



MEMORANDUM

DATE	August 7, 2014
TO	Psychology Board Members
FROM	Jonathan Burke Administrative Services Coordinator
SUBJECT	AB 2041 (Jones): Developmental Services : Regional Centers: Behavioral Health Treatment

Background:

Please see attached analysis for detail on this proposed legislation.

Action Requested:

The staff recommendation is to continue to watch AB 2041.

Attachment A is the staff analysis of AB 2041.

Attachment B shows the current language proposed in AB 2041.

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CALIFORNIA STATE BOARD OF PSYCHOLOGY

BILL ANALYSIS

BILL NUMBER: AB 2041

VERSION: AMENDED APRIL 22, 2014

AUTHOR: JONES

SPONSOR: DIR/FLOORTIME COALITION OF CALIFORNIA

BOARD POSITION: WATCH

SUBJECT: DEVELOPMENTAL SERVICES: REGIONAL CENTERS: BEHAVIORAL HEALTH TREATMENT

EXISTING LAW:

- 1) Establishes an entitlement to services for individuals with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welfare and Institutions Code (WIC) Section 4500 *et seq.*)
- 2) Grants all individuals with developmental disabilities, among all other rights and responsibilities established for any individual by the United States Constitution and laws and the California Constitution and laws, the right to treatment and habilitation services and supports in the least restrictive environment. (WIC Section 4502)
- 3) Establishes a system of 21 nonprofit regional centers throughout the state to identify needs and coordinate services for eligible individuals with developmental disabilities and requires the Department of Developmental Services (DDS) to contract with regional centers to provide case management services and arrange for or purchase services that meet the needs of individuals with developmental disabilities, as defined. (WIC Section 4620 *et seq.*)
- 4) Requires the development of an Individual Program Plan (IPP) for each regional center consumer, which specifies services to be provided to the consumer, based on his or her individualized needs determination and preferences, and defines that planning process as the vehicle to ensure that services and supports are customized to meet the needs of consumers who are served by regional centers. (WIC Section 4512)
- 5) Creates a process by which regional centers may “vendorize” service providers, thereby providing a path to contract for services with that provider and ensuring maximum flexibility and availability of appropriate services and support for persons with developmental disabilities. (WIC Section 4648)
- 6) Authorizes regional centers to solicit an individual or agency through a request for proposals or other means to provide needed services or supports not presently available, provided it is necessary to expand the availability of needed services of good quality. (WIC Section 4648(e)(1))
- 7) Defines behavioral health treatment, for purposes of payment under a health care service plan contract or a health insurance policy, as professional services and treatment programs, including applied behavior analysis and evidence-based behavior intervention programs, which

develop or restore, to the maximum extent practicable, the functioning of an individual with pervasive developmental disorder or autism, and sets forth criteria that must be met related to the treatment plan, prescription of the treatment, and the providers authorized to provide such treatment, which includes qualified autism service professionals, as specified. (Health and Safety Code (H&S) Section 1374.73(c)(1), Insurance Code (INS) Section 10144.51(c)(1))

8) Includes in the definition of a "qualified autism service professional" 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 Title 17 CCR Section 54342. (H&S Section 1374.73(c)(4)(D), INS Section 10144.51(c)(4)(D))

9) Defines in state regulations, for purposes of regional center vendorization, Behavior Management Assistant and Behavior Management Consultant and requires education or experience in an applied behavior analysis (ABA) for both professionals, as specified. (Title 17 CCR Section 54342)

This Bill.

- Provides a statutory definition for Behavior Management Assistants and Behavior Management Consultants for purposes of providing behavioral health treatment, being vendorized by regional centers, and receiving health insurance coverage for providing such services. Specifically, this bill:
- Aligns the definitions of Behavior Management Assistant and Behavior Management Consultant for purposes of regional center vendorization with the definition for behavioral health treatment provided for in current statute related to health plan and insurance coverage of specified treatments for individuals with pervasive developmental disorder or autism.
- Deletes references to the current definitions for Behavior Management Assistant and Behavior Management Consultant in Title 17 of the California Code of Regulations (CCR) Section 54342 and instead references the newly proposed definitions for both professionals for purposes of payment for behavioral health treatment by health care service plan contracts and health insurance policies, as specified.

Comments:

1) Background. The Lanterman Act (1977) guides the provision of services and supports for Californians with developmental disabilities. Each individual under the Lanterman Act, typically referred to as a "consumer," is legally entitled to treatment and habilitation services and supports in the least restrictive environment. Lanterman Act services are designed to enable all consumers to live more independent and productive lives in the community.

