

Introduced by Senator MitchellFebruary 12, 2016

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 1034, as introduced, Mitchell. Health care coverage: autism.

Existing law provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. A violation of those provisions is a crime. Existing law provides for the licensure and regulation of health insurers by the Department of Insurance.

Existing law requires every health care service plan contract and health insurance policy 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. 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 analyst, behavior management assistant, behavior management consultant, or behavior management program pursuant to specified regulations adopted under the Lanterman Developmental Disabilities Services Act. Existing law requires a treatment plan to be reviewed no less than once every 6 months.

This bill would, among other things, modify requirements to be a qualified autism service professional to include providing behavioral

health treatment, such as clinical management and case supervision. The bill would require that a treatment plan be reviewed no more than once every 6 months, unless a shorter period is recommended by the qualified autism service provider. The bill would extend the operation of these provisions indefinitely. The bill would make conforming changes.

By extending the operation of these provisions, the violation of which by a health care service plan would be a crime, 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.

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

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

15 (c) For the purposes of this section, the following definitions
16 shall apply:

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

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

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

31 (i) A qualified autism service provider.

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

34 (iii) A qualified autism service paraprofessional supervised ~~and~~
35 ~~employed~~ by a qualified autism service provider.

36 (C) The treatment plan has measurable goals over a specific
37 timeline that is developed and approved by the qualified autism
38 service provider for the specific patient being treated. The treatment
39 plan shall be reviewed no ~~less~~ *more* than once every six months
40 by the qualified autism service ~~provider~~ *provider, unless a shorter*

1 *period is recommended by the qualified autism service provider,*
2 and modified whenever appropriate, and shall be consistent with
3 Section 4686.2 of the Welfare and Institutions Code pursuant to
4 which the qualified autism service provider does all of the
5 following:

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

8 (ii) Designs an intervention plan that includes the service type,
9 number of hours, and parent *or caregiver* participation
10 *recommended by the qualified autism service provider,* needed to
11 achieve the plan’s goal and objectives, and the frequency at which
12 the patient’s progress is evaluated and reported. *Lack of parent or*
13 *caregiver participation shall not be used to deny or reduce*
14 *medically necessary behavioral health treatment.*

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

18 (iv) Discontinues intensive behavioral intervention services
19 when the treatment goals and objectives are achieved or no longer
20 appropriate. *appropriate, and continued therapy is not necessary*
21 *to maintain function or prevent deterioration.*

22 (D) (i) The treatment plan is not used for purposes of providing
23 or for the reimbursement of respite, day care, or educational
24 services and is not used to reimburse a parent for participating in
25 the treatment program. ~~The~~

26 (ii) *Notwithstanding the clause (i), all medically necessary*
27 *behavioral health treatment shall be covered in all settings*
28 *regardless of time or location of delivery.*

29 (iii) *The* treatment plan shall be made available to the health
30 care service plan upon request.

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

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

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

1 the experience and competence of the person, entity, or group that
2 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, including*
15 *clinical management and case supervision.*

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

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

20 (D) Is a behavioral service provider ~~approved as a vendor by a~~
21 ~~California regional center to provide services as~~ *who meets the*
22 *education and experience qualifications defined in Section 5432*
23 *of Title 17 of the California Code of Regulations* for an Associate
24 Behavior Analyst, Behavior Analyst, Behavior Management
25 Assistant, Behavior Management Consultant, or Behavior
26 Management Program ~~as defined in Section 54342 of Title 17 of~~
27 ~~the California Code of Regulations~~: *Program.*

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

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

36 (A) Is ~~employed and~~ supervised by a qualified autism service
37 provider.

38 (B) Provides treatment and implements services pursuant to a
39 treatment plan developed and approved by the qualified autism
40 service ~~provider~~: *provider or qualified autism service professional.*

1 (C) Meets the ~~criteria set forth~~ *education and experience*
2 *qualifications defined* in the regulations adopted pursuant to Section
3 4686.3 of the Welfare and Institutions Code.

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

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~~ *MDI-Cal*
10 program (Chapter 7 (commencing with Section 14000) of Part 3
11 of Division 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~~ *This section*
21 *does not* limit the obligation to provide services ~~under~~ *pursuant*
22 *to* Section 1374.72.

