Date of Hearing: July 11, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES
Corey A. Jackson, Chair
SB 805 (Portantino) – As Amended April 24, 2023

SENATE VOTE: 40-0

SUBJECT: Health care coverage: pervasive developmental disorders or autism

SUMMARY: Expands the criteria for a qualified autism service professional (QASP) and a qualified autism service paraprofessional (QASPP); requires the Department of Developmental Services (DDS) to adopt emergency regulations; and, requires DDS to establish rates and the educational or experiential qualifications and professional supervision requirements necessary for these positions to provide behavioral intervention services. Specifically, **this bill**:

1) Expands the definition of QASP in existing law to include either of the following:

    a) Meets the criteria to be set forth in the regulations adopted pursuant to 3) and 4) below for a behavioral health professional; or,

    b) A psychology associate, an associate marriage and family therapist, an associate clinical social worker, or an associate professional clinical counselor, as defined and regulated by the Board of Behavioral Sciences or the Board of Psychology.

2) Expands the definition of QASPP to meets the criteria set forth in the regulations to be adopted pursuant to 3) and 4) below for a behavioral health paraprofessional.

3) Requires DDS to adopt emergency regulations to address the use of behavioral health professionals and paraprofessionals in group practice provider behavioral intervention services and establish a rate.

4) Requires the emergency regulations to also establish a rate and the educational or experiential qualifications and professional supervision requirements necessary for the behavioral health professional and paraprofessional to provide behavioral intervention services. Deems the adoption, amendment, repeal, or readoption of a regulation authorized by this bill to be necessary for the immediate preservation of the public peace, health and safety, or general welfare.

EXISTING LAW:

1) Establishes the "Lanterman Developmental Disabilities Services Act", which states that California is responsible for providing an array of services and supports sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. (Welfare and Institutions Code Section [WIC] 4500, *et seq.*)

2) Establishes the Department of Managed Health Care (DMHC) to regulate health plans under the Knox-Keene Health Care Services Plan Act of 1975; the California Department of Insurance (CDI) to regulate health and other insurers; the Department of Health Care

Services (DHCS) to administer the Medi-Cal program; and DDS to administer services to people with developmental disabilities. (Health and Safety Code Section [HSC] 1340, *et seq.*, Insurance Code Section [INS] 106, *et seq.*, WIC 14000, *et seq.*, and WIC 4400, *et seq.*)

3) Establishes a system of nonprofit regional centers overseen by DDS, to provide fixed points of contact in the community for all persons with developmental disabilities and their families, to coordinate services and supports best suited to them throughout their lifetime. (WIC 4620)

4) Establishes an "Individual Program Plan" (IPP) and defines that planning process as the vehicle to ensure that services and supports are customized to meet the needs of consumers who are served by regional centers. (WIC 4512(b))

5) Requires every health care service plan contract that provides hospital, medical, or surgical coverage to also provide coverage for behavioral health treatment (BHT) for pervasive developmental disorder or autism, as specified. (WIC 1374.73(a)(1))

6) Requires that every health care service plan maintain an adequate network that includes qualified autism service (QAS) providers who supervise and employ QASP or QASPP who provide and administer BHT. Provides that nothing will prevent a health care service plan from selectively contracting with providers within these requirements. (HSC 1374.73(b))

7) Defines BHT, for purposes of payment under a health care service plan contract or a health insurance policy, as professional services and treatment programs, including applied behavior analysis (ABA) and evidence-based behavior intervention programs, which develop or restore, to the maximum extent practicable, the functioning of an individual with pervasive developmental disorder or autism. (HSC 1374.73(c)(1); INS 10144.51(c)(1))

8) Requires treatment be prescribed by a physician or surgeon, as specified, and that it be provided by a QASP, or a QASPP who is supervised and employed by a qualified autism provider. (HSC 1374.73(c)(1); INS 10144.51(c)(1))

9) Includes in the definition of a "QASP" 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. (HSC 1374.73(c)(4)(D); INS 10144.51(c)(4)(D))

10) Defines in state regulations, for purposes of regional center vendorization, Behavior Management Assistant, Behavior Management Consultant, Behavior Analyst and Associate Behavior Analyst and requires education or experience in Applied Behavioral Analysis (ABA), as specified. (17 California Code of Regulations 54342)

FISCAL EFFECT: According to the Senate Appropriations Committee on May 5, 2023:

- DDS estimates ongoing costs of $287,000 ($230,000 General Fund) for state staffing for administration. In addition, DDS indicates that to the extent this bill results in increased utilization or higher rates, the associated costs for purchase of services could be substantial. DDS estimates that, for example, an increase of 1% in behavioral health related service expenditures may result in a $4.4 million ($2.6 million General Fund) increase;

- Unknown, potential increases in CalPERS employer premiums;

- DMHC estimates costs to administer the provisions would be minor and absorbable; and,

- The CDI estimates no fiscal impact to administer the provisions.

