


MEMORANDUM

DATE	February 26, 2017
TO	Policy and Advocacy Committee
FROM	 Jason Glasspiegel Central Services Coordinator
SUBJECT	Agenda Item #7(a)(i)(D) – SB 399 (Portantino) Health care coverage: pervasive developmental disorder or autism.

Background:

This bill would modify the definition of a Qualified Autism Service Professional (Professional) and Qualified Autism Service Paraprofessional (Paraprofessional). This bill would also modify how often a treatment plan must be reviewed and change the reimbursement requirements for health care service plans and health insurers.

Location: Senate Committee on Health and Human Services

Status: 02/23/2017 - Referred to Committee on Health and Human Services

Action Requested:

The staff recommends the Committee take an "Oppose" position on SB 399 (Portantino).

Attachment A: Analysis of SB 399 (Portantino)

Attachment B: SB 399 (Portantino) Bill Text

2017 Bill Analysis

Author: Portantino	Bill Number: SB 399	Related Bills: AB 1074 (Maienschein)
Sponsor: DIR Floor Time Coalition of California	Version: Introduced 02/15/2017	
Subject: Health care coverage: pervasive developmental disorder or autism.		

SUMMARY

This bill would modify the definition of a Qualified Autism Service Professional (Professional) and Qualified Autism Service Paraprofessional (Paraprofessional). This bill would also modify how often a treatment plan must be reviewed and change the reimbursement requirements for health care service plans and health insurers.

RECOMMENDATION

OPPOSE – Due to the changes to the definition of the Professional and Paraprofessional in this bill, Board of Psychology (Board) staff believe this bill would remove necessary State oversight that verifies consistency in training for those individuals providing services to a vulnerable population.

REASON FOR THE BILL

The author did not have a fact sheet available, but stated that “too many Californians with autism are being denied coverage for physician and psychological prescribed evidenced based behavioral health treatments.”

ANALYSIS

Qualified Autism Service Professional definition change

Existing law mandates that all Professionals be approved as a vendor by a California regional center. This bill would remove the requirement for approval as a vendor, and instead adds language that specifies that the Professional is a behavioral health provider who meets the Department of Developmental Services (DSS) qualifications to be approved as a vendor by a regional center.

Other Boards/Departments that may be affected:	
<input type="checkbox"/> Change in Fee(s) <input type="checkbox"/> Affects Licensing Processes <input type="checkbox"/> Affects Enforcement Processes	
<input type="checkbox"/> Urgency Clause <input type="checkbox"/> Regulations Required <input type="checkbox"/> Legislative Reporting <input type="checkbox"/> New Appointment Required	
Policy & Advocacy Committee Position: <input type="checkbox"/> Support <input type="checkbox"/> Support if Amended <input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended <input type="checkbox"/> Neutral <input type="checkbox"/> Watch Date: _____ Vote: _____	Full Board Position: <input type="checkbox"/> Support <input type="checkbox"/> Support if Amended <input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended <input type="checkbox"/> Neutral <input type="checkbox"/> Watch Date: _____ Vote: _____

Treatment Plan review requirement

Existing law requires the treatment plan be reviewed no less than once every six months by a Provider. This bill changes the review time period to no more than once every six months or less than once every 12 months unless a shorter period is recommended by a QASP.

Staff is not aware of the need for this change.

Due to the changes to Professional and Paraprofessional requirements in this bill, Board staff believes this bill will remove necessary oversight that verifies consistency in training for those individuals providing services to this vulnerable population. This bill appears to be a step backwards from the increased consumer protections that the Board has advocated for in past legislation. For this reason, Board staff recommends an Oppose position on SB 399.

Removal of health care service plan exemption

Existing law states that health care service plan contracts that provide hospital, medical, or surgical coverage must also provide coverage for behavioral health treatment for Pervasive Development Disorder (PDD) or Autism Spectrum Disorder (ASD). Additional language clarifies that this section shall not affect or reduce any obligation to provide services under an individualized educational program, or an individual service plan. This bill adds additional language to clarify that existing law does not require health care service plans to provide reimbursement for services delivered by school personnel pursuant to an individualized educational program unless otherwise required by law.

