

Introduced by Senator PortantinoFebruary 15, 2017

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

LEGISLATIVE COUNSEL'S DIGEST

SB 399, as introduced, Portantino. Health care coverage: pervasive developmental disorder or autism.

Existing law, the Lanterman Developmental Disabilities Services Act, requires the State Department of Developmental Services to contract with regional centers to provide services and supports to individuals with developmental disabilities and their families. Existing law defines developmental disability for these purposes, to include, among other things, autism.

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 and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law requires a health care service plan contract or a health insurance policy to provide coverage for behavioral health treatment for pervasive developmental disorder or autism, 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 behavioral service provider approved as a vendor by a California regional center to provide services as an associate behavior

analyst, 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, among other things, would instead define a “qualified autism service professional” to mean a person who, among other requirements, is a behavioral service provider who meets the State Department of Developmental Services’ education and experience qualifications to be approved as a vendor by a California regional center to provide behavior intervention services or as an adaptive skills trainer, associate behavior analyst, behavior analyst, behavior management assistant, behavior management consultant, or behavior management program if the services are within the experience and competence of the professional.

This bill would require that the treatment plan be reviewed, as specified. The bill would specify that health care service plans and health insurers are not required to provide reimbursement for services delivered by school personnel pursuant to an enrollee’s individualized educational program unless otherwise required by law, that lack of parent or caregiver participation not be used to deny or reduce medically necessary behavioral health treatment, and that the setting, location, or time of treatment not be used as a reason to deny medically necessary behavioral health treatment. Because a willful violation of the bill’s provisions by a health care service plan would be a crime, it 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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Autism and other pervasive developmental disorders are
- 4 complex neurobehavioral disorders that include impairments in
- 5 social communication and social interaction combined with rigid,
- 6 repetitive behaviors, interests, and activities.

1 (b) Autism covers a large spectrum of symptoms and levels of
2 impairment ranging in severity from somewhat limiting to a severe
3 disability that may require institutional care.

4 (c) One in 68 children born today will be diagnosed with autism
5 or another pervasive developmental disorder.

6 (d) Research has demonstrated that children diagnosed with
7 autism can often be helped with early administration of behavioral
8 health treatment.

9 (e) There are several forms of evidence-based behavioral health
10 treatment, including, but not limited to, applied behavioral analysis.

11 (f) Children diagnosed with autism respond differently to
12 behavioral health treatment.

13 (g) It is critical that each child diagnosed with autism receives
14 the specific type of evidence-based behavioral health treatment
15 best suited to him or her, as prescribed by his or her physician or
16 developed by a psychologist.

17 (h) The Legislature intends that evidence-based behavioral
18 health treatment be covered by health care service plans, pursuant
19 to Section 1374.73 of the Health and Safety Code, and health
20 insurance policies, pursuant to Section 10144.51 of the Insurance
21 Code.

22 (i) The Legislature intends that health care service plan provider
23 networks include qualified professionals practicing all forms of
24 evidence-based behavioral health.

25 SEC. 2. Section 1374.73 of the Health and Safety Code is
26 amended to read:

27 1374.73. (a) (1) Every health care service plan contract that
28 provides hospital, medical, or surgical coverage shall also provide
29 coverage for behavioral health treatment for pervasive
30 developmental disorder or autism no later than July 1, 2012. The
31 coverage shall be provided in the same manner and shall be subject
32 to the same requirements as provided in Section 1374.72.

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

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

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

12 (5) *This section shall not be construed to require a health care*
13 *service plan to provide reimbursement for services delivered by*
14 *school personnel pursuant to an enrollee's individualized*
15 *educational program unless otherwise required by law.*

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

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

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

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

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

39 (i) A qualified autism service provider.

1 (ii) A qualified autism service professional supervised and
2 employed by the qualified autism service provider.

3 (iii) A qualified autism service paraprofessional supervised and
4 employed by a qualified autism service provider.

5 (C) The treatment plan has measurable goals over a specific
6 timeline that is developed and approved by the qualified autism
7 service provider for the specific patient being treated. The treatment
8 plan shall be reviewed ~~no-less more~~ than once every six months
9 *or less than once every 12 months* by the qualified autism service
10 ~~provider~~ *provider, unless a shorter period is recommended by the*
11 *qualified autism service provider*, and modified whenever
12 appropriate, and shall be consistent with Section 4686.2 of the
13 Welfare and Institutions Code pursuant to which the qualified
14 autism service provider does all of the following:

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

17 (ii) Designs an intervention plan that includes the service type,
18 number of hours, and parent participation needed to achieve the
19 plan’s goal and objectives, and the frequency at which the patient’s
20 progress is evaluated and reported. *Lack of parent or caregiver*
21 *participation shall not be used to deny or reduce medically*
22 *necessary behavioral health treatment.*

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

26 (iv) Discontinues intensive behavioral intervention services
27 when the treatment goals and objectives are achieved or no longer
28 appropriate.

