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AMENDED IN ASSEMBLY JUNE 30, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 24, 2011

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 770

Introduced by ~~Senator Evans~~ *Senators Steinberg and Evans*
(Principal coauthor: Assembly Member Beall)
(Coauthor: Assembly Member Fuentes)

February 18, 2011

~~An act to add Section 2864 to the Fish and Game Code, relating to marine resources.~~ *An act to add Section 1374.73 to the Health and Safety Code, and to add Sections 10144.51 and 10144.52 to the Insurance Code, relating to health care coverage.*

LEGISLATIVE COUNSEL'S DIGEST

SB 770, as amended, ~~Evans Steinberg~~. ~~Marine protected areas: Native American tribes.~~ *Health care coverage: mental illness: developmental disorder and autism.*

(1) Existing law provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. A willful violation of these provisions is a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law requires health care service plan contracts and health insurance

policies to provide benefits for specified conditions, including certain mental health conditions.

This bill would require those health care service plan contracts and health insurance policies to also provide coverage for behavioral health treatment, as defined, for pervasive developmental disorder or autism. The bill would provide, however, that no benefits are required to be provided that exceed the essential health benefits required under specified federal law. Because a violation of these provisions with respect to health care service plans would be a crime, the bill would impose a state-mandated local program.

(2) 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.

~~The Marine Life Protection Act (MLPA) establishes the Marine Life Protection Program to reexamine and redesign California's marine protected area system. Existing law requires the Department of Fish and Game to prepare, and the Fish and Game Commission to adopt, a master plan that guides the adoption and implementation of the program, including recommended alternative networks of marine protected areas. Under the MLPA, the taking of a marine species in a marine life reserve, a type of marine protected area, is prohibited for any purpose, including recreational and commercial fishing, except as authorized by the commission for scientific purposes.~~

~~This bill would authorize Native American tribes to submit proposals for comanagement of marine species within marine protected areas that are designated or proposed to be designated under the MLPA. The bill would require comanagement proposals to include prescribed information, and would require submission of the proposals to the Secretary of the Natural Resources Agency. The bill would authorize the secretary to request additional information before determining that a proposal is complete, and upon receipt of a proposal from the secretary, would require the Director of Fish and Game to consult with the tribe to develop memoranda of understanding or other agreements to, among other things, provide access to the tribe for traditional hunting and gathering and cultural activities. If multiple tribal governments or groups submit proposals to the secretary, the bill would require the secretary to prioritize the proposals for negotiation, as provided.~~

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) *Scientific research has established that behavioral health*
4 *treatment can significantly improve the cognitive function and*
5 *emotional capabilities, and reduce self-injurious behavior, for a*
6 *significant number of individuals with pervasive developmental*
7 *disorder or autism.*

8 (b) *Existing law requires health care service plan contracts and*
9 *health insurance policies to provide coverage for all medically*
10 *necessary treatment for individuals with pervasive developmental*
11 *disorder or autism pursuant to Section 1374.72 of the Health and*
12 *Safety Code and Section 10144.5 of the Insurance Code.*

13 (c) *Scientists, physicians, and other autism experts consider*
14 *behavioral health treatment an important and medically necessary*
15 *treatment for a significant number of individuals with pervasive*
16 *developmental disorder or autism.*

17 (d) *Despite Section 1374.72 of the Health and Safety Code,*
18 *Section 10144.5 of the Insurance Code, and the scientific literature*
19 *findings that behavioral health treatment is efficacious in the*
20 *treatment of pervasive developmental disorder and autism, some*
21 *health care service plans and health insurers continue to refuse*
22 *to cover medically necessary behavioral health treatment for*
23 *individuals with these disorders.*

24 (e) *Of the grievances and appeals that have been filed with the*
25 *Department of Managed Health Care and the Department of*
26 *Insurance, an increasing number of independent medical review*
27 *decisions have determined that behavioral health treatment is*
28 *medically necessary for the treatment of pervasive developmental*
29 *disorder or autism.*

30 (f) *Therefore, it is the intent of the Legislature to ensure that*
31 *behavioral health treatment is considered a covered benefit, when*
32 *it is medically necessary, for the treatment of pervasive*
33 *developmental disorder or autism.*

34 SEC. 2. *Section 1374.73 is added to the Health and Safety*
35 *Code, to read:*

1 1374.73. (a) (1) Every health care service plan contract
2 issued, amended, or renewed on or after January 1, 2012, that
3 provides hospital, medical, or surgical coverage pursuant to
4 Section 1374.72 shall provide coverage for behavioral health
5 treatment for pervasive developmental disorder or autism. The
6 coverage shall be provided in the same manner and shall be subject
7 to the same requirements as provided in Section 1374.72.