Board staff has no concerns regarding the change.

LEGISLATIVE HISTORY

AB 796 (Nazarian, Chapter 493, Statutes of 2016) removed the sunset provision set forth in SB 796 (Steinberg).

AB 1715 (Holden, 2016) would have required the Board of Psychology to license the practice of Behavior Analysis. This bill died in the Senate Business Professions and Economic Development Committee.

SB 1034 (Mitchell, 2016) would have made similar changes to AB 796, but was held in the Assembly Committee of Appropriations.

SB 946 (Steinberg, Chapter 650, Statutes of 2011) requires health plans and health insurance policies to cover behavioral health therapy for individuals with PDD or ASD. Additionally, it requires plans and insurers to maintain adequate networks of ASD service providers, and established an Autism Advisory Task Force in the Department of Managed Health Care.

Introduced by Senator PortantinoFebruary 15, 2017

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

LEGISLATIVE COUNSEL'S DIGEST

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

Existing law, the Lanterman Developmental Disabilities Services Act, requires the State Department of Developmental Services to contract with regional centers to provide services and supports to individuals with developmental disabilities and their families. Existing law defines developmental disability for these purposes, to include, among other things, autism.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law requires a health care service plan contract or a health insurance policy to provide coverage for behavioral health treatment for pervasive developmental disorder or autism, and defines "behavioral health treatment" to mean specified services provided by, among others, a qualified autism service professional supervised and employed by a qualified autism service provider. For purposes of this provision, existing law defines a "qualified autism service professional" to mean a person who, among other requirements, is a behavioral service provider approved as a vendor by a California regional center to provide services as an associate behavior

1 (b) Autism covers a large spectrum of symptoms and levels of
2 impairment ranging in severity from somewhat limiting to a severe
3 disability that may require institutional care.

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

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

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

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

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

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

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

25 SEC. 2. Section 1374.73 of the Health and Safety Code is
26 amended to read:

27 1374.73. (a) (1) Every health care service plan contract that
28 provides hospital, medical, or surgical coverage shall also provide
29 coverage for behavioral health treatment for pervasive
30 developmental disorder or autism no later than July 1, 2012. The
31 coverage shall be provided in the same manner and shall be subject
32 to the same requirements as provided in Section 1374.72.

33 (2) Notwithstanding paragraph (1), as of the date that proposed
34 final rulemaking for essential health benefits is issued, this section
35 does not require any benefits to be provided that exceed the
36 essential health benefits that all health plans will be required by
37 federal regulations to provide under Section 1302(b) of the federal
38 Patient Protection and Affordable Care Act (Public Law 111-148),
39 as amended by the federal Health Care and Education
40 Reconciliation Act of 2010 (Public Law 111-152).

1 (ii) A qualified autism service professional supervised and
2 employed by the qualified autism service provider.

3 (iii) A qualified autism service paraprofessional supervised and
4 employed by a qualified autism service provider.

5 (C) The treatment plan has measurable goals over a specific
6 timeline that is developed and approved by the qualified autism
7 service provider for the specific patient being treated. The treatment
8 plan shall be reviewed no-less *more* than once every six months
9 *or less than once every 12 months* by the qualified autism service
10 ~~provider~~ *provider, unless a shorter period is recommended by the*
11 *qualified autism service provider*, and modified whenever
12 appropriate, and shall be consistent with Section 4686.2 of the
13 Welfare and Institutions Code pursuant to which the qualified
14 autism service provider does all of the following:

15 (i) Describes the patient's behavioral health impairments or
16 developmental challenges that are to be treated.

17 (ii) Designs an intervention plan that includes the service type,
18 number of hours, and parent participation needed to achieve the
19 plan's goal and objectives, and the frequency at which the patient's
20 progress is evaluated and reported. *Lack of parent or caregiver*
21 *participation shall not be used to deny or reduce medically*
22 *necessary behavioral health treatment.*

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

26 (iv) Discontinues intensive behavioral intervention services
27 when the treatment goals and objectives are achieved or no longer
28 appropriate.

