

AMENDED IN SENATE JUNE 30, 2016

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, 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 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:

1 (a) Autism and other pervasive developmental disorders are
2 complex neurobehavioral disorders that include impairments in
3 social communication and social interaction combined with rigid,
4 repetitive behaviors, interests, and activities.

5 (b) Autism covers a large spectrum of symptoms and levels of
6 impairment ranging in severity from somewhat limiting to a severe
7 disability that may require institutional care.

8 (c) One in 68 children born today will be diagnosed with autism
9 or another pervasive developmental disorder.

10 (d) Research has demonstrated that children diagnosed with
11 autism can often be helped with early administration of behavioral
12 health treatment.

13 (e) There are several forms of evidence-based behavioral health
14 treatment, including, but not limited to, applied behavioral analysis.

15 (f) Children diagnosed with autism respond differently to
16 behavioral health treatment.

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

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

26 (i) The Legislature intends that health care service plan provider
27 networks include qualified professionals practicing all forms of
28 evidence-based behavioral health treatment other than just applied
29 behavioral analysis.

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

32 1374.73. (a) (1) Every health care service plan contract that
33 provides hospital, medical, or surgical coverage shall also provide
34 coverage for behavioral health treatment for pervasive
35 developmental disorder or autism no later than July 1, 2012. The
36 coverage shall be provided in the same manner and shall be subject
37 to the same requirements as provided in Section 1374.72.

38 (2) Notwithstanding paragraph (1), as of the date that proposed
39 final rulemaking for essential health benefits is issued, this section
40 does not require any benefits to be provided that exceed the

1 essential health benefits that all health plans will be required by
2 federal regulations to provide under Section 1302(b) of the federal
3 Patient Protection and Affordable Care Act (Public Law 111-148),
4 as amended by the federal Health Care and Education
5 Reconciliation Act of 2010 (Public Law 111-152).

6 (3) This section shall not affect services for which an individual
7 is eligible pursuant to Division 4.5 (commencing with Section
8 4500) of the Welfare and Institutions Code or Title 14
9 (commencing with Section 95000) of the Government Code.

10 (4) This section shall not affect or reduce any obligation to
11 provide services under an individualized education program, as
12 defined in Section 56032 of the Education Code, or an individual
13 service plan, as described in Section 5600.4 of the Welfare and
14 Institutions Code, or under the federal Individuals with Disabilities
15 Education Act (20 U.S.C. Sec. 1400 et seq.) and its implementing
16 regulations.

17 (b) Every health care service plan subject to this section shall
18 maintain an adequate network that includes qualified autism service
19 providers who supervise and employ qualified autism service
20 professionals or paraprofessionals who provide and administer
21 behavioral health treatment. Nothing shall prevent a health care
22 service plan from selectively contracting with providers within
23 these requirements.

24 (c) For the purposes of this section, the following definitions
25 shall apply:

26 (1) “Behavioral health treatment” means professional services
27 and treatment programs, including applied behavior analysis and
28 evidence-based behavior intervention programs, that develop or
29 restore, to the maximum extent practicable, the functioning of an
30 individual with pervasive developmental disorder or autism and
31 that meet all of the following criteria:

32 (A) The treatment is prescribed by a physician and surgeon
33 licensed pursuant to Chapter 5 (commencing with Section 2000)
34 of, or is developed by a psychologist licensed pursuant to Chapter
35 6.6 (commencing with Section 2900) of, Division 2 of the Business
36 and Professions Code.

37 (B) The treatment is provided under a treatment plan prescribed
38 by a qualified autism service provider and is administered by one
39 of the following:

40 (i) A qualified autism service provider.

1 (ii) A qualified autism service professional supervised and
2 employed by the qualified autism service provider.

3 (iii) A qualified autism service paraprofessional supervised and
4 employed by a qualified autism service provider.

5 (C) The treatment plan has measurable goals over a specific
6 timeline that is developed and approved by the qualified autism
7 service provider for the specific patient being treated. The treatment
8 plan shall be reviewed no less than once every six months by the
9 qualified autism service provider and modified whenever
10 appropriate, and shall be consistent with Section 4686.2 of the
11 Welfare and Institutions Code pursuant to which the qualified
12 autism service provider does all of the following:

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

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

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

22 (iv) Discontinues intensive behavioral intervention services
23 when the treatment goals and objectives are achieved or no longer
24 appropriate.

25 (D) The treatment plan is not used for purposes of providing or
26 for the reimbursement of respite, day care, or educational services
27 and is not used to reimburse a parent for participating in the
28 treatment program. The treatment plan shall be made available to
29 the health care service plan upon request.

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

32 (3) “Qualified autism service provider” means either of the
33 following:

34 (A) A person, entity, or group that is certified by a national
35 entity, such as the Behavior Analyst Certification Board, that is
36 accredited by the National Commission for Certifying Agencies,
37 and who designs, supervises, or provides treatment for pervasive
38 developmental disorder or autism, provided the services are within
39 the experience and competence of the person, entity, or group that
40 is nationally certified.

1 (B) A person licensed as a physician and surgeon, physical
2 therapist, occupational therapist, psychologist, marriage and family
3 therapist, educational psychologist, clinical social worker,
4 professional clinical counselor, speech-language pathologist, or
5 audiologist pursuant to Division 2 (commencing with Section 500)
6 of the Business and Professions Code, who designs, supervises,
7 or provides treatment for pervasive developmental disorder or
8 autism, provided the services are within the experience and
9 competence of the licensee.

