



January 2, 2018

The Honorable Ed Hernandez  
Chair, California Senate Committee on Health  
State Capitol, Room 2191  
Sacramento, CA 95814

*Via E-mail only*

Dear Senator Hernandez:

The California Health Benefits Review Program (CHBRP) was asked by Senate Health Committee staff on December 5, 2017 to analyze proposed December 4, 2017 revisions of Senate Bill (SB) 399 (Portantino), *Pervasive Development Disorder or Autism*. In response, CHBRP is pleased to provide this letter with its updated findings.

CHBRP's analysis of the February 16, 2017 version of SB 399 focused on changes the bill would have made to an existing benefit mandate that addresses coverage of behavioral health treatment (BHT) for persons with pervasive developmental disorder or autism.<sup>1</sup> The December 4, 2017 version of SB 399 is similar to the February version, but would act on the recently altered mandate, which was updated by the late 2017 passage of another bill, Assembly Bill (AB) 1074 (Maienschein).

AB 1074 altered the existing mandate in two ways. By altering the Welfare and Institutions Code, AB 1074 clarified that the mandate is not applicable to the benefit coverage of Medi-Cal beneficiaries. In addition, AB 1074 ended the mandate's formal exemption associated with California Public Employees' Retirement System (CalPERS) enrollees. However, due to the complex interaction of the current mandate, California's separate Mental Health Parity benefit mandate,<sup>2</sup> and case law,<sup>3</sup> CHBRP continues to expect compliance to be required for CalPERS enrollees' benefit coverage.

CHBRP anticipates the difference in impacts between the two versions of SB 399 to be due to changes in the mandate they would alter, rather than to differences between the two versions. Whereas the February version seemed likely to impact the benefit coverage of Medi-Cal beneficiaries, the December version, acting on an altered mandate, would clearly not do so.

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<sup>1</sup> Health and Safety Code 1374.73; Insurance Code 10144.51 and 10144.52

<sup>2</sup> Health and Safety Code 1374.72 and Insurance Code 10144.5.

<sup>3</sup> Consumer Watchdog v. DMHC (2014).

A table indicating impacts of the December version of SB 399 on benefit coverage, utilization, and expenditures is included with this letter. Because impacts related to Medi-Cal beneficiaries are not present, the table's impact figures are lower than those in an (otherwise similar) table provided in CHBRP's report on the February version. Please note, however, that CHBRP's findings of medical effectiveness and public health included in that report **remain relevant**.

As noted, it is the changed mandate that the two versions seek to alter, not the differences in the language between the February and December versions of SB 399, that lead CHBRP to expect some difference in impact. However there are differences as well as similarities between the two versions, which are discussed, below.

Key language in both versions of SB 399 are similar. Both would alter the current mandate to:

- Make a number of technical alterations to the definitions of qualified autism service (QAS) providers, QAS professionals, and QAS paraprofessionals.
- Include as aspects of BHT, clinical case management and case supervision.
- Prohibit denial of coverage for BHT based on:
  - Lack of parental involvement;
  - Setting, location, or time of treatment
- Prohibit review of treatment plans more than once every 6 months, unless recommended by the QAS provider.

CHBRP considered all of these requirements in its analysis of the February version and the approaches to considering their impacts remain valid for consideration of the December version.

The key difference is the December version inclusion of an additional requirement. In addition to the requirements discussed above, the December version would also alter the current mandate to:

- Require that services, including limits on scope or duration of services, comply with:
  - The MHPAEA -the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343), and all rules, regulations, or guidance issued pursuant to Section 2726 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-26); and
  - The ADA - the Americans with Disabilities Act (41 U.S.C. Sec 12101).

For the reasons listed below, CHBRP expects no measurable impacts on benefit coverage, utilization of BHT, expenditures, or health outcomes due to the December version's requirement that plans and insurers regulated by the California Department of Managed Health Care (DMHC) or the California Department of Insurance (CDI) comply with the MHPAEA or the ADA.

- DMHC-regulated plans and CDI-regulated insurers are already subject to ADA.