8 (2) Notwithstanding paragraph (1), this section does not require
9 any benefits to be provided that exceed the essential health benefits
10 required to be provided under Section 1302(b) of the federal
11 Patient Protection and Affordable Care Act (Public Law 111-148),
12 as amended by the federal Health Care and Education
13 Reconciliation Act of 2010 (Public Law 111-152).

14 (3) This section shall not be construed as reducing any
15 obligation to provide services to an individual under an
16 individualized family service plan as described in Section 95020
17 of the Government Code, an individualized program plan as
18 described in Section 4646 of the Welfare and Institutions Code, a
19 prevention program plan as described in Section 4435 of the
20 Welfare and Institutions Code, an individualized education
21 program as defined in Section 56032 of the Education Code, or
22 an individualized service plan as described in Section 5600.4 of
23 the Welfare and Institutions Code.

24 (b) Every health care service plan subject to this section shall
25 maintain an adequate network of qualified autism service
26 providers, and the plan shall comply with all applicable provisions
27 of this act or regulations adopted thereunder.

28 (c) (1) Notwithstanding any other provision of law, unlicensed
29 or uncertified staff may implement services if the qualified autism
30 service provider ensures that each staff person implementing
31 services pursuant to this section has adequate training and the
32 qualified autism service provider supervises these staff persons.

33 (2) Prior to implementing services, all unlicensed or uncertified
34 staff shall be subject to criminal background screening and
35 fingerprinting meeting requirements established by the department.

36 (d) For the purposes of this section, the following definitions
37 shall apply:

38 (1) "Behavioral health treatment" means professional services
39 and treatment programs, including, but not limited to, applied
40 behavior analysis and other intervention programs, such as Pivotal

1 *Response Therapy and Early Start Denver Model, that meet all of*
2 *the following criteria:*

3 (A) *The treatment is prescribed by a physician and surgeon*
4 *licensed pursuant to Chapter 5 (commencing with Section 2000)*
5 *of Division 2 of the Business and Professions Code.*

6 (B) *The treatment shall be derived from peer-reviewed literature*
7 *or scientific evidence-based research that has demonstrated*
8 *clinical efficacy in treating the symptoms or manifestations*
9 *associated with pervasive developmental disorder or autism.*

10 (C) *The treatment is provided or supervised by a qualified*
11 *autism service provider.*

12 (2) *“Pervasive developmental disorder or autism” shall have*
13 *the same meaning and interpretation as used in Section 1374.72.*

14 (3) *“Qualified autism service provider” shall include any*
15 *person, entity, or group that is nationally certified by an entity,*
16 *such as, but not limited to, the Behavior Analyst Certification*
17 *Board, that is accredited by the National Commission for Certifying*
18 *Agencies, or any person licensed as a physician and surgeon,*
19 *physical therapist, occupational therapist, psychologist, marriage*
20 *and family therapist, educational psychologist, clinical social*
21 *worker, professional clinical counselor, speech-language*
22 *pathologist, or audiologist, pursuant to Division 2 (commencing*
23 *with Section 500) of the Business and Professions Code, who*
24 *designs, supervises, or provides treatment for pervasive*
25 *developmental disorder or autism, provided the services are within*
26 *the experience and competence of the person, entity, or group that*
27 *is nationally certified or the licensee. A “qualified autism service*
28 *provider” shall also include both of the following:*

29 (A) *Any service provider that is approved as a vendor of a*
30 *regional center to provide those same services for pervasive*
31 *developmental disorder or autism pursuant to Division 4.5*
32 *(commencing with Section 4500) of the Welfare and Institutions*
33 *Code or Title 14 (commencing with Section 95000) of the*
34 *Government Code.*

35 (B) *A State Department of Education nonpublic, nonsectarian*
36 *agency, as defined in Section 56035 of the Education Code, that*
37 *is approved to provide those same services for pervasive*
38 *developmental disorder or autism.*

39 *SEC. 3. Section 10144.51 is added to the Insurance Code, to*
40 *read:*

1 10144.51. (a) (1) Every health insurance policy issued,
2 amended, or renewed on or after January 1, 2012, that provides
3 hospital, medical, or surgical coverage pursuant to Section 10144.5
4 shall provide coverage for behavioral health treatment for
5 pervasive developmental disorder or autism. The coverage shall
6 be provided in the same manner and shall be subject to the same
7 requirements as provided in Section 10144.5.