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

12 (A) Provides behavioral health treatment.

13 (B) Is employed and supervised by a qualified autism service
14 provider.

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

17 (D) Is a behavioral service provider approved as a vendor by a
18 California regional center to provide services as an Associate
19 Behavior Analyst, Behavior Analyst, Behavior Management
20 Assistant, Behavior Management Consultant, or Behavior
21 Management Program as defined in Section 54342 of Article 3 of
22 Subchapter 2 of Chapter 3 of Division 2 of Title 17 of the
23 California Code of Regulations.

24 (E) Has training and experience in providing services for
25 pervasive developmental disorder or autism pursuant to Division
26 4.5 (commencing with Section 4500) of the Welfare and
27 Institutions Code or Title 14 (commencing with Section 95000)
28 of the Government Code.

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

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

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

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

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

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

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

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

7 (3) A health care service plan contract in the Healthy Families
8 Program (Part 6.2 (commencing with Section 12693) of Division
9 2 of the Insurance Code).

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

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

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

22 SEC. 3. Section 10144.51 of the Insurance Code is amended
23 to read:

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

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

37 (3) This section shall not affect services for which an individual
38 is eligible pursuant to Division 4.5 (commencing with Section
39 4500) of the Welfare and Institutions Code or Title 14
40 (commencing with Section 95000) of the Government Code.

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

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

17 (c) For the purposes of this section, the following definitions
18 shall apply:

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

25 (A) The treatment is prescribed by a physician and surgeon
26 licensed pursuant to Chapter 5 (commencing with Section 2000)
27 of, or is developed by a psychologist licensed pursuant to Chapter
28 6.6 (commencing with Section 2900) of, Division 2 of the Business
29 and Professions Code.

30 (B) The treatment is provided under a treatment plan prescribed
31 by a qualified autism service provider and is administered by one
32 of the following:

33 (i) A qualified autism service provider.

34 (ii) A qualified autism service professional supervised and
35 employed by the qualified autism service provider.

36 (iii) A qualified autism service paraprofessional supervised and
37 employed by a qualified autism service provider.

38 (C) The treatment plan has measurable goals over a specific
39 timeline that is developed and approved by the qualified autism
40 service provider for the specific patient being treated. The treatment

1 plan shall be reviewed no less than once every six months by the
2 qualified autism service provider and modified whenever
3 appropriate, and shall be consistent with Section 4686.2 of the
4 Welfare and Institutions Code pursuant to which the qualified
5 autism service provider does all of the following:

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

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

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

15 (iv) Discontinues intensive behavioral intervention services
16 when the treatment goals and objectives are achieved or no longer
17 appropriate.

18 (D) The treatment plan is not used for purposes of providing or
19 for the reimbursement of respite, day care, or educational services
20 and is not used to reimburse a parent for participating in the
21 treatment program. The treatment plan shall be made available to
22 the insurer upon request.

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

25 (3) “Qualified autism service provider” means either of the
26 following:

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

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

1 autism, provided the services are within the experience and
2 competence of the licensee.

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

5 (A) Provides behavioral health treatment.

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

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

10 (D) Is a behavioral service provider approved as a vendor by a
11 California regional center to provide services as an Associate
12 Behavior Analyst, Behavior Analyst, Behavior Management
13 Assistant, Behavior Management Consultant, or Behavior
14 Management Program as defined in Section 54342 of Article 3 of
15 Subchapter 2 of Chapter 3 of Division 2 of Title 17 of the
16 California Code of Regulations.

17 (E) Has training and experience in providing services for
18 pervasive developmental disorder or autism pursuant to Division
19 4.5 (commencing with Section 4500) of the Welfare and
20 Institutions Code or Title 14 (commencing with Section 95000)
21 of the Government Code.

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

25 (A) Is employed and supervised by a qualified autism service
26 provider.

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

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

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

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

35 (1) A specialized health insurance policy that does not cover
36 mental health or behavioral health services or an accident only,
37 specified disease, hospital indemnity, or Medicare supplement
38 policy.

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

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

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

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

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

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

20 4513.1. ~~(a) The department, no later than July 1, 2018, with~~
21 ~~input from the stakeholders identified in subdivision (b), shall do~~
22 ~~both of the following:~~

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

26 ~~(2) Update regulations stakeholders, shall update regulations~~
27 ~~as appropriate to set forth the minimum standards of education,~~
28 ~~training, and professional experience for qualified autism service~~
29 ~~professionals and paraprofessionals practicing behavioral health~~
30 ~~treatment other than applied behavioral analysis that shall be no~~
31 ~~less rigorous than the requirements set forth in subdivision (b) of~~
32 ~~Section 54342 of Article 3 of Subchapter 2 of Chapter 3 of Division~~
33 ~~2 of Title 17 of the California Code of Regulations.~~

34 ~~(b) Stakeholders shall include professionals trained in~~
35 ~~interpreting research data and shall represent a balanced diversity~~
36 ~~of treatment modalities, including both behavioral and~~
37 ~~developmental approaches. These professionals shall include, at~~
38 ~~a minimum, a developmental pediatrician, a marriage and family~~
39 ~~therapist, a child and adolescent psychiatrist, a psychologist, a~~

1 ~~neuropsychologist, a board certified behavior analyst, and a~~
2 ~~University of California autism researcher.~~

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