Board of Behavioral Sciences

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Memo

To: Board Members **Date:** September 30, 2022

From: Rosanne Helms
Legislative Manager

Subject: **Legislative Update**

BOARD-SPONSORED LEGISLATION

The Board pursued the following legislative proposals this year.

1. **AB 1758 (Aguiar-Curry) Board of Behavioral Sciences: Marriage and Family Therapists: Clinical Social Workers: Professional Clinical Counselors: Supervision of Applicants for Licensure via Videoconferencing**

   This bill allows required weekly supervision via two-way, real-time videoconferencing in all settings, if the supervisor makes an assessment that this is appropriate. The Board approved this proposal it its November 5, 2021 meeting. It approved amendments to the bill at its February 11, 2022 meeting, and these were amended into the bill on March 29, 2022. This bill was an urgency measure.

   Status: This bill was signed by the Governor and became effective on August 29, 2022 (Chapter 204, Statutes of 2022).

2. **AB 1759 (Aguiar-Curry) Board of Behavioral Sciences: Licensees and Registrants: Marriage and Family Therapy, Educational Psychology, Clinical Social Work, and Professional Clinical Counseling**

   This bill proposed two changes to the Board's continuing education requirements:

   - It proposed requiring applicants for licensure and current licensees to complete 3 hours of training or coursework in the provision of mental health services via telehealth, including law and ethics related to telehealth, as a one-time requirement.

   - It requires all Board registrants to complete a 3 hour continuing education course in California law and ethics each renewal cycle.

In addition, the bill also makes clarifications that certain pre-licensees may provide services with clients via telehealth.

The Board approved a portion of this proposal at its September 10, 2021 meeting and a portion of the proposal at its November 5, 2021 meeting.

Status: This bill was signed by the Governor (Chapter 520, Statutes of 2022).

3. SB 1495 (Senate Business, Professions and Economic Development Committee) Professions and Vocations

This bill proposal, approved by the Board at its November 5, 2021 meeting, makes two sets of minor, technical, or non-substantive amendments to add clarity and consistency to current law.

The Board had requested a third set of amendments. However, the Senate Health Committee had concerns and rejected its inclusion. That proposal was as follows:

Amend Health and Safety Code Section 1374.72 and Insurance Code Section 10144.5 – Definition of a "Health Care Provider" in SB 855 (Chapter 151, Statutes of 2020) (Attachment A)

Identification of the Problem: SB 855 (Wiener, Health Coverage: Mental Health or Substance Use Disorders) was a bill the Board supported that the Governor signed into law in 2020.

The bill expands California's 1999 Mental Health Parity Act. It requires health plans and insurers that provide hospital, medical or surgical coverage to cover all medically necessary treatment of mental health and substance use disorders under the same terms and conditions applied to other medical conditions.

This bill contains a definition of a "health care provider" in the two sections noted above. Separate from its position, the Board had ultimately decided to request that all of its associates be added to the definition of "health care provider", but that trainees either be removed, or it be clarified that they are under supervision of a licensed person.

Due to the unusual circumstances of the 2020 legislative session, the author was ultimately not able to make these amendments before session ended. The author's staff person suggested, however, that the Board pursue them as part of the Health Committee's omnibus bill.

Proposed Solution: The Board requested an amendment to the definition of a "health care provider" as follows to address its concerns:

- *Delete professional clinical counselor trainees from the definition (they cannot count pre-degree hours, and therefore, are not necessarily under the supervision of a licensed professional.)*

- *Continue to include marriage and family therapist trainees in the definition but clarify that they are performing activities and services as part of their supervised course of study as set out in §4980.42 of the Business and Professions Code. (In order to count pre-degree hours, MFT trainees must be supervised by a licensed person who meets the Board's supervisor qualifications.)*

The rejected language that had been proposed by the Board for this item is shown in **Attachment A.**

Status: This bill was signed by the Governor (Chapter 511, Statutes of 2022).

BOARD-SUPPORTED LEGISLATION

1. AB 646 (Low) Department of Consumer Affairs: Boards: Expunged Convictions

This bill would have required DCA boards, within 90 days upon a licensee's or former licensee's provision of a certified copy of expungement, to update their online license search system with notification of the expungement order (if the person is relicensed or reapplies for licensure) or to remove the posting of revocation and previously posted arrests, charges, and convictions (if the person's license was revoked, they are no longer licensed, and have not reapplied).

