

Introduced by Senator SteinbergJanuary 22, 2013

An act to amend Section 1374.73 of the Health and Safety Code, and to amend Sections 10144.51 and 10144.52 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 126, as introduced, Steinberg. Health care coverage: pervasive developmental disorder or autism.

Existing law provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. 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 coverage for behavioral health treatment, as defined, for pervasive developmental disorder or autism, except as specified. A willful violation of these provisions with respect to health care service plans is a crime. These provisions are inoperative on July 1, 2014, and are repealed on January 1, 2015.

This bill would extend the operation of these provisions until July 1, 2019, and would repeal these provisions on January 1, 2020. By extending the operation of provisions establishing crimes, the 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.

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

The people of the State of California do enact as follows:

1 SECTION 1. Section 1374.73 of the Health and Safety Code
2 is amended to read:

3 1374.73. (a) (1) Every health care service plan contract that
4 provides hospital, medical, or surgical coverage shall also provide
5 coverage for behavioral health treatment for pervasive
6 developmental disorder or autism no later than July 1, 2012. The
7 coverage shall be provided in the same manner and shall be subject
8 to the same requirements as provided in Section 1374.72.

9 (2) Notwithstanding paragraph (1), as of the date that proposed
10 final rulemaking for essential health benefits is issued, this section
11 does not require any benefits to be provided that exceed the
12 essential health benefits that all health plans will be required by
13 federal regulations to provide under Section 1302(b) of the federal
14 Patient Protection and Affordable Care Act (Public Law 111-148),
15 as amended by the federal Health Care and Education
16 Reconciliation Act of 2010 (Public Law 111-152).

17 (3) This section shall not affect services for which an individual
18 is eligible pursuant to Division 4.5 (commencing with Section
19 4500) of the Welfare and Institutions Code or Title 14
20 (commencing with Section 95000) of the Government Code.

21 (4) This section shall not affect or reduce any obligation to
22 provide services under an individualized education program, as
23 defined in Section 56032 of the Education Code, or an
24 ~~individualized~~ *individual* service plan, as described in Section
25 5600.4 of the Welfare and Institutions Code, or under the
26 Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400,
27 et seq.) and its implementing regulations.

28 (b) Every health care service plan subject to this section shall
29 maintain an adequate network that includes qualified autism service
30 providers who supervise and employ qualified autism service
31 professionals or paraprofessionals who provide and administer
32 behavioral health treatment. Nothing shall prevent a health care
33 service plan from selectively contracting with providers within
34 these requirements.

1 (c) 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 applied behavior analysis and
5 evidence-based behavior intervention programs, that develop or
6 restore, to the maximum extent practicable, the functioning of an
7 individual with pervasive developmental disorder or autism and
8 that meet all of the following criteria:

9 (A) The treatment is prescribed by a physician and surgeon
10 licensed pursuant to Chapter 5 (commencing with Section 2000)
11 of, or is developed by a psychologist licensed pursuant to Chapter
12 6.6 (commencing with Section 2900) of, Division 2 of the Business
13 and Professions Code.

14 (B) The treatment is provided under a treatment plan prescribed
15 by a qualified autism service provider and is administered by one
16 of the following:

17 (i) A qualified autism service provider.

18 (ii) A qualified autism service professional supervised and
19 employed by the qualified autism service provider.

20 (iii) A qualified autism service paraprofessional supervised and
21 employed by a qualified autism service provider.

22 (C) The treatment plan has measurable goals over a specific
23 timeline that is developed and approved by the qualified autism
24 service provider for the specific patient being treated. The treatment
25 plan shall be reviewed no less than once every six months by the
26 qualified autism service provider and modified whenever
27 appropriate, and shall be consistent with Section 4686.2 of the
28 Welfare and Institutions Code pursuant to which the qualified
29 autism service provider does all of the following:

30 (i) Describes the patient’s behavioral health impairments to be
31 treated.

32 (ii) Designs an intervention plan that includes the service type,
33 number of hours, and parent participation needed to achieve the
34 plan’s goal and objectives, and the frequency at which the patient’s
35 progress is evaluated and reported.

36 (iii) Provides intervention plans that utilize evidence-based
37 practices, with demonstrated clinical efficacy in treating pervasive
38 developmental disorder or autism.

