California Board of PSYCHOLOGY

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MEMORANDUM

DATE	May 6, 2016
TO	Board of Psychology
FROM	Jason Glasspiegel Central Services Coordinator
SUBJECT	Agenda Item #22 (a)(10) – Legislative Update – SB 1034 (Mitchell) Health care coverage: Autism

Background:

This bill modifies the requirements to be a qualified autism service professional to include providing behavioral health treatment, such as clinical management and case supervision. Requires that a treatment plan be reviewed no more than once every six months, unless a shorter period is recommended.

Location: Senate Appropriations Committee

Status: In Senate. Read second time and amended. Re-referred to Committee on Appropriations.

Action Requested:
No action is requested at this time. Staff will continue to watch SB 1034 (Mitchell).

Attachment A is the language of SB 1034 (Mitchell)
Attachment B is the Senate Health Committee Analysis of SB 1034 (Mitchell)

California LEGISLATIVE INFORMATION

SB-1034 Health care coverage: autism. (2015-2016)

AMENDED IN SENATE APRIL 26, 2016

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

SENATE BILL **No. 103**

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 anc 10144.52 of the Insurance 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 Manag Health Care. A violation of those provisions is a crime. Existing law provides for the licensure and regulation health insurers by the Department of Insurance.

Existing law requires every health care service plan contract and health insurance policy to provide coverage behavioral health treatment for pervasive developmental disorder or autism until January 1, 2017, and defi "behavioral health treatment" to mean specified services provided by, among others, a qualified autism serv professional supervised and employed by a qualified autism service provider. Existing law defines a "qualif autism service professional" to mean a person who, among other requirements, is a behavior service provi approved as a vendor by a California regional center to provide services as an associate behavior analyst, beha analyst, behavior management assistant, behavior management consultant, or behavior management progr pursuant to specified regulations adopted under the Lanterman Developmental Disabilities Services Act. Exist 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 incl providing behavioral health treatment, such as clinical management and case supervision. The bill would requ that a treatment plan be reviewed no more than once every 6 months, unless a shorter period is recommended the qualified autism service provider. The bill would extend the operation of these provisions indefinitely. The would make conforming changes.

By extending the operation of these provisions, the violation of which by a health care service plan would b 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 cc 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 Local Program: yes

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 sl also provide coverage for behavioral health treatment for pervasive developmental disorder or autism no later tl July 1, 2012. The coverage shall be provided in the same manner and shall be subject to the same requirements provided in Section 1374.72.

(2) Notwithstanding paragraph (1), as of the date that proposed final rulemaking for essential health benefits issued, this section does not require any benefits to be provided that exceed the essential health benefits that health plans will be required by federal regulations to provide under Section 1302(b) of the federal Pati Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Educat 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 (commenc with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of Government Code.

(4) This section shall not affect or reduce any obligation to provide services under an individualized educat program, as defined in Section 56032 of the Education Code, or an individual service plan, as described in Sect 5600.4 of the Welfare and Institutions Code, or under the federal Individuals with Disabilities Education Act 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 qualif autism service providers who supervise qualified autism service professionals or paraprofessionals who provide a administer behavioral health treatment. Nothing shall prevent a health care service plan from selectively contract 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 beha analysis and other evidence-based behavior intervention programs, that develop, ~~maintain,~~ *keep,* or restore, to maximum extent practicable, the functioning of an individual with pervasive developmental disorder or autism a that meet all of the following criteria:

(A) The treatment is prescribed by a physician and surgeon licensed pursuant to Chapter 5 (commencing w Section 2000) of, or is developed by a psychologist licensed pursuant to Chapter 6.6 (commencing with Sect 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 anc administered by one of the following:

(i) A qualified autism service provider.

