

AMENDED IN ASSEMBLY JUNE 30, 2016

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, *and to amend Section 14132.56 of the Welfare and Institutions 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. *Under existing law, the above provisions do not apply to certain types of health care coverage, including health care service plans and health insurance policies in the Medi-Cal program.*

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~~ to January 1, 2022. *The bill would require behavioral health treatment for purposes of the Medi-Cal program to expressly comply with the approved Medicaid state plan. The bill also would make clarifying and 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

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 qualified autism service professionals or
20 paraprofessionals who provide and administer behavioral health
21 treatment. Nothing shall prevent a health care service plan from
22 selectively contracting with providers within these requirements.

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

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

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

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

39 (i) A qualified autism service provider.

- 1 (ii) A qualified autism service professional supervised by the
2 qualified autism service provider.
- 3 (iii) A qualified autism service paraprofessional supervised by
4 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 more than once every six months by the
9 qualified autism service provider, unless a shorter period is
10 recommended by the qualified autism service provider, and
11 modified whenever appropriate, and shall be consistent with
12 Section 4686.2 of the Welfare and Institutions Code pursuant to
13 which the qualified autism service provider does all of the
14 following:
 - 15 (i) Describes the patient’s behavioral health impairments or
16 developmental challenges that are to be treated.
 - 17 (ii) Designs an intervention plan that includes the service type,
18 number of hours, and parent or caregiver participation
19 recommended by the qualified autism service provider to achieve
20 the plan’s goal and objectives, and the frequency at which the
21 patient’s progress is evaluated and reported. Lack of parent or
22 caregiver participation shall not be used to deny or reduce
23 medically necessary behavioral health treatment.
 - 24 (iii) Provides intervention plans that utilize evidence-based
25 practices, with demonstrated clinical efficacy in treating pervasive
26 developmental disorder or autism.
 - 27 (iv) Discontinues intensive behavioral intervention services
28 when the treatment goals and objectives are achieved or no longer
29 appropriate, and continued therapy is not necessary to maintain
30 function or prevent deterioration.
- 31 (D) (i) The treatment plan is not used for purposes of providing
32 or for the reimbursement of respite, day care, or academic services
33 and is not used to reimburse a parent for participating in the
34 treatment program.
 - 35 (ii) The setting, location, or time of treatment shall not be used
36 as a reason to deny medically necessary behavioral health
37 treatment.
 - 38 (iii) The treatment plan shall be made available to the health
39 care service plan upon request.

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

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

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

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

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

23 (A) Provides behavioral health treatment, including clinical
24 management and case supervision.

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

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

28 (D) Is a behavioral service provider who meets the education
29 and experience qualifications defined in Section 54342 of Title 17
30 of the California Code of Regulations for an Associate Behavior
31 Analyst, Behavior Analyst, Behavior Management Assistant,
32 Behavior Management Consultant, or Behavior Management
33 Program.

34 (E) Has training and experience in providing services for
35 pervasive developmental disorder or autism pursuant to Division
36 4.5 (commencing with Section 4500) of the Welfare and
37 Institutions Code or Title 14 (commencing with Section 95000)
38 of the Government Code.

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

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

5 (B) Provides treatment and implements services pursuant to a
6 treatment plan developed and approved by the qualified autism
7 service provider or qualified autism service professional.

8 (C) Meets the education and training qualifications defined in
9 the regulations adopted pursuant to Section 4686.3 of the Welfare
10 and Institutions Code.

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

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

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

16 (2) A health care service plan contract in the Medi-Cal program
17 (Chapter 7 (commencing with Section 14000) of Part 3 of Division
18 9 of the Welfare and Institutions Code). *The provision of*
19 *behavioral health treatment in the Medi-Cal program, including*
20 *any associated obligation of a health care service plan in the*
21 *Medi-Cal program, is governed by Section 14132.56 of the Welfare*
22 *and Institutions Code, the approved Medi-Cal state plan and*
23 *waivers, and applicable federal Medicaid law.*

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

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

31 (g) This section shall not be construed to require coverage for
32 services that are included in a patient’s individualized education
33 program.