1 (iv) Discontinues intensive behavioral intervention services
2 when the treatment goals and objectives are achieved or no longer
3 appropriate.

4 (D) The treatment plan is not used for purposes of providing or
5 for the reimbursement of respite, day care, or educational services
6 and is not used to reimburse a parent for participating in the
7 treatment program. The treatment plan shall be made available to
8 the health care service plan upon request.

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

11 (3) “Qualified autism service provider” means either of the
12 following:

13 (A) A person, entity, or group that is certified by a national
14 entity, such as the Behavior Analyst Certification Board, that is
15 accredited by the National Commission for Certifying Agencies,
16 and who designs, supervises, or provides treatment for pervasive
17 developmental disorder or autism, provided the services are within
18 the experience and competence of the person, entity, or group that
19 is nationally certified.

20 (B) A person licensed as a physician and surgeon, physical
21 therapist, occupational therapist, psychologist, marriage and family
22 therapist, educational psychologist, clinical social worker,
23 professional clinical counselor, speech-language pathologist, or
24 audiologist pursuant to Division 2 (commencing with Section 500)
25 of the Business and Professions Code, who designs, supervises,
26 or provides treatment for pervasive developmental disorder or
27 autism, provided the services are within the experience and
28 competence of the licensee.

29 (4) “Qualified autism service professional” means an individual
30 who meets all of the following criteria:

31 (A) Provides behavioral health treatment.

32 (B) Is employed and supervised by a qualified autism service
33 provider.

34 (C) Provides treatment pursuant to a treatment plan developed
35 and approved by the qualified autism service provider.

36 (D) Is a behavioral service provider approved as a vendor by a
37 California regional center to provide services as an Associate
38 Behavior Analyst, Behavior Analyst, Behavior Management
39 Assistant, Behavior Management Consultant, or Behavior

1 Management Program as defined in Section 54342 of Title 17 of
2 the California Code of Regulations.

3 (E) Has training and experience in providing services for
4 pervasive developmental disorder or autism pursuant to Division
5 4.5 (commencing with Section 4500) of the Welfare and
6 Institutions Code or Title 14 (commencing with Section 95000)
7 of the Government Code.

8 (5) “Qualified autism service paraprofessional” means an
9 unlicensed and uncertified individual who meets all of the
10 following criteria:

11 (A) Is employed and supervised by a qualified autism service
12 provider.

13 (B) Provides treatment and implements services pursuant to a
14 treatment plan developed and approved by the qualified autism
15 service provider.

16 (C) Meets the criteria set forth in the regulations adopted
17 pursuant to Section 4686.3 of the Welfare and Institutions Code.

18 (D) Has adequate education, training, and experience, as
19 certified by a qualified autism service provider.

20 (d) This section shall not apply to the following:

21 (1) A specialized health care service plan that does not deliver
22 mental health or behavioral health services to enrollees.

23 (2) A health care service plan contract in the Medi-Cal program
24 (Chapter 7 (commencing with Section 14000) of Part 3 of Division
25 9 of the Welfare and Institutions Code).

26 (3) A health care service plan contract in the Healthy Families
27 Program (Part 6.2 (commencing with Section 12693) of Division
28 2 of the Insurance Code).

29 (4) A health care benefit plan or contract entered into with the
30 Board of Administration of the Public Employees’ Retirement
31 System pursuant to the Public Employees’ Medical and Hospital
32 Care Act (Part 5 (commencing with Section 22750) of Division 5
33 of Title 2 of the Government Code).

34 (e) Nothing in this section shall be construed to limit the
35 obligation to provide services under Section 1374.72.

36 (f) As provided in Section 1374.72 and in paragraph (1) of
37 subdivision (a), in the provision of benefits required by this section,
38 a health care service plan may utilize case management, network
39 providers, utilization review techniques, prior authorization,
40 copayments, or other cost sharing.

1 (g) This section shall become inoperative on July 1, ~~2014~~ 2019,
2 and, as of January 1, ~~2015~~ 2020, is repealed, unless a later enacted
3 statute, that becomes operative on or before January 1, ~~2015~~ 2020,
4 deletes or extends the dates on which it becomes inoperative and
5 is repealed.

