

ASSEMBLY BILL

No. 1977

Introduced by Assembly Member Ta

January 30, 2024

An act to amend Section 1374.73 of the Health and Safety Code, and to amend Section 14132.56 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1977, as introduced, Ta. Health care coverage: behavioral diagnoses.

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 provides for the regulation of health insurers by the Department of Insurance. Existing law requires a health care service plan contract or health insurance policy to provide coverage for behavioral health treatment for pervasive developmental disorder or autism.

This bill would prohibit a health care service plan contract or health insurance policy issued, amended, or renewed on or after January 1, 2025, from requiring an enrollee or insured previously diagnosed with pervasive developmental disorder or autism to be reevaluated or receive a new behavioral diagnosis to maintain coverage for behavioral health treatment for their condition. Because a willful violation of this provision by a health care service plan would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1374.73 of the Health and Safety Code
2 is amended to read:

3 1374.73. (a) (1) Every health care service plan contract that
4 provides hospital, medical, or surgical coverage shall also provide
5 coverage for behavioral health treatment for pervasive
6 developmental disorder or autism no later than July 1, 2012. The
7 coverage shall be provided in the same manner and shall be subject
8 to the same requirements as provided in Section 1374.72.

9 (2) Notwithstanding paragraph (1), as of the date that proposed
10 final rulemaking for essential health benefits is issued, this section
11 does not require any benefits to be provided that exceed the
12 essential health benefits that all health plans will be required by
13 federal regulations to provide under Section 1302(b) of the federal
14 Patient Protection and Affordable Care Act (Public Law 111-148),
15 as amended by the federal Health Care and Education
16 Reconciliation Act of 2010 (Public Law 111-152).

17 (3) This section shall not affect services for which an individual
18 is eligible pursuant to Division 4.5 (commencing with Section
19 4500) of the Welfare and Institutions Code or Title 14
20 (commencing with Section 95000) of the Government Code.

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

28 (b) Every health care service plan subject to this section shall
29 maintain an adequate network that includes qualified autism service
30 providers who supervise or employ qualified autism service

professionals or paraprofessionals who provide and administer behavioral health treatment. A health care service plan is not prevented from selectively contracting with providers within these requirements.

(c) A health care service plan contract issued, amended, or renewed on or after January 1, 2025, shall not require an enrollee previously diagnosed with pervasive developmental disorder or autism to be reevaluated or receive a new behavioral diagnosis to maintain coverage for behavioral health treatment for pervasive developmental disorder or autism.

~~(e)~~
(d) 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 by the qualified autism service provider.

(iii) A qualified autism service paraprofessional supervised by a qualified autism service provider or qualified autism service professional.

(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

1 Welfare and Institutions Code pursuant to which the qualified
2 autism service provider does all of the following:

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

5 (ii) Designs an intervention plan that includes the service type,
6 number of hours, and parent participation needed to achieve the
7 plan's goal and objectives, and the frequency at which the patient's
8 progress is evaluated and reported.

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

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

15 (D) The treatment plan is not used for purposes of providing or
16 for the reimbursement of respite, day care, or educational services
17 and is not used to reimburse a parent for participating in the
18 treatment program. The treatment plan shall be made available to
19 the health care service plan upon request.

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

22 (3) "Qualified autism service provider" means either of the
23 following:

24 (A) A person who is certified by a national entity, such as the
25 Behavior Analyst Certification Board, with a certification that is
26 accredited by the National Commission for Certifying Agencies,
27 and who designs, supervises, or provides treatment for pervasive
28 developmental disorder or autism, provided the services are within
29 the experience and competence of the person who is nationally
30 certified.

31 (B) A person licensed as a physician and surgeon, physical
32 therapist, occupational therapist, psychologist, marriage and family
33 therapist, educational psychologist, clinical social worker,
34 professional clinical counselor, speech-language pathologist, or
35 audiologist pursuant to Division 2 (commencing with Section 500)
36 of the Business and Professions Code, who designs, supervises,
37 or provides treatment for pervasive developmental disorder or
38 autism, provided the services are within the experience and
39 competence of the licensee.

1 (4) “Qualified autism service professional” means an individual
2 who meets all of the following criteria:

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

6 (B) Is supervised by a qualified autism service provider.

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

9 (D) Is either of the following:

10 (i) A behavioral service provider who meets the education and
11 experience qualifications described in Section 54342 of Title 17
12 of the California Code of Regulations for an Associate Behavior
13 Analyst, Behavior Analyst, Behavior Management Assistant,
14 Behavior Management Consultant, or Behavior Management
15 Program.

