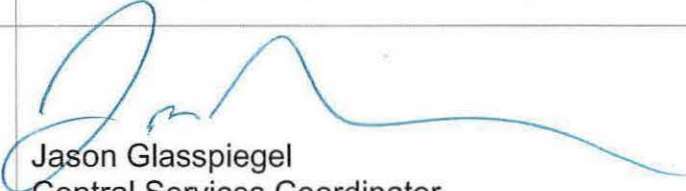


MEMORANDUM

DATE	August 3, 2016
TO	Board of Psychology
FROM	 Jason Glasspiegel Central Services Coordinator
SUBJECT	Agenda Item #20 (a) – AB 796 (Nazarian) Health Care Coverage: Autism: Pervasive Disorders

Background:

This bill would require 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. 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.

On July 28, 2016, the Board sent an "Oppose" letter to the Senate Appropriations Committee, as well as the author's office. The oppose letter expressed the Board's concern with the lack of consumer protection due to no licensure of providers as well as there not being a sunset date.

Location: Senate Appropriations Committee

Status: 08/01/2016 In Senate Appropriations Committee: To Suspense File

Action Requested:

There is no further action required for this bill.

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 Appropriations Committee as well as the author's office.

Attachment D is the Senate Appropriations analysis for AB 796

CALIFORNIA STATE BOARD OF PSYCHOLOGY

BILL ANALYSIS

BILL NUMBER: AB 796

VERSION: AMENDED: JUNE 30, 2016

**AUTHOR: NAZARIAN, RENDON
(COAUTHOR)**

SPONSOR: DIR FLOOR TIME COALITION

BOARD POSITION: OPPOSE

**SUBJECT: HEALTH CARE COVERAGE: AUTISM AND PERVASIVE
DEVELOPMENTAL DISORDERS**

Overview:

The bill would require 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. 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) 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.
- 2) 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:

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

Oppose:

- Department of Developmental Services
- Center for Autism and Related Disorders

4) History

08/01/16 In committee: Referred to APPR. suspense file.

06/30/16 Read second time and amended. Re-referred to Com. on APPR.

06/29/16 From committee: Amend, and do pass as amended and re-refer to Com. on APPR. (Ayes 5. Noes 0.) (June 28).

06/21/16 Read second time and amended. Re-referred to Com. on HUMAN S.

06/20/16 From committee: Amend, and do pass as amended and re-refer to Com. on HUMAN S. (Ayes 6. Noes 2.) (June 15).

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.*

July 28, 2016

The Honorable Ricardo Lara
California State Senate
State Capitol, Room 5050
Sacramento CA, 95814

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

Dear Senator Lara:

At its July 27, 2016 meeting, the Board of Psychology (Board) adopted an **Oppose** position on **AB 796**. The bill would require the State Department of Developmental Services, 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 as well as delete the sunset date of this provision, thereby extending the operation of existing law which requires insurance coverage for behavioral health treatment (BHT) for Pervasive Developmental Disorder (PDD) or Autism Spectrum Disorder (ASD) indefinitely.

The Board supports providing reimbursable services for those with PDD or ASD. However, we believe that in order to ensure a basic level of competence for those providing the services, oversight in the form of state licensure and periodical review in the form of a sunset provision is crucial to the safe provision of care. If AB 796 is passed as written, it will mandate insurance providers and Medi-Cal cover services provided by unlicensed and sometimes unqualified providers without consideration for the protection of consumers or the qualifications or lack of qualifications of the providers.

Insurance reimbursement for these services began with the passage of SB 946 (Steinberg) on October 9, 2011. SB 946 required the Department of Managed Health Care (DMHC) to convene an Autism Advisory Task Force (Task Force) by February 1, 2012. The purpose of the Task Force was to develop recommendations regarding medically necessary BHT for individuals with ASD or PDD, as well as the appropriate qualifications, training and supervision for providers of such treatment. The Task Force concluded that all "top level" (undefined) providers should be licensed by the state, and set forth a process for establishing a new professional license for "Licensed Behavioral Health Practitioner." AB 796 falls short of this recommendation.