6 SEC. 2. Section 10144.51 of the Insurance Code is amended
7 to read:

8 10144.51. (a) (1) Every health insurance policy shall also
9 provide coverage for behavioral health treatment for pervasive
10 developmental disorder or autism no later than July 1, 2012. The
11 coverage shall be provided in the same manner and shall be subject
12 to the same requirements as provided in Section 10144.5.

13 (2) Notwithstanding paragraph (1), as of the date that proposed
14 final rulemaking for essential health benefits is issued, this section
15 does not require any benefits to be provided that exceed the
16 essential health benefits that all health insurers will be required by
17 federal regulations to provide under Section 1302(b) of the federal
18 Patient Protection and Affordable Care Act ~~(P.L. (Public Law~~
19 ~~111-148)~~, as amended by the federal Health Care and Education
20 Reconciliation Act of 2010 ~~(P.L. (Public Law 111-152)~~.

21 (3) This section shall not affect services for which an individual
22 is eligible pursuant to Division 4.5 (commencing with Section
23 4500) of the Welfare and Institutions Code or Title 14
24 (commencing with Section 95000) of the Government Code.

25 (4) This section shall not affect or reduce any obligation to
26 provide services under an individualized education program, as
27 defined in Section 56032 of the Education Code, or an
28 ~~individualized~~ *individual* service plan, as described in Section
29 5600.4 of the Welfare and Institutions Code, or under the
30 Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400
31 et seq.) and its implementing regulations.

32 (b) Pursuant to Article 6 (commencing with Section 2240) of
33 Title 10 of the California Code of Regulations, every health insurer
34 subject to this section shall maintain an adequate network that
35 includes qualified autism service providers who supervise and
36 employ qualified autism service professionals or paraprofessionals
37 who provide and administer behavioral health treatment. Nothing
38 shall prevent a health insurer from selectively contracting with
39 providers within these requirements.

1 (c) 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 applied behavior analysis and
5 evidence-based behavior intervention programs, that develop or
6 restore, to the maximum extent practicable, the functioning of an
7 individual with pervasive developmental disorder or autism, and
8 that meet all of the following criteria:

9 (A) The treatment is prescribed by a physician and surgeon
10 licensed pursuant to Chapter 5 (commencing with Section 2000)
11 of, or is developed by a psychologist licensed pursuant to Chapter
12 6.6 (commencing with Section 2900) of, Division 2 of the Business
13 and Professions Code.

14 (B) The treatment is provided under a treatment plan prescribed
15 by a qualified autism service provider and is administered by one
16 of the following:

17 (i) A qualified autism service provider.

18 (ii) A qualified autism service professional supervised and
19 employed by the qualified autism service provider.

20 (iii) A qualified autism service paraprofessional supervised and
21 employed by a qualified autism service provider.

22 (C) The treatment plan has measurable goals over a specific
23 timeline that is developed and approved by the qualified autism
24 service provider for the specific patient being treated. The treatment
25 plan shall be reviewed no less than once every six months by the
26 qualified autism service provider and modified whenever
27 appropriate, and shall be consistent with Section 4686.2 of the
28 Welfare and Institutions Code pursuant to which the qualified
29 autism service provider does all of the following:

30 (i) Describes the patient’s behavioral health impairments to be
31 treated.

32 (ii) Designs an intervention plan that includes the service type,
33 number of hours, and parent participation needed to achieve the
34 plan’s goal and objectives, and the frequency at which the patient’s
35 progress is evaluated and reported.

36 (iii) Provides intervention plans that utilize evidence-based
37 practices, with demonstrated clinical efficacy in treating pervasive
38 developmental disorder or autism.

1 (iv) Discontinues intensive behavioral intervention services
2 when the treatment goals and objectives are achieved or no longer
3 appropriate.

4 (D) The treatment plan is not used for purposes of providing or
5 for the reimbursement of respite, day care, or educational services
6 and is not used to reimburse a parent for participating in the
7 treatment program. The treatment plan shall be made available to
8 the insurer upon request.

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

11 (3) “Qualified autism service provider” means either of the
12 following:

13 (A) A person, entity, or group that is certified by a national
14 entity, such as the Behavior Analyst Certification Board, that is
15 accredited by the National Commission for Certifying Agencies,
16 and who designs, supervises, or provides treatment for pervasive
17 developmental disorder or autism, provided the services are within
18 the experience and competence of the person, entity, or group that
19 is nationally certified.