- DMHC-regulated plans are required by state law to comply with the federal MHPAEA,<sup>4</sup> as are CDI-regulated large group policies<sup>5</sup> and CDI-regulated small group and individual market policies.<sup>6</sup>

In summary, when reviewed with the revised impact estimates included as a table with this letter, CHBRP's analysis of the February 16<sup>th</sup> version of SB 399 (available [here](#)), remains relevant to consideration of the December 4<sup>th</sup> version of the bill.

Thank you for allowing CHBRP the opportunity to further assist. We are happy to answer any questions.

Sincerely,



Garen L. Corbett, MS  
 Director  
 California Health Benefits Review Program  
 MC 3116, Berkeley, CA 94709-3116  
[Garen.Corbett@chbrp.org](mailto:Garen.Corbett@chbrp.org)  
[www.chbrp.org](http://www.chbrp.org)

CC: Senator Anthony J. Portantino, Author of Senate Bill 399, *Pervasive Development Disorder or Autism*  
 Senator Kevin de León, President Pro Tem of the Senate  
 Assembly Member Anthony Rendon, Speaker of the Assembly  
 Assembly Member Jim Wood, Chair, Assembly Committee on Health  
 Assembly Member Brian Maienschein, Vice Chair, Assembly Committee on Health  
 Assembly Member Lorena S. Gonzalez Fletcher, Chair, Assembly Committee on Appropriations  
 Assembly Member Frank Bigelow, Vice Chair, Assembly Committee on Appropriations  
 Senator Janet Nguyen, Vice Chair, Senate Committee on Health  
 Senator Ricardo Lara, Chair, Senate Committee on Appropriations  
 Senator Patricia Bates, Vice Chair, Senate Committee on Appropriations  
 Tara McGee, Legislative Director, Office of Senator Anthony Portantino  
 Rosielyn Pulmano, Chief Consultant, Assembly Committee on Health  
 Kristene Mapile, Principal Consultant, Assembly Committee on Health  
 Melanie Moreno, Staff Director, Senate Committee on Health  
 Teri Boughton, Consultant, Senate Committee on Health  
 Mark McKenzie, Staff Director, Senate Committee on Appropriations  
 Brendan McCarthy, Consultant, Senate Committee on Appropriations  
 Lisa Murawski, Principal Consultant, Assembly Committee on Appropriations  
 Tim Conaghan, Consultant, Senate Republican Caucus  
 Mark Newton, Deputy Legislative Analyst, Legislative Analyst's Office

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<sup>4</sup> Health and Safety Code 1374.76

<sup>5</sup> Insurance Code 10112.27(a)(2)(D)

<sup>6</sup> Insurance Code 10144.4

Camille Wagner, Legislative Affairs Secretary, Office of Governor Jerry Brown  
Robert Herrell, Deputy Commissioner and Legislative Director, California Department of Insurance (CDI)  
Josephine Figueroa, Deputy Legislative Director, CDI  
Shelley Rouillard, Director, California Department of Managed Health Care (DMHC)  
Jenny Mae Phillips, Senior Attorney, California DMHC  
Mikhail Karshedt, Associate Governmental Program Analyst, California DMHC  
Angela Gilliard, Legislative Director, State Governmental Relations, UCOP  
John Stobo, Executive Vice President, UC Health, UCOP  
Lauren LeRoy, CHBRP National Advisory Council Chair  
Chris Yetter, Chief of Staff, Office of Research, UC Berkeley