8 (2) Notwithstanding paragraph (1), this section does not require
9 any benefits to be provided that exceed the essential health benefits
10 required to be provided under Section 1302(b) of the federal
11 Patient Protection and Affordable Care Act (Public Law 111-148),
12 as amended by the federal Health Care and Education
13 Reconciliation Act of 2010 (Public Law 111-152).

14 (3) This section shall not be construed as reducing any
15 obligation to provide services to an individual under an
16 individualized family service plan as described in Section 95020
17 of the Government Code, an individualized program plan as
18 described in Section 4646 of the Welfare and Institutions Code, a
19 prevention program plan as described in Section 4435 of the
20 Welfare and Institutions Code, an individualized education
21 program as defined in Section 56032 of the Education Code, or
22 an individualized service plan as described in Section 5600.4 of
23 the Welfare and Institutions Code.

24 (b) Pursuant to Article 6 (commencing with Section 2240.1) of
25 Title 10 of the California Code of Regulations, every health insurer
26 subject to this section shall maintain an adequate network of
27 qualified autism service providers to ensure that all insureds have
28 timely access to qualified autism service providers, continuity of
29 care, and ready referral to in-network qualified autism service
30 providers.

31 (c) (1) Notwithstanding any other provision of law, unlicensed
32 or uncertified staff may implement services if the qualified autism
33 service provider ensures that each staff person implementing
34 services pursuant to this section has adequate training and the
35 qualified autism service provider supervises these staff persons.

36 (2) All unlicensed or uncertified staff implementing services
37 pursuant to this section shall be subject to criminal background
38 screening and fingerprinting meeting requirements established by
39 the department.

1 (d) For the purposes of this section, the following definitions
2 shall apply:

3 (1) “Behavioral health treatment” means professional services
4 and treatment programs, including, but not limited to, applied
5 behavior analysis and other intervention programs, such as Pivotal
6 Response Therapy and Early Start Denver Model, that meet all of
7 the following criteria:

8 (A) The treatment is prescribed by a physician and surgeon
9 licensed pursuant to Chapter 5 (commencing with Section 2000)
10 of Division 2 of the Business and Professions Code.

11 (B) The treatment shall be derived from peer-reviewed literature
12 or scientific evidence-based research that has demonstrated
13 clinical efficacy in treating the symptoms or manifestations
14 associated with pervasive developmental disorder or autism.

15 (C) The treatment is provided or supervised by a qualified
16 autism service provider.

17 (2) “Pervasive developmental disorder or autism” shall have
18 the same meaning and interpretation as used in Section 10144.5.

19 (3) “Qualified autism service provider” shall include any
20 person, entity, or group that is nationally certified by an entity,
21 such as, but not limited to, the Behavior Analyst Certification
22 Board, that is accredited by the National Commission for Certifying
23 Agencies, or any person licensed as a physician and surgeon,
24 physical therapist, occupational therapist, psychologist, marriage
25 and family therapist, educational psychologist, clinical social
26 worker, professional clinical counselor, speech-language
27 pathologist, or audiologist, pursuant to Division 2 (commencing
28 with Section 500) of the Business and Professions Code, who
29 designs, supervises, or provides treatment for pervasive
30 developmental disorder or autism, provided the services are within
31 the experience and competence of the person, entity, or group that
32 is nationally certified or the licensee. A “qualified autism service
33 provider” shall also include both of the following:

34 (A) Any service provider that is approved as a vendor of a
35 regional center to provide those same services for pervasive
36 developmental disorder or autism pursuant to Division 4.5
37 (commencing with Section 4500) of the Welfare and Institutions
38 Code or Title 14 (commencing with Section 95000) of the
39 Government Code.

1 (B) A State Department of Education nonpublic, nonsectarian
2 agency as defined in Section 56035 of the Education Code,
3 approved to provide those same services for pervasive
4 developmental disorder or autism.