COMMENTS:

Background: *Lanterman Developmental Disabilities Services Act.* California's Lanterman Act was originally passed in 1969. The Lanterman Act provides entitlement to services and supports for individuals ages three and older who have a qualifying developmental disability. Qualifying disabilities include autism, epilepsy, cerebral palsy, intellectual disabilities, and other conditions closely related to intellectual disabilities that require similar treatment. To qualify, an individual must have a disability that is substantial that began before the age of 18 and is expected to be life-long. There are no income-related eligibility criteria. As of December 2022, DDS serves about 330,000 Lanterman-eligible individuals and another 2,900 children ages three and four who are provisionally eligible.

Regional Center Services. The 21 regional centers serve approximately 370,000 consumers, providing services such as: information and referral; assessment and diagnosis; counseling; lifelong individualized planning and service coordination; purchase of necessary services included in the IPP; resource development; outreach; assistance in finding and using community and other resources; advocacy for the protection of legal, civil and service rights; early intervention services for at-risk infants and their families; genetic counseling; family support; planning, placement, and monitoring for 24-hour out-of-home care; training and educational opportunities for individuals and families; and, community education about developmental disabilities. Regional centers services vary at each location. One location might offer one program and the next might offer what they consider an alternative or nothing comparable. Geographically, regional centers' spending also varies. For continuity of care, it makes it difficult for eligible consumers to move from one regional center to another. It is unclear why the services vary so widely.

Autism Spectrum Disorder and Evidence-Based Interventions. According to the National Institute of Mental Health (NIMH), Autism spectrum disorder (ASD) is a neurological and developmental disorder that affects how people interact with others, communicate, learn, and behave. Although autism can be diagnosed at any age, it is described as a "developmental disorder" because symptoms generally appear in the first two years of life. ASD is prevalent in 1 in 59 children in the United States.

According to an article published in the American Academy of Pediatrics entitled *Identification, evaluation, and management of children with autism spectrum disorder*, "The goals of treatment of children with ASD are to (1) minimize core deficits (social communication and interaction and restricted or repetitive behaviors and interests) and co-occurring associated impairments; (2) maximize functional independence by facilitating learning and acquisition of adaptive skills; and, (3) eliminate, minimize, or prevent problem behaviors that may interfere with functional skills." Based on the goals of the individual, there are multiple avenues for therapeutic intervention including, but not limited to:

ABA is one of the most commonly used which is defined as "the process of systematically applying interventions based upon the principles of learning theory to improve socially significant behaviors to a meaningful degree, and to demonstrate that the interventions employed are responsible for the improvement in behavior."

Developmental Relationship-Focused Interventions is focused on the relationship between the caregiver's level of responsiveness and the child's development of social communication.

Naturalistic Developmental Behavioral Intervention incorporates elements of ABA and developmental principles, such as emphasis on developmentally based learning targets and foundational social learning skills, with delivery of interventions in the context of naturally occurring social activities within natural environments.

SB 946 (Steinberg), Chapter 650, Statutes of 2011, required health plans and health insurance policies to cover behavioral health therapy for pervasive developmental disorder or autism, required plans and insurers to maintain adequate networks of autism service providers, and established an "Autism Advisory Task Force" (Task Force) within DMHC. The Task Force developed recommendations regarding medically necessary BHT for individuals with autism or pervasive developmental disorder, as well as the appropriate qualifications, training and supervision for providers of such treatment. The Task Force also developed recommendations regarding the education, training, and experience requirements that unlicensed individuals providing BHT must meet in order to obtain licensure from the state.

The Task Force's report to the Governor and the Legislature in 2013 recommended that "all top level providers should be licensed by the state, and set forth a process for establishing a new professional license titled ― 'Licensed Behavioral Health Practitioner'" The report further recommends that a 'Licensed Behavioral Health Practitioner' should possess one of the following: 1) Certification by and in good standing with a national entity; 2) Certification by and in good standing with a national entity that is accredited by the National Commission for Certifying Agencies in the design, supervision and delivery of behavioral health treatment, provided the services are within the experience and competence of the licensee; or, 3) Master's or doctoral degree in behavior analysis, developmental psychology, special education, or related field, significant supervised experience in the development of treatment plans, and supervision and provision of behavioral health treatment for individuals with autism, successfully pass an examination, and letters of recommendation.