**Table 1. SB 399 Impacts on 2018 Benefit Coverage, Utilization, and Cost – revised for 12/04/17 amended language**

	Baseline	Postmandate	Increase/ Decrease	Percent Change
<b>Benefit coverage</b>				
Total enrollees in DMHC/CDI plans/policies (a)	24,048,000	24,048,000	0	0%
Total enrollees in DMHC/CDI plans/policies with health insurance subject to SB 399	16,212,000	16,212,000	0	0%
Percentage of enrollees with health insurance subject to SB 399 and				
coverage for BHT for ASD	100%	100%	0%	0%
coverage for BHT for ASD that includes case supervision and clinical management	100%	100%	0%	0%
coverage for BHT for ASD regardless of parental involvement	26%	100%	74%	283%
coverage for BHT for ASD regardless of setting/time/location	35%	100%	65%	183%
<b>Utilization and unit cost</b>				
Number of enrollees with ASD	40,990	40,990	0	0%
Number of enrollees with ASD using BHT	7,811	7,811	0	0%
Average annual hours of BHT per 1,000 enrollees				
Enrollees Ages 0-17	82.08	83.85	2	2%
Enrollees Ages 18+	2.99	2.99	0	0%
Average annual hours of BHT per user				
Enrollees Ages 0-17	185.92	196.20	10	6%
Enrollees Ages 18+	46.69	46.69	0	0%
Average unit cost (per hour BHT for ASD)				
Enrollees Ages 0-17	\$103.31	\$103.52	\$0.21	0%
Enrollees Ages 18+	\$74.00	\$74.00	\$0.00	0%
<b>Expenditures</b>				
<u>Premium expenditures by payer</u>				
Private employers for group insurance	\$64,820,615,000	\$64,822,758,000	\$2,143,000	0.0033%
CalPERS HMO employer expenditures (c)	\$4,884,262,000	\$4,884,428,000	\$166,000	0.0034%
Medi-Cal Managed Care Plan expenditures for DMHC-regulated plans (d)	\$27,983,856,000	\$27,983,856,000	\$0	0.0000%
Enrollees for individually purchased insurance	\$14,608,214,000	\$14,608,536,000	\$322,000	0.0022%
Enrollees with group insurance, CalPERS HMOs, Covered California, and Medi-Cal Managed Care (b) (e)	\$20,387,090,000	\$20,387,754,000	\$664,000	0.0033%
<u>Enrollee expenses</u>				
For covered benefits (deductibles, copayments, etc.)	\$13,565,623,000	\$13,566,005,000	\$382,000	0.0028%
For noncovered benefits (f)	—	—	—	—
<b>Total expenditures</b>	<b>\$146,249,660,000</b>	<b>\$146,253,337,000</b>	<b>\$3,677,000</b>	<b>0.0025%</b>

Source: California Health Benefits Review Program, 2018.

*Notes:* (a) This population includes persons with privately-funded (including Covered California) and publicly-funded (e.g., CalPERS HMOs, Medi-Cal Managed Care Plans) health insurance products regulated by DMHC or CDI. Population includes enrollees aged 0 to 64 years and enrollees 65 years or older covered by employer-sponsored health insurance.

(b) Premium expenditures by enrollees include employee contributions to employer-sponsored health insurance and enrollee contributions for publicly purchased insurance.

(c) Of the increase in CalPERS employer expenditures, about 56.7% would be state expenditures for CalPERS members who are state employees or their dependents. It should be noted, however, that should CalPERS choose to make similar adjustments for consistency to the benefit coverage of enrollees associated with CalPERS' self-insured products, the fiscal impact on CalPERS could be greater.

(d) Does not include enrollees in COHS.

(e) Enrollee premium expenditures include contributions to employer-sponsored health insurance, health insurance purchased through Covered California, and contributions to Medi-Cal Managed Care.

(f) Not measurable. Includes only those expenses that are paid directly by enrollees or other sources to providers for services related to the mandated benefit that are not currently covered by insurance. Although enrollees with newly compliant benefit coverage may have paid for some treatments before SB 399, CHBRP cannot estimate the frequency with which such situations may have occurred and, therefore, cannot estimate the total noncovered expenses. Postmandate, such expenses would be gone, though enrollees with newly compliant benefit coverage might pay for some treatments for which coverage is denied. Again, CHBRP cannot estimate the frequency with which such situations might occur, and/or the total expense.

*Key:* ASD = autism spectrum disorder; BHT = behavioral health treatment; CalPERS HMOs = California Public Employees' Retirement System Health Maintenance Organizations; CDI = California Department of Insurance; COHS = County Organized Health Systems; DMHC = Department of Managed Health Care.