At its May 2022 meeting, the Board took a "support if amended" position on this bill. The Board requested an amendment to BPC section 493.5(a)(2) in the bill.

Status: This bill is dead.

2. AB 988 (Bauer-Kahan) Mental Health: 988 Crisis Hotline

This bill takes steps to implement a statewide 988 mental health crisis hotline.

At its May 2022 meeting, the Board took a "support" position on this bill. The Board reaffirmed its "support" position at its August 12, 2022 meeting. However, additional significant amendments that the Board was not able to consider were made to the bill at the end of the legislative session.

Status: The Governor signed this bill (Chapter 747, Statutes of 2022).

3. **AB 1635 (Nguyen) Suicide Prevention: Mental Health Provider Educational Loan Repayment**

This bill proposed creating a new account in the Mental Health Practitioner Education Fund to provide grants to repay education loans for specified Board licensees and registrants who commit to providing direct patient care for at least 24 months in an organization that provides mental health services to individuals who have been referred there by a suicide prevention hotline.

At its May 2022 meeting, the Board took a "support if amended" position on this bill, and requested amendments to identify a funding source, and an amendment to broaden the work settings eligible for the grant.

Status: This bill is dead.

4. **AB 2222 (Reyes) Student Financial Aid: Golden State Social Opportunities Program**

This bill proposed creating the Golden State Social Opportunities Program to provide grants for qualifying students enrolled in a postgraduate program if they commit to working in a California-based nonprofit setting for their required post degree hours of supervised experience as an associate registered with this Board or the Board of Psychology.

At its May 2022 meeting, the Board took a "support if amended" position on the bill and requested various technical and clarifying amendments. The Board's requested amendments were made. However, additional substantive amendments that the Board was not able to consider were made at the end of the legislative session.

Status: The Governor vetoed this bill. His veto message can be found here.

5. **AB 2666 (Salas) Behavioral Health Internship Grant Program**

This bill proposed requiring the Department of Health Care Access and Information (HCAI) to establish and administer a grant program to provide stipends to students in behavioral health fields of study and practice who are interning or completing licensure hours at federally qualified health centers (FQHCs) and who are unpaid.

At its May 2022 meeting, the Board took a "support if amended" position on the bill. It requested various technical amendments and requested that a funding source be identified. The requested amendments were not made.

Status: The Governor vetoed this bill. His veto message can be found here.

6. **SB 923 (Wiener) Gender-Affirming Care**

This bill takes a number of steps to provide a model for trans-inclusive care, including requiring health plan staff who are in direct contact with enrollees to complete evidence-based cultural competency training for the purpose of providing trans-inclusive health care.

At its August 2022 meeting, the Board took a "support" position on the bill. However, additional substantive amendments that the Board was not able to consider were made at the end of the legislative session.

Status: The Governor signed this bill (Chapter 822, Statutes of 2022).

7. **SB 964 (Wiener) Behavioral Health**

This bill took steps to address the current behavioral health workforce shortage by commissioning a landscape analysis of the current behavioral health workforce and state workforce needs.

At its May 2022 meeting, the Board took a "support" position on the bill. At its August 12, 2022 meeting, the Board reaffirmed its "support" position.

Status: The Governor vetoed this bill. His veto message can be found here.

8. **SB 966 (Limon) Federally Qualified Health Centers and Rural Health Clinics: Visits**

This bill would allow Medi-Cal reimbursement for covered mental health services provided by an associate clinical social worker or an associate marriage and family therapist who is under appropriate supervision and who is employed by a federally qualified health center or a rural health clinic.

At its May 2022 meeting, the Board took a "support" position on the bill. Additional substantive amendments that the Board was not able to consider were made at the end of the legislative session.

Status: The Governor signed this bill (Chapter 607, Statutes of 2022).

9. **SB 1002 (Portantino) Workers' Compensation: Licensed Clinical Social Workers**

This bill adds licensed clinical social workers as providers in the workers' compensation system.

At its May 2022 meeting, the Board took a "support" position on the bill. Additional substantive amendments that the Board was not able to consider were made at the end of the legislative session.

Status: The Governor signed this bill (Chapter 609, Statutes of 2022).

