

Date of Hearing: June 26, 2012

ASSEMBLY COMMITTEE ON HUMAN SERVICES
Jim Beall Jr., Chair
SB 764 (Steinberg) – As Amended: June 20, 2012

SENATE VOTE: 24-13

SUBJECT: Developmental services: telehealth systems program

SUMMARY: Establishes a pilot program for the provision of treatment and intervention services through the use of telehealth. Specifically, this bill:

- 1) States legislative intent to do all of the following:
 - a) Improve access to treatment and intervention services for individuals with autism spectrum disorders (ASDs) and their families in underserved populations;
 - b) Provide more cost-effective treatments and intervention services for individuals with ASDs and their families;
 - c) Maximize the effectiveness of the interpersonal and face-to-face interactions that are utilized for the treatment of individuals with ASDs; and,
 - d) Continue maintenance and support of the existing service workforce for individuals with ASDs.
- 2) Requires the Department of Developmental Services (DDS) to do the following as a demonstration pilot project intended to promote the use of telehealth to provide services for individuals with ASDs:
 - a) Authorize providers vendorized by a regional center to provide intervention or therapeutic services to provide such services through telehealth as part of a consumer's individual program plan (IPP) upon approval of a regional center and voluntary approval of the consumer or, when appropriate, his or her parents, legal guardian, conservator or authorized representative.
 - b) Authorize regional centers to purchase intervention or therapeutic services provided through the use of telehealth as part of a consumer's IPP if the following conditions are met:
 - i) The consumer or, when appropriate, his or her parents, legal guardian, conservator or authorized representative voluntarily approves this use of telehealth;
 - ii) The provider demonstrates that the proposed use of telehealth meets the needs of the consumer as defined in the consumer's IPP;

- iii) The provider establishes that the telehealth services are, at a minimum, in compliance with the following:
 - (1) All requirements related to consumer privacy and confidentiality;
 - (2) The requirements of the Lanterman Developmental Disabilities Services Act (Lanterman Act);
 - (3) State and federal requirements with regard to the purchase of regional center services; and,
 - (4) All federal funding participation guidelines and requirements.
- c) Require regional centers to consider the use of telehealth in the implementation of parent training on behavior intervention techniques in lieu of some or all of the in-home parent training component of behavioral intervention services for autism.
- 3) Requires DDS to implement vendorization codes or subcodes for all telehealth services and programs that apply under the pilot project.
- 4) Provides that the provider is responsible for all expenses and costs related to the equipment, transmission, storage, infrastructure, and other expenses related to telehealth.
- 5) Defines "telehealth" as that term is defined in the Business and Professions Code.
- 6) Authorizes consumers to receive intervention or therapeutic services through telehealth on a provisional basis for a period not to exceed 12 months, during which time the consumer has an automatic right to return to his or her preexisting services, as defined in the consumer's IPP, that were in place prior to the implementation of the telehealth service.
- 7) Requires that DDS, by December 1, 2017, based on information provided by regional centers, provide information to the Legislature on the effectiveness and appropriateness of telehealth to provide services to people with developmental disabilities through the IPP process.
- 8) Provides that this bill does not prevent or preclude the use of telehealth by regional centers for services to consumers with developmental disabilities other than ASD.
- 9) Specifies a sunset date for the pilot demonstration program of January 1, 2018.

EXISTING LAW

- 1) Establishes the Lanterman Developmental Disabilities Services Act (Lanterman Act), under which DDS contracts with 21 private non-profit regional centers to provide case management services and arrange for, or purchase, services that meet the needs of individuals with developmental disabilities. Welfare & Institutions (W&I) Code Section 4500 et seq.

- 2) Provides that an array of services and supports should be established that is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, to support their integration into the mainstream life of the community, and that, to the maximum extent feasible, services and supports should be available throughout the state.
- 3) Provides that the determination of which services and supports are necessary for each consumer shall be made through the IPP process and shall include consideration of a range of service options proposed by the IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. W&I Code Section 4512(b).
- 4) States the intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the IPP, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. W&I Code Section 4646(a).
- 5) Provides that, if a consumer or, where appropriate, the consumer's parents, legal guardian, authorized representative, or conservator requests an IPP review, the IPP shall be reviewed within 30 days after the request is submitted. W&I Code Section 4646.5(b).
- 6) States the intent of the Legislature that regional centers find innovative and economical methods of achieving IPP objectives and that DDS encourage and assist regional centers to use innovative programs, techniques, and staffing patterns to carry out their responsibilities. W&I Code Section 4651.
- 7) Provides that, when necessary to expand the availability of services of good quality, regional centers may use creative and innovative service delivery models. W&I Code Section 4648(e)(3).
- 8) Authorizes regional centers to utilize innovative service-delivery mechanisms to ensure that services and supports designed to assist families to care for their children at home are provided in the most cost-effective and beneficial manner. W&I Code Section 4685(c)(3).
- 9) Requires regional centers to consider the use of group training for parents on behavioral intervention techniques in lieu of some or all of the in-home training component of the behavioral intervention services. 4685(c)(3)(B)(i).
- 10) Defines "telehealth" to mean "the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers." Business & Professions Code Section 2290.5(a)(6).