The Board of Psychology's mission is to advance quality psychological services for Californians by ensuring ethical and legal practice and supporting the evolution of the profession.

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,

A handwritten signature in blue ink, appearing to read 'SC Phillips', with a stylized flourish at the end.

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

cc: Assembly Member Adrin Nazarian
Senate Appropriations Committee
Senate Appropriations Committee Consultant
Senate Republican Caucus

SENATE COMMITTEE ON APPROPRIATIONS

Senator Ricardo Lara, Chair
2015 - 2016 Regular Session

AB 796 (Nazarian) - Health care coverage: autism and pervasive developmental disorders

Version: June 30, 2016

Policy Vote: HEALTH 6 - 2, HUMAN S. 5
- 0

Urgency: No

Mandate: Yes

Hearing Date: August 1, 2016

Consultant: Brendan McCarthy

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

Bill Summary: AB 796 would delete the existing statutory sunset on the mandate to provide health care coverage for behavioral health treatment for autism and related disorders. The bill would require the Department of Developmental Services to update its regulations to set forth minimum standards for autism service professionals and paraprofessionals providing behavioral health treatments other than applied behavioral analysis (ABA).

Fiscal Impact:

- One-time costs of about \$50,000 and ongoing costs of \$15,000 per year to review health plan filings for compliance with the requirements of the bill and to undertake any necessary enforcement actions by the Department of Managed Health Care (Managed Care Fund).
- Likely costs of less than \$100,000 per year for review of health insurance plan filings and enforcement actions by the Department of Insurance (Insurance Fund).
- No state costs are anticipated due to the elimination of the existing sunset on the benefit mandate. Current law exempts Medi-Cal managed care plans and CalPERS coverage from the benefit mandate. This bill does not eliminate those exemptions,

While existing law specifically mandates coverage for behavioral health treatment, separate federal and state mental health parity requirements and requirements for the provision of essential health benefits implicitly require coverage for behavioral health treatment for autism and related disorders. Therefore, elimination of the statutory sunset will not materially impact coverage for behavioral health treatment. Nor will eliminating the sunset require the state to pay for the costs to subsidize coverage for behavioral health treatment coverage for subsidized Covered California plans.

- Likely one-time costs in the hundreds of thousands for development of regulations specifying the training and educational requirements for non-ABA professionals (General Fund). According to the Department, there are many categories of professionals and paraprofessionals that are providing or could provide behavioral health treatments. The Department would need to evaluate the appropriate level of education and training for each of those types of service provider.

- Unknown potential increased costs for services currently being provided to regional center consumers (General Fund and federal funds). By establishing additional standards for autism service professionals and paraprofessionals, it is possible that some vendors who are currently providing services to regional center consumers under different codes would be able to bill as either a Behavior Management Assistant or a Behavior Management Consultant. Since those service codes generally receive higher rates than other behavioral services, this could increase overall costs for services currently being provided. For example, if 5 percent of the hours billed to the regional centers for an Adaptive Skills Trainer were billed for a Behavior Management Consultant, the annual costs would be about \$670,000 per year. Similarly, if 5 percent of the hours billed to the regional centers for Community Integration were billed for a Behavior Management Assistant, the annual costs would be about \$3.8 million per year.
- Unknown potential savings to the state from shifting costs from the regional centers to private insurance coverage. The sponsors of this bill have indicated that health insurance coverage for certain types of non-ABA behavioral health treatment is being denied by health insurers and health plans. In such cases, families may seek such services from the regional center system. The intention of the bill is to expand the types of providers that can provide non-ABA services in the regional center system, which would in turn increase those providers ability to provide services through private insurance.

According to the California Health Benefits Review Program, to date there is no indication that the supply of providers is significantly constraining the coverage for behavioral health treatment. Therefore, the Program indicates that the bill is unlikely to result in a significant increase in private insurance coverage for non-ABA behavioral health treatment. Thus, it does not seem likely that the state would experience significant cost savings from shifting of services from the regional center system to private insurance.

