

AMENDED IN SENATE JANUARY 4, 2012

AMENDED IN SENATE APRIL 4, 2011

SENATE BILL

No. 166

Introduced by Senator Steinberg

February 3, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

SB 166, as amended, Steinberg. Health care coverage: mental illness: autism spectrum disorders.

(1) Existing law provides for licensure and regulation of health care service plans by the Department of Managed Health Care. A willful violation of these provisions is a crime. Existing law provides for regulation of health insurers by the Department of Insurance. Existing law requires health care service plan contracts and health insurance policies, *with specified exceptions*, to provide benefits for ~~specified conditions, including certain mental health conditions:~~ *behavioral health treatment for pervasive development disorder or autism*.

This bill would ~~require those health care service plan contracts and health insurance policies to also provide coverage for behavioral intervention therapy, as defined, for pervasive developmental disorder or autism. The bill would, however, provide that no benefits are required to be provided that exceed the essential health benefits required under federal law. Because a violation of these provisions with respect to health care service plans would be a crime, the bill would thereby impose a state-mandated local program:~~ *exempt certain child-only health care service plan contracts administered by counties or other specified*

local entities from the requirement to provide coverage for behavioral health treatment for pervasive development disorder or autism.

~~(2) 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~~*no*.

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.

21 (4) This section shall not affect or reduce any obligation to
22 provide services under an individualized education program, as
23 defined in Section 56032 of the Education Code, or an
24 individualized service plan, as described in Section 5600.4 of the
25 Welfare and Institutions Code, or under the Individuals with
26 Disabilities Education Act (20 U.S.C. Sec. 1400, et seq.) and its
27 implementing regulations.

1 (b) Every health care service plan subject to this section shall
2 maintain an adequate network that includes qualified autism service
3 providers who supervise and employ qualified autism service
4 professionals or paraprofessionals who provide and administer
5 behavioral health treatment. Nothing shall prevent a health care
6 service plan from selectively contracting with providers within
7 these requirements.

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

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

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

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

24 (i) A qualified autism service provider.

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

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

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

37 (i) Describes the patient’s behavioral health impairments to be
38 treated.

39 (ii) Designs an intervention plan that includes the service type,
40 number of hours, and parent participation needed to achieve the

1 plan’s goal and objectives, and the frequency at which the patient’s
2 progress is evaluated and reported.

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

6 (iv) Discontinues intensive behavioral intervention services
7 when the treatment goals and objectives are achieved or no longer
8 appropriate.

9 (D) The treatment plan is not used for purposes of providing or
10 for the reimbursement of respite, day care, or educational services
11 and is not used to reimburse a parent for participating in the
12 treatment program. The treatment plan shall be made available to
13 the health care service plan upon request.

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

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

18 (A) A person, entity, or group that is certified by a national
19 entity, such as the Behavior Analyst Certification Board, that is
20 accredited by the National Commission for Certifying Agencies,
21 and who designs, supervises, or provides treatment for pervasive
22 developmental disorder or autism, provided the services are within
23 the experience and competence of the person, entity, or group that
24 is nationally certified.

25 (B) A person licensed as a physician and surgeon, physical
26 therapist, occupational therapist, psychologist, marriage and family
27 therapist, educational psychologist, clinical social worker,
28 professional clinical counselor, speech-language pathologist, or
29 audiologist pursuant to Division 2 (commencing with Section 500)
30 of the Business and Professions Code, who designs, supervises,
31 or provides treatment for pervasive developmental disorder or
32 autism, provided the services are within the experience and
33 competence of the licensee.

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

36 (A) Provides behavioral health treatment.

37 (B) Is employed and supervised by a qualified autism service
38 provider.

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

1 (D) Is a behavioral service provider approved as a vendor by a
2 California regional center to provide services as an Associate
3 Behavior Analyst, Behavior Analyst, Behavior Management
4 Assistant, Behavior Management Consultant, or Behavior
5 Management Program as defined in Section 54342 of Title 17 of
6 the California Code of Regulations.

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

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

15 (A) Is employed and supervised by a qualified autism service
16 provider.

