Date of Hearing: April 16, 2024

ASSEMBLY COMMITTEE ON HEALTH
Mia Bonta, Chair
AB 2449 (Ta) – As Introduced February 13, 2024

SUBJECT: Health care coverage: qualified autism service providers.

SUMMARY: Expands the definition of qualified autism service (QAS) provider to also mean a person who is certified by a national entity, such as the Qualified Applied Behavior Analysis (QABA) Credentialing Board, with a certification that is accredited by the American National Standards Institute (ANSI) in addition to the certifications in 4)c)i) below under existing law as it relates to the coverage of behavioral health treatment (BHT) for pervasive developmental disorder (PDD) or autism.

EXISTING LAW:

1) Establishes the Department of Managed Health Care (DMHC) to regulate health plans under the Knox-Keene Health Care Services Plan Act of 1975 and the California Department of Insurance (CDI) to regulate health and other insurers. [Health and Safety Code (HSC) §1340, *et seq*., Insurance Code (INS) §106, *et seq*.]

2) Requires every health plan contract and health insurance policy that provides hospital, medical, or surgical coverage to cover BHT for PDD or autism. Requires the coverage to be provided in the same manner and to be subject to the same requirements as provided in California's mental health parity law. [HSC §1374.73 and INS §10144.51]

3) Defines BHT for purposes of 2) above as professional services and treatment programs, including applied behavior analysis (ABA) and evidence-based intervention programs, that develop or restore, to the maximum extent practicable, the functioning of an individual with PDD or autism and that meet specified criteria regarding the treatment plan, the professionals who can prescribe (physicians and psychologists) and supervise treatment, and administer a treatment plan. Defines BHT to mean specified services provided by, among others, a qualified autism service professional (QASP) or qualified autism service paraprofessional (QASPP) supervised and employed by a QAS provider. [HSC §1374.73 and INS §10144.51]

4) Defines the following BHT providers:
   a) QASP to mean an individual that meets specified criteria, including is supervised by a QAS provider; provides treatment pursuant to a treatment plan developed and approved by a QAS provider; is either a behavioral service provider as specified in regulations or a clinical provider as defined and regulated by the Board of Behavioral Sciences or the Board of Psychology; has training and experience in providing services for PDD or autism; and, is employed by the QAS provider responsible for the autism treatment plan;
   b) Defines a QASPP an unlicensed and uncertified individual who meets specified criteria, including supervision by a QAS provider or QASP at a level of clinical supervision that meets professionally recognized standards of practice, provides treatment and implements services pursuant to a treatment plan developed and approved by the QAS provider; and meets the education and training qualifications described in regulations; and,
   c) Defines a QAS provider to mean either of the following:

i) A person who is certified by a national entity, such as the Behavior Analyst Certification Board (BACB), with a certification that is accredited by the National Commission for Certifying Agencies, and who designs, supervises, or provides treatment for PDD or autism, provided the services are within the experience and competence of the person who is nationally certified; or,

ii) 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 in the Business and Professions Code, who designs, supervises, or provides treatment for PDD or autism, provided the services are within the experience and competence of the licensee. [HSC §1374.73(c) and INS §10144.51(c)]

5) Requires the treatment plan to have measurable goals over a specific timeline that is developed and approved by the QAS provider for the specific patient being treated. Requires the treatment plan to be reviewed no less than once every six months by the QAS provider and modified whenever appropriate, and requires the QAS provider to do all of the following:
   a) Describes the patient's behavioral health impairments or developmental challenges that are to be treated;
   b) Designs an intervention plan that includes the service type, number of hours, and parent participation needed to achieve the plan or insurer's goal and objectives, and the frequency at which the patient's progress is evaluated and reported;
   c) Provides intervention plans that utilize evidence-based practices, with demonstrated clinical efficacy in treating PDD or autism; and,
   d) Discontinues intensive behavioral intervention services when the treatment goals and objectives are achieved or no longer appropriate. [HSC §1374.73(c)(1)(C) and INS §10144.51(c)(1)(C)]

FISCAL EFFECT: None.

COMMENTS:

1) **PURPOSE OF THIS BILL.** According to the author, this bill is a critical piece of legislation aimed at ensuring that individuals with autism receive the highest quality of care from QAS providers. By establishing clear standards and qualifications, we can guarantee consistent and effective care for those in need, regardless of their background or location. The author concludes that this bill not only supports the well-being of individuals with autism but also promotes a more equitable and efficient healthcare system.