10. SB 1229 (McGuire) Mental Health Workforce Grant Program

This bill creates a grant program under California's Student Aid Commission to increase the number of mental health professionals serving children and youth. It proposes awarding grants of up to $25,000 to post-graduate students enrolled in an accredited social work program, a program designed to lead to licensure as a marriage and family therapist, professional clinical counselor, or educational psychologist, or designed to provide a services credential with a specialization in pupil personnel services. The student must meet specified criteria, including agreeing to work in an eligible California-based nonprofit entity or a local education agency when gaining their required postgraduate supervised experience hours.

At its May 2022 meeting, the Board took a "support" position on the bill.

Status: This bill is dead.

11. SB 1238 (Eggman) Behavioral Health Services: Existing and Projected Needs

This bill requires the Department of Health Care Services to conduct a review of and report on the current and projected behavioral health care infrastructure and service needs in each region of the state, beginning January 1, 2024, and every 5 years thereafter.

At its May 2022 meeting, the Board took a "support" position on this bill.

Status: The Governor vetoed this bill. His veto message can be found here.

BOARD-MONITORED LEGISLATION

1. AB 29 (Cooper) State Bodies: Meetings

This bill proposed a change to the Bagley-Keene Open Meeting Act to require that state bodies provide meeting writings or materials to the public on the same day they are provided to the state body's members, or at least 72 hours before the meeting, whichever is earlier.

At its May 2021 meeting, the Board took an "oppose unless amended" position on this bill. The Board requested an amendment that would permit revision of board materials related to current legislation to reflect the most recent information

available. In addition, the Board requested an amendment specifying that closed session materials would remain confidential.

Status: This was a two-year bill. It is now dead.

2. **AB 1662 (Gipson) Licensing Boards: Disqualification from Licensure: Criminal Conviction**

This bill proposed requiring DCA boards to establish a process for prospective applicants to request a preapplication determination regarding whether their criminal history could be cause for denial of licensure.

At its May 2022 meeting, the Board opted not to take a position on this bill.

Status: This bill is dead.

3. SB 1237 (Newman) Licenses: Military Service

This bill clarifies the meaning of the term "called to active duty" with respect to the requirement in law that licensing boards under DCA waive renewal fees and continuing education requirements of a licensee or registrant called to active duty as a member of the U.S. Armed forces or California National Guard.

At its May 2022 meeting, the Board opted not to take a position on this bill.

Status: This bill was signed by the Governor (Chapter 386, Statutes of 2022).

4. SB 1365 (Jones) Licensing Boards: Procedures

This bill proposed requiring boards under DCA to publicly post a list of criteria used to evaluate applicants with criminal convictions on its website. It also would have required DCA to take steps to establish procedures for evaluating and assisting applicants with criminal convictions.

At its May 2022 meeting, the Board opted not to take a position on this bill.

Status: This bill is dead.

Updated: September 30, 2022

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Attachment A
Omnibus Bill 2022
Rejected Proposed Text

AMEND HEALTH AND SAFETY CODE §1374.72.

(a) (1) Every health care service plan contract issued, amended, or renewed on or after January 1, 2021, that provides hospital, medical, or surgical coverage shall provide coverage for medically necessary treatment of mental health and substance use disorders, under the same terms and conditions applied to other medical conditions as specified in subdivision (c).

(2) For purposes of this section, "mental health and substance use disorders" means a mental health condition or substance use disorder that falls under any of the diagnostic categories listed in the mental and behavioral disorders chapter of the most recent edition of the International Classification of Diseases or that is listed in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders. Changes in terminology, organization, or classification of mental health and substance use disorders in future versions of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders or the World Health Organization's International Statistical Classification of Diseases and Related Health Problems shall not affect the conditions covered by this section as long as a condition is commonly understood to be a mental health or substance use disorder by health care providers practicing in relevant clinical specialties.

(3) (A) For purposes of this section, "medically necessary treatment of a mental health or substance use disorder" means a service or product addressing the specific needs of that patient, for the purpose of preventing, diagnosing, or treating an illness, injury, condition, or its symptoms, including minimizing the progression of that illness, injury, condition, or its symptoms, in a manner that is all of the following:

(i) In accordance with the generally accepted standards of mental health and substance use disorder care.

