

AMENDED IN ASSEMBLY JULY 12, 2011

SENATE BILL

No. 91

Introduced by Committee on Budget and Fiscal Review

January 10, 2011

~~An act relating to the Budget Act of 2011.~~ *An act to amend Sections 1570.7, 1574.5, 1576.2, and 1578.1 of, and to repeal Sections 1575.5 and 1590.3 of, the Health and Safety Code, and to amend Section 14574 of the Welfare and Institutions Code, relating to adult day health care, and making an appropriation therefor, to take effect immediately, bill related to the budget.*

LEGISLATIVE COUNSEL'S DIGEST

SB 91, as amended, Committee on Budget and Fiscal Review. ~~Budget Act of 2011.~~ *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.

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 be excluded from coverage under the Medi-Cal program.

Existing law requires, concurrently with the submission of an application for initial licensure as an adult day health care center, an applicant to apply for eligibility certification as a provider of adult day health care services reimbursable under the Medi-Cal program. Existing law also prohibits a license from being issued or renewed for an adult day health care center that is not approved as a Medi-Cal provider of adult day health care services.

This bill would remove the requirement that an applicant for initial licensure as an adult day health care center apply for Medi-Cal certification. This bill would also remove the prohibition against issuing or renewing a license for an adult day health care center that is not approved as a Medi-Cal provider of adult day health care services, and would make conforming changes.

Existing law provides that if an adult day health care center licensee provides adult day program services, the adult day health care license is the only license required to provide these additional services.

This bill would require a provider choosing to add an adult day program within the adult day health care facility to submit a notice to the department. By changing the definition of a crime, this bill would impose a state-mandated local program.

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.

This bill would appropriate the sum of \$1,000 from the General Fund to the State Department of Public Health for administrative costs.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

~~*This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2011.*~~

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

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:

1 1570.7. As used in this chapter and in any regulations
2 promulgated thereunder:

3 (a) “Adult day health care” means an organized day program
4 of therapeutic, social, and skilled nursing health activities and
5 services provided pursuant to this chapter to elderly persons or
6 adults with disabilities with functional impairments, either physical
7 or mental, for the purpose of restoring or maintaining optimal
8 capacity for self-care. Provided on a short-term basis, adult day
9 health care serves as a transition from a health facility or home
10 health program to personal independence. Provided on a long-term
11 basis, it serves as an alternative to institutionalization in a long-term
12 health care facility when 24-hour skilled nursing care is not
13 medically necessary or viewed as desirable by the recipient or his
14 or her family.

15 (b) “Adult day health center” or “adult day health care center”
16 means a licensed ~~and certified~~ facility that provides adult day health
17 care.

18 (c) “Core staff” includes the positions of program director,
19 registered nurse, social worker, activity director, and program aide.

20 (d) “Department” or “state department” means the State
21 Department of Public Health.

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

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

26 (g) “Extended hours” means those hours of operation prior to
27 or following the adult day health care program hours of service,
28 as designated by the adult day health care center in its plan of
29 operation, during which the adult day health care center may
30 operate an adult day program, or an Alzheimer’s day care resource
31 center, or both.

32 (h) “Hours of service” means the program hours defined and
33 posted by the adult day health care center for the provision of adult
34 day health care services, pursuant to Section 14550 of the Welfare
35 and Institutions Code, which shall be no less than four hours,
36 excluding transportation.

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

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

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

11 (l) “Maintenance program” means procedures and exercises
12 that are provided to a participant, pursuant to Section 1580, in
13 order to generally maintain existing function. These procedures
14 and exercises are planned by a licensed or certified therapist and
15 are provided by a person who has been trained by a licensed or
16 certified therapist and who is directly supervised by a nurse or by
17 a licensed or certified therapist.

18 (m) “Program director” shall be a person with both of the
19 following:

20 (1) One of the following backgrounds:

21 (A) A person with a bachelor’s degree and a minimum of two
22 years of experience in a management, supervisory, or
23 administrative position.

