

AMENDED IN SENATE JUNE 21, 2016

AMENDED IN SENATE JUNE 8, 2016

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, *and to add Section 4513.1 to the Welfare and Institutions 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, the Lanterman Developmental Disabilities Services Act, requires the State Department of Developmental Services to contract with regional centers to provide services and supports to individuals with developmental disabilities and their families. Existing law defines developmental disability for these purposes, to include, among other things, autism.

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 delete the sunset date, thereby extending the operation of these provisions indefinitely. 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 Department of Managed Health Care, in conjunction with the Department of Insurance, to develop procedure codes for evidence-based behavioral health treatment other than applied behavior analysis. The bill would also require the Department of Managed Health Care, in conjunction with the Department of Insurance as the lead agency, to convene a task force, as specified. The bill would also provide that the list of behavioral health treatment modalities developed shall constitute evidence that a particular form of treatment is evidence-based in an independent medical review. The bill would also prohibit the absence of a particular form of treatment from the list of behavioral health treatment modalities developed from constituting evidence that a particular form of treatment is not evidence-based.~~

The bill would also require the State Department of Developmental Services, no later than July 1, 2018, with input from stakeholders, as specified, to develop a methodology for determining what constitutes an evidence-based practice in the field of behavioral health treatment for autism and pervasive developmental disorder and to update regulations to set forth the minimum standards of education, training, and professional experience for qualified autism service professionals and paraprofessionals, as specified.

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.

17 (f) Children diagnosed with autism respond differently to
18 behavioral health treatment.

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

23 (h) The Legislature intends that ~~all forms of~~ evidence-based
24 behavioral health treatment be covered by health care service plans,
25 pursuant to Section 1374.73 of the Health and Safety Code, and
26 health insurance policies, pursuant to Section 10144.51 of the
27 Insurance Code.

28 (i) The Legislature intends that health care service plan provider
29 networks include qualified professionals practicing all forms of

1 evidence-based behavioral health treatment other than just applied
2 behavioral analysis.

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

5 1374.73. (a) (1) Every health care service plan contract that
6 provides hospital, medical, or surgical coverage shall also provide
7 coverage for behavioral health treatment for pervasive
8 developmental disorder or autism no later than July 1, 2012. The
9 coverage shall be provided in the same manner and shall be subject
10 to the same requirements as provided in Section 1374.72.

11 (2) Notwithstanding paragraph (1), as of the date that proposed
12 final rulemaking for essential health benefits is issued, this section
13 does not require any benefits to be provided that exceed the
14 essential health benefits that all health plans will be required by
15 federal regulations to provide under Section 1302(b) of the federal
16 Patient Protection and Affordable Care Act (Public Law 111-148),
17 as amended by the federal Health Care and Education
18 Reconciliation Act of 2010 (Public Law 111-152).

19 (3) This section shall not affect services for which an individual
20 is eligible pursuant to Division 4.5 (commencing with Section
21 4500) of the Welfare and Institutions Code or Title 14
22 (commencing with Section 95000) of the Government Code.

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

30 (b) Every health care service plan subject to this section shall
31 maintain an adequate network that includes qualified autism service
32 providers who supervise and employ qualified autism service
33 professionals or paraprofessionals who provide and administer
34 behavioral health treatment. Nothing shall prevent a health care
35 service plan from selectively contracting with providers within
36 these requirements.

37 (c) For the purposes of this section, the following definitions
38 shall apply:

39 (1) "Behavioral health treatment" means professional services
40 and treatment programs, including applied behavior analysis and

1 evidence-based behavior intervention programs, that develop or
2 restore, to the maximum extent practicable, the functioning of an
3 individual with pervasive developmental disorder or autism and
4 that meet all of the following criteria:

5 (A) The treatment is prescribed by a physician and surgeon
6 licensed pursuant to Chapter 5 (commencing with Section 2000)
7 of, or is developed by a psychologist licensed pursuant to Chapter
8 6.6 (commencing with Section 2900) of, Division 2 of the Business
9 and Professions Code.

10 (B) The treatment is provided under a treatment plan prescribed
11 by a qualified autism service provider and is administered by one
12 of the following:

- 13 (i) A qualified autism service provider.
- 14 (ii) A qualified autism service professional supervised and
15 employed by the qualified autism service provider.
- 16 (iii) A qualified autism service paraprofessional supervised and
17 employed by a qualified autism service provider.

