

Introduced by Senator PortantinoFebruary 18, 2021

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 562, as introduced, Portantino. Health care coverage: pervasive developmental disorders or autism.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act), 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. Existing law defines "behavioral health treatment" for these purposes to mean professional services and treatment programs, including applied behavior analysis and evidence-based behavior intervention programs that meet specified criteria.

This bill would modify that definition to mean professional services and treatment programs based on behavioral, developmental, relationship-based, or other evidence-based models, including applied behavior analysis and other evidence-based behavior intervention programs that meet the specified criteria.

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.

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).

17 (3) This section shall not affect services for which an individual
18 is eligible pursuant to Division 4.5 (commencing with Section
19 4500) of the Welfare and Institutions Code or Title 14
20 (commencing with Section 95000) of the Government Code.

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

28 (b) Every health care service plan subject to this section shall
29 maintain an adequate network that includes qualified autism service
30 providers who supervise or employ qualified autism service

1 professionals or paraprofessionals who provide and administer
2 behavioral health treatment. A health care service plan is not
3 prevented from selectively contracting with providers within these
4 requirements.

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

7 (1) “Behavioral health treatment” means professional services
8 and treatment ~~programs, including applied behavior analysis and~~
9 *programs based on behavioral, developmental, relationship-based,*
10 *or other evidence-based models, including applied behavior*
11 *analysis and other evidence-based behavior intervention programs,*
12 that develop or restore, to the maximum extent practicable, the
13 functioning of an individual with pervasive developmental disorder
14 or autism and that meet all of the following criteria:

15 (A) The treatment is prescribed by a physician and surgeon
16 licensed pursuant to Chapter 5 (commencing with Section 2000)
17 of, or is developed by a psychologist licensed pursuant to Chapter
18 6.6 (commencing with Section 2900) of, Division 2 of the Business
19 and Professions Code.

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

- 23 (i) A qualified autism service provider.
- 24 (ii) A qualified autism service professional supervised by the
25 qualified autism service provider.
- 26 (iii) A qualified autism service paraprofessional supervised by
27 a qualified autism service provider or qualified autism service
28 professional.

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

- 37 (i) Describes the patient’s behavioral health impairments or
38 developmental challenges that are to be treated.
- 39 (ii) Designs an intervention plan that includes the service type,
40 number of hours, and parent participation needed to achieve the

1 plan’s goal and objectives, and the frequency at which the patient’s
2 progress is evaluated and reported.

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

6 (iv) Discontinues intensive behavioral intervention services
7 when the treatment goals and objectives are achieved or no longer
8 appropriate.

9 (D) The treatment plan is not used for purposes of providing or
10 for the reimbursement of respite, day care, or educational services
11 and is not used to reimburse a parent for participating in the
12 treatment program. The treatment plan shall be made available to
13 the health care service plan upon request.

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

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

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

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

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

36 (A) Provides behavioral health treatment, which may include
37 clinical case management and case supervision under the direction
38 and supervision of a qualified autism service provider.

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

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

3 (D) Is a behavioral service provider who meets the education
4 and experience qualifications described in Section 54342 of Title
5 17 of the California Code of Regulations for an Associate Behavior
6 Analyst, Behavior Analyst, Behavior Management Assistant,
7 Behavior Management Consultant, or Behavior Management
8 Program.

9 (E) Has training and experience in providing services for
10 pervasive developmental disorder or autism pursuant to Division
11 4.5 (commencing with Section 4500) of the Welfare and
12 Institutions Code or Title 14 (commencing with Section 95000)
13 of the Government Code.

14 (F) Is employed by the qualified autism service provider or an
15 entity or group that employs qualified autism service providers
16 responsible for the autism treatment plan.

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

20 (A) Is supervised by a qualified autism service provider or
21 qualified autism service professional at a level of clinical
22 supervision that meets professionally recognized standards of
23 practice.

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

27 (C) Meets the education and training qualifications described
28 in Section 54342 of Title 17 of the California Code of Regulations.

29 (D) Has adequate education, training, and experience, as
30 certified by a qualified autism service provider or an entity or
31 group that employs qualified autism service providers.

32 (E) Is employed by the qualified autism service provider or an
33 entity or group that employs qualified autism service providers
34 responsible for the autism treatment plan.