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

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

(C) The treatment plan has measurable goals over a specific timeline that is developed and approved by qualified autism service provider for the specific patient being treated. The treatment plan shall be reviewed more than once every six months by the qualified autism service provider, unless a shorter period is recommenc by the qualified autism service provider, and modified whenever appropriate, and shall be consistent with Sect 4686.2 of the Welfare and Institutions Code pursuant to which the qualified autism service provider does all of 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 caregi participation recommended by the qualified autism service ~~provider, needed~~ *provider* to achieve the plan's goal a objectives, and the frequency at which the patient's progress is evaluated and reported. Lack of parent or caregi 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 treat

pervasive developmental disorder or autism.

(iv) Discontinues intensive behavioral intervention services when the treatment goals and objectives are achie 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, ~~educational~~ *academic* services and is not used to reimburse a parent for participating in the treatment program.

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

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

(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 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 Boa that is accredited by the National Commission for Certifying Agencies, and who designs, supervises, or provi treatment for pervasive developmental disorder or autism, provided the services are within the experience a 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, marri and family therapist, educational psychologist, clinical social worker, professional clinical counselor, spee language pathologist, or audiologist pursuant to Division 2 (commencing with Section 500) of the Business a Professions Code, who designs, supervises, or provides treatment for pervasive developmental disorder or auti 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 supervised by a qualified autism service provider.

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

(D) Is a behavioral service provider who meets the education and experience qualifications defined in Section ~~54~~ *54342* of Title 17 of the California Code of Regulations for an Associate Behavior Analyst, Behavior Anal Behavior Management Assistant, Behavior Management Consultant, or Behavior Management Program.

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

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

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

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

(C) Meets the education and ~~experience~~ *training* qualifications defined in the regulations adopted pursuant 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 enrollees.

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

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

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

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 pervasive developmental disorder or autism no later than July 1, 2012. The coverage shall be provided in the sa 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 benefit issued, this section does not require any benefits to be provided that exceed the essential health benefits that health insurers will be required by federal regulations to provide under Section 1302(b) of the federal Pati Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Educat 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 (commenc with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of Government Code.

(4) This section shall not affect or reduce any obligation to provide services under an individualized educat program, as defined in Section 56032 of the Education Code, or an individual service plan, as described in Sect 5600.4 of the Welfare and Institutions Code, or under the federal Individuals with Disabilities Education Act 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, ev health insurer subject to this section shall maintain an adequate network that includes qualified autism ser providers who supervise qualified autism service professionals or paraprofessionals who provide and adminis behavioral health treatment. Nothing shall prevent a health insurer from selectively contracting with provid 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 beha analysis and other evidence-based behavior intervention programs, that develop, ~~maintain,~~ *keep,* or restore, to maximum extent practicable, the functioning of an individual with pervasive developmental disorder or autism, a that meet all of the following criteria:

(A) The treatment is prescribed by a physician and surgeon licensed pursuant to Chapter 5 (commencing w Section 2000) of, or is developed by a psychologist licensed pursuant to Chapter 6.6 (commencing with Sect 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 administered by one of the following:

(i) A qualified autism service provider.

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

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

(C) The treatment plan has measurable goals over a specific timeline that is developed and approved by qualified autism service provider for the specific patient being treated. The treatment plan shall be reviewed more than once every six months by the qualified autism service provider, unless a shorter period is recommend by the qualified autism service provider, and modified whenever appropriate, and shall be consistent with Sect 4686.2 of the Welfare and Institutions Code pursuant to which the qualified autism service provider does all of 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 caregi participation recommended by a qualified autism service provider needed to achieve the plan's goal and objectiv and the frequency at which the patient's progress is evaluated and reported. Lack of parent or caregi 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 treat pervasive developmental disorder or autism.

(iv) Discontinues intensive behavioral intervention services when the treatment goals and objectives are achie 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, ~~educational~~ *academic* services and is not used to reimburse a parent for participating in the treatment program.