18 (C) The treatment plan has measurable goals over a specific
19 timeline that is developed and approved by the qualified autism
20 service provider for the specific patient being treated. The treatment
21 plan shall be reviewed no less than once every six months by the
22 qualified autism service provider and modified whenever
23 appropriate, and shall be consistent with Section 4686.2 of the
24 Welfare and Institutions Code pursuant to which the qualified
25 autism service provider does all of the following:

- 26 (i) Describes the patient's behavioral health impairments or
27 developmental challenges that are to be treated.
- 28 (ii) Designs an intervention plan that includes the service type,
29 number of hours, and parent participation needed to achieve the
30 plan's goal and objectives, and the frequency at which the patient's
31 progress is evaluated and reported.
- 32 (iii) Provides intervention plans that utilize evidence-based
33 practices, with demonstrated clinical efficacy in treating pervasive
34 developmental disorder or autism.
- 35 (iv) Discontinues intensive behavioral intervention services
36 when the treatment goals and objectives are achieved or no longer
37 appropriate.

38 (D) The treatment plan is not used for purposes of providing or
39 for the reimbursement of respite, day care, or educational services
40 and is not used to reimburse a parent for participating in the

1 treatment program. The treatment plan shall be made available to
2 the health care service plan upon request.

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

5 (3) “Qualified autism service provider” means either of the
6 following:

7 (A) A person, entity, or group that is certified by a national
8 entity, such as the Behavior Analyst Certification Board, that is
9 accredited by the National Commission for Certifying Agencies,
10 and who designs, supervises, or provides treatment for pervasive
11 developmental disorder or autism, provided the services are within
12 the experience and competence of the person, entity, or group that
13 is nationally certified.

14 (B) A person licensed as a physician and surgeon, physical
15 therapist, occupational therapist, psychologist, marriage and family
16 therapist, educational psychologist, clinical social worker,
17 professional clinical counselor, speech-language pathologist, or
18 audiologist pursuant to Division 2 (commencing with Section 500)
19 of the Business and Professions Code, who designs, supervises,
20 or provides treatment for pervasive developmental disorder or
21 autism, provided the services are within the experience and
22 competence of the licensee.

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

25 (A) Provides behavioral health treatment.

26 (B) Is employed and supervised by a qualified autism service
27 provider.

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

30 (D) Is a behavioral service provider approved as a vendor by a
31 California regional center to provide services as an Associate
32 Behavior Analyst, Behavior Analyst, Behavior Management
33 Assistant, Behavior Management Consultant, or Behavior
34 Management Program as defined in Section 54342 of Article 3 of
35 Subchapter 2 of Chapter 3 of Division 2 of Title 17 of the
36 California Code of Regulations.

37 (E) Has training and experience in providing services for
38 pervasive developmental disorder or autism pursuant to Division
39 4.5 (commencing with Section 4500) of the Welfare and

1 Institutions Code or Title 14 (commencing with Section 95000)
2 of the Government Code.

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

6 (A) Is employed and supervised by a qualified autism service
7 provider.

8 (B) Provides treatment and implements services pursuant to a
9 treatment plan developed and approved by the qualified autism
10 service provider.

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

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

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

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

18 (2) A health care service plan contract in the Medi-Cal program
19 (Chapter 7 (commencing with Section 14000) of Part 3 of Division
20 9 of the Welfare and Institutions Code).

21 (3) A health care service plan contract in the Healthy Families
22 Program (Part 6.2 (commencing with Section 12693) of Division
23 2 of the Insurance Code).

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

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

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

36 ~~(g) No later than July 1, 2017, the department, in conjunction~~
37 ~~with the Department of Insurance, shall develop procedure codes~~
38 ~~for evidence-based behavioral health treatment other than applied~~
39 ~~behavior analysis.~~

1 ~~(h) No later than December 31, 2017, and thereafter as~~
2 ~~necessary, the department, in conjunction with the Department of~~
3 ~~Insurance as lead agency, shall convene a task force that, at a~~
4 ~~minimum, shall include a developmental pediatrician, a marriage~~
5 ~~and family therapist, a child and adolescent psychiatrist, a~~
6 ~~psychologist, a neuropsychologist, a board-certified behavior~~
7 ~~analyst, and a University of California autism researcher as voting~~
8 ~~representatives, as well as nonvoting representatives from the State~~
9 ~~Department of Developmental Services, the Department of~~
10 ~~Insurance, and the department. All voting members shall be~~
11 ~~professionals trained in interpreting research data and shall~~
12 ~~represent a balanced diversity of treatment modalities, including~~
13 ~~both behavioral and developmental approaches. The task force~~
14 ~~shall do all of the following:~~