24 (B) A person with a master’s degree and a minimum of one year
25 of experience in a management, supervisory, or administrative
26 position.

27 (C) A registered nurse with a minimum of two years experience
28 in a management, supervisory, or administrative position.

29 (2) Appropriate skills, knowledge, and abilities related to the
30 health, and mental, cognitive, and social needs of the participant
31 group being served by the adult day health center.

32 (n) “Restorative therapy” means physical, occupational, and
33 speech therapy, and psychiatric and psychological services that
34 are planned and provided by a licensed or certified therapist. The
35 therapy and services may also be provided by an assistant or aide
36 under the appropriate supervision of a licensed therapist, as
37 determined by the licensed therapist. The therapy and services are
38 provided to restore function, when there is an expectation that the
39 condition will improve significantly in a reasonable period of time,
40 as determined by the multidisciplinary assessment team.

1 (o) “Short-term absence” or “short-term vacancy” means an
2 absence or vacancy lasting one month or less, and includes sick
3 leave and vacations. An adult day health care center shall ensure
4 that appropriate staff is designated to serve in these positions during
5 the short-term absence or vacancy and that the center’s policies
6 and procedures are specific regarding coverage of short-term
7 absences or vacancies.

8 (p) “Social worker” shall be a person who meets one of the
9 following:

10 (1) The person holds a master’s degree in social work from an
11 accredited school of social work.

12 (2) The person holds a master’s degree in psychology,
13 gerontology, or counseling from an accredited school and has one
14 year of experience providing social services in one or more of the
15 fields of aging, health, or long-term care services.

16 (3) The person is licensed by the California Board of Behavioral
17 sciences.

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

22 *SEC. 2. Section 1574.5 of the Health and Safety Code is*
23 *amended to read:*

24 1574.5. (a) All adult day health care centers shall maintain
25 compliance with licensing~~and certification~~ requirements. These
26 requirements shall not prohibit program flexibility for the use of
27 alternate concepts, methods, procedures, techniques, equipment,
28 number and qualifications of personnel, or the conducting of pilot
29 projects, if these alternatives or pilot projects are carried out with
30 provisions for safe and adequate care and with the prior written
31 approval of the state department. This approval shall provide for
32 the terms and conditions under which permission to use an
33 alternative or pilot program is granted. Particular attention shall
34 be given to encourage the development of models appropriate to
35 rural areas. The department may allow the substitution of work
36 experience for academic requirements for the position of program
37 director, administrator, or activity coordinator.

38 (b) The applicant or licensee may submit a written request to
39 the department for program flexibility, and shall submit with the
40 request substantiating evidence supporting the request.

(c) Any approval by the department granted under this section, or a true copy thereof, shall be posted immediately adjacent to the center's license.

SEC. 3. Section 1575.5 of the Health and Safety Code is repealed.

~~1575.5. (a) Concurrently with the submission of any application under Section 1575.2, the applicant shall apply to the department for eligibility certification as a provider of adult day health care services reimbursable under the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code). No license shall be issued or renewed for an adult day health care center that is not approved as a Medi-Cal provider of adult day health care services.~~

~~(b) (1) This section shall not apply to centers licensed during a moratorium imposed in accordance with Section 14043.46 of the Welfare and Institutions Code. The moratorium shall not prohibit the department from approving a change in ownership, relocation, or increase in capacity for an adult day health care center that meets the conditions in subdivision (c) of Section 14043.46 of the Welfare and Institutions Code.~~

~~(2) This section shall not apply upon the implementation of the adult day health care waiver in accordance with the Welfare and Institutions Code.~~

SEC. 4. Section 1576.2 of the Health and Safety Code is amended to read:

1576.2. (a) Each license issued or renewed pursuant to this chapter shall not be transferable and the initial license shall expire 12 months from the date of its issuance. The director shall be given the discretion to approve applications for relicensure for a period of up to 24 months. Application for annual renewal of a license, accompanied by the required fee, shall be filed with the department not less than 30 days prior to the expiration date. Failure to submit a renewal application prior to that date shall result in expiration of the license.

