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

LEGISLATIVE COUNSEL’S DIGEST

SB 399, as introduced, Portantino. Health care coverage: pervasive developmental disorder or autism.

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, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law requires a health care service plan contract or a health insurance policy to provide coverage for behavioral health treatment for pervasive developmental disorder or autism, 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 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, among other things, would instead define a “qualified autism service professional” to mean a person who, among other requirements, is a behavioral service provider who meets the State Department of Developmental Services’ education and experience qualifications to be approved as a vendor by a California regional center to provide behavior intervention services or as an adaptive skills trainer, associate behavior analyst, behavior analyst, behavior management assistant, behavior management consultant, or behavior management program if the services are within the experience and competence of the professional.

This bill would require that the treatment plan be reviewed, as specified. The bill would specify that health care service plans and health insurers are not required to provide reimbursement for services delivered by school personnel pursuant to an enrollee’s individualized educational program unless otherwise required by law, that lack of parent or caregiver participation not be used to deny or reduce medically necessary behavioral health treatment, and that the setting, location, or time of treatment not be used as a reason to deny medically necessary behavioral health treatment. Because a willful violation of the bill’s provisions by a health care service plan would be a crime, it 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. The Legislature finds and declares all of the following:
(a) Autism and other pervasive developmental disorders are complex neurobehavioral disorders that include impairments in social communication and social interaction combined with rigid, repetitive behaviors, interests, and activities.
(b) Autism covers a large spectrum of symptoms and levels of impairment ranging in severity from somewhat limiting to a severe disability that may require institutional care.

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

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

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

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

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

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

(i) The Legislature intends that health care service plan provider networks include qualified professionals practicing all forms of evidence-based behavioral health.

SEC. 2. 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).
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.

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.

This section shall not be construed to require a health care service plan to provide reimbursement for services delivered by school personnel pursuant to an enrollee’s individualized educational program unless otherwise required by law.

(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 evidence-based behavior intervention programs, that develop 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 or less than once every 12 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 participation 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.

(v) Makes the treatment plan available to the health care service plan upon request.

(D) 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 treatment plan shall be made available to the health care service plan upon request.

(E) The setting, location, or time of treatment shall not be used as a reason to deny treatment.

(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, which may include clinical management and case supervision under the direction and supervision of a qualified autism service provider.
(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 an Associate Behavior Analyst, Behavior Analyst, Behavior Management Assistant, Behavior Management Consultant, or Behavior Management Program as defined in Section 54342 of Article 3 of Subchapter 2 of Chapter 3 of Division 2 of Title 17 of the California Code of Regulations.

(D) Is a behavioral service provider who meets the State Department of Developmental Services' education and experience qualifications to be approved as a vendor by a California regional center to provide behavior intervention services, including, but not limited to, interdisciplinary assessment services, client/parent support behavior intervention training, socialization training,
program, individual family training, or as an adaptive skills
trainer, associate behavior analyst, behavior analyst, behavior
management assistant, behavior management consultant, or
behavior management program if the services are within the
experience and competence of the professional.

(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 person, entity, or group
that is a qualified autism service provider or qualified
autism service professional.

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

(C) Meets the criteria set forth 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-Cal program
(Chapter 7 (commencing with Section 14000) of Part 3 of 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

(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.
SEC. 3. 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
declared 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.
(5) This section shall not be construed to require a health
insurer to provide reimbursement for services delivered by school
personnel pursuant to an enrollee’s individualized educational
program unless otherwise required by law.
(b) Pursuant to Article 6 (commencing with Section 2240) of
Subchapter 2 of Chapter 5 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
evidence-based behavior intervention programs, that develop 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
or less than once every 12 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 participation 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.

(v) Makes the treatment plan available to the health insurer upon request.

(D) 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 treatment plan shall be made available to the insurer upon request.

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

(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, which may include clinical management and case supervision under the direction and supervision of a qualified autism service provider.

(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 an Associate Behavior Analyst, Behavior Analyst, Behavior Management Assistant, Behavior Management Consultant, or Behavior Management Program as defined in Section 54342 of Article 3 of Subchapter 2 of Chapter 3 of Division 2 of Title 17 of the California Code of Regulations.

(D) Is a behavioral service provider who meets the State Department of Developmental Services’ education and experience qualifications to be approved as a vendor by a California regional center to provide behavior intervention services, including, but not limited to, interdisciplinary assessment services, client/parent support behavior intervention training, socialization training program, individual family training, or as an adaptive skills trainer, associate behavior analyst, behavior analyst, behavior management assistant, behavior management consultant, or behavior management program if the services are within the experience and competence of the professional.

(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. autism.

(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 person, entity, or group that is qualified autism service provider, provider or qualified autism service professional.
(B) Provides treatment and implements services pursuant to a treatment plan developed and approved by the qualified autism service provider.

(C) Meets the criteria set forth in the regulations adopted pursuant to Section 4686.3 of the Welfare and Institutions Code or has adequate education, training, and experience, as certified by a qualified autism service provider.

(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-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.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB 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.