

AMENDED IN ASSEMBLY AUGUST 31, 2011

AMENDED IN ASSEMBLY AUGUST 16, 2011

AMENDED IN ASSEMBLY JUNE 30, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 24, 2011

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SENATE BILL

No. 770

Introduced by Senators Steinberg and Evans

(Principal coauthor: Assembly Member Beall)

(~~Coauthor: Assembly Member Fuentes~~)

February 18, 2011

An act to add Section 1374.73 to the Health and Safety Code, and to add Sections 10144.51 and 10144.52 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 770, as amended, Steinberg. Health care coverage: mental illness: developmental disorder and autism.

(1) Existing law provides for the 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 the regulation of health insurers by the Department of Insurance. Existing law requires health care service plan contracts and health insurance policies to provide benefits for specified conditions, including certain mental health conditions.

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

(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.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Scientific research has established that behavioral health
4 treatment can significantly improve the cognitive function and
5 emotional capabilities, and reduce self-injurious behavior, for a
6 significant number of individuals with pervasive developmental
7 disorder or autism.

8 (b) Existing law requires health care service plan contracts and
9 health insurance policies to provide coverage for all medically
10 necessary treatment for individuals with pervasive developmental
11 disorder or autism pursuant to Section 1374.72 of the Health and
12 Safety Code and Section 10144.5 of the Insurance Code.

13 (c) Scientists, physicians, and other autism experts consider
14 behavioral health treatment an important and medically necessary
15 treatment for a significant number of individuals with pervasive
16 developmental disorder or autism.

17 (d) Despite Section 1374.72 of the Health and Safety Code,
18 Section 10144.5 of the Insurance Code, and the scientific literature
19 findings that behavioral health treatment is efficacious in the
20 treatment of pervasive developmental disorder and autism, some
21 health care service plans and health insurers continue to refuse to

1 cover medically necessary behavioral health treatment for
2 individuals with these disorders.

3 (e) Of the grievances and appeals that have been filed with the
4 Department of Managed Health Care and the Department of
5 Insurance, an increasing number of independent medical review
6 decisions have determined that behavioral health treatment is
7 medically necessary for the treatment of pervasive developmental
8 disorder or autism.

9 (f) Therefore, it is the intent of the Legislature to ensure that
10 behavioral health treatment is considered a covered benefit, when
11 it is medically necessary, for the treatment of pervasive
12 developmental disorder or autism.

13 SEC. 2. Section 1374.73 is added to the Health and Safety
14 Code, to read:

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

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

28 (3) This section shall not be construed as reducing any obligation
29 to provide services to an individual under an individualized family
30 service plan as described in Section 95020 of the Government
31 Code, an individualized program plan as described in Section 4646
32 of the Welfare and Institutions Code, a prevention program plan
33 as described in Section 4435 of the Welfare and Institutions Code,
34 an individualized education program as defined in Section 56032
35 of the Education Code, or an individualized service plan as
36 described in Section 5600.4 of the Welfare and Institutions Code.

37 (b) Every health care service plan subject to this section shall
38 maintain an adequate network of qualified autism service providers,
39 and the plan shall comply with all applicable provisions of this act
40 or regulations adopted thereunder.

1 (c) (1) Notwithstanding any other provision of law, unlicensed
2 or uncertified staff may implement services if the qualified autism
3 service provider ensures that each staff person implementing
4 services pursuant to this section has adequate training and the
5 qualified autism service provider supervises these staff persons.
6 (2) Prior to implementing services, all unlicensed or uncertified
7 staff shall be subject to criminal background screening and
8 fingerprinting meeting requirements established by the department.
9 (d) For the purposes of this section, the following definitions
10 shall apply:
11 (1) “Behavioral health treatment” means professional services
12 and treatment programs, including, but not limited to, applied
13 behavior analysis and other intervention programs, such as Pivotal
14 Response Therapy and Early Start Denver Model, that meet all of
15 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 Division 2 of the Business and Professions Code.
19 (B) The treatment shall be derived from peer-reviewed literature
20 or scientific evidence-based research that has demonstrated clinical
21 efficacy in treating the symptoms or manifestations associated
22 with pervasive developmental disorder or autism.
23 (C) The treatment is provided or supervised by a qualified autism
24 service provider.
25 (2) “Pervasive developmental disorder or autism” shall have
26 the same meaning and interpretation as used in Section 1374.72.
27 (3) “Qualified autism service provider” shall include any person,
28 entity, or group that is nationally certified by an entity, such as,
29 but not limited to, the Behavior Analyst Certification Board, that
30 is accredited by the National Commission for Certifying Agencies,
31 or any 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
36 500) of the Business and Professions Code, who designs,
37 supervises, or provides treatment for pervasive developmental
38 disorder or autism, provided the services are within the experience
39 and competence of the person, entity, or group that is nationally

1 certified or the licensee. A “qualified autism service provider”
2 shall also include both of the following:

3 (A) Any service provider that is approved as a vendor of a
4 regional center to provide those same services for pervasive
5 developmental disorder or autism pursuant to Division 4.5
6 (commencing with Section 4500) of the Welfare and Institutions
7 Code or Title 14 (commencing with Section 95000) of the
8 Government Code.

