

AMENDED IN ASSEMBLY APRIL 22, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2041

Introduced by Assembly Member Jones

February 20, 2014

An act to amend Section 1374.73 of the Health and Safety Code, to amend Section 10144.51 of the Insurance Code, and to add Section 4648.32 to the Welfare and Institutions Code, relating to health.

LEGISLATIVE COUNSEL'S DIGEST

AB 2041, as amended, Jones. Developmental services: regional centers: behavioral health treatment.

The Lanterman Developmental Disabilities Services Act requires the State Department of Developmental Services to enter into contracts with private nonprofit corporations to operate regional centers for the provision of community services and supports for persons with developmental disabilities and their families. Regulations adopted under that act require a regional center to classify a vendor of services provided by the regional center as a behavior management consultant or behavior management assistant if the vendor designs or implements behavior management intervention services, possesses specified experience in designing or implementing those services, and meets other specified licensure and education requirements.

This bill would require that a regional center classify a vendor as a behavior management consultant or behavior management assistant if the vendor designs or implements behavioral health treatment, has a

specified amount of experience in designing or implementing that treatment, and meets other licensure and education requirements.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. Existing law also 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 coverage for behavioral health treatment for pervasive developmental disorder or autism until January 1, 2017, and defines behavioral health treatment to mean specified services provided by, among others, a qualified autism service professional supervised and employed by a qualified autism service provider. For purposes of this provision, existing law defines a “qualified autism service professional” to mean a person who, among other requirements, is a behavior service provider approved as a vendor by a California regional center to provide services as an associate behavior analyst, behavior management assistant, behavior management consultant, or behavior management program pursuant to specified regulations adopted under the Lanterman Developmental Disabilities Services Act.

This bill would instead require that the behavior management assistant or behavior management consultant be approved as a California regional center vendor under the provisions described above.

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

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 is subject to
8 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

1 Patient Protection and Affordable Care Act (Public Law 111-148),
2 as amended by the federal Health Care and Education
3 Reconciliation Act of 2010 (Public Law 111-152).

4 (3) This section shall not affect services for which an individual
5 is eligible pursuant to Division 4.5 (commencing with Section
6 4500) of the Welfare and Institutions Code or Title 14
7 (commencing with Section 95000) of the Government Code.

8 (4) This section shall not affect or reduce any obligation to
9 provide services under an individualized education program, as
10 defined in Section 56032 of the Education Code, or an individual
11 service plan, as described in Section 5600.4 of the Welfare and
12 Institutions Code, or under the federal Individuals with Disabilities
13 Education Act (20 U.S.C. Sec. 1400 et seq.) and its implementing
14 regulations.

15 (b) Every health care service plan subject to this section shall
16 maintain an adequate network that includes qualified autism service
17 providers who supervise and employ qualified autism service
18 professionals or paraprofessionals who provide and administer
19 behavioral health treatment. Nothing shall prevent a health care
20 service plan from selectively contracting with providers within
21 these requirements.

22 (c) For the purposes of this section, the following definitions
23 shall apply:

24 (1) “Behavioral health treatment” means professional services
25 and treatment programs, including applied behavior analysis and
26 evidence-based behavior intervention programs, that develop or
27 restore, to the maximum extent practicable, the functioning of an
28 individual with pervasive developmental disorder or autism and
29 that meet all of the following criteria:

30 (A) The treatment is prescribed by a physician and surgeon
31 licensed pursuant to Chapter 5 (commencing with Section 2000)
32 of, or is developed by a psychologist licensed pursuant to Chapter
33 6.6 (commencing with Section 2900) of, Division 2 of the Business
34 and Professions Code.

35 (B) The treatment is provided under a treatment plan prescribed
36 by a qualified autism service provider and is administered by one
37 of the following:

38 (i) A qualified autism service provider.

39 (ii) A qualified autism service professional supervised and
40 employed by the qualified autism service provider.

