

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE APRIL 26, 2016

SENATE BILL

No. 1034

Introduced by Senator Mitchell

February 12, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1034, as amended, Mitchell. Health care coverage: 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. 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. Existing law

requires a treatment plan to be reviewed no less than once every 6 months.

This bill would, among other things, modify requirements to be a qualified autism service professional to include providing behavioral health treatment, such as clinical management and case supervision. The bill would require that a treatment plan be reviewed no more than once every 6 months, unless a shorter period is recommended by the qualified autism service provider. The bill would extend the operation of these provisions indefinitely. The bill would make conforming changes.

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 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. Section 1374.73 of the Health and Safety Code
2 is amended to read:
3 1374.73. (a) (1) Every health care service plan contract that
4 provides hospital, medical, or surgical coverage shall also provide
5 coverage for behavioral health treatment for pervasive
6 developmental disorder or autism no later than July 1, 2012. The
7 coverage shall be provided in the same manner and shall be subject
8 to the same requirements as provided in Section 1374.72.
9 (2) Notwithstanding paragraph (1), as of the date that proposed
10 final rulemaking for essential health benefits is issued, this section
11 does not require any benefits to be provided that exceed the
12 essential health benefits that all health plans will be required by
13 federal regulations to provide under Section 1302(b) of the federal
14 Patient Protection and Affordable Care Act (Public Law 111-148),
15 as amended by the federal Health Care and Education
16 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) Every health care service plan subject to this section shall
13 maintain an adequate network that includes qualified autism service
14 providers who supervise qualified autism service professionals or
15 paraprofessionals who provide and administer behavioral health
16 treatment. Nothing shall prevent a health care service plan from
17 selectively contracting with providers within these requirements.

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

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

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

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

- 34 (i) A qualified autism service provider.
- 35 (ii) A qualified autism service professional supervised by the
36 qualified autism service provider.
- 37 (iii) A qualified autism service paraprofessional supervised by
38 a qualified autism service provider.

39 (C) The treatment plan has measurable goals over a specific
40 timeline that is developed and approved by the qualified autism

1 service provider for the specific patient being treated. The treatment
2 plan shall be reviewed no more than once every six months by the
3 qualified autism service provider, unless a shorter period is
4 recommended by the qualified autism service provider, and
5 modified whenever appropriate, and shall be consistent with
6 Section 4686.2 of the Welfare and Institutions Code pursuant to
7 which the qualified autism service provider does all of the
8 following:

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

11 (ii) Designs an intervention plan that includes the service type,
12 number of hours, and parent or caregiver participation
13 recommended by the qualified autism service provider to achieve
14 the plan’s goal and objectives, and the frequency at which the
15 patient’s progress is evaluated and reported. Lack of parent or
16 caregiver participation shall not be used to deny or reduce
17 medically necessary behavioral health treatment.

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

21 (iv) Discontinues intensive behavioral intervention services
22 when the treatment goals and objectives are achieved or no longer
23 appropriate, and continued therapy is not necessary to maintain
24 function or prevent deterioration.

25 (D) (i) The treatment plan is not used for purposes of providing
26 or for the reimbursement of respite, day care, or academic services
27 and is not used to reimburse a parent for participating in the
28 treatment program.

29 (ii) The setting, location, or time of treatment shall not be used
30 as a reason to deny medically necessary behavioral health
31 treatment.

32 (iii) The treatment plan shall be made available to the health
33 care service plan upon request.

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

36 (3) “Qualified autism service provider” means either of the
37 following:

38 (A) A person, entity, or group that is certified by a national
39 entity, such as the Behavior Analyst Certification Board, that is
40 accredited by the National Commission for Certifying Agencies,

1 and who designs, supervises, or provides treatment for pervasive
2 developmental disorder or autism, provided the services are within
3 the experience and competence of the person, entity, or group that
4 is nationally certified.

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

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

16 (A) Provides behavioral health treatment, including clinical
17 management and case supervision.

18 (B) Is supervised by a qualified autism service provider.

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

21 (D) Is a behavioral service provider who meets the education
22 and experience qualifications defined in Section 54342 of Title 17
23 of the California Code of Regulations for an Associate Behavior
24 Analyst, Behavior Analyst, Behavior Management Assistant,
25 Behavior Management Consultant, or Behavior Management
26 Program.

