California Board of
PSYCHOLOGY

1625 North Market Blvd., Suite N-215, Sacramento, CA 95834
T (916) 574-7720 F (916) 574-8672 Toll-Free (866) 503-3221
www.psychology.ca.gov

MEMORANDUM

DATE	July 7, 2016
TO	Board of Psychology
FROM	Jason Glasspiegel Central Services Coordinator
SUBJECT	Agenda Item #4 (a) – AB 796 (Nazarian) Health Care Coverage: Autism: Pervasive Disorders

Background:

This bill:

- Requires the State Department of Developmental Services, no later than July 1, 2018, with input from stakeholders, to update regulations to set forth the minimum standards of education, training, and professional experience for qualified autism service professionals and paraprofessionals.

- Deletes the sunset date of this provision, thereby extending the operation of existing law which requires insurance coverage for behavioral health treatment for pervasive developmental disorder or autism indefinitely.

On March 8, 2016, the Board sent an "Oppose" letter to the Senate Health and Human Services Committees, as well as the author's office. This opposition letter was based on a previous version of the bill. The Board of Psychology has since been amended out of the bill.

Location: Senate Appropriations Committee

Status: 06/30/2016 in Senate. Read second time and amended. Re-referred to Committee on Appropriations

Action Requested:
Staff recommends the Board take an Oppose position on AB 796.

Attachment A is the Analysis for AB 796
Attachment B is the Language for AB 796
Attachment C is the Oppose letter submitted to the Senate Health and Human Services Committees as well as the author's office.
Attachment D is the Senate Human Services analysis for AB 796

CALIFORNIA STATE BOARD OF PSYCHOLOGY

BILL ANALYSIS

BILL NUMBER: AB 796 **VERSION:** **AMENDED:** JUNE 8, 2016

AUTHOR: NAZARIAN, RENDON (COAUTHOR) **SPONSOR:** DIR FLOOR TIME COALITION

BOARD POSITION: OPPOSE

SUBJECT: HEALTH CARE COVERAGE: AUTISM AND PERVASIVE DEVELOPMENTAL DISORDERS

Overview:

This bill requires the Department of Developmental Services (DDS), with the Department of Insurance, to create procedure codes and convene a task force to develop a list of evidence-based treatment modalities and a methodology for what constitutes evidence-based practice in the field of behavioral health treatment for autism and pervasive developmental disorders, as well as minimum standards for education and training and experience for qualified autism service professionals other than applied behavior analysis. The bill also repeals the sunset provision in the requirement for health care service plans to provide health coverage for behavioral health treatment for pervasive development disorder or autism.

Existing Law:

1) Requires that every health care service plan or insurance policy that provides hospital, medical or surgical coverage must also provide coverage for behavioral health treatment for pervasive developmental disorder or autism (PDD/A). (Health and Safety Code (HSC) §1374.73(a), Insurance Code (IC) §10144.51(a))

2) Requires these health care service plans and health insurers subject to this provision to maintain an adequate network of qualified autism service providers. (HSC §1374.73(b), IC §10144.51(b))

3) Defines "behavioral health treatment" as professional services and treatment programs, including applied behavior analysis and evidence-based behavior intervention programs which develop or restore the functioning of an individual with pervasive developmental disorder or autism, and meets the following criteria (HSC §1374.73(c), IC §10144.51(c):

    a) Is prescribed by a licensed physician and surgeon or is developed by a licensed psychologist;

    b) Is provided under a treatment plan prescribed by a qualified autism service provider and administered by such a provider or by a qualified autism service professional under supervision and employment of a qualified autism service provider;

    c) The treatment plan has measurable goals over a specific timeline and the plan is reviewed by the provider at least once every six months; and

d) Is not used for purposes of providing or for the reimbursement of respite, day care, or educational services.

4) Defines vendor service codes and sets requirements for regional to classify the following professions (CCR 17 §54342):

a) Associate Behavior Analysts;

b) Behavior Analysts;

c) Behavior Management Assistants;

d) Behavior Management Consultants; and

e) Behavior Management Programs.

This Bill:

1) Requires, no later than July 1, 2017, DDS, in conjunction with the Department of Insurance, to develop procedure codes for evidence-based behavioral health treatment other than applied behavior analysis.