- 1 (iii) A qualified autism service paraprofessional supervised and
2 employed by a qualified autism service provider.
- 3 (C) The treatment plan has measurable goals over a specific
4 timeline that is developed and approved by the qualified autism
5 service provider for the specific patient being treated. The treatment
6 plan shall be reviewed no less than once every six months by the
7 qualified autism service provider and modified whenever
8 appropriate, and shall be consistent with Section 4686.2 of the
9 Welfare and Institutions Code pursuant to which the qualified
10 autism service provider does all of the following:
 - 11 (i) Describes the patient’s behavioral health impairments or
12 developmental challenges that are to be treated.
 - 13 (ii) Designs an intervention plan that includes the service type,
14 number of hours, and parent participation needed to achieve the
15 plan’s goal and objectives, and the frequency at which the patient’s
16 progress is evaluated and reported.
 - 17 (iii) Provides intervention plans that utilize evidence-based
18 practices, with demonstrated clinical efficacy in treating pervasive
19 developmental disorder or autism.
 - 20 (iv) Discontinues intensive behavioral intervention services
21 when the treatment goals and objectives are achieved or no longer
22 appropriate.
- 23 (D) The treatment plan is not used for purposes of providing or
24 for the reimbursement of respite, day care, or educational services
25 and is not used to reimburse a parent for participating in the
26 treatment program. The treatment plan shall be made available to
27 the health care service plan upon request.
- 28 (2) “Pervasive developmental disorder or autism” shall have
29 the same meaning and interpretation as used in Section 1374.72.
- 30 (3) “Qualified autism service provider” means either of the
31 following:
 - 32 (A) A person, entity, or group that is certified by a national
33 entity, such as the Behavior Analyst Certification Board, that is
34 accredited by the National Commission for Certifying Agencies,
35 and who designs, supervises, or provides treatment for pervasive
36 developmental disorder or autism, provided the services are within
37 the experience and competence of the person, entity, or group that
38 is nationally certified.
 - 39 (B) A person licensed as a physician and surgeon, physical
40 therapist, occupational therapist, psychologist, marriage and family

1 therapist, educational psychologist, clinical social worker,
2 professional clinical counselor, speech-language pathologist, or
3 audiologist pursuant to Division 2 (commencing with Section 500)
4 of the Business and Professions Code, who designs, supervises,
5 or provides treatment for pervasive developmental disorder or
6 autism, provided the services are within the experience and
7 competence of the licensee.

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

10 (A) Provides behavioral health treatment.

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

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

15 (D) Is a behavioral service provider approved as a vendor by a
16 California regional center to provide services as an Associate
17 Behavior Analyst, Behavior Analyst, or Behavior Management
18 Program as defined in Section 54342 of Title 17 of the California
19 Code of Regulations or as a Behavior Management Assistant or
20 Behavior Management Consultant pursuant to Section 4648.32 of
21 the Welfare and Institutions Code.

22 (E) Has training and experience in providing services for
23 pervasive developmental disorder or autism pursuant to Division
24 4.5 (commencing with Section 4500) of the Welfare and
25 Institutions Code or Title 14 (commencing with Section 95000)
26 of the Government Code.

27 (5) “Qualified autism service paraprofessional” means an
28 unlicensed and uncertified individual who meets all of the
29 following criteria:

30 (A) Is employed and supervised by a qualified autism service
31 provider.

32 (B) Provides treatment and implements services pursuant to a
33 treatment plan developed and approved by the qualified autism
34 service provider.

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

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

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

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

3 (2) A health care service plan contract in the Medi-Cal program
4 (Chapter 7 (commencing with Section 14000) of Part 3 of Division
5 9 of the Welfare and Institutions Code).

6 (3) A health care service plan contract in the Healthy Families
7 Program (Part 6.2 (commencing with Section 12693) of Division
8 2 of the Insurance Code).

9 (4) A health care benefit plan or contract entered into with the
10 Board of Administration of the Public Employees' Retirement
11 System pursuant to the Public Employees' Medical and Hospital
12 Care Act (Part 5 (commencing with Section 22750) of Division 5
13 of Title 2 of the Government Code).

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

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

21 (g) This section shall remain in effect only until January 1, 2017,
22 and as of that date is repealed, unless a later enacted statute, that
23 is enacted before January 1, 2017, deletes or extends that date.

24 SEC. 2. Section 10144.51 of the Insurance Code is amended
25 to read:

26 10144.51. (a) (1) Every health insurance policy shall also
27 provide coverage for behavioral health treatment for pervasive
28 developmental disorder or autism no later than July 1, 2012. The
29 coverage shall be provided in the same manner and shall be subject
30 to the same requirements as provided in Section 10144.5.

31 (2) Notwithstanding paragraph (1), as of the date that proposed
32 final rulemaking for essential health benefits is issued, this section
33 does not require any benefits to be provided that exceed the
34 essential health benefits that all health insurers will be required by
35 federal regulations to provide under Section 1302(b) of the federal
36 Patient Protection and Affordable Care Act (Public Law 111-148),
37 as amended by the federal Health Care and Education
38 Reconciliation Act of 2010 (Public Law 111-152).

39 (3) This section shall not affect services for which an individual
40 is eligible pursuant to Division 4.5 (commencing with Section

1 4500) of the Welfare and Institutions Code or Title 14
2 (commencing with Section 95000) of the Government Code.