15 ~~(1) Develop a methodology for determining what constitutes~~
16 ~~an evidence-based practice in the field of behavioral health~~
17 ~~treatment for autism and pervasive developmental disorder.~~

18 ~~(2) Develop a list of behavioral health treatment modalities for~~
19 ~~autism and pervasive developmental disorder supported by research~~
20 ~~that shall be displayed on the department Web site and distributed~~
21 ~~to the State Department of Developmental Services, all regional~~
22 ~~centers, and health care service plans.~~

23 ~~(3) Develop minimum standards of education, training, and~~
24 ~~professional experience for qualified autism service professionals~~
25 ~~practicing behavioral health treatment other than applied behavior~~
26 ~~analysis that shall be no less rigorous than the requirements as~~
27 ~~defined in subdivision (b) of Section 54342 of Article 3 of~~
28 ~~Subchapter 2 of Chapter 3 of Division 2 of Title 17 of the~~
29 ~~California Code of Regulations.~~

30 ~~(4) Develop minimum standards of education, training, and~~
31 ~~professional experience for qualified autism service~~
32 ~~paraprofessionals practicing behavioral health treatment other than~~
33 ~~applied behavior analysis that shall be no less rigorous than the~~
34 ~~education and training qualifications defined in the regulations~~
35 ~~adopted pursuant to Section 4686.3 of the Welfare and Institutions~~
36 ~~Code.~~

37 ~~(i) The list of behavioral health treatment modalities developed~~
38 ~~pursuant to this section shall constitute evidence that a particular~~
39 ~~form of treatment is evidence-based in an independent medical~~
40 ~~review.~~

1 ~~(j) The absence of a particular form of treatment from the list~~
2 ~~of behavioral health treatment modalities developed pursuant to~~
3 ~~this section shall not constitute evidence that a particular form of~~
4 ~~treatment is not evidence-based.~~

5 SEC. 3. Section 10144.51 of the Insurance Code is amended
6 to read:

7 10144.51. (a) (1) Every health insurance policy shall also
8 provide coverage for behavioral health treatment for pervasive
9 developmental disorder or autism no later than July 1, 2012. The
10 coverage shall be provided in the same manner and shall be subject
11 to the same requirements as provided in Section 10144.5.

12 (2) Notwithstanding paragraph (1), as of the date that proposed
13 final rulemaking for essential health benefits is issued, this section
14 does not require any benefits to be provided that exceed the
15 essential health benefits that all health insurers will be required by
16 federal regulations to provide under Section 1302(b) of the federal
17 Patient Protection and Affordable Care Act (Public Law 111-148),
18 as amended by the federal Health Care and Education
19 Reconciliation Act of 2010 (Public Law 111-152).

20 (3) This section shall not affect services for which an individual
21 is eligible pursuant to Division 4.5 (commencing with Section
22 4500) of the Welfare and Institutions Code or Title 14
23 (commencing with Section 95000) of the Government Code.

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

31 (b) Pursuant to Article 6 (commencing with Section 2240) of
32 Subchapter 2 of Chapter 5 of Title 10 of the California Code of
33 Regulations, every health insurer subject to this section shall
34 maintain an adequate network that includes qualified autism service
35 providers who supervise and employ qualified autism service
36 professionals or paraprofessionals who provide and administer
37 behavioral health treatment. Nothing shall prevent a health insurer
38 from selectively contracting with providers within these
39 requirements.

1 (c) For the purposes of this section, the following definitions
2 shall apply:

3 (1) “Behavioral health treatment” means professional services
4 and treatment programs, including applied behavior analysis and
5 evidence-based behavior intervention programs, that develop or
6 restore, to the maximum extent practicable, the functioning of an
7 individual with pervasive developmental disorder or autism, and
8 that meet all of the following criteria:

9 (A) The treatment is prescribed by a physician and surgeon
10 licensed pursuant to Chapter 5 (commencing with Section 2000)
11 of, or is developed by a psychologist licensed pursuant to Chapter
12 6.6 (commencing with Section 2900) of, Division 2 of the Business
13 and Professions Code.