2) Requires, no later than December 31, 2017 and thereafter as necessary, DDS, in conjunction with the Department of Insurance as lead agency, to convene a task force that, at a minimum, shall include a developmental pediatrician, a marriage and family therapist, a child and adolescent psychiatrist, a psychologist, a neuropsychologist, a board certified behavior analyst, and a University of California autism researcher as voting representatives, as well as nonvoting representatives from the State Department of Developmental Services, the Department of Insurance, and the department. All voting members shall be professionals trained in interpreting research data and shall represent a balanced diversity of treatment modalities, including both behavioral and developmental approaches. The task force shall do all of the following:

(a) Develop a methodology for determining what constitutes an evidence-based practice in the field of behavioral health treatment for autism and pervasive developmental disorder.

(b) Develop a list of behavioral health treatment modalities for autism and pervasive developmental disorder supported by research that shall be displayed on the Department website and distributed to the State Department of Developmental Services, all regional centers, and health care service plans.

(c) Develop minimum standards of education, training, and professional experience for qualified autism service professionals practicing behavioral health treatment other than applied behavior analysis that shall be no less rigorous than the requirements as defined in subdivision (b) of Section 54342 of Article 3 of Subchapter 2 of Chapter 3 of Division 2 of Title 17 of the California Code of Regulations.

(d) Develop minimum standards of education, training, and professional experience for qualified autism service paraprofessionals practicing behavioral health treatment other than applied behavior analysis that shall be no less rigorous than the education and training qualifications defined in the regulations adopted pursuant to Section 4686.3 of the Welfare and Institutions Code.

3) Mandates the list of behavioral health treatment modalities developed pursuant to this section shall constitute evidence that a particular form of treatment is evidence-based in an independent medical review.

4) Advises that the absence of a particular form of treatment from the list of behavioral health treatment modalities developed pursuant to this section shall not constitute evidence that a particular form of treatment is not evidence-based.

5) Repeals the sunset provisions, therefore extending the requirement that health care service plans provide health coverage for behavioral health treatment for pervasive development disorder or autism indefinitely.

Comments:

Author's Intent.

1) According to the author, this bill would ensure that children diagnosed with autism continue to have access to medically necessary treatments to increase their quality of life and functional independence by removing the 2017 sunset on the requirement for health plans and insurers to provide behavioral health treatments to children with autism.

2) **Previous Legislation.**

AB 2041 (Jones of 2014), would have required 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. AB 2041 would have required DDS to amend its regulations as necessary to implement the provisions of the bill. AB 2041 died in the Senate Appropriations Committee.

SB 126 (Steinberg, Chapter 680, Statutes of 2013), extends, until January 1, 2017, the sunset date of an existing state health benefit mandate that requires health plans and health insurance policies to cover behavioral health treatment for pervasive developmental disorder or autism and requires plans and insurers to maintain adequate networks of these service providers.

SB 946 (Steinberg, Chapter 650, Statutes of 2011), requires health plans and health insurance policies to cover behavioral health treatment for pervasive developmental disorder or autism, requires health plans and insurers to maintain adequate networks of autism service providers, establishes a task force in DMHC, sunsets the autism mandate provisions on July 1, 2014, and makes other technical changes to existing law regarding HIV reporting and mental health services payments.

SB 166 (Steinberg of 2011), would have required health care service plans licensed by DMHC and health insurers licensed by CDI to provide coverage for behavioral health treatment for autism. SB 166 was held in the Senate Health Committee.

AB 1205 (Bill Berryhill of 2011), would have required the Board of Behavioral Sciences to license behavioral analysts and assistant behavioral analysts, on and after January 1, 2015, and included standards for licensure such as specified higher education and training, fieldwork, passage of relevant examinations, and national board accreditation. AB 1205 was held in the Assembly Appropriations Committee on the suspense file.

SB 770 (Steinberg of 2010), would have required health plans and insurance policies to provide coverage for behavioral health treatment. SB 770 was held in the Assembly Appropriations Committee.

3) Support and Opposition.