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

24 (6) *“Healthy Kids coverage” means a child-only health care*
25 *service plan contract administered by a county, a county agency,*
26 *a local initiative, a county organized health system, or a health*
27 *authority providing health care coverage to eligible children whose*
28 *family income is at or below 400 percent of the federal poverty*
29 *level that is intended to provide coverage similar to the Healthy*
30 *Families Program for children who do not qualify for the Medi-Cal*
31 *program or the Healthy Families Program.*

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

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

35 (2) A health care service plan contract in the Medi-Cal program
36 (Chapter 7 (commencing with Section 14000) of Part 3 of Division
37 9 of the Welfare and Institutions Code).

38 (3) A health care service plan contract in the Healthy Families
39 Program (Part 6.2 (commencing with Section 12693) of Division
40 2 of the Insurance Code).

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

6 (5) *A health care service plan contract that provides Healthy
7 Kids coverage.*

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

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

15 (g) This section shall become inoperative on July 1, 2014, and,
16 as of January 1, 2015, is repealed, unless a later enacted statute,
17 that becomes operative on or before January 1, 2015, deletes or
18 extends the dates on which it becomes inoperative and is repealed.

19 *SEC. 2. Section 10144.51 of the Insurance Code is amended
20 to read:*

21 10144.51. (a) (1) Every health insurance policy shall also
22 provide coverage for behavioral health treatment for pervasive
23 developmental disorder or autism no later than July 1, 2012. The
24 coverage shall be provided in the same manner and shall be subject
25 to the same requirements as provided in Section 10144.5.

26 (2) Notwithstanding paragraph (1), as of the date that proposed
27 final rulemaking for essential health benefits is issued, this section
28 does not require any benefits to be provided that exceed the
29 essential health benefits that all health insurers will be required by
30 federal regulations to provide under Section 1302(b) of the federal
31 Patient Protection and Affordable Care Act (Public Law 111-148),
32 as amended by the federal Health Care and Education
33 Reconciliation Act of 2010 (Public Law 111-152).

34 (3) This section shall not affect services for which an individual
35 is eligible pursuant to Division 4.5 (commencing with Section
36 4500) of the Welfare and Institutions Code or Title 14
37 (commencing with Section 95000) of the Government Code.

38 (4) This section shall not affect or reduce any obligation to
39 provide services under an individualized education program, as
40 defined in Section 56032 of the Education Code, or an

1 individualized service plan, as described in Section 5600.4 of the
2 Welfare and Institutions Code, or under the Individuals with
3 Disabilities Education Act (20 U.S.C. Sec. 1400, et seq.) and its
4 implementing regulations.

5 (b) Pursuant to Article 6 (commencing with Section 2240.1) of
6 Title 10 of the California Code of Regulations, every health insurer
7 subject to this section shall maintain an adequate network that
8 includes qualified autism service providers who supervise and
9 employ qualified autism service professionals or paraprofessionals
10 who provide and administer behavioral health treatment. Nothing
11 shall prevent a health insurer from selectively contracting with
12 providers within these requirements.

13 (c) For the purposes of this section, the following definitions
14 shall apply:

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

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

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

29 (i) A qualified autism service provider.

30 (ii) A qualified autism service professional supervised and
31 employed by the qualified autism service provider.

32 (iii) A qualified autism service paraprofessional supervised and
33 employed by a qualified autism service provider.

34 (C) The treatment plan has measurable goals over a specific
35 timeline that is developed and approved by the qualified autism
36 service provider for the specific patient being treated. The treatment
37 plan shall be reviewed no less than once every six months by the
38 qualified autism service provider and modified whenever
39 appropriate, and shall be consistent with Section 4686.2 of the

1 Welfare and Institutions Code pursuant to which the qualified
2 autism service provider does all of the following:

3 (i) Describes the patient’s behavioral health impairments to be
4 treated.

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

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

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

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

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

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

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

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

3 (A) Provides behavioral health treatment.

4 (B) Is employed and supervised by a qualified autism service
5 provider.

