CALIFORNIA
HEALTH BENEFITS REVIEW PROGRAM

August 24, 2011

The Honorable William Monning
Chair, California Assembly Committee on Health
State Capitol, Room 6005
10th and L Streets
Sacramento, CA 95814

The Honorable Ed Hernández
Chair, California Senate Committee on Health
State Capitol, Room 5108
10th and L Streets
Sacramento, CA 95814

Via E-mail only

Dear Assembly Member Monning and Senator Hernández:

I am writing in response to a query from the Assembly Health Committee regarding language included in the August 16, 2011, amended version of Senate Bill (SB) 770 (Steinberg and Evans) Autism. The California Health Benefits Review Program (CHBRP) submitted *Analysis of Senate Bill TBD 1: Health Care Coverage: Autism*[1] on March 20, 2011. For the report, CHBRP analyzed language similar to the language now included in SB 770. Assembly Health Committee staff has asked whether CHBRP's analysis of SB TBD 1 would be applicable to consideration of SB 770, inclusive of the August 16th amendments.

The language in SB 770 is not identical to the language CHBRP analyzed as SB TBD 1. However, the language is similar enough to make many portions of CHBRP's report on SB TBD 1 relevant to policymakers' consideration of SB 770. The principal difference is that SB 770 would allow health plans regulated by the California Department of Managed Health Care (DMHC) and insurers regulated by the California Department of Insurance (CDI) to cover specified treatments and services when delivered by supervised but unlicensed and/or uncertified providers.

KEY SIMILARITIES: SB TBD 1 and SB 770

SB TBD 1 would have imposed a health benefit mandate on DMHC-regulated health plans and on CDI-regulated insurers. SB TBD 1 would have required coverage of behavioral intervention therapy for pervasive developmental disorder and autism (PDD/A). It would have defined behavioral intervention therapy as including but not limited to applied behavioral analysis (ABA). In CHBRP's report on SB TBD 1 and in this letter related to SB 770, CHBRP refers to interventions based on ABA and other theories of behavior as "intensive behavioral intervention therapy". Although California's current mental health parity law[2]

1 The full report is available at: http://www.chbrp.org/docs/index.php?action=read&bill_id=113&doc_type=3.
2 California Health & Safety Code Section 1374.72 and California Insurance Code Section 10144.5 (also known as AB 88).

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mandates that coverage be provided for medically necessary treatment of PDD/A, including outpatient services, it does not specify that coverage is required for behavioral intervention therapy. Therefore, SB TBD 1 would have altered the health benefit mandate.

In order to analyze SB TBD 1, CHBRP reviewed California's current mental health parity law and then made the following assumptions, which also seem relevant to a discussion of SB 770.

California's current mental health parity law:

- Does not define PDD/A. However, regulations governing health care service plans[3] define PDD/A as inclusive of five disorders: Asperger's Disorder, Autistic Disorder, Childhood Disintegrative Disorder, Pervasive Developmental Disorder Not Otherwise Specified (including atypical autism) (PDD-NOS), and Rett's Disorder. Therefore, CHBRP assumed that SB TBD 1 would have required coverage for intensive behavioral intervention therapy for the same set of five disorders.
- Requires that terms and conditions applicable to the mandated benefits be equal to those applied to all benefits covered under the plan contract or policy. SB TBD 1 specifies that benefit coverage be provided in the same manner and be subject to the same requirements as are the mental health benefits mandated by current law. Therefore, CHBRP assumed that SB TBD 1 would have required that terms and conditions for coverage of intensive behavioral intervention therapy for PDD/A be at parity with benefit coverage provided for physical or mental health.
- Specifies that coverage is mandated for "medically necessary" treatment. Therefore, CHBRP assumes that SB TBD 1 would also mandate benefit coverage subject to medical necessity and that the mandated benefits would be subject to the utilization review by the plan or policy and subject to the Independent Medical Review (IMR) process.
- Exempts health insurance provided to Medi-Cal beneficiaries through contracts with the California Department of Health Care Services (DHCS). Therefore, CHBRP assumed that SB TBD 1 would not apply to benefit coverage provided to enrollees in Medi-Cal Managed Care.