FISCAL EFFECT: Unknown

COMMENTS:

Need for this bill: According to the author, this bill is intended to promote and encourage the use of Tele-Health and Tele-Medicine applications for the diagnosis and treatment of ASD by DDS and regional centers; to improve access for the appropriate evaluation and treatment of ASD by regional centers to underserved communities; and, to provide services for the appropriate evaluation and treatment of ASD by regional centers in the most competent and cost-effective manner possible.

The author notes that there has been a twelve fold increase in the diagnosis of ASD during the past decade. ASDs are increasing at an average annual rate of 17 percent, and two-thirds of all new consumers who are entering the regional center system are now diagnosed with ASD. The cost to DDS and the regional centers for the evaluation, diagnosis, assessment, and treatment of ASD, the author says, is significantly higher than the costs for services and programs provided for other developmental disorders. According to the author, because there are currently over 51,000 ASD consumers who are receiving services from DDS and regional centers, the number of programs and service providers available for these consumers are diminishing, especially in geographically remote communities and in underserved populations. The author points out that there are currently innovative approaches and applications that are being used extensively in the area of Tele-Health and Tele-Medicine. Autism experts and healthcare professionals, the author says, have recommended that these applications and systems be used for the evaluation and treatment of ASD.

Should this bill focus on ASD?: According to the statement of legislative intent, this bill is intended to improve access to more cost-effective treatments and intervention services for individuals with ASDs and their families in underserved populations. To promote the use of telehealth to provide services for individuals with ASD, this bill requires DDS to establish a five-year demonstration pilot project to authorize the use of telehealth under specified conditions.

On April 12, 2012, the Senate Select Committee on Autism & Related Disorders held an informational hearing, *Ensuring Fair & Equal Access to Regional Center Services for Autism Spectrum Disorders*. Testimony addressed disparities, including racial and ethnic disparities, in access to regional center services, often based on where in the state the consumer lives. Access issues exist particularly within low-income communities or rural areas where services may not exist, or where other barriers, such as inadequate transportation, are common. Significantly, however, and relevant to this bill, it was clear from testimony at the Select Committee hearing that these disparities and access issues do not exist only for regional center consumers with ASD.

The California Association of Marriage and Family Therapists (CAMFT) points out, in support of this bill, that telehealth "serves the purpose of removing barriers in California to the access to health care to underserved, remote, and difficult to reach populations." CAMFT also notes that telehealth "reduces costs, increases access, and improves quality of care, especially in hard to reach populations." But, as CAMFT also notes, children with ASD are "[o]ne specific group who will greatly benefit from telehealth." (Emphasis added.)

Promoting the use of telehealth to provide better access to services and to provide treatment and services in the most competent and cost-effective manner possible are appropriate goals—not only for people with ASD but for all people served by regional centers. It may be the case that some services frequently, though not exclusively, used for individuals with ASD are especially amenable to delivery through telehealth (e.g., training for parents on behavior intervention techniques). It would be

inconsistent with the intent of the Lanterman Act, however, if consumers and family members were denied or had lesser access to telehealth services based not on individual need and choice but on diagnosis.

Is a pilot project necessary?: Nothing prevents the use of telehealth for regional center consumers under current law. As described in the Existing Law section, above, the Lanterman Act includes numerous references to the use of innovative and economical service mechanisms and methods of achieving IPP objectives. Because it can increase access to needed services by means of an innovative and cost-effective service mechanism, telehealth is certainly consistent with the intent of the Lanterman Act and not precluded by the current statute when identified as the preferred means of achieving a consumer's IPP objectives.

Establishment of a pilot program for telehealth might, in fact, have adverse unintended consequences to the extent it implies that telehealth is not an option under existing law or would no longer be available once the pilot program sunsets. Moreover, a pilot offering a service to a specific group carries the implication that the service is not equally available to those outside the group. This bill is confusing on this point. On the one hand, this bill provides that the pilot is intended to promote the use of telehealth to provide services for individuals with ASD but, on the other hand, it says that nothing in the bill precludes the use of telehealth by consumers who do not have ASD. It is not clear, therefore, what would change or be accomplished by establishing an ASD pilot program for telehealth.

What would the pilot consist of?: This bill would establish a "demonstration pilot project" but does not indicate what the pilot would consist of or who would participate. As noted, there is nothing in the Lanterman Act that precludes the use of telehealth to provide services to regional center consumers if it is specified in the consumer's IPP. This bill, itself, states that it does not preclude or prevent the use of telehealth for individuals with developmental disabilities other than ASD. What, therefore, is the scope of the pilot? Who would the participants be? How would participants be identified? If anyone can utilize telehealth, what distinguishes consumers in the "pilot" from other consumers utilizing telehealth?