2) **BACKGROUND.** According to the California Health Benefits Review Program (CHBRP), autism spectrum disorder (ASD) is a developmental disability characterized by deficits in social interactions and communication, sensory processing, stereotypic (repetitive) behaviors or interests, and sometimes cognitive function. The symptoms of ASD fall along a continuum, ranging from mild impairment to profound disability. ASD diagnoses are often made early in life, as individuals often demonstrate symptoms in early childhood. ASD can sometimes be detected by the age of 18 months, with reliable diagnoses by age two. The cause (or causes) of ASD remain unknown, and research into genetic etiology, as well as environmental factors, continues to be explored. There is no cure for ASD; however, there is

evidence that treatment, including BHT, may improve some symptoms. California law requires BHT coverage.

a) **SB 946.** SB 946 (Steinberg and Evans), Chapter 650, Statutes of 2011, imposes a set of rules regarding BHT that health plans and health insurers in California must cover for individuals with autism and PDD. SB 946 also identifies the required qualifications of individuals who provide BHT, and permits individuals who are not licensed by the state to provide BHT, as long as the detailed criteria set forth in the bill are met. SB 946 required the DMHC to convene an Autism Advisory Task Force (Task Force) by February 1, 2012, to develop recommendations regarding medically necessary BHT for individuals with autism or PDD, as well as the appropriate qualifications, training and supervision for providers of such treatment. SB 946 also required the Task Force to develop recommendations regarding the education, training, and experience requirements that unlicensed individuals providing BHT must meet in order to obtain licensure from the state.

b) **Task Force.** The Task Force was charged with making recommendations to inform state policymaking and guide future recommendations addressing specified subjects and develop recommendations regarding the education, training, and experience requirements that unlicensed individuals providing autism services must meet in order to secure a license from the state. The Task Force reached consensus on 54 of 55 recommendations and approved one recommendation by a vote of the majority. 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." The Task Force recommended that the license requirement not take effect until three years after the license is established, and an interim commission be formed to implement the new license until a board is able to do so. The Task Force also recommended all providers of autism services be registered with the state's TrustLine Registry or comparable system as a condition of employment by service organizations and contracting with health plans and health insurers. TrustLine uses the criminal history background check system to check the fingerprints of applicants, and checks for evidence of additional criminal records. Two attempts at establishing licensing for BHT providers were made in 2016 and 2015, however, neither bill was successful.

c) **Provider Qualifications**. Existing law requires a QAS Provider, QASP, or QASPP to meet specific education and training requirements. Numerous attempts since the passage of SB 946 have attempted to make changes to these provider types. Most recently, SB 805 (Portantino), Chapter 635, Statutes of 2023, expanded the criteria for a QASP to include a psychological associate, an associate marriage and family therapist, an associate clinical social worker, or an associate professional clinical counselor, who must also meet the criteria established by the Department of Development Services (DDS) for a Behavioral Health Professional. This bill expands the criteria for a QASP provider. Current law defines a QAS provider as a person who is certified by a national entity, such as the BACB, with a certification that is accredited by the National Commission for Certifying Agencies. According to the BACB website, the BACB is a nonprofit corporation that was established in 1998 to meet professional certification needs identified by behavior analysts, governments, and consumers of behavior-analytic services. The BACB's mission is to protect consumers of behavior-analytic services by systematically establishing, promoting, and disseminating professional standards.

This bill adds the QABA Credentialing Board as a national entity that may certify a QAS provider, and authorizes the certification to be accredited by ANSI. It should be noted that SB 562 (Portantino) from 2021, among other changes, included the expansion included in this bill. According to the QABA website, QABA is an internationally-accredited credentialing agency dedicated to ensuring the highest standard of care among professionals providing ABA services and was established 2012 to meet the growing need for more credentialed professionals providing ABA services.