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

Current state law (SB 946, Steinberg, Statutes of 2011) specifically requires health plans and health insurers to cover behavioral health therapy for pervasive development disorder or autism. The statutory sunset in SB 946 was extended to January 1, 2017 in SB 126 (Steinberg, 2013).

Under the federal Patient Protection and Affordable Care Act, health coverage provided in the small group or individual market (including through health exchanges) must provide essential health benefits. Under federal law, individuals purchasing coverage

through health benefit exchanges will be eligible for subsidies, based on income, paid by the federal government. However, if a state imposes a benefit mandate after January 1, 2012 that exceeds the benefits provided by the essential health benefits benchmark plan, the state is responsible for providing the subsidies for coverage of that mandated benefit.

California provides community-based services to approximately 250,000 persons with developmental disabilities and their families through a statewide system of 21 regional centers. Regional centers are private, nonprofit agencies under contract with the Department of Developmental Services for the provision of various services and supports to people with developmental disabilities. As a single point of entry, regional centers provide diagnostic and assessment services to determine eligibility; convene planning teams to develop an Individual Program Plan for each eligible consumer; and either provide or obtain from generic agencies appropriate services for each consumer in accordance with the Individual Program Plan.

Over the past several years, there have been a number of medical entities that have concluded that intensive behavioral treatments are effective in treating children and adults with autism. There are a several different types of behavioral health treatment. One of the best-known and most commonly accepted as being an evidence-based practice is Applied Behavioral Analysis.

Proposed Law: AB 796 would delete the existing statutory sunset on the mandate to provide health care coverage for behavioral health treatment for autism and related disorders.

The bill would require the Department of Developmental Services to update its regulations to set forth minimum standards for autism service professionals and paraprofessionals providing behavioral health treatments other than applied behavioral analysis (ABA).

Related Legislation:

- SB 1034 (Mitchell) would delete the existing statutory sunset on the mandate to provide health care coverage for behavioral health treatment for autism and related disorders. The bill would also revise the existing benefit mandate and apply the benefit mandate to health care coverage provided by CalPERS. That bill is pending in the Assembly.
- AB 2041 (Jones, 2014) would have defined the professional activities and the educational and training requirements necessary for vendorization by a regional center as a Behavior Management Assistant or a Behavior Management Consultant. That bill was held on this committee's Suspense File.

Staff Comments: The sponsors have indicated that health insurers and health plans are denying coverage for behavior health treatments that are not applied behavioral analysis because a provision in current law that defines a "Qualified Autism Service professional" as a person vendorized by a regional center to provide certain services, as defined in regulations. The sponsors indicate that by requiring the Department of Developmental Services to adopt regulations specifying the educational and training requirements for qualified autism service professionals and paraprofessionals to include behavioral health treatments in addition to applied behavioral analysis, this will allow

such individuals to provide behavioral health treatments to individuals covered by private insurance. However, current law requires that behavioral health treatment be provided by one of three categories of provider: qualified autism service providers, qualified autism service professionals, and qualified autism service paraprofessionals. Of those categories, only the latter two must be vendorized in the regional center system. Therefore, it is possible for some other licensed health care providers (such as a person with certain national certifications or certain licensed health professionals) to provide behavioral health treatment without being vendorized by a regional center.

As noted above, the California Health Benefits Review Program did not find that the bill would increase coverage for or utilization of behavioral health treatments by private insurers or health plans.

According to data from the Department of Insurance and the Department of Managed Health Care, challenges by enrollees to private health insurance or health plan denials of coverage for behavioral health treatment (both ABA and non-ABA) have overwhelmingly been ruled in favor of requiring coverage. The overall number of challenges is less than 200. This may indicate that enrollees are not aware of their right to an independent medical review. On the other hand, this may indicate that consumers are not having problems accessing coverage for behavioral health treatment.

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

-- END --