Support:

- DIR/Floortime Coalition of California (sponsor)
- Association of Regional Center Agencies
- Occupational Therapy Association of California
- Several hundred individuals

Oppose:

- Department of Developmental Disabilities (prior version)

4) History

06/08/16 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on HEALTH.
02/04/16 Referred to Coms. on HEALTH and HUMAN S.
01/25/16 In Senate. Read first time. To Com. on RLS. for assignment.
01/25/16 Read third time. Passed. Ordered to the Senate. (Ayes 75. Noes 0. Page 3476.)
01/21/16 Read second time. Ordered to third reading.
01/21/16 From committee: Do pass. (Ayes 17. Noes 0.) (January 21).
01/14/16 Re-referred to Com. on APPR.
01/13/16 From committee chair, with author's amendments: Amend, and re-refer to Com. on APPR. Read second time and amended.
01/13/16 From committee: Do pass and re-refer to Com. on APPR. (Ayes 18. Noes 0.) (January 12). Re-referred to Com. on APPR.
01/12/16 From committee: Do pass and re-refer to Com. on HEALTH. (Ayes 12. Noes 0.) (January 12). Re-referred to Com. on HEALTH.
01/07/16 (pending re-refer to Com. on HEALTH.)
01/07/16 Assembly Rule 56 suspended. (Page 3366.)
01/04/16 Re-referred to Com. on B. & P.
01/04/16 From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.
05/07/15 In committee: Reconsideration granted.
05/07/15 Joint Rule 62(a), file notice suspended. (Page 1320.)
05/05/15 In committee: Set, first hearing. Failed passage.
04/09/15 (Ayes 51. Noes 26. Page 845.)
04/09/15 Re-referred to Coms. on B. & P. and HEALTH pursuant to Assembly Rule 96.
04/08/15 In committee: Hearing postponed by committee.
03/26/15 In committee: Hearing postponed by committee.
03/12/15 Referred to Coms. on HEALTH and B. & P.
02/27/15 From printer. May be heard in committee March 29.
02/26/15 Read first time. To print.

California LEGISLATIVE INFORMATION

AB-796 Health care coverage: autism and pervasive developmental disorders. (2015-2016)

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 treatment other than just applied behavioral analysis.

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).

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

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

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

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

(1) "Behavioral health treatment" means professional services and treatment programs, including applied behavior analysis and 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 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.

(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.

(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.

(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.

(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.

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

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

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

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

(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 2 of the Insurance Code).

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

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

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

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

SEC. 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 defined in Section 56032 of the Education Code, or an individual service plan, as described in Section 5600.4 of the Welfare and Institutions Code, or under the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and its implementing regulations.

(b) Pursuant to Article 6 (commencing with Section 2240) of *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 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.

(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.

(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.

(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.

(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.

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

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

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

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

(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 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.

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

SEC. 4. *Section 4513.1 is added to the Welfare and Institutions Code, to read:*

4513.1. *The department, no later than July 1, 2018, with input from*

stakeholders, shall update regulations as appropriate to set forth the minimum standards of education, training, and professional experience for qualified autism service professionals and paraprofessionals practicing behavioral health treatment other than applied behavioral analysis that shall be no less rigorous than the requirements set forth in subdivision (b) of Section 54342 of Article 3 of Subchapter 2 of Chapter 3 of Division 2 of Title 17 of the California Code of Regulations.

SEC. 5. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

California Board of
PSYCHOLOGY

1625 North Market Blvd., Suite N-215, Sacramento, CA 95834
T (916) 574-7720 F (916) 574-8672 Toll-Free (866) 503-3221
www.psychology.ca.gov

March 8, 2016

The Honorable Ed Hernandez
California State Senate
State Capitol, Room 2080
Sacramento, CA 95814

RE: **AB 796 (Nazarian) – Health care coverage: autism and pervasive developmental disorders - OPPOSE**

Dear Senator Hernandez:

At its February 25, 2016 meeting, the Board of Psychology (Board) adopted an **Oppose** position on **AB 796**. The bill would require that the Board of Psychology convene a committee to create a list of evidence-based treatment modalities for purposes of behavioral health treatment for pervasive developmental disorder or autism, and extend the health insurance coverage for this treatment until January 1, 2022.

Developing practice based lists for insurance coverage is not the statutory charge of the Board. It is unprecedented in the Department of Consumer Affairs to engage in such a charge. As such, the Board opposes the bill.

