but no vote has been held.

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 CCI as an eight-county pilot project to: a) integrate Medi-Cal and Medicare benefits under managed care

for dual eligibles; and, b) integrate Long Term Services and Support (LTSS) under managed care for dual eligibles and Medi-Cal-only SPDs.

AB 96 (Blumenfield) would have established the Keeping Adults Free of Institutions (KAFI) program and required DHCS to submit an application to CMS to implement the program. AB 96 was vetoed by Governor Brown.

AB 97 (Committee on Budget), Chapter 3, Statutes of 2011, among other provisions eliminates ADHC as a Medi-Cal benefit.

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 managed care plans of over 600,000 low-income SPDs who are eligible for Medi-Cal only (not Medicare) in 16 counties.

SB 1755 (Chesbro), Chapter 691, Statutes of 2006, enacts numerous reforms in the ADHC program, and Medi-Cal coverage for ADHC, including narrowing the program eligibility and medical necessity criteria; revising the service requirements and roles and responsibilities of ADHC providers; and requiring the Department of Health Services (now DHCS) to establish a new prospective, cost-based reimbursement methodology and to perform field audits of ADHC providers, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

Adult Day Services Network of Contra Costa
Alzheimer's Association
American Association of Retired Persons (AARP)
American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO
California Alliance for Retire Americans
California Association for Adult Day Services (CAADS)
California Commission on Aging
California Communities United Institute
California Medical Association
California Primary Care Association (CPCA)
Camelot Adult Day Health Care Center
Congress of California Seniors
County Welfare Directors Association of California (CWDA)
ESKATON Adult Day Health Center Carmichael
Evermost Health Management, Inc.
GetTogether Adult Day Health Care Center
Humboldt Senior Resource Center
LMS Health Partners
Los Angeles Aging Advocacy Coalition
MountainView ADHC, Inc.
Multipurpose Senior Services Program Site Association
National Association of Social Workers-California Chapter (NASW-CA)

National Health Law Program (NHeLP)
Poway Adult Day Health Care Center
St. Barnabas Senior Services
San Ysidro Health Center (SYHC)
Senior Services Coalition
State Independent Living Council (SILC)
Sunny Cal Adult Day Health Care Center, Inc.
United Domestic Workers of America (UDW)-AFSCME Local 3930/AFL-CIO
Numerous individuals (about 100).

Opposition

None on file.

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