~~(b) A license shall be rescinded for an applicant that has had its Medi-Cal certification for adult day health care revoked.~~

SEC. 5. Section 1578.1 of the Health and Safety Code is amended to read:

1578.1. (a) Notwithstanding subdivisions (b) and (c) of Section 1570.7 or any other provision of law, if an adult day health care

center licensee also provides adult day program services, the adult day health care license shall be the only license required to provide these additional services. Costs shall be allocated among the programs in accordance with generally accepted accounting practices.

~~(b) The department, unless otherwise specified by the interagency agreement entered into pursuant to Section 1572 shall evaluate the program services provided for in subdivision (a) for quality of care and compliance with program requirements, concurrent with inspections of the adult day health care facility, using a single survey process.~~

~~(e) The department and the California Department of Aging shall jointly develop and adopt regulations pursuant to Section 1580 for the provision of different levels of care under the single adult day health care license.~~

(b) A provider choosing to add an adult day program within the adult day health care facility shall submit a notice to the department on such forms as may be required.

(c) Review and approval of the application to provide a dual program shall not require an on-site inspection.

(d) The maximum licensed capacity shall be determined by the local fire authority and shall include limits for ambulatory and nonambulatory participants.

SEC. 6. Section 1590.3 of the Health and Safety Code is repealed.

~~1590.3. (a) The denial, suspension, or revocation of a center's license shall be considered immediate grounds for the denial, suspension, or termination of the center's certification.~~

~~(b) Proceedings to deny an application for licensure or certification, suspend a license or certification, or revoke a license or terminate certification shall be consolidated whenever possible.~~

SEC. 7. Section 14574 of the Welfare and Institutions Code is amended to read:

14574. (a) The director shall terminate the Medi-Cal certification of any adult day health care provider at any time if he or she finds the provider is not in compliance with standards prescribed by this chapter or Chapter 7 (commencing with Section 14000) or regulations adopted pursuant to these chapters. The director shall give reasonable notice of his or her intention to terminate the certification to the provider and participants in the

1 center. The notice shall state the effective date of, and the reason
2 for, the termination.

3 ~~(b) The denial, suspension, or termination of certification shall~~
4 ~~be considered grounds for denial, suspension, or revocation of the~~
5 ~~license.~~

6 ~~(e)~~

7 (b) The California Department of Aging and the department
8 shall coordinate proceedings to deny an application for
9 certification, to terminate or suspend certification, or to revoke or
10 suspend licensure to the extent appropriate to ensure consistency
11 and uniformity.

12 ~~(d)~~

13 (c) The provider shall have the right to appeal the department's
14 decision made pursuant to Section 14123.

15 ~~(e)~~

16 (d) This section is not applicable to denials of initial certification
17 made pursuant to a moratorium imposed in accordance with Section
18 14043.46 of the Welfare and Institutions Code.

19 *SEC. 8. No reimbursement is required by this act pursuant to*
20 *Section 6 of Article XIII B of the California Constitution because*
21 *the only costs that may be incurred by a local agency or school*
22 *district will be incurred because this act creates a new crime or*
23 *infraction, eliminates a crime or infraction, or changes the penalty*
24 *for a crime or infraction, within the meaning of Section 17556 of*
25 *the Government Code, or changes the definition of a crime within*
26 *the meaning of Section 6 of Article XIII B of the California*
27 *Constitution.*

28 *SEC. 9. The sum of one thousand dollars (\$1,000) is hereby*
29 *appropriated from the General Fund to the State Department of*
30 *Public Health for administrative costs.*

31 *SEC. 10. This act is a bill providing for appropriations related*
32 *to the Budget Bill within the meaning of subdivision (e) of Section*
33 *12 of Article IV of the California Constitution, has been identified*
34 *as related to the budget in the Budget Bill, and shall take effect*
35 *immediately.*

36 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~
37 ~~changes relating to the Budget Act of 2011.~~

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