(ii) Clinically appropriate in terms of type, frequency, extent, site, and duration.

(iii) Not primarily for the economic benefit of the health care service plan and subscribers or for the convenience of the patient, treating physician, or other health care provider.

(B) This paragraph does not limit in any way the independent medical review rights of an enrollee or subscriber under this chapter.

(4) For purposes of this section, "health care provider" means any of the following:

(A) A person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(B) An associate marriage and family therapist ~~or marriage and family therapist trainee~~ functioning pursuant to Section 4980.43.3 of the Business and Professions Code.

(C) A qualified autism service provider or qualified autism service professional certified by a national entity pursuant to Section 10144.51 of the Insurance Code and Section 1374.73.

(D) An associate clinical social worker functioning pursuant to Section 4996.23.2 of the Business and Professions Code.

(E) An associate professional clinical counselor ~~or professional clinical counselor trainee~~ functioning pursuant to Section 4999.46.3 of the Business and Professions Code.

(F) A registered psychologist, as described in Section 2909.5 of the Business and Professions Code.

(G) A registered psychological assistant, as described in Section 2913 of the Business and Professions Code.

(H) A psychology trainee or person supervised as set forth in Section 2910 or 2911 of, or subdivision (d) of Section 2914 of, the Business and Professions Code.

(I) A marriage and family therapist trainee performing activities and services as part of their supervised course of study as set out in Section 4980.42 of the Business and Professions Code.

(5) For purposes of this section, “generally accepted standards of mental health and substance use disorder care” has the same meaning as defined in paragraph (1) of subdivision (f) of Section 1374.721.

(6) A health care service plan shall not limit benefits or coverage for mental health and substance use disorders to short-term or acute treatment.

(7) All medical necessity determinations by the health care service plan concerning service intensity, level of care placement, continued stay, and transfer or discharge of enrollees diagnosed with mental health and substance use disorders shall be conducted in accordance with the requirements of Section 1374.721. This paragraph does not deprive an enrollee of the other protections of this chapter, including, but not limited to, grievances, appeals, independent medical review, discharge, transfer, and continuity of care.

(8) A health care service plan that authorizes a specific type of treatment by a provider pursuant to this section shall not rescind or modify the authorization after the provider renders the health care service in good faith and pursuant to this authorization for any reason, including, but not limited to, the plan’s subsequent rescission, cancellation, or modification of the enrollee’s or subscriber’s contract, or the plan’s subsequent determination that it did not make an accurate determination of the enrollee’s or subscriber’s eligibility. This section shall not be construed to expand or alter the benefits available to the enrollee or subscriber under a plan.

(b) The benefits that shall be covered pursuant to this section shall include, but not be limited to, the following:

(1) Basic health care services, as defined in subdivision (b) of Section 1345.

(2) Intermediate services, including the full range of levels of care, including, but not limited to, residential treatment, partial hospitalization, and intensive outpatient treatment.

(3) Prescription drugs, if the plan contract includes coverage for prescription drugs.

(c) The terms and conditions applied to the benefits required by this section, that shall be applied equally to all benefits under the plan contract, shall include, but not be limited to, all of the following patient financial responsibilities:

(1) Maximum annual and lifetime benefits, if not prohibited by applicable law.

(2) Copayments and coinsurance.

(3) Individual and family deductibles.

(4) Out-of-pocket maximums.

(d) If services for the medically necessary treatment of a mental health or substance use disorder are not available in network within the geographic and timely access standards set by law or regulation, the health care service plan shall arrange coverage to ensure the delivery of medically necessary out-of-network services and any medically necessary followup services that, to the maximum extent possible, meet those geographic and timely access standards. As used in this subdivision, to “arrange coverage to ensure the delivery of medically necessary out-of-network services” includes, but is not limited to, providing services to secure medically necessary out-of-network options that are available to the enrollee within geographic and timely access standards. The enrollee shall pay no more than the same cost sharing that the enrollee would pay for the same covered services received from an in-network provider.

(e) This section shall not apply to contracts entered into pursuant to Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, between the State Department of Health Care Services and a health care service plan for enrolled Medi-Cal beneficiaries.

(f) (1) For the purpose of compliance with this section, a health care service plan may provide coverage for all or part of the mental health and substance use disorder services required by this section through a separate specialized health care service plan or mental health plan, and shall not be required to obtain an additional or specialized license for this purpose.