Like SB TBD 1, SB 770 refers to California's current mental health parity law, so the assumptions listed above seem valid for a discussion of SB 770. Assuming the definition of PDD/A provided above, the PDD/A prevalence estimates CHBRP provided in the report on SB TBD 1 are also relevant to a discussion of SB 770.

Like SB TBD 1, SB 770 would impose a health benefit mandate on DMHC-regulated health plans and on CDI-regulated health insurance policies. Both bills would require coverage for treatments related to PDD/A. Specifically:

- SB TBD 1 would have required coverage for "behavioral intervention therapy." The bill defined behavioral intervention therapy as including but not being limited to applied behavioral analysis (ABA).
- SB 770 would require coverage for "behavioral health treatments." The bill defines behavioral health treatments as including but not being limited to ABA and other intervention programs, such as Pivotal Response Therapy and Early Start Denver Model.

The terms used in the two bills are not identical but are similar. SB TBD 1's term, "behavioral intervention therapy," may be interpreted broadly (CHBRP is aware of no fixed definitions in law or in medicine), but the bills defined the term with reference to a specific treatment (ABA). Therefore, in its analysis of SB TBD 1, CHBRP focused on "intensive behavioral intervention therapy" based on ABA or other theories and defined "intensive" as 25 or more hours per week. SB 770's term, "behavioral health treatment," may also

3 California Code of Regulations 1300.74.72(e).

be interpreted more broadly, but SB 770 also references ABA and similar treatments. Therefore, the focus on intensive behavioral intervention therapy in CHBRP's report on SB TBD 1 and the medical effectiveness conclusions in that report seem valid for a discussion of SB 770, as do the report's estimates of public health impacts focused on health outcomes, pre- and post-mandate benefit coverage, and utilization.

KEY DIFFERENCES: SB TBD 1 and SB 770

SB 770 differs from SB TBD 1 in that it would allow DMHC-regulated health plans and CDI-regulated health polices to cover intensive behavioral intervention therapy when delivered by unlicensed and/or uncertified providers, so long as those providers are adequately trained and supervised by a qualified autism service provider. SB 770 would also require background checks and fingerprinting for unlicensed and/or uncertified providers

CHBRP's report on SB TBD 1 assumed use of licensed providers by health plans and insurers in the estimation of post-mandate unit cost (cost per hour of intensive behavioral intervention therapy). Although CDI[4] does not make a similar requirement, DMHC[5] generally requires health plans to utilize licensed providers where appropriate licensure exits. Because SB 770 would allow health plans[6] as well as insurers to cover services provided by supervised unlicensed and/or uncertified providers, a new unit cost would have to be estimated for SB 770. A unit cost that assumed use of a mix of licensed and unlicensed providers (as well as the cost of background checks and fingerprinting) could be lower than the unit cost presented in CHBRP's report on SB TBD 1. In addition, estimated unit cost is used to project impacts on premiums and enrollee expenses. Therefore, were such impacts to be projected for SB 770, they might be less than those presented in the SB TBD 1 report.

CONCLUSION

Although CHBRP is unable to make more than the statements above without time to analyze SB 770, it seems that many elements of CHBRP's report on SB TBD 1 are relevant to a discussion of SB 770.

My colleagues and I appreciate the opportunity to address your question, and we are happy to respond to any additional questions you may have. Please feel free to contact me at your convenience.

Thank you.

Sincerely,

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4 Personal communication, Michael Martinez, California Department of Insurance, August 2011.
5 Health and Safety Code Sections 1367(b), 1345(i), and Title 28, CCR, Section 1300.74.72(b)], August 2011.
6 Personal communication, Tim Le Bas, California Department of Managed Health Care, August 2011.

cc: Senator Darrell Steinberg, Author of Senate Bill 770
Senator Noreen Evans, Author of Senate Bill 770
Assembly Member Jim Beall, Jr., Principal Coauthor of Senate Bill 770
Assembly Member John Pérez, Speaker of the Assembly
Assembly Member Dan Logue, Vice Chair, Assembly Committee on Health
Assembly Member Felipe Fuentes, Chair, Assembly Committee on Appropriations
Assembly Member Diane L. Harkey, Vice Chair, Assembly Committee on Appropriations
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