9 (B) A State Department of Education nonpublic, nonsectarian
10 agency, as defined in Section 56035 of the Education Code, that
11 is approved to provide those same services for pervasive
12 developmental disorder or autism.

13 SEC. 3. Section 10144.51 is added to the Insurance Code, to
14 read:

15 10144.51. (a) (1) Every health insurance policy issued,
16 amended, or renewed on or after January 1, 2012, that provides
17 hospital, medical, or surgical coverage pursuant to Section 10144.5
18 shall provide coverage for behavioral health treatment for pervasive
19 developmental disorder or autism. The coverage shall be provided
20 in the same manner and shall be subject to the same requirements
21 as provided in Section 10144.5.

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

28 (3) This section shall not be construed as reducing any obligation
29 to provide services to an individual under an individualized family
30 service plan as described in Section 95020 of the Government
31 Code, an individualized program plan as described in Section 4646
32 of the Welfare and Institutions Code, a prevention program plan
33 as described in Section 4435 of the Welfare and Institutions Code,
34 an individualized education program as defined in Section 56032
35 of the Education Code, or an individualized service plan as
36 described in Section 5600.4 of the Welfare and Institutions Code.

37 (b) Pursuant to Article 6 (commencing with Section 2240.1) of
38 Title 10 of the California Code of Regulations, every health insurer
39 subject to this section shall maintain an adequate network of
40 qualified autism service providers to ensure that all insureds have

1 timely access to qualified autism service providers, continuity of
2 care, and ready referral to in-network qualified autism service
3 providers.

4 (c) (1) Notwithstanding any other provision of law, unlicensed
5 or uncertified staff may implement services if the qualified autism
6 service provider ensures that each staff person implementing
7 services pursuant to this section has adequate training and the
8 qualified autism service provider supervises these staff persons.

9 (2) All unlicensed or uncertified staff implementing services
10 pursuant to this section shall be subject to criminal background
11 screening and fingerprinting meeting requirements established by
12 the department.

13 (d) 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, but not limited to, applied
17 behavior analysis and other intervention programs, such as Pivotal
18 Response Therapy and Early Start Denver Model, that meet all of
19 the following criteria:

20 (A) The treatment is prescribed by a physician and surgeon
21 licensed pursuant to Chapter 5 (commencing with Section 2000)
22 of Division 2 of the Business and Professions Code.

23 (B) The treatment shall be derived from peer-reviewed literature
24 or scientific evidence-based research that has demonstrated clinical
25 efficacy in treating the symptoms or manifestations associated
26 with pervasive developmental disorder or autism.

27 (C) The treatment is provided or supervised by a qualified autism
28 service provider.

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

31 (3) “Qualified autism service provider” shall include any person,
32 entity, or group that is nationally certified by an entity, such as,
33 but not limited to, the Behavior Analyst Certification Board, that
34 is accredited by the National Commission for Certifying Agencies,
35 or any 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
40 500) of the Business and Professions Code, who designs,

1 supervises, or provides treatment for pervasive developmental
2 disorder or autism, provided the services are within the experience
3 and competence of the person, entity, or group that is nationally
4 certified or the licensee. A “qualified autism service provider”
5 shall also include both of the following:

6 (A) Any service provider that is approved as a vendor of a
7 regional center to provide those same services for pervasive
8 developmental disorder or autism pursuant to Division 4.5
9 (commencing with Section 4500) of the Welfare and Institutions
10 Code or Title 14 (commencing with Section 95000) of the
11 Government Code.

12 (B) A State Department of Education nonpublic, nonsectarian
13 agency as defined in Section 56035 of the Education Code,
14 approved to provide those same services for pervasive
15 developmental disorder or autism.

16 SEC. 4. Section 10144.52 is added to the Insurance Code, to
17 read:

18 10144.52. For purposes of this part, the terms “provider,”
19 “professional provider,” “network provider,” “mental health
20 provider,” and “mental health professional” shall include the term
21 “qualified autism service ~~provider~~ provider,” as defined in
22 subdivision (d) of Section 10144.51.

23 SEC. 5. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.