(2) A health care service plan shall provide the mental health and substance use disorder coverage required by this section in its entire service area and in emergency situations as may be required by applicable laws and regulations. For purposes of this

section, health care service plan contracts that provide benefits to enrollees through preferred provider contracting arrangements are not precluded from requiring enrollees who reside or work in geographic areas served by specialized health care service plans or mental health plans to secure all or part of their mental health services within those geographic areas served by specialized health care service plans or mental health plans, provided that all appropriate mental health or substance use disorder services are actually available within those geographic service areas within timeliness standards.

(3) Notwithstanding any other law, 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, provided that these practices are consistent with Section 1374.76 of this code, and Section 2052 of the Business and Professions Code.

(g) This section shall not be construed to deny or restrict in any way the department's authority to ensure plan compliance with this chapter.

(h) A health care service plan shall not limit benefits or coverage for medically necessary services on the basis that those services should be or could be covered by a public entitlement program, including, but not limited to, special education or an individualized education program, Medicaid, Medicare, Supplemental Security Income, or Social Security Disability Insurance, and shall not include or enforce a contract term that excludes otherwise covered benefits on the basis that those services should be or could be covered by a public entitlement program.

(i) A health care service plan shall not adopt, impose, or enforce terms in its plan contracts or provider agreements, in writing or in operation, that undermine, alter, or conflict with the requirements of this section.

AMEND INSURANCE CODE §10144.5.

(a) (1) Every disability insurance policy issued, amended, or renewed on or after January 1, 2021, that provides hospital, medical, or surgical coverage shall provide coverage for medically necessary treatment of mental health and substance use disorders, under the same terms and conditions applied to other medical conditions as specified in subdivision (c).

(2) For purposes of this section, "mental health and substance use disorders" means a mental health condition or substance use disorder that falls under any of the diagnostic categories listed in the mental and behavioral disorders chapter of the most recent edition of the World Health Organization's International Statistical Classification of Diseases and Related Health Problems, or that is listed in the most recent version of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. Changes in terminology, organization, or classification of mental health and substance use disorders in future versions of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders or the World Health

Organization's International Statistical Classification of Diseases and Related Health Problems shall not affect the conditions covered by this section as long as a condition is commonly understood to be a mental health or substance use disorder by health care providers practicing in relevant clinical specialties.

(3) (A) For purposes of this section, "medically necessary treatment of a mental health or substance use disorder" means a service or product addressing the specific needs of that patient, for the purpose of preventing, diagnosing, or treating an illness, injury, condition, or its symptoms, including minimizing the progression of an illness, injury, condition, or its symptoms, in a manner that is all of the following:

(i) In accordance with the generally accepted standards of mental health and substance use disorder care.

(ii) Clinically appropriate in terms of type, frequency, extent, site, and duration.

(iii) Not primarily for the economic benefit of the disability insurer and insureds or for the convenience of the patient, treating physician, or other health care provider.

(B) This paragraph does not limit in any way the independent medical review rights of an insured or policyholder under this chapter.

(4) "Health care provider" means any of the following:

(A) A person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(B) An associate marriage and family therapist ~~or marriage and family therapist trainee~~ functioning pursuant to Section 4980.43.3 of the Business and Professions Code.

(C) A qualified autism service provider or qualified autism service professional certified by a national entity pursuant to Section 1374.73 of the Health and Safety Code and Section 10144.51.

(D) An associate clinical social worker functioning pursuant to Section 4996.23.2 of the Business and Professions Code.

(E) An associate professional clinical counselor ~~or professional clinical counselor trainee~~ functioning pursuant to Section 4999.46.3 of the Business and Professions Code.

(F) A registered psychologist, as described in Section 2909.5 of the Business and Professions Code.

(G) A registered psychological assistant, as described in Section 2913 of the Business and Professions Code.

(H) A psychology trainee or person supervised as set forth in Section 2910 or 2911 of, or subdivision (d) of Section 2914 of, the Business and Professions Code.

(l) A marriage and family therapist trainee performing activities and services as part of their supervised course of study as set out in Section 4980.42 of the Business and Professions Code.

(5) For purposes of this section, “generally accepted standards of mental health and substance use disorder care” has the same meaning as defined in paragraph (1) of subdivision (f) of Section 10144.52.