5 SEC. 4. Section 10144.52 is added to the Insurance Code, to
6 read:

7 10144.52. For purposes of this part, the terms “provider,”
8 “professional provider,” “network provider,” “mental health
9 provider,” and “mental health professional” shall include the
10 term “qualified autism service provider” as defined in subdivision
11 (d) of Section 10144.51.

12 SEC. 5. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.

21 SECTION 1. Section 2864 is added to the Fish and Game Code,
22 to read:

23 ~~2864. (a) Any federally recognized Native American tribe or~~
24 ~~nonfederally recognized Native American tribe listed on the~~
25 ~~California Tribal Consultation List maintained by the Native~~
26 ~~American Heritage Commission, through its governing body, may~~
27 ~~submit a proposal for limited or full comanagement of marine~~
28 ~~species within marine protected areas designated or proposed to~~
29 ~~be designated under this chapter to the Secretary of the Natural~~
30 ~~Resources Agency. Two or more tribal governments may jointly~~
31 ~~submit a unified comanagement proposal.~~

32 ~~(b) A comanagement proposal shall include, but shall not be~~
33 ~~limited to, all of the following:~~

34 ~~(1) A description of the geographic boundaries of the area over~~
35 ~~which comanagement authority is sought.~~

36 ~~(2) A complete list of the species of interest to the tribe over~~
37 ~~which comanagement authority is sought.~~

38 ~~(3) A description of the proposed roles of the tribe and the State~~
39 ~~of California in identifying and sharing scientific data about the~~
40 ~~species of interest or their habitats.~~

1 ~~(4) A description of the proposed roles of the tribe and the State~~
2 ~~of California in recommending joint management policies.~~

3 ~~(5) A description of the proposed role of the tribe in enforcing~~
4 ~~the provisions of the comanagement agreement with its members.~~

5 ~~(6) A dispute resolution mechanism in the event of unresolved~~
6 ~~conflicts over obtaining or evaluating scientific data, enforcement~~
7 ~~mechanisms, and other matters that arise during the consultation~~
8 ~~undertaken pursuant to subdivision (e).~~

9 ~~(e) The Secretary of the Natural Resources Agency shall~~
10 ~~consider the comanagement proposal and may require additional~~
11 ~~or clarifying information before determining that the proposal is~~
12 ~~complete.~~

13 ~~(d) (1) If multiple tribal governments or groups of tribal~~
14 ~~governments submit proposals to the Secretary of the Natural~~
15 ~~Resources Agency, the secretary shall prioritize the proposals for~~
16 ~~negotiation by the extent to which a proposal includes multiple~~
17 ~~tribal governments, the overall importance of the species covered~~
18 ~~by the proposal to the implementation of this chapter, and other~~
19 ~~criteria identified by the secretary.~~

20 ~~(2) By July 1, 2012, the secretary shall forward the first proposal~~
21 ~~for negotiation to the director.~~

22 ~~(3) The director shall enter into negotiations pursuant to this~~
23 ~~section for only one memorandum of understanding or other~~
24 ~~agreement at a time.~~

25 ~~(4) Upon completion of an agreement or a determination by the~~
26 ~~secretary that negotiations have ceased, the secretary shall forward~~
27 ~~the next proposal in order of priority to the director for negotiation.~~

28 ~~(e) Upon receipt of a proposal from the Secretary of the Natural~~
29 ~~Resources Agency, the director shall consult with the tribal~~
30 ~~governing body, or the tribe's officially designated representative,~~
31 ~~on the tribe's request for comanagement of the resources that are~~
32 ~~the subject of the proposal. The objective of the consultation shall~~
33 ~~be to develop memoranda of understanding or other agreements~~
34 ~~between the tribe and the state that accomplish the following:~~

35 ~~(1) Provide access to the tribe for traditional hunting and~~
36 ~~gathering and cultural activities, recognizing that there may be~~
37 ~~other public use of the comanagement areas.~~

38 ~~(2) Establish protocols for comanagement of the comanagement~~
39 ~~areas.~~

- 1 ~~(3) Establish conservation strategies to ensure the preservation~~
- 2 ~~and enhancement of the resources of the comanagement areas to~~
- 3 ~~assist in meeting the science-based goals of this chapter.~~