

AMENDED IN ASSEMBLY JANUARY 13, 2016

AMENDED IN ASSEMBLY JANUARY 4, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 796

**Introduced by Assembly Member Nazarian
(Coauthor: Assembly Member Rendon)**

February 26, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 796, as amended, Nazarian. Health care coverage: autism and pervasive developmental disorders.

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. For purposes of this provision, 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.

This bill would extend the operation of these provisions to January 1, 2022. 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 bill would require the Board of Psychology, no later than December 31, 2017, and thereafter as necessary, to convene a committee to create a list of evidence-based treatment modalities for purposes of ~~developing mandated~~ behavioral health treatment ~~modalities~~ for pervasive developmental disorder or ~~autism~~, autism, and to post the list on the department's Internet Web site no later than January 1, 2019.

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) Autism and other pervasive developmental disorders are
- 4 complex neurobehavioral disorders that include impairments in
- 5 social communication and social interaction combined with rigid,
- 6 repetitive behaviors, interests, and activities.
- 7 (b) Autism covers a large spectrum of symptoms and levels of
- 8 impairment ranging in severity from somewhat limiting to a severe
- 9 disability that may require institutional care.
- 10 (c) One in 68 children born today will be diagnosed with autism
- 11 or another pervasive developmental disorder.
- 12 (d) Research has demonstrated that children diagnosed with
- 13 autism can often be helped with early administration of behavioral
- 14 health treatment.
- 15 (e) There are several forms of evidence-based behavioral health
- 16 treatment, including, but not limited to, applied behavioral analysis.

1 (f) Children diagnosed with autism respond differently to
2 behavioral health treatment.

3 (g) It is critical that each child diagnosed with autism receives
4 the specific type of evidence-based behavioral health treatment
5 best suited to him or her, as prescribed by his or her physician or
6 developed by a psychologist.

7 (h) The Legislature intends that all forms of evidence-based
8 behavioral health treatment be covered by health care service plans,
9 pursuant to Section 1374.73 of the Health and Safety Code, and
10 health insurance policies, pursuant to Section 10144.51 of the
11 Insurance Code.

12 (i) The Legislature intends that health care service plan provider
13 networks include qualified professionals practicing all forms of
14 evidence-based behavioral health treatment other than just applied
15 behavioral analysis.

16 SEC. 2. Section 1374.73 of the Health and Safety Code is
17 amended to read:

18 1374.73. (a) (1) Every health care service plan contract that
19 provides hospital, medical, or surgical coverage shall also provide
20 coverage for behavioral health treatment for pervasive
21 developmental disorder or autism no later than July 1, 2012. The
22 coverage shall be provided in the same manner and shall be subject
23 to the same requirements as provided in Section 1374.72.

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

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

36 (4) This section shall not affect or reduce any obligation to
37 provide services under an individualized education program, as
38 defined in Section 56032 of the Education Code, or an individual
39 service plan, as described in Section 5600.4 of the Welfare and
40 Institutions Code, or under the federal Individuals with Disabilities

1 Education Act (20 U.S.C. Sec. 1400 et seq.) and its implementing
2 regulations.

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

10 (c) For the purposes of this section, the following definitions
11 shall apply:

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

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

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

26 (i) A qualified autism service provider.

27 (ii) A qualified autism service professional supervised and
28 employed by the qualified autism service provider.

29 (iii) A qualified autism service paraprofessional supervised and
30 employed by a qualified autism service provider.

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

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

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

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

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

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

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

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

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

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

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

38 (A) Provides behavioral health treatment.

39 (B) Is employed and supervised by a qualified autism service
40 provider.

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

3 (D) Is a behavioral service provider approved as a vendor by a
4 California regional center to provide services as an Associate
5 Behavior Analyst, Behavior Analyst, Behavior Management
6 Assistant, Behavior Management Consultant, or Behavior
7 Management Program as defined in Section 54342 of *Subchapter*
8 *2 of Chapter 3 of Division 2* of Title 17 of the California Code of
9 Regulations.

10 (E) Has training and experience in providing services for
11 pervasive developmental disorder or autism pursuant to Division
12 4.5 (commencing with Section 4500) of the Welfare and
13 Institutions Code or Title 14 (commencing with Section 95000)
14 of the Government Code.

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

18 (A) Is employed and supervised by a qualified autism service
19 provider.