The Board's mission is to advance quality psychological services for Californians by ensuring ethical and legal practice and supporting the evolution of the profession. It is not within its purview to evaluate disparate research and vet acceptable treatment approaches. The Board is intended to evaluate the ethical and legal obligations of our licensees and registrants by referring to, among other things, the standard of care in the field. It would be antithetical to that process to involve ourselves in dictating the standard of care, which is a constantly evolving standard dictated by the professionals competent to practice with the relevant population.

If you have any questions or concerns regarding this position, please feel free to contact the Board's Executive Officer, Antonette Sorrick, at (916) 574-7113. Thank you.

Sincerely,

STEPHEN C. PHILLIPS, JD, PsyD
President, Board of Psychology

cc: Assembly Member Adrin Nazarian
Senate Committee on Health
Senate Committee on Health Consultant Reyes Diaz

SENATE COMMITTEE ON HUMAN SERVICES

Senator McGuire, Chair
2015 - 2016 Regular

Bill No:	AB 796		
Author:	Nazarian		
Version:	June 21, 2016	**Hearing Date:**	June 28, 2016
Urgency:	No	**Fiscal:**	Yes
Consultant:	Mareva Brown		

Subject: Health care coverage: autism and pervasive developmental disorders

SUMMARY

This bill deletes the sunset date for health care service plans' required coverage of autism-related behavioral health treatment. It additionally requires the State Department of Developmental Services (DDS), no later than July 1, 2018, with input from specified stakeholders to develop a methodology for determining what constitutes an evidence-based practice in the field of behavioral health treatment for autism and pervasive developmental disorder and to update regulations to set forth the minimum standards of education, training, and professional experience for qualified autism service professionals and paraprofessionals, as specified.

ABSTRACT

Existing law:

1) Establishes the Lanterman Developmental Disabilities Services Act, which states that California is responsible for providing an array of services and supports sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. (*WIC 4500, et seq.*)

2) Establishes a system of nonprofit Regional Centers, overseen by DDS, to provide fixed points of contact in the community for all persons with developmental disabilities and their families, to coordinate services and supports best suited to them throughout their lifetime. (*WIC 4620*)

3) Establishes an Individual Program Plan (IPP) 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 4512*)

4) Requires a regional center to secure services and supports that meet the needs of the consumer, as determined in the IPP, and to give highest preference to those which would allow minors with developmental disabilities to live with their families, adults to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways. *(WIC 4648)*

5) Requires every health care service plan contract that provides hospital, medical, or surgical coverage to also provide coverage for behavioral health treatment for pervasive

developmental disorder or autism, as specified, with a sunset date of January 1, 2017. *(WIC 1374.73. (a) (1))*

6) Requires every health insurance policy to provide coverage for behavioral health treatment for pervasive developmental disorder or autism, as specified, with a sunset date of January 1, 2017. *(INS 10144.51)*

7) Requires that every health care service plan 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. *(WIC 1374.73 (b))*

8) 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 requirements for the treatment plan, prescription of the treatment, and the providers authorized to provide such treatment, including qualified autism service professionals, as specified. *(HSC 1374.73(c)(1), INS 10144.51(c)(1))*

9) 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. *(HSC 1374.73 (c)(4)(D), INS 10144.51(c)(4)(D))*

10) Defines in state regulations, for purposes of regional center vendorization, Behavior Management Assistant, Behavior Management Consultant, Behavior Analyst and Associate Behavior Analyst and requires education or experience in ABA, as specified. *(17 CCR §54342)*

This bill:

1) Makes a series of uncodified Legislative findings about autism, its symptoms and prevalence, the use of behavioral health treatment to ameliorate its effects, and states Legislative intent that health care service plan provider networks include qualified professionals practicing all forms of evidence-based behavioral health treatment other than just applied behavioral analysis.

2) Deletes the sunset date of January 1, 2017 for HSC 1374.73 and INS 10144.51, which together require insurance policies and plans to provide coverage for behavioral health treatment for pervasive developmental disorder or autism.

3) Requires DDS no later than July 1, 2018, with input from specified stakeholders, to do both of the following:

    a. Develop a methodology for determining what constitutes an evidence-based practice in the field of behavioral health treatment for autism and pervasive development disorder.

b. Update regulations to set forth the minimum standards of education, training, and professional experience for qualified autism service professionals and paraprofessionals practicing behavioral health treatment other than applied behavioral analysis that shall be no less rigorous than the requirements set forth in existing regulations for ABA.