The term "developmental disability" means a disability that originates before an individual attains 18 years of age, is expected to continue indefinitely, and constitutes a substantial disability for that individual. It includes intellectual disabilities, cerebral palsy, epilepsy, and pervasive developmental disorder/autism spectrum disorder (PDD/ASD). Other developmental disabilities are those disabling conditions similar to an intellectual disability that require treatment (i.e., care and management) similar to that required by individuals with an intellectual disability. This does not include conditions that are solely psychiatric or physical in nature, and the conditions must occur before age 18, result in a substantial

disability, be likely to continue indefinitely, and involve brain damage or dysfunction. Examples of conditions might include intracranial neoplasms, degenerative brain disease or brain damage associated with accidents.

Direct responsibility for implementation of the Lanterman Act service system is shared by DDS and 21 regional centers, which are private nonprofit entities, established pursuant to the Lanterman Act, that contract with DDS to carry out many of the state's responsibilities under the Lanterman Act. The principal roles of regional centers include intake and assessment, individualized program plan development, case management, and securing services through generic agencies or purchasing services provided by vendors. Regional centers also share primary responsibility with local education agencies for provision of early intervention services under the California Early Intervention Services Act.

Regional centers: The 21 regional centers throughout the state serve over 260,000 consumers who receive services such as residential placements, supported living services, respite care, transportation, day treatment programs, work support programs, and various social and therapeutic activities. Approximately 1,300 consumers reside at one of California's four Developmental Centers—and one state-operated, specialized community facility—which provide 24-hour habilitation and medical and social treatment services.

Services provided to people with developmental disabilities are determined through an Individual Planning Process. Under this process, planning teams—which include, among others, the consumer, his or her legally authorized representative, and one or more regional center representatives—jointly prepare an IPP based on the consumer's needs and choices. The Lanterman Act requires that the IPP promote community integration and maximize opportunities for each consumer to develop relationships, be part of community life, increase control over his or her life, and acquire increasingly positive roles in the community. The IPP must give the highest preference to those services and supports that allow minors to live with their families and adults to live as independently as possible in the community.

The vendorization process: Prior to being approved to receive funding from a regional center for providing services to a consumer, a service provider must become vendored by the regional center that oversees the catchment area in which the provider is located. This "vendorization" process includes verifying that the provider is qualified to provide the planned services and meets all other regulatory standards and requirements. It is important to note that vendorization makes a provider eligible to provide services paid for by the regional center, but does not guarantee the regional center will refer consumers. Furthermore, there is nothing precluding a vendor from being vendored by more than one regional center. There are over 45,000 vendors that provide services paid for by regional centers in California.

2) Reason for the Bill:

As a result of SB 946 (Steinberg), Chapter 650, Statutes of 2011, behavioral health treatment for persons with ASD/PDD is supposed to be covered under health care service plan contracts and health insurance policies as of July 1, 2012. Although the definition for "behavioral health treatment" provided for in statute for purposes of the coverage mandate includes certain evidence-based, behavior intervention programs that are not categorized as ABA, the author of this bill states that not all health plans and insurance companies are strictly adhering to the mandate for some of the frontline service providers because the definition for those professionals in state regulations specifies the need for education and experience in ABA.

3) Support and Opposition.

Support:

- Autism Speaks
- Autism Society of Los Angeles
- Easter Seals of Central California
- Foothill Autism Alliance
- Interdisciplinary Council on Development and Learning (ICDL)
- Professional Child Development Associates
- Professional Training for Performers with Disabilities
- Child Development Institute

Oppose:

- Association of Regional Center Agencies
- Autism Research Group
- Center for Autism and Related Disorders
- ACT Today

Regional Centers are concerned that the bill will have unintended consequences as professionals who provide treatment have particular ABA training requirements. However, nothing in the bill alters the training that is needed. The bill does mean that providers do not need to be specifically trained in ABA. Licensees of the Board of Psychology are not affected by the legislation.

4) History

2014

Aug. 4	In committee: Placed on APPR. suspense file.
Jun. 26	Read second time and amended. Re-referred to Com. on APPR.
Jun. 25	From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 4. Noes 0.) (June 24).
Jun. 10	Re-referred to Com. on HUMAN S.
Jun. 10	Withdrawn from committee.
Jun. 09	From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on HEALTH.
May. 8	Referred to Coms. on HEALTH, HUMAN S. and APPR.
Apr. 28	In Senate. Read first time. To Com. on RLS. for assignment.
Apr. 28	Read third time. Passed. Ordered to the Senate. (Ayes 71. Noes 3. Page 4640.)
Apr. 22	Read second time. Ordered to third reading.
Apr. 22	Read second time and amended. Ordered to second reading.
Apr. 21	From committee: Do pass as amended. (Ayes 6. Noes 0.) (April 8).
Apr. 1	Re-referred to Com. on HUM. S.
Mar.28	From committee chair, with author's amendments: Amend, and re-refer to Com. on HUM. S. Read second time and amended.
Mar.28	Referred to Coms. on HUM. S. and HEALTH.
Feb. 21	From printer. May be heard in committee March 23.
Feb. 20	Read first time. To print.