16 (ii) A psychological associate, an associate marriage and family
17 therapist, an associate clinical social worker, or an associate
18 professional clinical counselor, as defined and regulated by the
19 Board of Behavioral Sciences or the Board of Psychology.

20 (E) (i) Has training and experience in providing services for
21 pervasive developmental disorder or autism pursuant to Division
22 4.5 (commencing with Section 4500) of the Welfare and
23 Institutions Code or Title 14 (commencing with Section 95000)
24 of the Government Code.

25 (ii) If an individual meets the requirement described in clause
26 (ii) of subparagraph (D), the individual shall also meet the criteria
27 set forth in the regulations adopted pursuant to Section 4686.4 of
28 the Welfare and Institutions Code for a Behavioral Health
29 Professional.

30 (F) Is employed by the qualified autism service provider or an
31 entity or group that employs qualified autism service providers
32 responsible for the autism treatment plan.

33 (5) “Qualified autism service paraprofessional” means an
34 unlicensed and uncertified individual who meets all of the
35 following criteria:

36 (A) Is supervised by a qualified autism service provider or
37 qualified autism service professional at a level of clinical
38 supervision that meets professionally recognized standards of
39 practice.

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

4 (C) Meets the education and training qualifications described
5 in Section 54342 of Title 17 of the California Code of Regulations.

6 (D) Has adequate education, training, and experience, as
7 certified by a qualified autism service provider or an entity or
8 group that employs qualified autism service providers.

9 (E) Is employed by the qualified autism service provider or an
10 entity or group that employs qualified autism service providers
11 responsible for the autism treatment plan.

12 ~~(d)~~

13 (e) This section shall not apply to the following:

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

16 (2) A health care service plan contract in the Medi-Cal program
17 (Chapter 7 (commencing with Section 14000) of Part 3 of Division
18 9 of the Welfare and Institutions Code).

19 ~~(e)~~

20 (f) This section does not limit the obligation to provide services
21 under Section 1374.72.

22 ~~(f)~~

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

28 SEC. 2. Section 10144.51 of the Insurance Code is amended
29 to read:

30 10144.51. (a) (1) Every health insurance policy shall also
31 provide coverage for behavioral health treatment for pervasive
32 developmental disorder or autism no later than July 1, 2012. The
33 coverage shall be provided in the same manner and shall be subject
34 to the same requirements as provided in Section 10144.5.

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

1 as amended by the federal Health Care and Education
2 Reconciliation Act of 2010 (Public Law 111-152).

3 (3) This section shall not affect services for which an individual
4 is eligible pursuant to Division 4.5 (commencing with Section
5 4500) of the Welfare and Institutions Code or Title 14
6 (commencing with Section 95000) of the Government Code.

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

14 (b) Pursuant to Article 6 (commencing with Section 2240) of
15 Subchapter 2 of Chapter 5 of Title 10 of the California Code of
16 Regulations, every health insurer subject to this section shall
17 maintain an adequate network that includes qualified autism service
18 providers who supervise or employ qualified autism service
19 professionals or paraprofessionals who provide and administer
20 behavioral health treatment. A health insurer is not prevented from
21 selectively contracting with providers within these requirements.

22 (c) *A health insurance policy issued, amended, or renewed on*
23 *or after January 1, 2025, shall not require an insured previously*
24 *diagnosed with pervasive developmental disorder or autism to be*
25 *reevaluated or receive a new behavioral diagnosis to maintain*
26 *coverage for behavioral health treatment for pervasive*
27 *developmental disorder or autism.*

28 (e)

29 (d) For the purposes of this section, the following definitions
30 shall apply:

31 (1) “Behavioral health treatment” means professional services
32 and treatment programs, including applied behavior analysis and
33 evidence-based behavior intervention programs, that develop or
34 restore, to the maximum extent practicable, the functioning of an
35 individual with pervasive developmental disorder or autism, and
36 that meet all of the following criteria:

37 (A) The treatment is prescribed by a physician and surgeon
38 licensed pursuant to Chapter 5 (commencing with Section 2000)
39 of, or is developed by a psychologist licensed pursuant to Chapter

1 6.6 (commencing with Section 2900) of, Division 2 of the Business
2 and Professions Code.

3 (B) The treatment is provided under a treatment plan prescribed
4 by a qualified autism service provider and is administered by one
5 of the following:

6 (i) A qualified autism service provider.

7 (ii) A qualified autism service professional supervised by the
8 qualified autism service provider.

9 (iii) A qualified autism service paraprofessional supervised by
10 a qualified autism service provider or qualified autism service
11 professional.