4) Requires that DDS consult stakeholders including professionals trained in interpreting research data who represent a balanced diversity of treatment modalities, including both behavioral and developmental approaches. These professionals shall include, at a minimum, a developmental pediatrician, a marriage and family therapist, a child and adolescent psychiatrist, a psychologist, a neuropsychologist, a board certified behavior analyst, and a University of California autism researcher.

FISCAL IMPACT

An analysis by the Assembly Committee on Appropriations reflected costs related to a prior version of the bill. The current language of the bill has not been analyzed by a fiscal committee. However the Assembly Appropriations analysis did note that The California Health Benefits Review Program (CHBRP) estimated no impact on private insurance premium cost or on public health from a previous bill *(SB 126, Steinberg, Chapter 680, Statutes of 2013)* that extended the sunset on the behavioral health treatment mandate from January 1, 2014 to January 1, 2017, given that state mental health parity laws already require coverage for this treatment. Although a CHBRP analysis was not performed on the current version of this bill, it appears as though the same reasoning would hold, and there would be no premium cost impact from a provision extending the mandate for additional years, the analysis stated.

BACKGROUND AND DISCUSSION

Purpose of the bill:

According to the author, passage of a 2011 bill *(SB 946, Steinberg, Chapter 650, Statutes of 2011)* was supposed to ensure that health plans and insurance policies would cover behavioral health therapy for autism or pervasive developmental disorder. The bill required plans and insurers to maintain adequate networks of autism service providers. However, the author states, the number of trained practitioners cannot meet the growing demand for services.

Additionally, the author states, SB 946 is being narrowly interpreted by insurance companies to apply to a single type of behavioral therapy, Applied Behavioral Analysis (ABA), but children respond uniquely to treatment. "AB 796 recognizes that there is no one size fits all Behavioral Health Treatment system for an individual diagnosed with autism," the author states.

Autism Spectrum Disorder

Autism is a neurodevelopmental disorder characterized by difficulty in language, social interaction, and by the presence of repetitive and stereotyped behaviors. The National Institutes of Health describes autism as the most severe form of a range of conditions that together make up Autism Spectrum Disorder, or ASD. Other conditions along the spectrum include Asperger syndrome, and pervasive developmental disorder not otherwise specified, or PDD-NOS. The most notable feature of ASD is impaired social interaction, according to the National Institutes of

Health. An infant with ASD may not respond to people or may focus intently on one item to the exclusion of others for long periods of time.

Children with ASD may avoid eye contact with other people, or not respond to verbal commands or conversation. They cannot interpret facial expressions or changes in voice inflection, so they do not understand what others are thinking or feeling. ASD occurs in all ethnic and socioeconomic groups and affects every age group. Experts estimate that 1 out of 88 children age 8 will have an ASD.[1] Males are four times more likely to have an ASD than females. DDS data shows that in March 2016, nearly 85,000 regional center consumers had a diagnosis of autism or PDD-NOS – about one-third of all consumers.

Prevalence

The prevalence of autism has grown exponentially over the past several decades. Studies published before 1985, for example, reported prevalence rates of 4 to 5 per 10,000 children for the broader autism spectrum, and about 2 per 10,000 for the classic autism definition. Since then, studies from the UK indicate a prevalence rate of 16.8 per 10,000 children for autistic disorder, and 62.6 per 10,000 for the entire classification of autistic spectrum disorders. In the United States, in 3- to 10-year-old children, there was a prevalence of 40 per 10,000 for autistic disorder and 67 per 10,000 children for the entire autism spectrum. Researchers have concluded that although many factors are at play, it is evident that there has been an increase in autism.[2]

In the United States, the most recent prevalence data released by the Centers for Disease Control[3] shows about 1 in 68 children has been identified with autism spectrum disorder.

Evaluating Best Practices in treatment

Agency for Health Care Research and Quality

The federal Agency for Healthcare Research and Quality within the U.S. Department of Health and Human Services conducts systematic reviews on emerging treatments to provide clinicians with information and context on the usefulness of these new treatments. The agency notes that systematic reviews are the building blocks underlying evidence-based practice. In part, they focus on the strengths and limitations of evidence from research studies about the effectiveness and safety of a clinical intervention.