d) **Disparities in Access to BHT for ASD**. According to CHBRP, treatments for ASD include a number of modalities that are based on a variety of theoretical models. Studies of children with ASD consistently show that children from low income, less educated, and more rural families are less likely to receive BHT than their higher income, better educated, and urban counterparts. One study revealed that parents with a lower educational level accessed less intensive therapies compared to parents with higher educational levels who accessed higher intensity services. A similar pattern was observed with geographic location with children in rural areas accessing less intensive services and individual treatment. Another study using data from the 2009/2010 National Survey of Children with Special Health Care Needs indicated that parents of Latino and black children with ASD were 45% less likely than whites to report that providers spent adequate time with their children, and were about 40% less likely to feel that their child's special needs provider was sensitive to their values and customs. Latino children in families whose primary language was not English also were less likely to utilize BHT. CHBPR notes, in its analysis of SB 562 (Portantino) of 2021, QAS provider shortages are less well documented, but literature suggests that provider shortages create unique barriers to BHT for low-income and rural families. For example, interviews with stakeholders in five states with autism insurance mandates, including California, reported that families were better able to access treatment services after the mandates were enacted, but that both consumer advocates and insurance companies reported shortages of licensed providers. To further complicate matters, stakeholders reported that low insurance reimbursement rates discourage QAS providers from accepting private insurance. CHBRP's literature review found three of six studies on geographic variation in age of autism diagnosis (the start of autism treatment services) identified barriers for rural compared to urban families.

3) **SUPPORT.** The QABA Credentialing Board, sponsors of this bill, write that including the QABA Credentialing Board and its three credentials parallel to the BACB represents fair trade. QABA is internationally accredited by ANSI, the golden standard for accreditation in the U.S. ANSI is the only accrediting body in the U.S. that is equivalent to higher education accreditation as they perform validation on paper and onsite visits. In 2023, QABA certified 302 people in California. There are 2,179 certificants in California. Funding sources such as Tricare, Magellan, Blue Shield of California, Blue Shield Promise, Kaiser and more include QABA credentials. QABA knows this bill would positively impact those individuals that already hold a certification from our credentialing board, and allow them to continue practicing ABA. QABA concludes that this bill will also provide continuity of care for families who are already receiving services from QABA Providers.

4) **OTHER.** ANSI submitted a letter providing additional background for consideration. The ANSI National Accreditation Board is a wholly owned subsidiary of ANSI and the largest multi-disciplinary accreditation body in the western hemisphere, with more than 2,500

organizations accredited in approximately 80 countries. ANSI coordinates the private sector standardization system for the United States. Member standards developers impact businesses in nearly every sector: from acoustical devices to construction equipment, from roads and bridges to energy distribution, and healthcare.

Accreditation is a key component of an effective standardization system, assuring industry and governmental decision-makers that credentialing organizations are competent and their results can be trusted. ANSI concludes that the standard has been recognized by several U.S. federal agencies as a critical requirement for personnel certification bodies that offer certification in areas related to public health, environment, and national security.

5) **OPPOSITION.** The California Association for Behavior Analysis (CalABA) writes that this bill contradicts widely accepted standards and best practices in credentialing practitioners in health care and other human services. Those standards call for credentialing bodies to be independent from other organizations, with a governance structure that prevents financial and other conflicts of interest. They also require the credentialing body to do the following for each credential it issues: a) conduct job or occupational task analyses to identify the knowledge and competencies required to practice the profession; b) specify prerequisites (degrees, coursework, and experiential training) for taking a professional examination in the subject matter; c) develop and manage a valid, reliable, and secure examination; d) specify requirements for maintaining the credential; and, e) ensure transparency about all of the above as well as outcomes of the credentialing programs. The large majority of national entities that credential practitioners in health care and other human services professions are nonprofit organizations. CalABA contends that according to information on its website and elsewhere, the QABA Board does not have the characteristics of national credentialing bodies in behavioral health and related professions. The Council of Autism Service Providers (CASP) write that the educational and experiential requirements of the QABA credential are significantly less stringent than those of the BCBA credential. QABAs receive no required training in the concepts, principles and theoretical underpinnings of the science of behavior analysis and QABA coursework may be obtained from third party vendors and is not required to be obtained through accredited university programs, or verified course sequences, further lessening the quality of the education received by QABA credentialed individuals. CASP concludes that QABA is a for-profit entity and potential disadvantages of for-profit professional credentialing entities are lack of transparency and conflicts of interest.

6) **RELATED LEGISLATION.** AB 1977 (Ta) prohibits a health 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 PDD or autism to be reevaluated or review a new behavioral diagnosis to maintain coverage for BHT for PDD or autism. AB 1977 is pending in Assembly Health Committee.