12 (C) The treatment plan has measurable goals over a specific
13 timeline that is developed and approved by the qualified autism
14 service provider for the specific patient being treated. The treatment
15 plan shall be reviewed no less than once every six months by the
16 qualified autism service provider and modified whenever
17 appropriate, and shall be consistent with Section 4686.2 of the
18 Welfare and Institutions Code pursuant to which the qualified
19 autism service provider does all of the following:

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

22 (ii) Designs an intervention plan that includes the service type,
23 number of hours, and parent participation needed to achieve the
24 plan's goal and objectives, and the frequency at which the patient's
25 progress is evaluated and reported.

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

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

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

37 (2) "Pervasive developmental disorder or autism" shall have
38 the same meaning and interpretation as used in Section 10144.5.

39 (3) "Qualified autism service provider" means either of the
40 following:

1 (A) A person who is certified by a national entity, such as the
2 Behavior Analyst Certification Board, with a certification that is
3 accredited by the National Commission for Certifying Agencies,
4 and who designs, supervises, or provides treatment for pervasive
5 developmental disorder or autism, provided the services are within
6 the experience and competence of the person who is nationally
7 certified.

8 (B) A person licensed as a physician and surgeon, physical
9 therapist, occupational therapist, psychologist, marriage and family
10 therapist, educational psychologist, clinical social worker,
11 professional clinical counselor, speech-language pathologist, or
12 audiologist pursuant to Division 2 (commencing with Section 500)
13 of the Business and Professions Code, who designs, supervises,
14 or provides treatment for pervasive developmental disorder or
15 autism, provided the services are within the experience and
16 competence of the licensee.

17 (4) “Qualified autism service professional” means an individual
18 who meets all of the following criteria:

19 (A) Provides behavioral health treatment, which may include
20 clinical case management and case supervision under the direction
21 and supervision of a qualified autism service provider.

22 (B) Is supervised by a qualified autism service provider.

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

25 (D) Is either of the following:

26 (i) A behavioral service provider who meets the education and
27 experience qualifications described in Section 54342 of Title 17
28 of the California Code of Regulations for an Associate Behavior
29 Analyst, Behavior Analyst, Behavior Management Assistant,
30 Behavior Management Consultant, or Behavior Management
31 Program.

32 (ii) A psychological associate, an associate marriage and family
33 therapist, an associate clinical social worker, or an associate
34 professional clinical counselor, as defined and regulated by the
35 Board of Behavioral Sciences or the Board of Psychology.

36 (E) (i) Has training and experience in providing services for
37 pervasive developmental disorder or autism pursuant to Division
38 4.5 (commencing with Section 4500) of the Welfare and
39 Institutions Code or Title 14 (commencing with Section 95000)
40 of the Government Code.

1 (ii) If an individual meets the requirement described in clause
2 (ii) of subparagraph (D), the individual shall also meet the criteria
3 set forth in the regulations adopted pursuant to Section 4686.4 of
4 the Welfare and Institutions Code for a Behavioral Health
5 Professional.

6 (F) Is employed by the qualified autism service provider or an
7 entity or group that employs qualified autism service providers
8 responsible for the autism treatment plan.

9 (5) “Qualified autism service paraprofessional” means an
10 unlicensed and uncertified individual who meets all of the
11 following criteria:

12 (A) Is supervised by a qualified autism service provider or
13 qualified autism service professional at a level of clinical
14 supervision that meets professionally recognized standards of
15 practice.

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

19 (C) Meets the education and training qualifications described
20 in Section 54342 of Title 17 of the California Code of Regulations.

21 (D) Has adequate education, training, and experience, as
22 certified by a qualified autism service provider or an entity or
23 group that employs qualified autism service providers.

24 (E) Is employed by the qualified autism service provider or an
25 entity or group that employs qualified autism service providers
26 responsible for the autism treatment plan.

27 ~~(d)~~

28 (e) This section shall not apply to the following:

29 (1) A specialized health insurance policy that does not cover
30 mental health or behavioral health services or an accident only,
31 specified disease, hospital indemnity, or Medicare supplement
32 policy.

33 (2) A health insurance policy in the Medi-Cal program (Chapter
34 7 (commencing with Section 14000) of Part 3 of Division 9 of the
35 Welfare and Institutions Code).

36 ~~(e)~~

37 (f) This section does not limit the obligation to provide services
38 under Section 10144.5.

39 ~~(f)~~

1 (g) As provided in Section 10144.5 and in paragraph (1) of
2 subdivision (a), in the provision of benefits required by this section,
3 a health insurer may utilize case management, network providers,
4 utilization review techniques, prior authorization, copayments, or
5 other cost sharing.

6 SEC. 3. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.