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

31 (D) The treatment plan is not used for purposes of providing or
32 for the reimbursement of respite, day care, or educational services
33 and is not used to reimburse a parent for participating in the
34 treatment program. ~~The treatment plan shall be made available to~~
35 ~~the health care service plan upon request.~~

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

38 (2) "Pervasive developmental disorder or autism" shall have
39 the same meaning and interpretation as used in Section 1374.72.

1 *program, individual family training, or as an adaptive skills*
2 *trainer, associate behavior analyst, behavior analyst, behavior*
3 *management assistant, behavior management consultant, or*
4 *behavior management program if the services are within the*
5 *experience and competence of the professional.*

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

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

14 (A) ~~Is employed and supervised by a person, entity, or group~~
15 ~~that is a qualified autism service provider.~~ *provider or qualified*
16 *autism service professional.*

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

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

24 ~~(D) Has adequate education, training, and experience, as~~
25 ~~certified by a qualified autism service provider.~~

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

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

29 (2) A health care service plan contract in the Medi-Cal program
30 (Chapter 7 (commencing with Section 14000) of Part 3 of Division
31 9 of the Welfare and Institutions Code).

32 (3) A health care service plan contract in the Healthy Families
33 Program (Part 6.2 (commencing with Section 12693) of Division
34 2 of the Insurance Code).

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

1 maintain an adequate network that includes qualified autism service
2 providers who supervise and employ qualified autism service
3 professionals or paraprofessionals who provide and administer
4 behavioral health treatment. Nothing shall prevent a health insurer
5 from selectively contracting with providers within these
6 requirements.

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

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

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

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

23 (i) A qualified autism service provider.

24 (ii) A qualified autism service professional supervised and
25 employed by the qualified autism service provider.

26 (iii) A qualified autism service paraprofessional supervised and
27 employed by a qualified autism service provider.

28 (C) The treatment plan has measurable goals over a specific
29 timeline that is developed and approved by the qualified autism
30 service provider for the specific patient being treated. The treatment
31 plan shall be reviewed no-less *more* than once every six months
32 *or less than once every 12 months* by the qualified autism service
33 ~~provider~~ *provider, unless a shorter period is recommended by the*
34 *qualified autism service provider*, and modified whenever
35 appropriate, and shall be consistent with Section 4686.2 of the
36 Welfare and Institutions Code pursuant to which the qualified
37 autism service provider does all of the following:

38 (i) Describes the patient's behavioral health impairments or
39 developmental challenges that are to be treated.

1 autism, provided the services are within the experience and
2 competence of the licensee.

3 (4) "Qualified autism service professional" means an individual
4 who meets all of the following criteria:

5 (A) Provides behavioral health ~~treatment~~. *treatment, which may*
6 *include clinical management and case supervision under the*
7 *direction and supervision of a qualified autism service provider.*

8 (B) Is employed and supervised by a qualified autism service
9 provider.

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

12 ~~(D) Is a behavioral service provider approved as a vendor by a~~
13 ~~California regional center to provide services as an Associate~~
14 ~~Behavior Analyst, Behavior Analyst, Behavior Management~~
15 ~~Assistant, Behavior Management Consultant, or Behavior~~
16 ~~Management Program as defined in Section 54342 of Article 3 of~~
17 ~~Subchapter 2 of Chapter 3 of Division 2 of Title 17 of the~~
18 ~~California Code of Regulations.~~

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

30 (E) Has training and experience in providing services for
31 pervasive developmental disorder or autism pursuant to Division
32 4.5 (commencing with Section 4500) of the Welfare and
33 Institutions Code or Title 14 (commencing with Section 95000)
34 of the Government Code: *autism.*

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

38 (A) Is employed and supervised by a *person, entity, or group*
39 *that is qualified autism service provider.* *provider or qualified*
40 *autism service professional.*

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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