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

37 SEC. 2. Section 10144.51 of the Insurance Code is amended
38 to read:

39 10144.51. (a) (1) Every health insurance policy shall also
40 provide coverage for behavioral health treatment for pervasive

1 developmental disorder or autism no later than July 1, 2012. The
2 coverage shall be provided in the same manner and shall be subject
3 to the same requirements as provided in Section 10144.5.

4 (2) Notwithstanding paragraph (1), as of the date that proposed
5 final rulemaking for essential health benefits is issued, this section
6 does not require any benefits to be provided that exceed the
7 essential health benefits that all health insurers will be required by
8 federal regulations to provide under Section 1302(b) of the federal
9 Patient Protection and Affordable Care Act (Public Law 111-148),
10 as amended by the federal Health Care and Education
11 Reconciliation Act of 2010 (Public Law 111-152).

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

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

23 (b) Pursuant to Article 6 (commencing with Section 2240) of
24 Title 10 of the California Code of Regulations, every health insurer
25 subject to this section shall maintain an adequate network that
26 includes qualified autism service providers who supervise qualified
27 autism service professionals or paraprofessionals who provide and
28 administer behavioral health treatment. Nothing shall prevent a
29 health insurer from selectively contracting with providers within
30 these requirements.

31 (c) For the purposes of this section, the following definitions
32 shall apply:

33 (1) “Behavioral health treatment” means professional services
34 and treatment programs, including applied behavior analysis and
35 other evidence-based behavior intervention programs, that develop,
36 keep, or restore, to the maximum extent practicable, the functioning
37 of an individual with pervasive developmental disorder or autism,
38 and that meet all of the following criteria:

39 (A) The treatment is prescribed by a physician and surgeon
40 licensed pursuant to Chapter 5 (commencing with Section 2000)

1 of, or is developed by a psychologist licensed pursuant to Chapter
2 6.6 (commencing with Section 2900) of, Division 2 of the Business
3 and Professions Code.

4 (B) The treatment is provided under a treatment plan prescribed
5 by a qualified autism service provider and is administered by one
6 of the following:

7 (i) A qualified autism service provider.

8 (ii) A qualified autism service professional supervised by the
9 qualified autism service provider.

10 (iii) A qualified autism service paraprofessional supervised by
11 a qualified autism service provider.

12 (C) The treatment plan has measurable goals over a specific
13 timeline that is developed and approved by the qualified autism
14 service provider for the specific patient being treated. The treatment
15 plan shall be reviewed no more than once every six months by the
16 qualified autism service provider, unless a shorter period is
17 recommended by the qualified autism service provider, and
18 modified whenever appropriate, and shall be consistent with
19 Section 4686.2 of the Welfare and Institutions Code pursuant to
20 which the qualified autism service provider does all of the
21 following:

22 (i) Describes the patient's behavioral health impairments or
23 developmental challenges that are to be treated.

24 (ii) Designs an intervention plan that includes the service type,
25 number of hours, and parent or caregiver participation
26 recommended by a qualified autism service provider to achieve
27 the plan's goal and objectives, and the frequency at which the
28 patient's progress is evaluated and reported. Lack of parent or
29 caregiver participation shall not be used to deny or reduce
30 medically necessary behavioral health treatment.

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

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

38 (D) (i) The treatment plan is not used for purposes of providing
39 or for the reimbursement of respite, day care, or academic services

1 and is not used to reimburse a parent for participating in the
2 treatment program.

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

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

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

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

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

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

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

30 (A) Provides behavioral health treatment, including clinical
31 management and case supervision.

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 who meets the education
37 and experience qualifications defined in Section 54342 of Title 17
38 of the California Code of Regulations for an Associate Behavior
39 Analyst, Behavior Analyst, Behavior Management Assistant,

1 Behavior Management Consultant, or Behavior Management
2 Program.

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 supervised by a qualified autism service provider.

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

15 (C) Meets the education and training qualifications defined in
16 the regulations adopted pursuant to Section 4686.3 of the Welfare
17 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). *The provision of behavioral health
28 treatment in the Medi-Cal program, including any associated
29 obligation of a health insurance policy in the Medi-Cal program,
30 is governed by Section 14132.56 of the Welfare and Institutions
31 Code, the approved Medi-Cal state plan and waivers, and
32 applicable federal Medicaid law.*

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

38 (f) This section shall not be construed to require coverage for
39 services that are included in a patient’s individualized education
40 program.

