


MEMORANDUM

DATE	April 10, 2017
TO	Board of Psychology
FROM	 Konnor Leitzell Central Services Student Assistant
SUBJECT	Agenda Item #4(b)(1)(B)(38) – SB 399 (Portantino) Health Care Coverage: Pervasive Developmental Disorder or Autism

Background:

This bill, among other things, would no longer require qualified autism service professionals or paraprofessionals to be employed by a qualified autism service provider and would no longer permit entities or groups to be qualified autism service providers. The bill would expand the definition of "qualified autism service professional" to include behavioral service providers who meet specified educational, professional, and work experience qualifications. The bill, with regard to the definition of "qualified autism service paraprofessional," would also authorize the substitution of specified education, work experience, and training qualifications for the requirement to meet the criteria set forth in regulations adopted by the State Department of Social Services.

Current language does not raise concern with Board staff, as the majority of the concerns regarding the reduction in oversight have been amended. The author confirmed they are working on the best possible language to require a live scan in order to practice.

Location: Senate Committee on Health

Status: 04/04/2017 Passed Senate Committee on Human Services (3-1-1).
Re-referred to Senate Committee on Health

Votes: 04/04/2017 Senate Committee on Human Services (3-1-1)

Action Requested:

No action is required at this time. Staff will continue to watch SB 399 (Portantino) to determine its impact on the oversight of Qualified Autism Service Professionals and Paraprofessionals.

Attachment A: SB 399 (Portantino) Text



SB-399 Health care coverage: pervasive developmental disorder or autism. (2017-2018)

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.*

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.

(5) This section shall not be construed to require a health care service plan to provide reimbursement for services delivered by school personnel pursuant to an enrollee's individualized educational program unless otherwise required by law.

(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 more than once every six months or less than once every 12 months by the qualified autism service provider, unless a shorter period is recommended 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. Lack of parent or caregiver participation shall not be used to deny or reduce medically necessary behavioral health treatment.~~

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

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

~~(v) Makes the treatment plan available to the health care service plan upon request.~~

~~(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.~~

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

(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~~ *person who* 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~~ *person who* 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~~ *treatment, which may include clinical management and case supervision under the direction and supervision of a qualified autism service provider.*

(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 who meets one of the following criteria:

~~(D) (i) Is a behavioral service provider~~ *Meets the requirements to be* 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 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.

(ii) Possesses a bachelor of arts or science degree and meets one of the following qualifications:

(I) One year of experience in designing or implementing behavioral health treatment supervised by a qualified autism service provider and 12 semester units from an accredited institution of higher learning in either applied behavioral analysis or clinical coursework in behavioral health.

(II) Two years of experience in designing or implementing behavioral health treatment supervised by a qualified autism service provider.

~~(E) (III) Has training and experience in providing services for pervasive developmental disorder or autism pursuant to Division 4.5~~ *The person is a registered psychological assistant or registered psychologist pursuant to Chapter 6.6 (commencing with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code 2900) of Division 2 of the Business and Professions Code.*

(IV) The person is an associate clinical social worker registered with the Board of Behavioral Sciences pursuant to Section 4996.18 of the Business and Professions Code.

(V) The person is a registered associate marriage and family therapist with the Board of Behavioral Sciences pursuant to Section 4980.44 of the Business and Professions Code.

(VI) The person is a registered associate professional clinical counselor with the Board of Behavioral Sciences pursuant to Section 4999.42 of the Business and Professions Code.

(E) Has training and experience in providing services for pervasive developmental disorder or autism.

(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 *person who is a* qualified autism service ~~provider~~ *provider or qualified autism service professional.*

(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~~ *Code or meets all of the following qualifications:*

(i) Possesses an associate's degree or two years of study from an accredited college or university with coursework in a related field of study.

(ii) Has six months of experience working with persons with a developmental disability.

(iii) Has 40 hours of training in the specific form of evidence-based behavioral health treatment developed and administered by a qualified autism provider or qualified autism service professional.

(iv) Has successfully passed a background check conducted by a state-approved agency.

~~(D)~~ (v) 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.

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.

(5) This section shall not be construed to require a health insurer to provide reimbursement for services delivered by school personnel pursuant to an enrollee's individualized educational program unless otherwise required by law.

(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~~ *more* than once every six months *or less than once every 12 months* by the qualified autism service ~~provider~~ *provider, unless a shorter period is recommended 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. *Lack of parent or caregiver participation shall not be used to deny or reduce medically necessary behavioral health treatment.*

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

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

(v) Makes the treatment plan available to the health insurer upon request.

(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.~~

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

(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~~ *person who* 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~~ *person who* 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~~ *treatment, which may include clinical management and case supervision under the direction and supervision of a qualified autism service provider.*

(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 who meets one of the following criteria:

~~(D)~~ (i) ~~Is a behavioral service provider~~ Meets the requirements to be 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~~ *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.

(ii) Possesses a bachelor of arts or science degree and meets one of the following qualifications:

(I) One year of experience in designing or implementing behavioral health treatment supervised by a qualified autism service provider and 12 semester units from an accredited institution of higher learning in either applied behavioral analysis or clinical coursework in behavioral health.

(II) Two years of experience in designing or implementing behavioral health treatment supervised by a qualified autism service provider.

~~(E) (III) Has training and experience in providing services for pervasive developmental disorder or autism pursuant to Division 4.5~~ *The person is a registered psychological assistant or registered psychologist pursuant to Chapter 6.6 (commencing with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code.*

(IV) The person is an associate clinical social worker registered with the Board of Behavioral Sciences pursuant to Section 4996.18 of the Business and Professions Code.

(V) The person is a registered associate marriage and family therapist with the Board of Behavioral Sciences pursuant to Section 4980.44 of the Business and Professions Code.

(VI) The person is a registered associate professional clinical counselor with the Board of Behavioral Sciences pursuant to Section 4999.42 of the Business and Professions Code.

(E) Has training and experience in providing services for pervasive developmental disorder or autism.

(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 *person who is* qualified autism service ~~provider; provider or qualified autism service professional.~~

(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; Code or meets all of the following qualifications:~~

(i) Possesses an associate's degree or two years of study from an accredited college or university with coursework in a related field of study.

(ii) Has six months of experience working with persons with a developmental disability.

(iii) Has 40 hours of training in the specific form of evidence-based behavioral health treatment developed and administered by a qualified autism provider or qualified autism service professional.

(iv) Has successfully passed a background check conducted by a state-approved agency.

~~(D)~~ (v) 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.

SEC. 4. 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.