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

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

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

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

1 (C) Meets the education and training qualifications defined in
2 the regulations adopted pursuant to Section 4686.3 of the Welfare
3 and Institutions Code.

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

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

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

9 (2) A health care service plan contract in the Medi-Cal program
10 (Chapter 7 (commencing with Section 14000) of Part 3 of Division
11 9 of the Welfare and Institutions Code).

12 (e) This section does not limit the obligation to provide services
13 pursuant to Section 1374.72.

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

19 (g) *This section shall not be construed to require coverage for*
20 *services that are included in a patient’s individualized education*
21 *program.*

22 SEC. 2. 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 Title 10 of the California Code of Regulations, every health insurer
10 subject to this section shall maintain an adequate network that
11 includes qualified autism service providers who supervise qualified
12 autism service professionals or paraprofessionals who provide and
13 administer behavioral health treatment. Nothing shall prevent a
14 health insurer from selectively contracting with providers within
15 these requirements.

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

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

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

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

32 (i) A qualified autism service provider.

33 (ii) A qualified autism service professional supervised by the
34 qualified autism service provider.

35 (iii) A qualified autism service paraprofessional supervised by
36 a qualified autism service provider.

37 (C) The treatment plan has measurable goals over a specific
38 timeline that is developed and approved by the qualified autism
39 service provider for the specific patient being treated. The treatment
40 plan shall be reviewed no more than once every six months by the

1 qualified autism service provider, unless a shorter period is
2 recommended by the qualified autism service provider, and
3 modified whenever appropriate, and shall be consistent with
4 Section 4686.2 of the Welfare and Institutions Code pursuant to
5 which the qualified autism service provider does all of the
6 following:

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

9 (ii) Designs an intervention plan that includes the service type,
10 number of hours, and parent or caregiver participation
11 recommended by a qualified autism service provider to achieve
12 the plan’s goal and objectives, and the frequency at which the
13 patient’s progress is evaluated and reported. Lack of parent or
14 caregiver participation shall not be used to deny or reduce
15 medically necessary behavioral health treatment.

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

19 (iv) Discontinues intensive behavioral intervention services
20 when the treatment goals and objectives are achieved or no longer
21 appropriate, and continued therapy is not necessary to maintain
22 function or prevent deterioration.

23 (D) (i) The treatment plan is not used for purposes of providing
24 or for the reimbursement of respite, day care, or academic services
25 and is not used to reimburse a parent for participating in the
26 treatment program.

27 (ii) The setting, location, or time of treatment shall not be used
28 as a reason to deny medically necessary behavioral health
29 treatment.

30 (iii) The treatment plan shall be made available to the insurer
31 upon request.

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

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

36 (A) A person, entity, or group that is certified by a national
37 entity, such as the Behavior Analyst Certification Board, that is
38 accredited by the National Commission for Certifying Agencies,
39 and who designs, supervises, or provides treatment for pervasive
40 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, including clinical
15 management and case supervision.

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

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

20 (D) Is a behavioral service provider who meets the education
21 and experience qualifications defined in Section 54342 of Title 17
22 of the California Code of Regulations for an Associate Behavior
23 Analyst, Behavior Analyst, Behavior Management Assistant,
24 Behavior Management Consultant, or Behavior Management
25 Program.

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 supervised by a qualified autism service provider.

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

38 (C) Meets the education and training qualifications defined in
39 the regulations adopted pursuant to Section 4686.3 of the Welfare
40 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 insurance policy that does not cover
5 mental health or behavioral health services or an accident only,
6 specified disease, hospital indemnity, or Medicare supplement
7 policy.

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

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

16 (f) *This section shall not be construed to require coverage for*
17 *services that are included in a patient’s individualized education*
18 *program.*

19 SEC. 3. Section 10144.52 of the Insurance Code is amended
20 to read:

21 10144.52. For purposes of this part, the terms “provider,”
22 “professional provider,” “network provider,” “mental health
23 provider,” and “mental health professional” shall include the term
24 “qualified autism service provider,” as defined in subdivision (c)
25 of Section 10144.51.

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.

O