14 (B) The treatment is provided under a treatment plan prescribed
15 by a qualified autism service provider and is administered by one
16 of the following:

17 (i) A qualified autism service provider.

18 (ii) A qualified autism service professional supervised and
19 employed by the qualified autism service provider.

20 (iii) A qualified autism service paraprofessional supervised and
21 employed by a qualified autism service provider.

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

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

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

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

1 (iv) Discontinues intensive behavioral intervention services
2 when the treatment goals and objectives are achieved or no longer
3 appropriate.

4 (D) The treatment plan is not used for purposes of providing or
5 for the reimbursement of respite, day care, or educational services
6 and is not used to reimburse a parent for participating in the
7 treatment program. The treatment plan shall be made available to
8 the insurer upon request.

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

11 (3) “Qualified autism service provider” means either of the
12 following:

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

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

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

31 (A) Provides behavioral health treatment.

32 (B) Is employed and supervised by a qualified autism service
33 provider.

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

36 (D) Is a behavioral service provider approved as a vendor by a
37 California regional center to provide services as an Associate
38 Behavior Analyst, Behavior Analyst, Behavior Management
39 Assistant, Behavior Management Consultant, or Behavior
40 Management Program as defined in Section 54342 of Article 3 of

1 Subchapter 2 of Chapter 3 of Division 2 of Title 17 of the
2 California Code of Regulations.

3 (E) Has training and experience in providing services for
4 pervasive developmental disorder or autism pursuant to Division
5 4.5 (commencing with Section 4500) of the Welfare and
6 Institutions Code or Title 14 (commencing with Section 95000)
7 of the Government Code.

8 (5) “Qualified autism service paraprofessional” means an
9 unlicensed and uncertified individual who meets all of the
10 following criteria:

11 (A) Is employed and supervised by a qualified autism service
12 provider.

13 (B) Provides treatment and implements services pursuant to a
14 treatment plan developed and approved by the qualified autism
15 service provider.

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

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

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

21 (1) A specialized health insurance policy that does not cover
22 mental health or behavioral health services or an accident only,
23 specified disease, hospital indemnity, or Medicare supplement
24 policy.

25 (2) A health insurance policy in the Medi-Cal program (Chapter
26 7 (commencing with Section 14000) of Part 3 of Division 9 of the
27 Welfare and Institutions Code).

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

30 (4) A health care benefit plan or policy entered into with the
31 Board of Administration of the Public Employees’ Retirement
32 System pursuant to the Public Employees’ Medical and Hospital
33 Care Act (Part 5 (commencing with Section 22750) of Division 5
34 of Title 2 of the Government Code).

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

37 (f) As provided in Section 10144.5 and in paragraph (1) of
38 subdivision (a), in the provision of benefits required by this section,
39 a health insurer may utilize case management, network providers,

1 utilization review techniques, prior authorization, copayments, or
2 other cost sharing.

3 *SEC. 4. Section 4513.1 is added to the Welfare and Institutions*
4 *Code, to read:*

5 *4513.1. (a) The department, no later than July 1, 2018, with*
6 *input from the stakeholders identified in subdivision (b), shall do*
7 *both of the following:*

8 *(1) Develop a methodology for determining what constitutes an*
9 *evidence-based practice in the field of behavioral health treatment*
10 *for autism and pervasive developmental disorder.*

11 *(2) Update regulations to set forth the minimum standards of*
12 *education, training, and professional experience for qualified*
13 *autism service professionals and paraprofessionals practicing*
14 *behavioral health treatment other than applied behavioral analysis*
15 *that shall be no less rigorous than the requirements set forth in*
16 *subdivision (b) of Section 54342 of Article 3 of Subchapter 2 of*
17 *Chapter 3 of Division 2 of Title 17 of the California Code of*
18 *Regulations.*

19 *(b) Stakeholders shall include professionals trained in*
20 *interpreting research data and shall represent a balanced diversity*
21 *of treatment modalities, including both behavioral and*
22 *developmental approaches. These professionals shall include, at*
23 *a minimum, a developmental pediatrician, a marriage and family*
24 *therapist, a child and adolescent psychiatrist, a psychologist, a*
25 *neuropsychologist, a board certified behavior analyst, and a*
26 *University of California autism researcher.*

27 ~~SEC. 4.~~

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

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