1 (g) *This section shall remain in effect only until January 1, 2022,*
2 *and as of that date is repealed, unless a later enacted statute, that*
3 *is enacted before January 1, 2022, deletes or extends that date.*

4 SEC. 3. Section 10144.52 of the Insurance Code is amended
5 to read:

6 10144.52. ~~For~~(a) *For* purposes of this part, the terms
7 “provider,” “professional provider,” “network provider,” “mental
8 health provider,” and “mental health professional” shall include
9 the term “qualified autism service provider,” as defined in
10 subdivision (c) of Section 10144.51.

11 (b) *This section shall remain in effect only until January 1, 2022,*
12 *and as of that date is repealed, unless a later enacted statute, that*
13 *is enacted before January 1, 2022, deletes or extends that date.*

14 SEC. 4. Section 14132.56 of the Welfare and Institutions Code
15 is amended to read:

16 14132.56. (a) (1) Only to the extent required by the federal
17 government and effective no sooner than required by the federal
18 government, behavioral health treatment ~~(BHT), as defined by~~
19 ~~Section 1374.73 of the Health and Safety Code,~~ (BHT) shall be a
20 covered Medi-Cal service for individuals under 21 years of age.

21 (2) It is the intent of the Legislature that, to the extent the federal
22 government requires BHT to be a covered Medi-Cal service, the
23 department shall seek statutory authority to implement this new
24 benefit in Medi-Cal.

25 (3) *For purposes of this section, “behavioral health treatment”*
26 *or “BHT” means professional services and treatment programs,*
27 *including applied behavior analysis and evidence-based behavior*
28 *intervention programs that develop or restore, to the maximum*
29 *extent practicable, the functioning of an individual with pervasive*
30 *developmental disorder or autism, and are administered as*
31 *described in the approved state plan.*

32 (b) The department shall implement, or continue to implement,
33 this section only after all of the following occurs or has occurred:

34 (1) The department receives all necessary federal approvals to
35 obtain federal funds for the service.

36 (2) The department seeks an appropriation that would provide
37 the necessary state funding estimated to be required for the
38 applicable fiscal year.

39 (3) The department consults with stakeholders.

1 (c) The department shall develop and define eligibility criteria,
2 provider participation criteria, utilization controls, and delivery
3 system structure for services under this section, subject to
4 limitations allowable under federal law, in consultation with
5 stakeholders.

6 (d) Notwithstanding Chapter 3.5 (commencing with Section
7 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
8 the department, without taking any further regulatory action, shall
9 implement, interpret, or make specific this section by means of
10 all-county letters, plan letters, plan or provider bulletins, or similar
11 instructions until regulations are adopted. The department shall
12 adopt regulations by July 1, 2017, in accordance with the
13 requirements of Chapter 3.5 (commencing with Section 11340) of
14 Part 1 of Division 3 of Title 2 of the Government Code.
15 Notwithstanding Section 10231.5 of the Government Code,
16 beginning six months after the effective date of this section, the
17 department shall provide semiannual status reports to the
18 Legislature, in compliance with Section 9795 of the Government
19 Code, until regulations have been adopted.

20 (e) For the purposes of implementing this section, the department
21 may enter into exclusive or nonexclusive contracts on a bid or
22 negotiated basis, including contracts for the purpose of obtaining
23 subject matter expertise or other technical assistance. Contracts
24 may be statewide or on a more limited geographic basis. Contracts
25 entered into or amended under this subdivision shall be exempt
26 from Part 2 (commencing with Section 10100) of Division 2 of
27 the Public Contract Code and Chapter 6 (commencing with Section
28 14825) of Part 5.5 of Division 3 of the Government Code, and
29 shall be exempt from the review or approval of any division of the
30 Department of General Services.

31 (f) The department may seek approval of any necessary state
32 plan amendments or waivers to implement this section. The
33 department shall make any state plan amendments or waiver
34 requests public at least 30 days prior to submitting to the federal
35 Centers for Medicare and Medicaid Services, and the department
36 shall work with stakeholders to address the public comments in
37 the state plan amendment or waiver request.

38 (g) This section shall be implemented only to the extent that
39 federal financial participation is available and any necessary federal
40 approvals have been obtained.

1 ~~SEC. 4.~~

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

O