3 (4) This section shall not affect or reduce any obligation to
4 provide services under an individualized education program, as
5 defined in Section 56032 of the Education Code, or an individual
6 service plan, as described in Section 5600.4 of the Welfare and
7 Institutions Code, or under the federal Individuals with Disabilities
8 Education Act (20 U.S.C. Sec. 1400 et seq.) and its implementing
9 regulations.

10 (b) Pursuant to Article 6 (commencing with Section 2240) of
11 Title 10 of the California Code of Regulations, every health insurer
12 subject to this section shall maintain an adequate network that
13 includes qualified autism service providers who supervise and
14 employ qualified autism service professionals or paraprofessionals
15 who provide and administer behavioral health treatment. Nothing
16 shall prevent a health insurer from selectively contracting with
17 providers within these requirements.

18 (c) For the purposes of this section, the following definitions
19 shall apply:

20 (1) “Behavioral health treatment” means professional services
21 and treatment programs, including applied behavior analysis and
22 evidence-based behavior intervention programs, that develop or
23 restore, to the maximum extent practicable, the functioning of an
24 individual with pervasive developmental disorder or autism, and
25 that meet all of the following criteria:

26 (A) The treatment is prescribed by a physician and surgeon
27 licensed pursuant to Chapter 5 (commencing with Section 2000)
28 of, or is developed by a psychologist licensed pursuant to Chapter
29 6.6 (commencing with Section 2900) of, Division 2 of the Business
30 and Professions Code.

31 (B) The treatment is provided under a treatment plan prescribed
32 by a qualified autism service provider and is administered by one
33 of the following:

34 (i) A qualified autism service provider.

35 (ii) A qualified autism service professional supervised and
36 employed by the qualified autism service provider.

37 (iii) A qualified autism service paraprofessional supervised and
38 employed by a qualified autism service provider.

39 (C) The treatment plan has measurable goals over a specific
40 timeline that is developed and approved by the qualified autism

1 service provider for the specific patient being treated. The treatment
2 plan shall be reviewed no less than once every six months by the
3 qualified autism service provider and modified whenever
4 appropriate, and shall be consistent with Section 4686.2 of the
5 Welfare and Institutions Code pursuant to which the qualified
6 autism service provider does all of the following:

7 (i) Describes the patient’s behavioral health impairments or
8 developmental challenges that are to be treated.

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

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

16 (iv) Discontinues intensive behavioral intervention services
17 when the treatment goals and objectives are achieved or no longer
18 appropriate.

19 (D) The treatment plan is not used for purposes of providing or
20 for the reimbursement of respite, day care, or educational services
21 and is not used to reimburse a parent for participating in the
22 treatment program. The treatment plan shall be made available to
23 the insurer upon request.

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

26 (3) “Qualified autism service provider” means either of the
27 following:

28 (A) A person, entity, or group that is certified by a national
29 entity, such as the Behavior Analyst Certification Board, that is
30 accredited by the National Commission for Certifying Agencies,
31 and who designs, supervises, or provides treatment for pervasive
32 developmental disorder or autism, provided the services are within
33 the experience and competence of the person, entity, or group that
34 is nationally certified.

35 (B) A person licensed as a physician and surgeon, physical
36 therapist, occupational therapist, psychologist, marriage and family
37 therapist, educational psychologist, clinical social worker,
38 professional clinical counselor, speech-language pathologist, or
39 audiologist pursuant to Division 2 (commencing with Section 500)
40 of the Business and Professions Code, who designs, supervises,

1 or provides treatment for pervasive developmental disorder or
2 autism, provided the services are within the experience and
3 competence of the licensee.

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

6 (A) Provides behavioral health treatment.

7 (B) Is employed and supervised by a qualified autism service
8 provider.

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

11 (D) Is a behavioral service provider approved as a vendor by a
12 California regional center to provide services as an Associate
13 Behavior Analyst, Behavior Analyst, or Behavior Management
14 Program as defined in Section 54342 of Title 17 of the California
15 Code of Regulations or as a Behavior Management Assistant or
16 Behavior Management Consultant pursuant to Section 4648.32 of
17 the Welfare and Institutions Code.

18 (E) Has training and experience in providing services for
19 pervasive developmental disorder or autism pursuant to Division
20 4.5 (commencing with Section 4500) of the Welfare and
21 Institutions Code or Title 14 (commencing with Section 95000)
22 of the Government Code.

23 (5) “Qualified autism service paraprofessional” means an
24 unlicensed and uncertified individual who meets all of the
25 following criteria:

26 (A) Is employed and supervised by a qualified autism service
27 provider.