In 2014, the Agency published a 513-page report entitled, "Therapies for Children With Autism Spectrum Disorder: Behavioral Interventions Update."[4] The report concluded that while a growing evidence base "suggests that behavioral interventions can be associated with positive outcomes for children with ASD … a need remains for studies of interventions across settings and continued improvements in methodologic rigor. Substantial scientific advances are needed to enhance our understanding of which interventions are most effective for specific children with ASD and to isolate elements or components of interventions most associated with effects."

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[1] Centers for Disease Control and Prevention: Morbidity and Mortality Weekly Report, March 30, 2012

[2] Merrick, J et al., "Trends in Autism," International Journal of Adolescent Medicine and Health," March 2006.

[3] http://www.cdc.gov/ncbddd/autism/data.html

[4] Weitlauf AS, et al, "Therapies for Children With Autism Spectrum Disorder: Behavioral Interventions Update." Comparative Effectiveness Review No. 137.

National Professional Development Center

In 2015, the National Professional Development Center on Autism Spectrum Disorder published a report[5] that included identification of 27-evidence based practices for autism treatment. The 114-page report compared various methods of intervention, reviewed research and established a methodology for determining an evidence-based practice.

Treatment Modalities

The most recognized form of behavioral health treatment for autism is Applied Behavioral Analysis, or ABA, which focuses on positive reinforcement and intensive teaching to bring about a change in behavior. ABA has been acknowledged as effective by the US Surgeon General, US Department of Education and others. One of the pioneers of autism treatment, Dr. O Ivar Lovaas at UCLA, used ABA in one-on-one sessions of 40 hours per week with children aged 2 or 3 for several years to direct children's behaviors. According to Lovaas' website, the primary instructional method during the first year is spent in individual training in the child's home. In the second year, children spend increasing amounts of time having supervised play-dates with typically developing peers to provide opportunities for peer tutoring and increase social skills, enter general education preschools to facilitate adjustment to school, and participate in incidental teaching in addition to discrete trial training. During the third and final year, the focus is on gradually reducing individual instruction and increasing inclusion into classroom settings.[6]

ABA encompasses several different treatment modalities, and there are also other interventions that have been scientifically studied and found to be effective. One of those is the Early Start Denver Model, which is a relationship-based intervention provided in the home by trained therapists and parents during natural play and daily routines. Researchers at the UC Davis MIND Institute have been studying the Early Start Denver Model's effectiveness.

There also are a number of behavioral treatments in practice that have not been studied and have not met other criteria to be considered "evidence-based."

California Code of Regulations

Title 17 CCR §54342 defines various types of service providers for regional center consumers, from dance therapist to occupational therapist to psychologist, and specifies the type of billing code for regional centers to use for each. These definitions include:

Behavior Analyst means an individual who assesses the function of a behavior of a consumer and designs, implements, and evaluates instructional and environmental modifications to produce socially significant improvements in the consumer's behavior through skill acquisition and the reduction of behavior. Behavior Analysts engage in functional assessments or functional analyses to identify environmental factors of which behavior is a function. A Behavior Analyst shall not practice psychology, as defined. A regional center shall classify a vendor as a Behavior Analyst if an individual is recognized by the national Behavior Analyst Certification Board as a Board Certified Behavior Analyst.

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[5] Wong, C., et al, "Evidence-based practices for children, youth, and young adults with autism spectrum disorder: A comprehensive review." Journal of Autism and Developmental Disorders. (2015).

[6] http://thelovaascenter.com/aba-treatment/

A regional center shall classify a vendor as an ***Associate Behavior Analyst*** if the vendor assesses the function of a behavior of a consumer and designs, implements, and evaluates instructional and environmental modifications to produce socially significant improvements in the consumer's behavior through skill acquisition and the reduction of behavior, under direct supervision of a Behavior Analyst or Behavior Management Consultant. A regional center shall classify a vendor as an Associate Behavior Analyst if an individual is recognized by the National Behavior Analyst Certification Board as a Board Certified Associate Behavior Analyst.

A regional center shall classify a vendor as a ***Behavior Management Assistant*** if the vendor designs or implements behavior modification intervention services under the direct supervision of a behavior management consultant; or if the vendor assesses the function of a behavior of a consumer and designs, implements, and evaluates instructional and environmental modifications to produce socially significant improvements in the consumer's behavior under direct supervision of a Behavior Analyst or Behavior Management Consultant. The regulations specify educational, training and professional requirements.