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

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

(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 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 Boa that is accredited by the National Commission for Certifying Agencies, and who designs, supervises, or provi treatment for pervasive developmental disorder or autism, provided the services are within the experience a 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, marri and family therapist, educational psychologist, clinical social worker, professional clinical counselor, spee language pathologist, or audiologist pursuant to Division 2 (commencing with Section 500) of the Business a Professions Code, who designs, supervises, or provides treatment for pervasive developmental disorder or auti 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 ser provider.

(D) Is a behavioral service provider who meets the education and experience qualifications defined in Section ~~54~~ *54342* of Title 17 of the California Code of Regulations for an Associate Behavior Analyst, Behavior Anal Behavior Management Assistant, Behavior Management Consultant, or Behavior Management Program.

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

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

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

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

(C) Meets the education and ~~experience~~ *training* qualifications defined in the regulations adopted pursuant 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 accident only, specified disease, hospital indemnity, or Medicare supplement policy.

(2) A health insurance policy in the ~~MDI-Cal~~ *Medi-Cal* program (Chapter 7 (commencing with Section 14000) of F

3 of Division 9 of the Welfare and Institutions Code).

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

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

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

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

SENATE COMMITTEE ON APPROPRIATIONS
Senator Ricardo Lara, Chair
2015 - 2016 Regular Session

SB 1034 (Mitchell) - Health care coverage: autism

Version: April 26, 2016
Urgency: No
Hearing Date: May 9, 2016

Policy Vote: HEALTH 6 - 0
Mandate: Yes
Consultant: Brendan McCarthy

This bill meets the criteria for referral to the Suspense File.

Bill Summary: SB 1034 would delete the existing statutory sunset on the mandate to provide health care coverage for behavioral health treatment for autism and related disorders. The bill would also revise the existing benefit mandate and apply the benefit mandate to health care coverage provided by CalPERS.

Fiscal Impact:

- One-time costs of about $50,000 and ongoing costs of $15,000 per year to review health plan filings for compliance with the requirements of the bill and to undertake any necessary enforcement actions by the Department of Managed Health Care (Managed Care Fund).

- Likely costs of less than $100,000 per year for review of health insurance plan filings and enforcement actions by the Department of Insurance (Insurance Fund).

- No state costs are anticipated due to the elimination of the existing sunset on the benefit mandate or the extension of the existing benefit mandate to CalPERS coverage. While existing law specifically mandates coverage for behavioral health treatment, separate federal and state mental health parity requirements and requirements for the provision of essential health benefits implicitly require coverage for behavioral health treatment for autism and related disorders. Therefore, elimination of the statutory sunset and extension of the mandate to CalPERS health coverage will not increase state costs, because CalPERS plans would have to provide coverage for these services even without a specific benefit mandate. Nor will eliminating the sunset require the state to pay for the costs to subsidize coverage for behavioral health treatment coverage for subsidized Covered California plans.

- Ongoing costs of about $300,000 per year due to a minor increase in health care premiums to CalPERS due to the expansion of the existing benefit mandate to require coverage to "keep" the functioning of eligible individuals (General Fund, special funds, and local funds). About half of the above costs would accrue to the state and half to local governments. See below.

- Uncertain impact on CalPERS health care costs from other changes to the existing benefit mandate in the bill (General Fund, special funds, and local funds). According to the California Health Benefits Review Program, there are several changes to the existing benefit mandate that could increase utilization of services, but that the Program was unable to quantify. To the extent that those factors do increase utilization, premium costs to CalPERS would increase. See below.

- No increased costs for the Medi-Cal program are anticipated due to the bill. Current law exempts Medi-Cal managed care plans from the existing benefit mandate. (However, federal guidance requires coverage for behavioral health treatment for Medi-Cal enrollees with autism or related disorders. The state has just begun providing this benefit in Medi-Cal and is in the process of transitioning Medi-Cal enrollee previously served by regional centers to having coverage provided by Medi-Cal.) This bill does not eliminate the existing Medi-Cal exemption.

