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 introduced, 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.


The people of the State of California do enact as follows:

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

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

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

(3) This section shall not affect services for which an individual is eligible pursuant to Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code.
(4) This section shall not affect or reduce any obligation to provide services under an individualized education program, as defined in Section 56032 of the Education Code, or an individual service plan, as described in Section 5600.4 of the Welfare and Institutions Code, or under the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and its implementing regulations.

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

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

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

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

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

      (i) A qualified autism service provider.

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

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

   (C) The treatment plan has measurable goals over a specific timeline that is developed and approved by the qualified autism service provider for the specific patient being treated. The treatment plan shall be reviewed no less than once every six months by the qualified autism service provider, unless a shorter
period is recommended by the qualified autism service provider,
and modified whenever appropriate, and shall be consistent with
Section 4686.2 of the Welfare and Institutions Code pursuant to
which the qualified autism service provider does all of the
following:
   (i) Describes the patient’s behavioral health impairments or
devvelopmental challenges that are to be treated.
   (ii) Designs an intervention plan that includes the service type,
number of hours, and parent or caregiver participation
recommended by the qualified autism service provider, needed to
achieve the plan’s goal and objectives, and the frequency at which
the patient’s progress is evaluated and reported. Lack of parent or
caregiver participation shall not be used to deny or reduce
medically necessary behavioral health treatment.
   (iii) Provides intervention plans that utilize evidence-based
practices, with demonstrated clinical efficacy in treating pervasive
developmental disorder or autism.
   (iv) Discontinues intensive behavioral intervention services
when the treatment goals and objectives are achieved or no longer
appropriate, and continued therapy is not necessary
to maintain function or prevent deterioration.
   (D) (i) The treatment plan is not used for purposes of providing
or for the reimbursement of respite, day care, or educational
services and is not used to reimburse a parent for participating in
the treatment program. The
   (ii) Notwithstanding the clause (i), all medically necessary
behavioral health treatment shall be covered in all settings
regardless of time or location of delivery.
   (iii) The treatment plan shall be made available to the health
care service plan upon request.
(2) “Pervasive developmental disorder or autism” shall have
the same meaning and interpretation as used in Section 1374.72.
(3) “Qualified autism service provider” means either of the
following:
   (A) A person, entity, or group that is certified by a national
entity, such as the Behavior Analyst Certification Board, that is
accredited by the National Commission for Certifying Agencies,
and who designs, supervises, or provides treatment for pervasive
developmental disorder or autism, provided the services are within
the experience and competence of the person, entity, or group that
is nationally certified.

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

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

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

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

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

(D) Is a behavioral service provider approved as a vendor by a
California regional center to provide services as defined in Section 5432
of Title 17 of the California Code of Regulations for an Associate
Behavior Analyst, Behavior Analyst, Behavior Management
Assistant, Behavior Management Consultant, or Behavior
Management Program as defined in Section 54342 of Title 17 of
the California Code of Regulations.

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

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

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

(B) Provides treatment and implements services pursuant to a
treatment plan developed and approved by the qualified autism
service provider or qualified autism service professional.
(C) Meets the criteria set forth education and experience qualifications defined in the regulations adopted pursuant to Section 4686.3 of the Welfare and Institutions Code.

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

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

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

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

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

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

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

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

(g) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

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

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

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

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

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

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

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

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

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

(B) The treatment is provided under a treatment plan prescribed
by a qualified autism service provider and is administered by one
of the following:
(i) A qualified autism service provider.

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

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

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

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

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

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

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

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

(ii) Notwithstanding the above, all medically necessary behavioral health treatment shall be covered in all settings regardless of time or location of delivery.

(iii) The treatment plan shall be made available to the insurer upon request.
(2) “Pervasive developmental disorder or autism” shall have the same meaning and interpretation as used in Section 10144.5.

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

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

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

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

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

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

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

(D) Is a behavioral service provider approved as a vendor by a California regional center to provide services as who meets the education and experience qualifications defined in Section 5432 of Title 17 of the California Code of Regulations for an Associate Behavior Analyst, Behavior Analyst, Behavior Management Assistant, Behavior Management Consultant, or Behavior Management Program as defined in Section 54342 of Title 17 of the California Code of Regulations: Program.

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

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

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

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

(C) Meets the criteria set forth education and experience qualifications defined in the regulations adopted pursuant to Section 4686.3 of the Welfare and Institutions Code.

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

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

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

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

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

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

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

(f) As provided in Section 10144.5 and in paragraph (1) of subdivision (a), in the provision of benefits required by this section, a health insurer may utilize case management, network providers, utilization review techniques, prior authorization, copayments, or other cost sharing.
(g) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

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

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

(b) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

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