Permits a regional center to classify a vendor as a ***Behavior Management Consultant*** if the vendor designs and/or implements behavior modification intervention services, has completed 12 semester units in applied behavior analysis and possesses a license and experience as a psychologist, licensed clinical social worker, licensed marriage and family therapist or other licensed professional that designs or implements behavior modification intervention services and has two years of experience in designing and implementing these interventions.

Related legislation:

SB 1034 (Mitchell, 2016) modifies the requirements of a qualified autism service professional and requires that a treatment plan be reviewed no more than once every 6 months, unless a shorter period is recommended by the qualified autism service provider.

AB 2041 (Jones, 2014) would have expanded the scope of treatment providers in the regional center vendor system to include a behavior management consultant or behavior management assistant, with specified requirements.

SB 946 (Steinberg) Chapter 650, statutes of 2011 required health plans and insurers to pay for behavioral health treatment when a consumer's IPP identified the need.

AB 171 (Beall) 2011) would have required health plans and insurers to cover the screening, diagnosis and treatment of ASD. This bill died in the Senate Health committee.

Support:

The sponsor of AB 796, DIR Floortime Inc., writes that while a task force convened in 2011 unanimously adopted the guiding principle that behavioral health interventions should be highly individualized and that the choice of BHT should be grounded in scientific evidence, clinical practice guidelines, and/or evidence-based practice, most insurance plans are failing to cover anything except Applied Behavior Analysis.

"We are vitally concerned with the choice of evidence-based behavioral health treatments available and covered by health insurance in California. Unfortunately, in far too many cases, children with autism are being denied coverage for the specific type of evidence-based treatment

recommended or prescribed by their doctor or psychologist." DIR Floortime Inc. writes that the existing statutory definition of evidence-based practices is vague and that DDS-issued regulations only identify requirements to provide ABA.

Opposition:

The Department of Developmental Services opposes this bill, noting that there are other "well-established sources of information" regarding evidence based practices for treating ASD. The Department expresses concern that the bill does not establish "definitive criteria for evaluating the quality of the evidence available on treatment modalities." The Department writes that any determination of effectiveness of treatment modalities must be based on sound, scientifically validated principles and supported by empirical data. However, the Department cites concerns about this bill, including the fact that national entities already have published information on evidence-based treatment.

COMMENTS

This bill has been amended to shift the responsibility for conducting a work group to define best practices in behavioral therapy from the board of psychology to the Department of Managed Health Care. The most recent amendments move this responsibility to the Department of Developmental Services, which already had expressed concerns about the qualifications of individuals tasked with identifying best practices. Given the reluctance of various state agencies and boards to convene such a task force, and expressed concern about the state's role in defining evidence-based treatments, ***staff recommends the following amendments***:

WIC 4513.1. ~~(a)~~ The department, no later than July 1, 2018, with input from ~~the~~ stakeholders ~~identified in subdivision (b), shall do both of the following:~~

~~(1) Develop a methodology for determining what constitutes an evidence based practice in the field of behavioral health treatment for autism and pervasive developmental disorder.~~

~~(2)~~ ***shall*** update regulations***, as appropriate,*** to set forth the minimum standards of education, training, and professional experience for qualified autism service professionals and paraprofessionals practicing behavioral health treatment other than applied behavioral analysis that shall be no less rigorous than the requirements set forth in subdivision (b) of Section 54342 of Article 3 of Subchapter 2 of Chapter 3 of Division 2 of Title 17 of the California Code of Regulations.

~~(b) Stakeholders shall include professionals trained in interpreting research data and shall represent a balanced diversity of treatment modalities, including both behavioral and developmental approaches. These professionals shall include, at a minimum, a developmental pediatrician, a marriage and family therapist, a child and adolescent psychiatrist, a psychologist, a neuropsychologist, a board certified behavior analyst, and a University of California autism researcher.~~

PRIOR VOTES

Assembly Floor:	75 - 0
Assembly Appropriations Committee:	17 - 0
Assembly Business and Professions Committee:	7 - 4

POSITIONS

Support:

The DIR/Floortime Coalition of California (sponsor)
Autism Business Association

Oppose:

Department of Developmental Services
Center for Autism and Related Disorders

-- END --