20 (B) A person licensed as a physician and surgeon, physical
21 therapist, occupational therapist, psychologist, marriage and family
22 therapist, educational psychologist, clinical social worker,
23 professional clinical counselor, speech-language pathologist, or
24 audiologist pursuant to Division 2 (commencing with Section 500)
25 of the Business and Professions Code, who designs, supervises,
26 or provides treatment for pervasive developmental disorder or
27 autism, provided the services are within the experience and
28 competence of the licensee.

29 (4) “Qualified autism service professional” means an individual
30 who meets all of the following criteria:

31 (A) Provides behavioral health treatment.

32 (B) Is employed and supervised by a qualified autism service
33 provider.

34 (C) Provides treatment pursuant to a treatment plan developed
35 and approved by the qualified autism service provider.

36 (D) Is a behavioral service provider approved as a vendor by a
37 California regional center to provide services as an Associate
38 Behavior Analyst, Behavior Analyst, Behavior Management
39 Assistant, Behavior Management Consultant, or Behavior

1 Management Program as defined in Section 54342 of Title 17 of
2 the California Code of Regulations.

3 (E) Has training and experience in providing services for
4 pervasive developmental disorder or autism pursuant to Division
5 4.5 (commencing with Section 4500) of the Welfare and
6 Institutions Code or Title 14 (commencing with Section 95000)
7 of the Government Code.

8 (5) “Qualified autism service paraprofessional” means an
9 unlicensed and uncertified individual who meets all of the
10 following criteria:

11 (A) Is employed and supervised by a qualified autism service
12 provider.

13 (B) Provides treatment and implements services pursuant to a
14 treatment plan developed and approved by the qualified autism
15 service provider.

16 (C) Meets the criteria set forth in the regulations adopted
17 pursuant to Section 4686.3 of the Welfare and Institutions Code.

18 (D) Has adequate education, training, and experience, as
19 certified by a qualified autism service provider.

20 (d) This section shall not apply to the following:

21 (1) A specialized health insurance policy that does not cover
22 mental health or behavioral health services or an accident only,
23 specified disease, hospital indemnity, or Medicare supplement
24 policy.

25 (2) A health insurance policy in the Medi-Cal program (Chapter
26 7 (commencing with Section 14000) of Part 3 of Division 9 of the
27 Welfare and Institutions Code).

28 (3) A health insurance policy in the Healthy Families Program
29 (Part 6.2 (commencing with Section 12693)).

30 (4) A health care benefit plan or policy entered into with the
31 Board of Administration of the Public Employees’ Retirement
32 System pursuant to the Public Employees’ Medical and Hospital
33 Care Act (Part 5 (commencing with Section 22750) of Division 5
34 of Title 2 of the Government Code).

35 (e) Nothing in this section shall be construed to limit the
36 obligation to provide services under Section 10144.5.

37 (f) As provided in Section 10144.5 and in paragraph (1) of
38 subdivision (a), in the provision of benefits required by this section,
39 a health insurer may utilize case management, network providers,

1 utilization review techniques, prior authorization, copayments, or
2 other cost sharing.

3 (g) This section shall become inoperative on July 1, ~~2014~~ 2019,
4 and, as of January 1, ~~2015~~ 2020, is repealed, unless a later enacted
5 statute, that becomes operative on or before January 1, ~~2015~~ 2020,
6 deletes or extends the dates on which it becomes inoperative and
7 is repealed.

8 SEC. 3. Section 10144.52 of the Insurance Code is amended
9 to read:

10 10144.52. (a) For purposes of this part, the terms “provider,”
11 “professional provider,” “network provider,” “mental health
12 provider,” and “mental health professional” shall include the term
13 “qualified autism service provider,” as defined in subdivision (c)
14 of Section 10144.51.

15 (b) This section shall become inoperative on July 1, ~~2014~~ 2019,
16 and, as of January 1, ~~2015~~ 2020, is repealed, unless a later enacted
17 statute, that becomes operative on or before January 1, ~~2015~~ 2020,
18 deletes or extends the dates on which it becomes inoperative and
19 is repealed.

20 SEC. 4. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.