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

8 (D) Is a behavioral service provider approved as a vendor by a
9 California regional center to provide services as an Associate
10 Behavior Analyst, Behavior Analyst, Behavior Management
11 Assistant, Behavior Management Consultant, or Behavior
12 Management Program as defined in Section 54342 of Title 17 of
13 the California Code of Regulations.

14 (E) Has training and experience in providing services for
15 pervasive developmental disorder or autism pursuant to Division
16 4.5 (commencing with Section 4500) of the Welfare and
17 Institutions Code or Title 14 (commencing with Section 95000)
18 of the Government Code.

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

22 (A) Is employed and supervised by a qualified autism service
23 provider.

24 (B) Provides treatment and implements services pursuant to a
25 treatment plan developed and approved by the qualified autism
26 service provider.

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

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

31 (6) *“Healthy Kids coverage” means a child-only health care*
32 *service plan contract administered by a county, a county agency,*
33 *a local initiative, a county organized health system, or a health*
34 *authority providing health care coverage to eligible children whose*
35 *family income is at or below 400 percent of the federal poverty*
36 *level that is intended to provide coverage similar to the Healthy*
37 *Families Program for children who do not qualify for the Medi-Cal*
38 *program or the Healthy Families Program.*

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

1 (1) A specialized health insurance policy that does not cover
2 mental health or behavioral health services or an accident only,
3 specified disease, hospital indemnity, or Medicare supplement
4 policy.

5 (2) A health insurance policy in the Medi-Cal program (Chapter
6 7 (commencing with Section 14000) of Part 3 of Division 9 of the
7 Welfare and Institutions Code).

8 (3) A health insurance policy in the Healthy Families Program
9 (Part 6.2 (commencing with Section 12693) of Division 2 of the
10 Insurance Code).

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

16 (5) *A health insurance policy that provides Healthy Kids
17 coverage.*

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

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

25 (g) This section shall become inoperative on July 1, 2014, and,
26 as of January 1, 2015, is repealed, unless a later enacted statute,
27 that becomes operative on or before January 1, 2015, deletes or
28 extends the dates on which it becomes inoperative and is repealed.

29 ~~SECTION 1. The Legislature finds and declares all of the
30 following:~~

31 ~~(a) During the past decade, scientific research has established
32 that behavioral intervention therapy can significantly improve the
33 cognitive function and emotional capabilities of, and reduce
34 self-injurious behaviors of, a significant number of individuals
35 with pervasive developmental disorders or autism.~~

36 ~~(b) Scientists, physicians, and other autism experts now consider
37 that behavioral intervention therapy is an important and medically
38 necessary treatment for a significant number of individuals with
39 pervasive developmental disorder or autism.~~

1 ~~(e) Controversy, uncertainty, and disparities currently exist~~
2 ~~among some health care service plans and health insurers as to~~
3 ~~whether behavioral intervention therapy should be a covered benefit~~
4 ~~for pervasive developmental disorder or autism.~~

5 ~~(d) It is the intent of this act to provide clarification of existing~~
6 ~~laws requiring mental health parity and to provide for coverage of~~
7 ~~behavioral intervention therapy with regard to pervasive~~
8 ~~developmental disorder or autism.~~

9 ~~SEC. 2. Section 1374.73 is added to the Health and Safety~~
10 ~~Code, to read:~~

11 ~~1374.73. (a) (1) Every health care service plan contract issued,~~
12 ~~amended, or renewed on or after January 1, 2012, that provides~~
13 ~~hospital, medical, or surgical coverage pursuant to Section 1374.72~~
14 ~~shall provide coverage for behavioral intervention therapy for~~
15 ~~pervasive developmental disorder or autism. The coverage shall~~
16 ~~be provided in the same manner and shall be subject to the same~~
17 ~~requirements as provided in Section 1374.72.~~

18 ~~(2) Notwithstanding paragraph (1), this section does not require~~
19 ~~any benefits to be provided that exceed the essential health benefits~~
20 ~~required to be provided under Section 1302(b) of the federal Patient~~
21 ~~Protection and Affordable Care Act (Public Law 111-148), as~~
22 ~~amended by the federal Health Care and Education Reconciliation~~
23 ~~Act of 2010 (Public Law 111-152).~~