Some requirements of this bill are unnecessary: Some provisions of this bill are appropriate but are not dependent on establishment of a pilot program—e.g., requiring DDS to establish vendorization codes or subcodes for telehealth services and programs, and emphasizing that telehealth providers must adhere to all requirements related to consumer privacy and confidentiality. Other provisions, on the other hand, already apply to any provider and are therefore unnecessary here—e.g., requiring telehealth providers to adhere to the requirements of the Lanterman Act or state and federal purchase-of-service requirements.

The provision concerning providing telehealth to a consumer on a one-year "provisional basis" with an "automatic right to return to his or her preexisting services" is an unwarranted departure from the IPP process and likely impractical. The only other reference in the Lanterman Act to provisional services with a one-year automatic right of return is in relation to people placed from developmental centers into the community. While such a mechanism makes sense in that context, it is less appropriate here. Many consumers receiving a service through telehealth will not have had the service in question provided previously; so, unlike return to a developmental center of former residents, there would be no prior IPP service to return to. In addition, unlike a developmental center, the prior service specified in the IPP may not be available to return to. A parent training class, for example, may not have openings or may no longer be offered. The mechanism for determining or modifying the services and supports provided under the Lanterman Act is the IPP process. An IPP meeting can always be requested to modify services and supports specified in the IPP that are no longer appropriate or no longer the preferred

option. W&I Code Section 4646.5(b). There is no obvious reason to treat telehealth services any differently. Moreover, because, as discussed above, it would be impossible to distinguish those participating in the pilot from others receiving services through telehealth, it would be unclear to whom this "automatic right of return" would apply.

Opposition: Developmental Disabilities Area Board 10 opposes this bill, in part, because of the provision on a one-year provisional placement and automatic right to return to previous services specified in the IPP. Area Board 10 also opposes because there is no provision for evaluating the results of the pilot. Area Board 10 may have misinterpreted the one-year provisional period, and the amended version does include evaluation language. Nonetheless, these issues are addressed by the proposed alternative language below.

Proposed alternative: The above discussion of fundamental and unintended problems with this bill is not meant to suggest that telehealth may not prove to be a valuable service delivery model for increasing access to needed services. Nor is it intended to suggest that the use of telehealth should not be promoted and evaluated. For the reasons stated above, however, the pilot proposed by this bill is problematic and unclear. An alternative approach—that avoids the problems with the current language—would entail having the evaluation component of the bill comprise the pilot. Under this alternative, DDS would designate regional centers to evaluate the cost-effectiveness and efficacy of telehealth over the pilot period. An evaluation pilot would not preclude or hinder access to telehealth by any regional center consumer for whom it is an appropriate and preferred alternative; it would simply involve identifying a sample of telehealth users for purposes of conducting an evaluation. The following proposed amendments further the overall intent of this bill and maintain its significant features but avoid or address the issues and concerns discussed above.

PROPOSED AMENDMENTS:

- 1) Amend SECTION 1 (intent language) to replace "individuals with ASD" with "individuals with ASD or other developmental disabilities."
- 2) Delete SEC. 2 and replace with the following:

4686.21(a) To improve access to intervention and therapeutic services to consumers and family members, including those from underserved communities, and for purposes of facilitating better and cost-effective services, individual program planning teams shall, whenever applicable, consider the use of telehealth as defined in paragraph (6) of subdivision (a) of Section 2290.5 of the Business and Professions Code.

(1) Telehealth shall be considered for parent trainings, including but not limited to trainings specified in clause (i) of subparagraph (B) of paragraph (3) of subdivision (c) of Section 4685.

(2) The department shall implement appropriate vendorization codes or subcodes for telehealth services and programs.

(3) Providers of telehealth services shall be required to maintain the privacy and security of all confidential consumer information.

(b) The department shall establish a five-year pilot program for evaluating the efficacy and cost-effectiveness of telehealth services. Each regional center selected for the pilot shall provide to the department information, as requested by the department, on

frequency, applications, cost-effectiveness, consumer and family member satisfaction, and other information deemed necessary by the department to evaluate the effectiveness and appropriateness of telehealth in providing services to regional center consumers. By December 31, 2017, based on the information provided to the department by the participating regional centers, the department shall report to the appropriate fiscal and policy committees of the Legislature on the cost-effectiveness and efficacy of providing services to consumers using telehealth.

Technical amendments to current version: The current version of this bill would require technical amendments to correct the numbering of paragraphs.

REGISTERED SUPPORT / OPPOSITION:

Support

Aspiranet
Association of Regional Center Agencies (ARCA)
Autism and Behavior Training Associates
Autism Treatment Providers' Insurance Authorization Network, (ATPIAN)
Behavioral Intervention Association (BIA)]]
California Association for Health Services at Home (CAHSAH)
California Association of Marriage and Family Therapists
Capitol Autism Services
Center for Autism and Related Disorders
Center for Reducing Health Disparities (UCD)
Central Valley Regional Center, Inc.
DIR/Floortime Coalition of California
Disability Rights California
North Bay Regional Center
Professor, Sergio Aguilar-Gaxiola, M.D., Ph.D. (UCD)
Special Needs Network (SNN)
Spectrum Center
TARJAN Center
TechNet
The Children's Partnership
The Help Group

Opposition

Developmental Disabilities Area Board 10

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