Governor's veto message: This bill is substantially similar to SB 562 (Portantino) of 2021, which was vetoed by Governor Newsom. In his veto message, The Governor stated:

> *"This bill would require health plans and insurers to cover relationship-based and developmental behavioral therapies for the treatment of autism spectrum disorder (ASD). The bill would also authorize additional types of providers and professionals that can provide behavioral health therapy to individuals with ASD.*
>
> *Early diagnosis of ASD and subsequent participation in evidence-based intervention and therapies, provided by licensed and certified individuals, make all the difference in an individual's long-term health outcomes. Research finds that Black and Latino children are often misdiagnosed and diagnosed later with ASD than their White peers. It is incumbent upon us to ensure that any intervention is medically-necessary, evidence-based and grounded in research that is conducted to reduce disparities.*
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> *Under existing law, health plans and insurers must cover evidence-based and medically-necessary behavioral therapies. This bill proposes to change the existing evidence-based standard by requiring coverage of therapies where there is insufficient, or only emerging, evidence to assess the impact of the interventions. Furthermore, the bill proposes*

changes to professional standards by expanding the types of individuals who can serve as qualified autism service professionals, which could result in long-term ramifications for individuals with ASD who receive the services.

I appreciate the author's dedication to supporting children diagnosed with ASD and their families. While the bill's intent is laudable, expanding access to certain therapies and interventions must be grounded in evidence-based practices and be provided by qualified professionals. I encourage the author to continue discussions related to the expansion of provider types and changes to professional standards through a formal licensing scheme that includes clinical expertise and administrative oversight to address qualification standards for practitioners, to ensure equity and quality of care, and provide effective consumer protection, as I expressed when I vetoed a similar bill in 2019."

In response to the Governor's veto message, the sponsor, DIRFloortime Coalition of California states,

"SB 805 has four differences from SB 562 (2022).

1) *SB 562 proposed a revision in the definition of behavioral health treatment, whereas in SB 805 the definition of behavioral health treatment remains unchanged. "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…"*

2) *Whereas SB 562 included revisions to the requirements for qualified autism professionals and paraprofessionals, SB 805 leaves those unchanged and instead proposes that two new positions will be created and that the qualifications for these positions will be developed by DDS through the regulatory process.*

3) *Whereas SB 562 revised the definition of qualified autism service professional to include a registered, certified, or licensed associate or assistant regulated by one of a list of specified professional boards, SB 805 adds only four specific "Associates" to the definition of qualified autism service professional. These four positions are Psychological Associate, Associate Marriage Family Therapist, Associate Clinical Social Worker, and Associate Professional Counselor. These four positions are all under the supervision of a board-certified licensed provider and have a Master's degree requirement.*

4) *SB 562 also addressed the issue of parent participation and place of treatment, and included a requirement that the qualified autism service provider would prohibit using the lack of parent or caregiver participation, implementation of an alternative plan, or the setting, location, or time of treatment as a reason to deny or reduce coverage for medically necessary services. This provision is not included in SB 805."*

Author's Statement: According to the Author, "[This bill] is needed so that children with autism can receive the behavioral health services they desperately need. For too long, behavioral health treatment has been limited to only one form of therapy. Research clearly shows that other forms of treatment are also 'evidence-based.' It is time to remove this barrier to care and

implement full access to services as envisioned at the outset of the legislation for behavioral health services in 2011."

Need for this bill: The provisions of this bill seek to expand services offered to children with ASD by expanding the criteria of QASPs and QASPPs. Further, this bill requires DDS to work on regulations to address the use of behavioral health professionals and paraprofessionals in group practice provider behavioral intervention services and establish a rate.

Equity Implications: According to a CDC study, about 1 in 22 four-year-old children were identified with autism in California in 2020. The study also showed that white children, for the first time, were less likely to be identified with ASD than other races and/or ethnicities. Nationally, it is estimated that about three percent of Black, Hispanic or Latino and Asian or Pacific Islander children have been diagnosed with autism, compared with about two percent of white children. Experts attributed the data changes to improved screening and autism services for all kids, and to improved awareness and advocacy for Black and Hispanic families.

DDS data shows that as of March 2023, approximately 164,472 of the state's 407,134 developmental services consumers have an ASD or pervasive developmental disorder diagnosis. Additionally, DDS reports that among those consumers receiving services for ASD, 40.24% identified as Latino, 25.82% identified as white, 8.51 percent identified as Asian, 7.2 percent identified as Black, 3.11 percent identified as Filipino, .29 percent identified as Native American, and .22 percent identified as Polynesian.