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

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

38 (2) A health care service plan contract in the Medi-Cal program
39 (Chapter 7 (commencing with Section 14000) of Part 3 of Division
40 9 of the Welfare and Institutions Code).

1 (e) This section does not limit the obligation to provide services
2 under Section 1374.72.

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

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

10 10144.51. (a) (1) Every health insurance policy shall also
11 provide coverage for behavioral health treatment for pervasive
12 developmental disorder or autism no later than July 1, 2012. The
13 coverage shall be provided in the same manner and shall be subject
14 to the same requirements as provided in Section 10144.5.

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

23 (3) This section shall not affect services for which an individual
24 is eligible pursuant to Division 4.5 (commencing with Section
25 4500) of the Welfare and Institutions Code or Title 14
26 (commencing with Section 95000) of the Government Code.

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

34 (b) Pursuant to Article 6 (commencing with Section 2240) of
35 Subchapter 2 of Chapter 5 of Title 10 of the California Code of
36 Regulations, every health insurer subject to this section shall
37 maintain an adequate network that includes qualified autism service
38 providers who supervise or employ qualified autism service
39 professionals or paraprofessionals who provide and administer

1 behavioral health treatment. A health insurer is not prevented from
2 selectively contracting with providers within these requirements.

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

5 (1) “Behavioral health treatment” means professional services
6 and treatment programs, ~~including applied behavior analysis and~~
7 *programs based on behavioral, developmental, relationship-based,*
8 *or other evidence-based models, including applied behavior*
9 *analysis and other evidence-based behavior intervention programs,*
10 that develop or restore, to the maximum extent practicable, the
11 functioning of an individual with pervasive developmental disorder
12 or autism, and that meet all of the following criteria:

13 (A) The treatment is prescribed by a physician and surgeon
14 licensed pursuant to Chapter 5 (commencing with Section 2000)
15 of, or is developed by a psychologist licensed pursuant to Chapter
16 6.6 (commencing with Section 2900) of, Division 2 of the Business
17 and Professions Code.

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

21 (i) A qualified autism service provider.

22 (ii) A qualified autism service professional supervised by the
23 qualified autism service provider.

24 (iii) A qualified autism service paraprofessional supervised by
25 a qualified autism service provider or qualified autism service
26 professional.

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

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

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

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

4 (iv) Discontinues intensive behavioral intervention services
5 when the treatment goals and objectives are achieved or no longer
6 appropriate.

7 (D) The treatment plan is not used for purposes of providing or
8 for the reimbursement of respite, day care, or educational services
9 and is not used to reimburse a parent for participating in the
10 treatment program. The treatment plan shall be made available to
11 the insurer upon request.

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

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

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

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

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

34 (A) Provides behavioral health treatment, which may include
35 clinical case management and case supervision under the direction
36 and supervision of a qualified autism service provider.

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

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

1 (D) Is a behavioral service provider who meets the education
2 and experience qualifications described in Section 54342 of Title
3 17 of the California Code of Regulations for an Associate Behavior
4 Analyst, Behavior Analyst, Behavior Management Assistant,
5 Behavior Management Consultant, or Behavior Management
6 Program.

7 (E) Has training and experience in providing services for
8 pervasive developmental disorder or autism pursuant to Division
9 4.5 (commencing with Section 4500) of the Welfare and
10 Institutions Code or Title 14 (commencing with Section 95000)
11 of the Government Code.

12 (F) Is employed by the qualified autism service provider or an
13 entity or group that employs qualified autism service providers
14 responsible for the autism treatment plan.

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

18 (A) Is supervised by a qualified autism service provider or
19 qualified autism service professional at a level of clinical
20 supervision that meets professionally recognized standards of
21 practice.

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

25 (C) Meets the education and training qualifications described
26 in Section 54342 of Title 17 of the California Code of Regulations.

27 (D) Has adequate education, training, and experience, as
28 certified by a qualified autism service provider or an entity or
29 group that employs qualified autism service providers.

30 (E) Is employed by the qualified autism service provider or an
31 entity or group that employs qualified autism service providers
32 responsible for the autism treatment plan.

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

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

38 (2) A health insurance policy in the Medi-Cal program (Chapter
39 7 (commencing with Section 14000) of Part 3 of Division 9 of the
40 Welfare and Institutions Code).

1 (e) This section does not limit the obligation to provide services
2 under Section 10144.5.

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

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