7) **PREVIOUS LEGISLATION.**

   a) SB 805 (Portantino), Chapter 635, Statutes of 2023, expands the criteria for a QASP to include a psychological associate, an associate marriage and family therapist, an associate clinical social worker, or an associate professional clinical counselor, as specified. Requires those positions to meet the criteria for a Behavioral Health Professional, as provided. Requires DDS to adopt regulations, on or before July 1, 2026, to address the use of Behavioral Health Professionals and Behavioral Health Paraprofessionals in BHT

group practice. Requires DDS to establish rates and the educational or experiential qualifications and professional supervision requirements necessary for these positions to provide behavioral intervention services, as specified.

b) SB 562 (Portantino) of 2021 would have revised the definition of BHT to require the services and treatment programs provided to be based on behavioral, developmental, relationship-based, or other evidence-based models. Would have expanded the definitions of QAS provider, QASP, QASPP and specifically, would have added the QABA Credentialing Board accredited by ANSI. Would have prohibited 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. SB 562 was vetoed by Governor Newsom, in part:

"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.

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.

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."

c) AB 1074 (Maienschein), Chapter 385, Statutes of 2017, requires a QASP or QASPP to be supervised by a QAS provider for purposes of providing BHT. Require a QASP and a QASPP to be employed by a QAS provider or an entity or group that employs QAS providers. Authorizes a qualified autism service professional, as specified, to supervise a qualified autism service paraprofessional. Revises the definition of a QASP to, among other things, specify that the BHT provided by the QASP may include clinical case management and case supervision under the direction and supervision of a QAS provider.

d) AB 1715 (Holden) of 2016 would have established the Behavior Analyst Act, which provides for the licensure, registration, and regulation of behavior analysts and assistant behavior analysts, and requires the California Board of Psychology, until January 1, 2022, to administer and enforce the Act. AB 1715 died in the Senate Business, Professions and Economic Development Committee.

e) SB 479 (Bates) of 2015 would have established the Behavior Analyst Act which requires a person to apply for and obtain a license from the Board of Psychology prior to engaging in the practice of behavior analysis, as defined, either as a behavior analyst or an assistant behavior analyst, and meet certain educational and training requirements. SB 479 died in the Assembly Appropriations Committee.

f) 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 BHT, has a specified amount of experience in designing or implementing that treatment, and meets other licensure and education requirements. AB 2041 died in the Senate Appropriations Committee.

g) SB 946 requires until July 1, 2014, health plans and health insurance policies to cover BHT for PDD or autism, requires health plans and insurers to maintain adequate networks of autism service providers, established a task force in DMHC, and makes other technical changes to existing law regarding HIV reporting and mental health services payments.

h) AB 1453 (Monning), Chapter 854, Statutes of 2012, and SB 951 (Hernandez), Chapter 866, Statutes of 2012, established California's essential health benefits.

i) AB 1205 (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.

8) POLICY COMMENTS.

a) Provider Networks. As CHBRP noted above, disparities in access to BHT services persist and this bill may expand the number of providers in a health plan's network.

b) Licensing. Current law requires specified providers to meet the education, training, and experience qualifications described in existing law and specified regulations. This bill authorizes additional qualifications to meet the criteria of a QAS provider under health insurance coverage. While DMHC and CDI are tasked with regulating health plans and health insurers, these entities may not be the appropriate entities to provide oversight of provider qualifications. Without a board supervised licensing scheme, it is difficult to measure the quality of care of BHT providers and ensure appropriate consumer safety protections. As this bill moves forward, the author should consider a proposal that would require a state agency to conduct an analysis on the appropriate oversight of BHT providers, including how to measure quality of care. Alternatively, the author could consider the Committee on Business and Professions sunrise process for the purpose of assessing requests for new or increased occupational regulation.

REGISTERED SUPPORT / OPPOSITION:

Support

Qualified Applied Behavior Analysis Credentialing Board (sponsor)

A Change in Trajectory
Autism Behavior Services INC.
Autism Business Association
Autism Society of California
California Psychological Association
DIR/Floortime Coalition of California
Greenhouse Therapy Center

Opposition

California Association for Behavior Analysis
The Council of Autism Service Providers

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