29 (v) *Makes the treatment plan available to the health care service*
30 *plan upon request.*

31 (D) The treatment plan is not used for purposes of providing or
32 for the reimbursement of respite, day care, or educational services
33 and is not used to reimburse a parent for participating in the
34 treatment program. ~~The treatment plan shall be made available to~~
35 ~~the health care service plan upon request.~~

36 (E) *The setting, location, or time of treatment shall not be used*
37 *as a reason to deny treatment.*

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

1 (3) “Qualified autism service provider” means either of the
2 following:

3 (A) A person, entity, or group that is certified by a national
4 entity, such as the Behavior Analyst Certification Board, that is
5 accredited by the National Commission for Certifying Agencies,
6 and who designs, supervises, or provides treatment for pervasive
7 developmental disorder or autism, provided the services are within
8 the experience and competence of the person, entity, or group that
9 is nationally certified.

10 (B) A person licensed as a physician and surgeon, physical
11 therapist, occupational therapist, psychologist, marriage and family
12 therapist, educational psychologist, clinical social worker,
13 professional clinical counselor, speech-language pathologist, or
14 audiologist pursuant to Division 2 (commencing with Section 500)
15 of the Business and Professions Code, who designs, supervises,
16 or provides treatment for pervasive developmental disorder or
17 autism, provided the services are within the experience and
18 competence of the licensee.

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

21 (A) Provides behavioral health ~~treatment~~. *treatment, which may*
22 *include clinical management and case supervision under the*
23 *direction and supervision of a qualified autism service provider.*

24 (B) Is employed and supervised by a qualified autism service
25 provider.

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

28 ~~(D) Is a behavioral service provider approved as a vendor by a~~
29 ~~California regional center to provide services as an Associate~~
30 ~~Behavior Analyst, Behavior Analyst, Behavior Management~~
31 ~~Assistant, Behavior Management Consultant, or Behavior~~
32 ~~Management Program as defined in Section 54342 of Article 3 of~~
33 ~~Subchapter 2 of Chapter 3 of Division 2 of Title 17 of the~~
34 ~~California Code of Regulations.~~

35 *(D) Is a behavioral service provider who meets the State*
36 *Department of Developmental Services’ education and experience*
37 *qualifications to be approved as a vendor by a California regional*
38 *center to provide behavior intervention services, including, but*
39 *not limited to, interdisciplinary assessment services, client/parent*
40 *support behavior intervention training, socialization training*

1 *program, individual family training, or as an adaptive skills*
2 *trainer, associate behavior analyst, behavior analyst, behavior*
3 *management assistant, behavior management consultant, or*
4 *behavior management program if the services are within the*
5 *experience and competence of the professional.*

6 (E) Has training and experience in providing services for
7 pervasive developmental disorder or ~~autism pursuant to Division~~
8 ~~4.5 (commencing with Section 4500) of the Welfare and~~
9 ~~Institutions Code or Title 14 (commencing with Section 95000)~~
10 ~~of the Government Code.~~ *autism.*

11 (5) “Qualified autism service paraprofessional” means an
12 unlicensed and uncertified individual who meets all of the
13 following criteria:

14 (A) ~~Is employed and supervised by a person, entity, or group~~
15 ~~that is a qualified autism service provider.~~ *provider or qualified*
16 *autism service professional.*

17 (B) Provides treatment and implements services pursuant to a
18 treatment plan developed and approved by the qualified autism
19 service provider.

20 (C) Meets the criteria set forth in the regulations adopted
21 pursuant to Section 4686.3 of the Welfare and Institutions ~~Code.~~
22 *Code or has adequate education, training, and experience, as*
23 *certified by a qualified autism service provider.*

24 ~~(D) Has adequate education, training, and experience, as~~
25 ~~certified by a qualified autism service provider.~~

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

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

29 (2) A health care service plan contract in the Medi-Cal program
30 (Chapter 7 (commencing with Section 14000) of Part 3 of Division
31 9 of the Welfare and Institutions Code).

32 (3) A health care service plan contract in the Healthy Families
33 Program (Part 6.2 (commencing with Section 12693) of Division
34 2 of the Insurance Code).

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

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

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

8 SEC. 3. Section 10144.51 of the Insurance Code is amended
9 to read:

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

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

23 (3) This section shall not affect services for which an individual
24 is eligible pursuant to Division 4.5 (commencing with Section
25 4500) of the Welfare and Institutions Code or Title 14
26 (commencing with Section 95000) of the Government Code.

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

34 (5) *This section shall not be construed to require a health*
35 *insurer to provide reimbursement for services delivered by school*
36 *personnel pursuant to an enrollee's individualized educational*
37 *program unless otherwise required by law.*

38 (b) Pursuant to Article 6 (commencing with Section 2240) of
39 Subchapter 2 of Chapter 5 of Title 10 of the California Code of
40 Regulations, every health insurer subject to this section shall

1 maintain an adequate network that includes qualified autism service
2 providers who supervise and employ qualified autism service
3 professionals or paraprofessionals who provide and administer
4 behavioral health treatment. Nothing shall prevent a health insurer
5 from selectively contracting with providers within these
6 requirements.