20 (B) Provides treatment and implements services pursuant to a
21 treatment plan developed and approved by the qualified autism
22 service provider.

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

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

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

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

30 (2) A health care service plan contract in the Medi-Cal program
31 (Chapter 7 (commencing with Section 14000) of Part 3 of Division
32 9 of the Welfare and Institutions Code).

33 (3) A health care service plan contract in the Healthy Families
34 Program (Part 6.2 (commencing with Section 12693) of Division
35 2 of the Insurance Code).

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

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

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

8 (g) No later than December 31, 2017, and thereafter as
9 necessary, the Board of Psychology, upon appropriation of the
10 Legislature, shall convene a committee to create a list of
11 evidence-based treatment modalities for purposes of ~~developing~~
12 ~~mandated~~ behavioral health treatment ~~modalities~~ for pervasive
13 developmental disorder or autism. *The Board of Psychology shall*
14 *post the list of evidence-based treatment modalities on its Internet*
15 *Web site no later than January 1, 2019.*

16 (h) This section shall remain in effect only until January 1, 2022,
17 and as of that date is repealed, unless a later enacted statute, that
18 is enacted before January 1, 2022, deletes or extends that date.

19 SEC. 3. 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 individual

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

5 (b) Pursuant to Article 6 (commencing with Section 2240) of
6 *Subchapter 2 of Chapter 5* of Title 10 of the California Code of
7 Regulations, every health insurer subject to this section shall
8 maintain an adequate network that includes qualified autism service
9 providers who supervise and employ qualified autism service
10 professionals or paraprofessionals who provide and administer
11 behavioral health treatment. Nothing shall prevent a health insurer
12 from selectively contracting with providers within these
13 requirements.

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

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

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

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

30 (i) A qualified autism service provider.

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

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

35 (C) The treatment plan has measurable goals over a specific
36 timeline that is developed and approved by the qualified autism
37 service provider for the specific patient being treated. The treatment
38 plan shall be reviewed no less than once every six months by the
39 qualified autism service provider and modified whenever
40 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 or
4 developmental challenges that are to be 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 *Subchapter*
13 *2 of Chapter 3 of Division 2* of Title 17 of the California Code of
14 Regulations.
- 15 (E) Has training and experience in providing services for
16 pervasive developmental disorder or autism pursuant to Division
17 4.5 (commencing with Section 4500) of the Welfare and
18 Institutions Code or Title 14 (commencing with Section 95000)
19 of the Government Code.
- 20 (5) “Qualified autism service paraprofessional” means an
21 unlicensed and uncertified individual who meets all of the
22 following criteria:
- 23 (A) Is employed and supervised by a qualified autism service
24 provider.
- 25 (B) Provides treatment and implements services pursuant to a
26 treatment plan developed and approved by the qualified autism
27 service provider.
- 28 (C) Meets the criteria set forth in the regulations adopted
29 pursuant to Section 4686.3 of the Welfare and Institutions Code.
- 30 (D) Has adequate education, training, and experience, as
31 certified by a qualified autism service provider.
- 32 (d) This section shall not apply to the following:
- 33 (1) A specialized health insurance policy that does not cover
34 mental health or behavioral health services or an accident only,
35 specified disease, hospital indemnity, or Medicare supplement
36 policy.
- 37 (2) A health insurance policy in the Medi-Cal program (Chapter
38 7 (commencing with Section 14000) of Part 3 of Division 9 of the
39 Welfare and Institutions Code).

1 (3) A health insurance policy in the Healthy Families Program
2 (Part 6.2 (commencing with Section 12693)).

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

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

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

15 (g) No later than December 31, 2017, and thereafter as
16 necessary, the Board of Psychology, upon appropriation by the
17 Legislature, shall convene a committee to create a list of
18 evidence-based treatment modalities for purposes of ~~developing~~
19 ~~mandated~~ behavioral health treatment ~~modalities~~ for pervasive
20 developmental disorder or autism. *The Board of Psychology shall*
21 *post the list of evidence-based treatment modalities on its Internet*
22 *Web site no later than January 1, 2019.*

23 (h) This section shall remain in effect only until January 1, 2022,
24 and as of that date is repealed, unless a later enacted statute, that
25 is enacted before January 1, 2022, deletes or extends that date.

26 SEC. 4. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.