Background: Current state law (SB 88, Thompson, Statutes of 1999) requires health plans and health insurers who provide hospital, medical, or surgical coverage to provide coverage for the diagnosis and treatment of severe mental illness (as specified in statute). In addition, health plans and health insurers are required to provide additional coverage for serious emotional disturbances of a child. In both cases, coverage is required to be provided under the same terms and conditions applied to other medical conditions. Under current federal law, health plans and health insurers that offer coverage for mental health or substance abuse disorders are required to provide that coverage under the same terms and conditions as other covered benefits. Collectively, these requirements are referred to as "mental health parity" requirements.

In addition, current state law (SB 946, Steinberg, Statutes of 2011) specifically requires health plans and health insurers to cover behavioral health therapy for pervasive development disorder or autism. The statutory sunset in SB 946 was extended to January 1, 2017 in SB 126 (Steinberg, 2013). Current law defines behavioral health treatment to include programs that "develop or restore, to the maximum extent practicable, the functioning of an individual...".

Under the federal Patient Protection and Affordable Care Act, health coverage provided in the small group or individual market (including through health exchanges) must provide essential health benefits. Under federal law, individuals purchasing coverage through health benefit exchanges will be eligible for subsidies, based on income, paid by the federal government. However, if a state imposes a benefit mandate after January 1, 2012 that exceeds the benefits provided by the essential health benefits benchmark plan, the state is responsible for providing the subsidies for coverage of that mandated benefit.

Proposed Law: SB 1034 would delete the existing statutory sunset on the mandate to provide health care coverage for behavioral health treatment for autism and related disorders. The bill would also revise the existing benefit mandate and apply the benefit mandate to health care coverage provided by CalPERS.

Specific provisions of the bill would:

- Revise the definition of behavioral health treatment to include other evidence-based behavioral intervention programs and also include programs designed to keep the functioning of the individual;
- Delete the requirement that autism service professionals and paraprofessionals be employed by qualified autism service providers (they would still require supervision by providers);
- Require treatment plans to be reviewed no more than once every six months, unless a shorter period is recommended by the provider;

- Prohibit a lack of parent or caregiver participation from being used to deny coverage;
- Permit services to be discontinued when no longer necessary;
- Prohibit the setting, location, or time of treatment from being used as a reason to deny coverage;
- Revise the definitions and requirements for qualified autism service professionals and paraprofessionals;
- Delete the exemption in current law for CalPERS coverage from the benefit mandate;
- Delete the existing statutory sunset.

Related Legislation: AB 796 (Nazarian) would require the Board of Psychology to convene a committee to study evidenced-based treatments for autism and related disorders. The bill would also extend the existing benefit mandate sunset to January 1, 2022. That bill is pending in the Senate Health Committee.

Staff Comments: The California Health Benefits Review Program found that there is insufficient evidence to determine whether behavioral health treatment aimed at maintaining function (amended to "keep" in the latest amendments) derived from intensive behavioral health treatments is effective. However, given that there is a large body of evidence that behavioral health treatment improves functioning, the Program found that it stands to reason that it could also be useful for maintaining function.

The Program was able to make projections about the increased utilization of services relating to maintaining function (recently amended to "keep"). For the other changes to the mandate in the bill (such as the prohibition of denials of coverage based on parental participation or the elimination of restrictions on the time or setting of services), the Program could not quantify the impacts of the changes. The Program indicates that those changes are likely to increase utilization

For example, under current state and federal law, school districts are required to provide certain services to students to allow the students to fulfil their educational needs. The boundary between services covered by health plans and health insurers under the existing benefit mandate and those provided by schools is not completely clear. There are indications that health plans and health insurers have denied coverage for mandated services simply because those services were to be provided in a school setting (but by a contracted provider, not the school or its providers). By prohibiting denial of coverage based on time or setting, the bill may result in coverage for some services shifting from school districts to health plans and health insurers.

The only costs that may be incurred by a local agency relate to crimes and infractions. Under the California Constitution, such costs are not reimbursable by the state.

-- END --