Currently, private payees are able to access any desired intervention, but due to current law not all treatments are recognized. This bill would allow additional providers and might expand access.

Policy Considerations: As outlined in Assembly Health Committee analysis, this Committee echoes policy comments to improve clarity in this bill.

This bill requires DDS to adopt emergency regulations, in part, to establish rates for behavioral health professionals and paraprofessionals.

> *The author may wish to consider adding a date in which DDS must adopt these emergency regulations.*

It is unclear as to whom these provider rates will apply to and whether or not these rates will apply to health plans, insurers, and Medi-Cal.

> *As this bill moves forward, the author may wish to clarify these rates and DDS' authority.*

Double referral: This bill passed out of the Assembly Health Committee on June 28, 2023, with a 15-0 vote.

RELATED AND PRIOR LEGISLATION:

SB 562 (Portantino) of 2021, would have revised and expanded the definition of BHT for pervasive developmental disorder or autism for purposes of health plan and insurer mandated coverage, would have expanded the definitions of "QAS providers, professionals and

paraprofessionals," as well as prohibited the setting, location, or time of treatment recommended by the QAS provider from being used as a reason to deny or reduce coverage for medically necessary services. *SB 562 was vetoed by Governor Newsom.*

SB 163 (Portantino) of 2019, was identical to SB 562 of 2021, except it would have also removed the Medi-Cal exclusion. *SB 163 was vetoed by Governor Newsom.*

SB 399 (Portantino) of 2018, would have broadened the eligibility criteria to become a "QAS professional" and would have authorized the substitution of specified education, work experience, and training qualifications to meet the criteria of a "QAS professional." SB 399 would also have eliminated the requirement for a professional or paraprofessional to be directly employed by a qualified autism provider and would have prohibited the lack of parent or caregiver participation from being used to deny or reduce medically necessary behavioral health treatment, among other changes. *SB 399 was vetoed by Governor Brown.*

AB 1074 (Maienschein), Chapter 385, Statues of 2017, permits a QASPP to be supervised by a QASP; indicates that BHT may include clinical case management and case supervision under the direction and supervision of a QAS provider, deletes a requirement that a behavioral service provider is approved as a vendor by a Regional Center based on provider definitions in specified regulations; and, instead requires a behavioral service provider to meet the education and experience qualifications described in the specified regulations; and, makes other technical changes. Revises the definition of BHT for purposes of the Medi-Cal program to be those services administered by DHCS as described in the state plan approved by the Centers for Medicare & Medicaid Services.

SB 796 (Nazarian), Chapter 493, Statutes of 2016, deletes the sunset date of coverage for BHT services.

SB 1034 (Mitchell) of 2016, would have eliminated the sunset date on the health insurance mandate to cover BHT for PDD or autism, and prohibited health plans or health insurers from excluding medically necessary BHT on the basis of setting, location, time of treatment, or lack of parent or caregiver participation. *SB 1034 was held on the Assembly Appropriations Committee suspense file.*

AB 2041 (Jones) of 2014, would have expanded the scope of treatment providers in the regional center vendor system to include a behavior management consultant or behavior management assistant, with specified requirements. *The bill was held on the Senate Appropriations Committee suspense file.*

SB 946 (Steinberg), Chapter 650, Statutes of 2011, required health plans and health insurance policies to cover BHT for pervasive developmental disorder or autism, required health plans and insurers to maintain adequate networks of autism service providers, established a task force in DMHC, sunset the autism mandate provisions on July 1, 2014, and made other technical changes to existing law regarding HIV reporting and mental health services payments.

REGISTERED SUPPORT / OPPOSITION:

Support

DIR/Floortime Coalition of California (Sponsor)

California Psychological Association
Center for Developmental Play and Learning
Cherry Crisp Entertainment and Productions
Child Development Institute
Disability Rights California
Disability Voices United
Easterseals Northern California
Exceptional Minds
Fresno City College
Greenhouse Therapy Center
Institute for Girls' Development
Interdisciplinary Council on Development and Learning
ITS Integrated Therapy Solutions
Mental Health and Autism Insurance Project
National Association of Social Workers, California Chapter
Positive Development
Professional Child Development Associates
Quicksilver Software
San Diego Academy of Child and Adolescent Psychiatry
Spirited Play Labs
The Center for Connection
TheraPeeps
Touchstone Family Development Center, INC.

Opposition

California Association for Behavior Analysis

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