

ASSEMBLY BILL

No. 1074

Introduced by Assembly Member Maienschein

February 16, 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

AB 1074, as introduced, Maienschein. Health care coverage: pervasive developmental disorder or 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.

This bill would revise those provisions, for purposes of health care service plans and health insurers, to require a qualified autism service professional or a qualified autism service paraprofessional to be supervised by a qualified autism service provider for purposes of providing behavioral health treatment. The bill would require a qualified autism service professional and a qualified autism service paraprofessional to be employed by a qualified autism service provider

or an entity or group that employs qualified autism service providers. The bill additionally would authorize a qualified autism service professional to supervise a qualified autism service paraprofessional. The bill would revise the definition of a qualified autism service professional to, among other things, specify that the behavioral health treatment provided by the qualified autism service professional may include clinical case management and case supervision under the direction and supervision of a qualified autism service provider.

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. 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

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

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

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

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

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

33 (i) A qualified autism service provider.

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

36 (iii) A qualified autism service paraprofessional supervised ~~and~~
37 ~~employed~~ by a qualified autism service ~~provider~~. *provider or*
38 *qualified autism service professional.*

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 health care service plan upon request.

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

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

28 (A) ~~A person, entity, or group that~~ *person who* is certified by a
29 national entity, such as the Behavior Analyst Certification Board,
30 *with a certification* that is accredited by the National Commission
31 for Certifying Agencies, and who designs, supervises, or provides
32 treatment for pervasive developmental disorder or autism, provided
33 the services are within the experience and competence of the
34 ~~person, entity, or group that~~ *person who* 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~~. *treatment, which may*
7 *include clinical case management and case supervision under the*
8 *direction and supervision of a qualified autism service provider.*

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

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

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

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 (F) *Is employed by a qualified autism service provider or an*
28 *entity or group that employs qualified autism service providers.*

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

32 (A) ~~Is employed and supervised by a qualified autism service~~
33 ~~provider. provider or qualified autism service professional.~~

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

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

39 (C) *Meets the education and training qualifications described*
40 *in Section 54342 of Title 17 of the California Code of Regulations.*

1 (D) Has adequate education, training, and experience, as
2 certified by a qualified autism service ~~provider.~~ *provider or an*
3 *entity or group that employs qualified autism service providers.*

4 (E) *Is employed by a qualified autism service provider or an*
5 *entity or group that employs qualified autism service providers.*

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

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

9 (2) A health care service plan contract in the Medi-Cal program
10 (Chapter 7 (commencing with Section 14000) of Part 3 of Division
11 9 of the Welfare and Institutions Code).

12 ~~(3) A health care service plan contract in the Healthy Families~~
13 ~~Program (Part 6.2 (commencing with Section 12693) of Division~~
14 ~~2 of the Insurance Code).~~

15 ~~(4) A health care benefit plan or contract entered into with the~~
16 ~~Board of Administration of the Public Employees' Retirement~~
17 ~~System pursuant to the Public Employees' Medical and Hospital~~
18 ~~Care Act (Part 5 (commencing with Section 22750) of Division 5~~
19 ~~of Title 2 of the Government Code).~~

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

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

27 SEC. 2. Section 10144.51 of the Insurance Code is amended
28 to read:

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

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

1 as amended by the federal Health Care and Education
2 Reconciliation Act of 2010 (Public Law 111-152).

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

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

14 (b) Pursuant to Article 6 (commencing with Section 2240) of
15 Subchapter 2 of Chapter 5 of Title 10 of the California Code of
16 Regulations, every health insurer 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 insurer
21 from selectively contracting with providers within these
22 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.~~ *provider or*
5 *qualified autism service professional.*

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

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

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

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

23 (iv) Discontinues intensive behavioral intervention services
24 when the treatment goals and objectives are achieved or no longer
25 appropriate.

26 (D) The treatment plan is not used for purposes of providing or
27 for the reimbursement of respite, day care, or educational services
28 and is not used to reimburse a parent for participating in the
29 treatment program. The treatment plan shall be made available to
30 the insurer upon request.

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

33 (3) “Qualified autism service provider” means either of the
34 following:

35 (A) ~~A person, entity, or group that~~ *person who* is certified by a
36 national entity, such as the Behavior Analyst Certification Board,
37 *with a certification* that is accredited by the National Commission
38 for Certifying Agencies, and who designs, supervises, or provides
39 treatment for pervasive developmental disorder or autism, provided

1 the services are within the experience and competence of the
2 ~~person, entity, or group that~~ *person who* is nationally certified.

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

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

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

17 (B) ~~Is employed and~~ supervised by a qualified autism service
18 provider.

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

21 (D) ~~Is a behavioral service provider approved as a vendor by a~~
22 ~~California regional center to provide services as~~ *who meets the*
23 *education and experience qualifications described in Section 54342*
24 *of Title 17 of the California Code of Regulations for an Associate*
25 *Behavior Analyst, Behavior Analyst, Behavior Management*
26 *Assistant, Behavior Management Consultant, or Behavior*
27 *Management Program as defined in Section 54342 of Article 3 of*
28 ~~Subchapter 2 of Chapter 3 of Division 2 of Title 17 of the~~
29 ~~California Code of Regulations.~~ *Program.*

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.

35 (F) *Is employed by a qualified autism service provider or an*
36 *entity or group that employs qualified autism service providers.*

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

1 (A) ~~Is employed and supervised by a qualified autism service~~
2 ~~provider. provider or qualified autism service professional.~~

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

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

8 *(C) Meets the education and training qualifications described*
9 *in Section 54342 of Title 17 of the California Code of Regulations.*

10 (D) Has adequate education, training, and experience, as
11 certified by a qualified autism service ~~provider. provider or an~~
12 ~~entity or group that employs qualified autism service providers.~~

13 *(E) Is employed by a qualified autism service provider or an*
14 *entity or group that employs qualified autism service providers.*

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

16 (1) A specialized health insurance policy that does not cover
17 mental health or behavioral health services or an accident only,
18 specified disease, hospital indemnity, or Medicare supplement
19 policy.

20 (2) A health insurance policy in the Medi-Cal program (Chapter
21 7 (commencing with Section 14000) of Part 3 of Division 9 of the
22 Welfare and Institutions Code).

23 ~~(3) A health insurance policy in the Healthy Families Program~~
24 ~~(Part 6.2 (commencing with Section 12693)).~~

25 ~~(4) A health care benefit plan or policy entered into with the~~
26 ~~Board of Administration of the Public Employees' Retirement~~
27 ~~System pursuant to the Public Employees' Medical and Hospital~~
28 ~~Care Act (Part 5 (commencing with Section 22750) of Division 5~~
29 ~~of Title 2 of the Government Code).~~

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

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

37 SEC. 3. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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