24 ~~(3) This section shall not be construed as reducing any obligation~~
25 ~~to provide services to an individual under an individualized family~~
26 ~~service plan, an individualized program plan, a prevention program~~
27 ~~plan, an individualized education program, or an individualized~~
28 ~~service plan.~~

29 ~~(b) (1) For the purposes of this section, “behavioral intervention~~
30 ~~therapy” shall be defined to include, but not be limited to, the~~
31 ~~following:~~

32 ~~(A) The design, implementation, and evaluation of~~
33 ~~environmental modifications, such as applied behavioral analysis,~~
34 ~~using behavioral stimuli and consequences, to produce significant~~
35 ~~improvement in human health functions and behaviors, including~~
36 ~~the use of direct observation, measurement, and functional analysis~~
37 ~~of the relationship between environment and behavior.~~

38 ~~(B) Professional services or treatment programs that have been~~
39 ~~scientifically validated and have demonstrated clinical efficacy.~~

1 ~~(C) Professional services or treatment programs that have~~
2 ~~measurable treatment outcomes.~~

3 ~~(2) For the purposes of this section, “pervasive developmental~~
4 ~~disorder or autism” shall have the meaning as used in Section~~
5 ~~1374.72.~~

6 ~~SEC. 3. Section 10144.51 is added to the Insurance Code, to~~
7 ~~read:~~

8 ~~10144.51. (a) (1) Every health insurance policy issued,~~
9 ~~amended, or renewed on or after January 1, 2012, that provides~~
10 ~~hospital, medical, or surgical coverage pursuant to Section 10144.5~~
11 ~~shall provide coverage for the behavioral intervention therapy for~~
12 ~~pervasive developmental disorder or autism. The coverage shall~~
13 ~~be provided in the same manner and shall be subject to the same~~
14 ~~requirements as provided in Section 10144.5.~~

15 ~~(2) Notwithstanding paragraph (1), this section does not require~~
16 ~~any benefits to be provided that exceed the essential health benefits~~
17 ~~required to be provided under Section 1302(b) of the federal Patient~~
18 ~~Protection and Affordable Care Act (Public Law 111-148), as~~
19 ~~amended by the federal Health Care and Education Reconciliation~~
20 ~~Act of 2010 (Public Law 111-152).~~

21 ~~(3) This section shall not be construed as reducing any obligation~~
22 ~~to provide services to an individual under an individualized family~~
23 ~~service plan, an individualized program plan, a prevention program~~
24 ~~plan, an individualized education program, or an individualized~~
25 ~~service plan.~~

26 ~~(b) (1) For the purposes of this section, “behavioral intervention~~
27 ~~therapy” shall be defined to include, but not be limited to, the~~
28 ~~following:~~

29 ~~(A) The design, implementation, and evaluation of~~
30 ~~environmental modifications, such as applied behavioral analysis,~~
31 ~~using behavioral stimuli and consequences, to produce significant~~
32 ~~improvement in human health functions and behaviors, including~~
33 ~~the use of direct observation, measurement, and functional analysis~~
34 ~~of the relationship between environment and behavior.~~

35 ~~(B) Professional services or treatment programs that have been~~
36 ~~scientifically validated and have demonstrated clinical efficacy.~~

37 ~~(C) Professional services or treatment programs that have~~
38 ~~measurable treatment outcomes.~~

1 ~~(2) For the purposes of this section, “pervasive developmental~~
2 ~~disorder or autism” shall have the meaning as used in Section~~
3 ~~10144.5.~~

4 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
5 ~~Section 6 of Article XIII B of the California Constitution because~~
6 ~~the only costs that may be incurred by a local agency or school~~
7 ~~district will be incurred because this act creates a new crime or~~
8 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
9 ~~for a crime or infraction, within the meaning of Section 17556 of~~
10 ~~the Government Code, or changes the definition of a crime within~~
11 ~~the meaning of Section 6 of Article XIII B of the California~~
12 ~~Constitution.~~