

AMENDED IN SENATE AUGUST 16, 2016

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, *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~~ *behavioral* 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, 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.~~

31 ~~SECTION 1.~~ Section 1374.73 of the Health and Safety Code
32 is amended to read:

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

39 (2) Notwithstanding paragraph (1), as of the date that proposed
40 final rulemaking for essential health benefits is issued, this section

1 does not require any benefits to be provided that exceed the
2 essential health benefits that all health plans will be required by
3 federal regulations to provide under Section 1302(b) of the federal
4 Patient Protection and Affordable Care Act (Public Law 111-148),
5 as amended by the federal Health Care and Education
6 Reconciliation Act of 2010 (Public Law 111-152).

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

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

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

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

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

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

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

1 (i) A qualified autism service provider.

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

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

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

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

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

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

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

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

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

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

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

1 the experience and competence of the person, entity, or group that
2 is nationally certified.

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

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

14 (A) Provides behavioral health treatment.

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

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

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

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

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

34 (A) Is employed and supervised by a qualified autism service
35 provider.

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

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

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

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

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

6 (2) A health care service plan contract in the Medi-Cal program
7 (Chapter 7 (commencing with Section 14000) of Part 3 of Division
8 9 of the Welfare and Institutions Code).

9 (3) A health care service plan contract in the Healthy Families
10 Program (Part 6.2 (commencing with Section 12693) of Division
11 2 of the Insurance Code).

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

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

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

24 ~~SEC. 3.~~

25 *SEC. 2.* Section 10144.51 of the Insurance Code is amended
26 to read:

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

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

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

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

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

21 (c) For the purposes of this section, the following definitions
22 shall apply:

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

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

34 (B) The treatment is provided under a treatment plan prescribed
35 by a qualified autism service provider and is administered by one
36 of the following:

- 37 (i) A qualified autism service provider.
- 38 (ii) A qualified autism service professional supervised and
39 employed by the qualified autism service provider.

1 (iii) A qualified autism service paraprofessional supervised and
2 employed by a qualified autism service provider.

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

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

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

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

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

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

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

30 (3) “Qualified autism service provider” means either of the
31 following:

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

39 (B) A person licensed as a physician and surgeon, physical
40 therapist, occupational therapist, psychologist, marriage and family

1 therapist, educational psychologist, clinical social worker,
2 professional clinical counselor, speech-language pathologist, or
3 audiologist pursuant to Division 2 (commencing with Section 500)
4 of the Business and Professions Code, who designs, supervises,
5 or provides treatment for pervasive developmental disorder or
6 autism, provided the services are within the experience and
7 competence of the licensee.

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

10 (A) Provides behavioral health treatment.

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

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

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

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

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

30 (A) Is employed and supervised by a qualified autism service
31 provider.

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

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

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

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

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

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

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

10 (4) A health care benefit plan or policy 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 10144.5.

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

22 ~~SEC. 4. Section 4513.1 is added to the Welfare and Institutions~~
23 ~~Code, to read:~~

24 ~~4513.1. The department, no later than July 1, 2018, with input~~
25 ~~from stakeholders, shall update regulations as appropriate to set~~
26 ~~forth the minimum standards of education, training, and~~
27 ~~professional experience for qualified autism service professionals~~
28 ~~and paraprofessionals practicing behavioral health treatment other~~
29 ~~than applied behavioral analysis that shall be no less rigorous than~~
30 ~~the requirements set forth in subdivision (b) of Section 54342 of~~
31 ~~Article 3 of Subchapter 2 of Chapter 3 of Division 2 of Title 17~~
32 ~~of the California Code of Regulations.~~

33 ~~SEC. 5.~~

34 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
35 ~~Section 6 of Article XIII B of the California Constitution because~~
36 ~~the only costs that may be incurred by a local agency or school~~
37 ~~district will be incurred because this act creates a new crime or~~
38 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
39 ~~for a crime or infraction, within the meaning of Section 17556 of~~
40 ~~the Government Code, or changes the definition of a crime within~~

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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