7 (c) For the purposes of this section, the following definitions
8 shall apply:

9 (1) “Behavioral health treatment” means professional services
10 and treatment programs, including applied behavior analysis and
11 evidence-based behavior intervention programs, that develop or
12 restore, to the maximum extent practicable, the functioning of an
13 individual with pervasive developmental disorder or autism, and
14 that meet all of the following criteria:

15 (A) The treatment is prescribed by a physician and surgeon
16 licensed pursuant to Chapter 5 (commencing with Section 2000)
17 of, or is developed by a psychologist licensed pursuant to Chapter
18 6.6 (commencing with Section 2900) of, Division 2 of the Business
19 and Professions Code.

20 (B) The treatment is provided under a treatment plan prescribed
21 by a qualified autism service provider and is administered by one
22 of the following:

23 (i) A qualified autism service provider.

24 (ii) A qualified autism service professional supervised and
25 employed by the qualified autism service provider.

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

28 (C) The treatment plan has measurable goals over a specific
29 timeline that is developed and approved by the qualified autism
30 service provider for the specific patient being treated. The treatment
31 plan shall be reviewed ~~no less more~~ than once every six months
32 *or less than once every 12 months* by the qualified autism service
33 ~~provider~~ *provider, unless a shorter period is recommended by the*
34 *qualified autism service provider*, and modified whenever
35 appropriate, and shall be consistent with Section 4686.2 of the
36 Welfare and Institutions Code pursuant to which the qualified
37 autism service provider does all of the following:

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

1 (ii) Designs an intervention plan that includes the service type,
2 number of hours, and parent participation needed to achieve the
3 plan’s goal and objectives, and the frequency at which the patient’s
4 progress is evaluated and reported. *Lack of parent or caregiver*
5 *participation shall not be used to deny or reduce medically*
6 *necessary behavioral health treatment.*

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

10 (iv) Discontinues intensive behavioral intervention services
11 when the treatment goals and objectives are achieved or no longer
12 appropriate.

13 (v) *Makes the treatment plan available to the health insurer*
14 *upon request.*

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

20 (E) *The setting, location, or time of treatment shall not be used*
21 *as a reason to deny medically necessary behavioral health*
22 *treatment.*

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

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

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

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

1 autism, provided the services are within the experience and
2 competence of the licensee.

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

5 (A) Provides behavioral health ~~treatment~~. *treatment, which may*
6 *include clinical management and case supervision under the*
7 *direction and supervision of a qualified autism service provider.*

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

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

12 ~~(D) Is a behavioral service provider approved as a vendor by a~~
13 ~~California regional center to provide services as an Associate~~
14 ~~Behavior Analyst, Behavior Analyst, Behavior Management~~
15 ~~Assistant, Behavior Management Consultant, or Behavior~~
16 ~~Management Program as defined in Section 54342 of Article 3 of~~
17 ~~Subchapter 2 of Chapter 3 of Division 2 of Title 17 of the~~
18 ~~California Code of Regulations.~~

19 *(D) Is a behavioral service provider who meets the State*
20 *Department of Developmental Services’ education and experience*
21 *qualifications to be approved as a vendor by a California regional*
22 *center to provide behavior intervention services, including, but*
23 *not limited to, interdisciplinary assessment services, client/parent*
24 *support behavior intervention training, socialization training*
25 *program, individual family training, or as an adaptive skills*
26 *trainer, associate behavior analyst, behavior analyst, behavior*
27 *management assistant, behavior management consultant, or*
28 *behavior management program if the services are within the*
29 *experience and competence of the professional.*

30 (E) Has training and experience in providing services for
31 pervasive developmental disorder or autism pursuant to Division
32 4.5 (commencing with Section 4500) of the Welfare and
33 Institutions Code or Title 14 (commencing with Section 95000)
34 of the Government Code. *autism.*

35 (5) “Qualified autism service paraprofessional” means an
36 unlicensed and uncertified individual who meets all of the
37 following criteria:

38 (A) ~~Is employed and supervised by a person, entity, or group~~
39 ~~that is qualified autism service provider.~~ *provider or qualified*
40 *autism service professional.*

1 (B) Provides treatment and implements services pursuant to a
2 treatment plan developed and approved by the qualified autism
3 service provider.

4 (C) Meets the criteria set forth in the regulations adopted
5 pursuant to Section 4686.3 of the Welfare and Institutions Code.
6 *Code or has adequate education, training, and experience, as*
7 *certified by a qualified autism service provider.*

8 ~~(D) Has adequate education, training, and experience, as~~
9 ~~certified by a qualified autism service provider.~~

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

11 (1) A specialized health insurance policy that does not cover
12 mental health or behavioral health services or an accident only,
13 specified disease, hospital indemnity, or Medicare supplement
14 policy.

15 (2) A health insurance policy in the Medi-Cal program (Chapter
16 7 (commencing with Section 14000) of Part 3 of Division 9 of the
17 Welfare and Institutions Code).

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

20 (4) A health care benefit plan or policy entered into with the
21 Board of Administration of the Public Employees' Retirement
22 System pursuant to the Public Employees' Medical and Hospital
23 Care Act (Part 5 (commencing with Section 22750) of Division 5
24 of Title 2 of the Government Code).

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

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

32 SEC. 4. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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