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

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

31 SEC. 2. Section 10144.51 of the Insurance Code is amended
32 to read:

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

38 (2) Notwithstanding paragraph (1), as of the date that proposed
39 final rulemaking for essential health benefits is issued, this section
40 does not require any benefits to be provided that exceed the

1 essential health benefits that all health insurers will be required by
2 federal regulations to provide under Section 1302(b) of the federal
3 Patient Protection and Affordable Care Act (Public Law 111-148),
4 as amended by the federal Health Care and Education
5 Reconciliation Act of 2010 (Public Law 111-152).

6 (3) This section shall not affect services for which an individual
7 is eligible pursuant to Division 4.5 (commencing with Section
8 4500) of the Welfare and Institutions Code or Title 14
9 (commencing with Section 95000) of the Government Code.

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

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

25 (c) For the purposes of this section, the following definitions
26 shall apply:

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

33 (A) The treatment is prescribed by a physician and surgeon
34 licensed pursuant to Chapter 5 (commencing with Section 2000)
35 of, or is developed by a psychologist licensed pursuant to Chapter
36 6.6 (commencing with Section 2900) of, Division 2 of the Business
37 and Professions Code.

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

1 (i) A qualified autism service provider.

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

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

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~~ *more* than once every six months
10 by the qualified autism service ~~provider~~ *provider, unless a shorter*
11 *period is recommended by the qualified autism service provider,*
12 and modified whenever appropriate, and shall be consistent with
13 Section 4686.2 of the Welfare and Institutions Code pursuant to
14 which the qualified autism service provider does all of the
15 following:

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

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

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

28 (iv) Discontinues intensive behavioral intervention services
29 when the treatment goals and objectives are achieved or no longer
30 ~~appropriate.~~ *appropriate, and continued therapy is not necessary*
31 *to maintain function or prevent deterioration.*

32 (D) (i) The treatment plan is not used for purposes of providing
33 or for the reimbursement of respite, day care, or educational
34 services and is not used to reimburse a parent for participating in
35 the treatment program. ~~The~~

36 (ii) *Notwithstanding the above, all medically necessary*
37 *behavioral health treatment shall be covered in all settings*
38 *regardless of time or location of delivery.*

39 (iii) *The* treatment plan shall be made available to the insurer
40 upon request.

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

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

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

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

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

23 (A) Provides behavioral health ~~treatment~~. *treatment, including*
24 *clinical management and case supervision.*

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

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

29 (D) Is a behavioral service provider ~~approved as a vendor by a~~
30 ~~California regional center to provide services as~~ *who meets the*
31 *education and experience qualifications defined in Section 5432*
32 *of Title 17 of the California Code of Regulations for* an Associate
33 Behavior Analyst, Behavior Analyst, Behavior Management
34 Assistant, Behavior Management Consultant, or Behavior
35 Management Program ~~as defined in Section 54342 of Title 17 of~~
36 ~~the California Code of Regulations.~~ *Program.*

37 (E) Has training and experience in providing services for
38 pervasive developmental disorder or autism pursuant to Division
39 4.5 (commencing with Section 4500) of the Welfare and

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

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

6 (A) ~~Is employed and~~ supervised by a qualified autism service
7 provider.

8 (B) Provides treatment and implements services pursuant to a
9 treatment plan developed and approved by the qualified autism
10 service ~~provider~~. *provider or qualified autism service professional.*

11 (C) Meets the ~~criteria set forth~~ *education and experience*
12 *qualifications defined* in the regulations adopted pursuant to Section
13 4686.3 of the Welfare and Institutions Code.

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

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

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

21 (2) A health insurance policy in the ~~Medi~~ *MDI-Cal* program
22 (Chapter 7 (commencing with Section 14000) of Part 3 of Division
23 9 of the Welfare and Institutions Code).

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

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

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

33 (f)

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

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

4 SEC. 3. Section 10144.52 of the Insurance Code is amended
5 to read:

6 10144.52. ~~(a)~~ For purposes of this part, the terms “provider,”
7 “professional provider,” “network provider,” “mental health
8 provider,” and “mental health professional” shall include the term
9 “qualified autism service provider,” as defined in subdivision (c)
10 of Section 10144.51.

11 ~~(b) This section shall remain in effect only until January 1, 2017,~~
12 ~~and as of that date is repealed, unless a later enacted statute, that~~
13 ~~is enacted before January 1, 2017, deletes or extends that date.~~

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