

## MEMORANDUM

<b>DATE</b>	February 26, 2017
<b>TO</b>	Policy and Advocacy Committee
<b>FROM</b>	 Jason Glasspiegel Central Services Coordinator
<b>SUBJECT</b>	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

<b>Author:</b> Portantino	<b>Bill Number:</b> SB 399	<b>Related Bills:</b> AB 1074 (Maienschein)
<b>Sponsor:</b> DIR Floor Time Coalition of California	<b>Version:</b> Introduced 02/15/2017	
<b>Subject:</b> 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.

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

O