AMENDED IN SENATE JUNE 26, 2014

AMENDED IN SENATE JUNE 9, 2014

AMENDED IN ASSEMBLY APRIL 22, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2041

Introduced by Assembly Member Jones

February 20, 2014

An act to add Section 4648.32 to the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

AB 2041, as amended, Jones. Developmental services: regional centers: behavioral health treatment.

The Lanterman Developmental Disabilities Services Act requires the State Department of Developmental Services to enter into contracts with private nonprofit corporations to operate regional centers for the provision of community services and supports for persons with developmental disabilities and their families. Regulations adopted under that act require a regional center to classify a vendor of services provided by the regional center as a behavior management consultant or behavior management assistant if the vendor designs or implements behavior management intervention services, possesses specified experience in designing or implementing those services, and meets other specified licensure and education requirements.

This bill would require that a regional center classify a vendor as a behavior management consultant or behavior management assistant if

the vendor designs or implements *evidence-based* behavioral health treatment, has a specified amount of experience in designing or implementing that treatment, and meets other licensure and education requirements. The bill would require the department to amend its regulations as necessary to implement the provisions of the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 4648.32 is added to the Welfare and
2 Institutions Code, to read:

3 4648.32. (a) For purposes of this section, “behavioral health
4 treatment” shall have the same meaning as provided in Article 5.6
5 (commencing with Section 1374.60) of Chapter 2.2 of Division 2
6 of the Health and Safety Code and Article 2.5 (commencing with
7 Section 10140) of Chapter 1 of Part 2 of Division 2 of the Insurance
8 Code.

9 (b) A regional center shall classify a vendor as a Behavior
10 Management Assistant if the vendor does both of the following:

11 (1) Designs or implements behavioral health treatments under
12 the direct supervision of a Behavior Management Consultant,
13 classified as provided in subdivision (c), or assesses the function
14 of a behavior of a consumer and designs, implements, and evaluates
15 instructional and environmental modifications to produce socially
16 significant improvements in the consumer’s behavior through skill
17 acquisition and the reduction of behavior, under direct supervision
18 of a Behavior Analyst, classified as provided in Section 54342 of
19 Title 17 of the California Code of Regulations, or a Behavior
20 Management Consultant, classified as provided in subdivision (c).

21 (2) Meets either of the following requirements:

22 (A) Possesses a bachelor of arts or science degree and has either
23 of the following:

24 (i) Twelve semester units of applied behavior analysis or
25 behavioral health treatment and one year of experience in designing
26 or implementing behavioral health treatment.

27 (ii) Two years of experience in designing or implementing
28 behavioral health treatment.

29 (B) Is either of the following:

- 1 (i) A registered psychological assistant or licensed psychologist
2 pursuant to Chapter 6.6 (commencing with Section 2900) of
3 Division 2 of the Business and Professions Code.
- 4 (ii) An associate clinical social worker registered with the Board
5 of Behavioral Sciences pursuant to Section 4996.18 of the Business
6 and Professions Code.
- 7 (3) For purposes of this section, a regional center shall only
8 classify as a vendor a Behavior Management Assistant who designs
9 or implements *evidence-based* behavioral health treatments that
10 are consistent with the vendor's experience and education.
- 11 (c) A regional center shall classify a vendor as a Behavior
12 Management Consultant if the vendor designs or implements
13 behavioral health treatments and meets all of the following
14 requirements:
- 15 (1) Has two years of experience designing and implementing
16 behavioral health treatments.
- 17 (2) Is licensed as one of the following:
- 18 (A) A psychologist pursuant to Chapter 6.6 (commencing with
19 Section 2900) of Division 2 of the Business and Professions Code.
- 20 (B) A licensed clinical social worker pursuant to Chapter 14
21 (commencing with Section 4991) of Division 2 of the Business
22 and Professions Code.
- 23 (C) A licensed marriage and family therapist pursuant to Chapter
24 13 (commencing with Section 4980) of Division 2 of the Business
25 and Professions Code.
- 26 (D) Any other licensed professional under the laws of this state
27 whose license permits the design or implementation of behavioral
28 health treatments.
- 29 (3) For individuals vendored as a behavior management
30 consultant prior to, or as of, December 31, 2006, have completed
31 12 semester units in applied behavior analysis by December 31,
32 2008.
- 33 (4) For individuals vendored as a behavior management
34 consultant on or after January 1, 2007, completes 12 semester units
35 of applied behavior analysis or behavioral health treatment.
- 36 (5) For purposes of this section, a regional center shall only
37 classify as a vendor a Behavior Management Consultant who
38 designs or implements *evidence-based* behavioral health treatments
39 that are consistent with the vendor's experience and education.

- 1 (d) The department shall amend its regulations as necessary to
- 2 implement ~~to~~ this section.

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