28 (B) Provides treatment and implements services pursuant to a
29 treatment plan developed and approved by the qualified autism
30 service provider.

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

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

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

36 (1) A specialized health insurance policy that does not cover
37 mental health or behavioral health services or an accident only,
38 specified disease, hospital indemnity, or Medicare supplement
39 policy.

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

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

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

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

13 (f) As provided in Section 10144.5 and in paragraph (1) of
 14 subdivision (a), in the provision of benefits required by this section,
 15 a health insurer may utilize case management, network providers,
 16 utilization review techniques, prior authorization, copayments, or
 17 other cost sharing.

18 (g) This section shall remain in effect only until January 1, 2017,
 19 and as of that date is repealed, unless a later enacted statute, that
 20 is enacted before January 1, 2017, deletes or extends that date.

21 SEC. 3. Section 4648.32 is added to the Welfare and
 22 Institutions Code, to read:

23 4648.32. (a) *For purposes of this section, “behavioral health*
 24 *treatment” shall have the same meaning as provided in Article*
 25 *5.6 (commencing with Section 1374.60) of Chapter 2.2 of Division*
 26 *2 of the Health and Safety Code and Article 2.5 (commencing with*
 27 *Section 10140) of Chapter 1 of Part 2 of Division 2 of the*
 28 *Insurance Code.*

29 (b) A regional center shall classify a vendor as a Behavior
 30 Management Assistant if the vendor does both of the following:

31 (1) Designs or implements behavioral health treatments under
 32 the direct supervision of a Behavior Management Consultant,
 33 classified as provided in subdivision ~~(b)~~ (c), or assesses the function
 34 of a behavior of a consumer and designs, implements, and evaluates
 35 instructional and environmental modifications to produce socially
 36 significant improvements in the consumer’s behavior through skill
 37 acquisition and the reduction of behavior, under direct supervision
 38 of a Behavior Analyst, classified as provided in Section 54342 of
 39 Title 17 of the California Code of Regulations, or a Behavior

1 Management Consultant, classified as provided in subdivision ~~(b)~~
2 (c).

3 (2) Meets either of the following requirements:

4 (A) Possesses a bachelor of arts or science degree and has either
5 of the following:

6 (i) Twelve semester units of applied behavior analysis or
7 behavioral health *treatment* and one year of experience in designing
8 or implementing behavioral health treatment.

9 (ii) Two years of experience in designing or implementing
10 behavioral health treatment.

11 (B) Is either of the following:

12 (i) A registered psychological assistant or ~~registered~~ *licensed*
13 psychologist pursuant to Chapter 6.6 (commencing with Section
14 2900) of Division 2 of the Business and Professions Code.

15 (ii) An associate-~~licensed~~ clinical social worker registered with
16 the Board of Behavioral Sciences pursuant to Section 4996.18 of
17 the Business and Professions Code.

18 (3) *For purposes of this section, a regional center shall only*
19 *classify as a vendor a Behavior Management Assistant who designs*
20 *or implements behavioral health treatments that are consistent*
21 *with the vendor's experience and education.*

22 ~~(b)~~

23 (c) A regional center shall classify a vendor as a Behavior
24 Management Consultant if the vendor designs or implements
25 behavioral health treatments and meets all of the following
26 requirements:

27 (1) Has two years of experience designing and implementing
28 behavioral health treatments.

29 (2) Is licensed as one of the following:

30 (A) A psychologist pursuant to Chapter 6.6 (commencing with
31 Section 2900) of Division 2 of the Business and Professions Code.

32 (B) A licensed clinical social worker pursuant to Chapter 14
33 (commencing with Section 4991) of Division 2 of the Business
34 and Professions Code.

35 (C) A licensed marriage and family therapist pursuant to Chapter
36 13 (commencing with Section 4980) of Division 2 of the Business
37 and Professions Code.

38 (D) Any other licensed professional under the laws of this state
39 whose license permits the design or implementation of behavioral
40 health treatments.

1 (3) For individuals vended as a behavior management
2 consultant prior to, or as of, December 31, 2006, have completed
3 12 semester units in applied behavior analysis by December 31,
4 2008.

5 (4) For individuals vended as a behavior management
6 consultant on or after January 1, 2007, completes 12 semester units
7 of applied behavior analysis or behavioral health *treatment*.

8 (5) *For purposes of this section, a regional center shall only*
9 *classify as a vendor a Behavior Management Consultant who*
10 *designs or implements behavioral health treatments that are*
11 *consistent with the vendor's experience and education.*