(6) A disability insurer shall not limit benefits or coverage for mental health and substance use disorders to short-term or acute treatment.

(7) All medical necessity determinations made by the disability insurer concerning service intensity, level of care placement, continued stay, and transfer or discharge of insureds diagnosed with mental health and substance use disorders shall be conducted in accordance with the requirements of Section 10144.52.

(8) A disability insurer that authorizes a specific type of treatment by a provider pursuant to this section shall not rescind or modify the authorization after the provider renders the health care service in good faith and pursuant to this authorization for any reason, including, but not limited to, the insurer’s subsequent rescission, cancellation, or modification of the insured’s or policyholder’s contract, or the insurer’s subsequent determination that it did not make an accurate determination of the insured’s or policyholder’s eligibility. This section shall not be construed to expand or alter the benefits available to the insured or policyholder under an insurance policy.

(b) The benefits that shall be covered pursuant to this section shall include, but not be limited to, the following:

(1) Basic health care services, as defined in subdivision (b) of Section 1345 of the Health and Safety Code.

(2) Intermediate services, including the full range of levels of care, including, but not limited to, residential treatment, partial hospitalization, and intensive outpatient treatment.

(3) Prescription drugs, if the policy includes coverage for prescription drugs.

(c) The terms and conditions applied to the benefits required by this section, that shall be applied equally to all benefits under the disability insurance policy shall include, but not be limited to, all of the following patient financial responsibilities:

(1) Maximum and annual lifetime benefits, if not prohibited by applicable law.

(2) Copayments and coinsurance.

(3) Individual and family deductibles.

(4) Out-of-pocket maximums.

(d) If services for the medically necessary treatment of a mental health or substance use disorder are not available in network within the geographic and timely access standards set by law or regulation, the disability insurer shall arrange coverage to ensure the delivery of medically necessary out-of-network services and any medically necessary followup services that, to the maximum extent possible, meet those geographic and timely access standards. As used in this subdivision, to "arrange coverage to ensure the delivery of medically necessary out-of-network services" includes, but is not limited to, providing services to secure medically necessary out-of-network options that are available to the insured within geographic and timely access standards. The insured shall pay no more than the same cost sharing that the insured would pay for the same covered services received from an in-network provider.

(e) This section shall not apply to accident-only, specified disease, hospital indemnity, Medicare supplement, dental-only, or vision-only insurance policies.

(f) (1) For the purpose of compliance with this section, a disability insurer may provide coverage for all or part of the mental health and substance use disorder services required by this section through a separate specialized health insurance policy or mental health policy. This paragraph shall not apply to policies that are subject to Section 10112.27.

(2) A disability insurer shall provide the mental health and substance use disorder coverage required by this section in its entire service area and in emergency situations as may be required by applicable laws and regulations. For purposes of this section, disability insurance policies that provide benefits to insureds through preferred provider contracting arrangements are not precluded from requiring insureds who reside or work in geographic areas served by specialized health insurance policies or mental health insurance policies to secure all or part of their mental health services within those geographic areas served by specialized health insurance policies or mental health insurance policies, provided that all appropriate mental health or substance use disorder services are actually available within those geographic service areas within timeliness standards.

(3) Notwithstanding any other law, in the provision of benefits required by this section, a disability insurer may utilize case management, network providers, utilization review techniques, prior authorization, copayments, or other cost sharing, provided that these practices are consistent with Section 10144.4 of this code, and Section 2052 of the Business and Professions Code.

(g) This section shall not be construed to deny or restrict in any way the department's authority to ensure a disability insurer's compliance with this code.

(h) A disability insurer shall not limit benefits or coverage for medically necessary services on the basis that those services should be or could be covered by a public entitlement program, including, but not limited to, special education or an individualized education program, Medicaid, Medicare, Supplemental Security Income, or Social Security Disability Insurance, and shall not include or enforce a contract term that

excludes otherwise covered benefits on the basis that those services should be or could be covered by a public entitlement program.

(i) A disability insurer shall not adopt, impose, or enforce terms in its policies or provider agreements, in writing or in operation, that undermine, alter, or conflict with the requirements of this section.

(j) If the commissioner determines that a disability insurer has violated this section, the commissioner may, after appropriate notice and opportunity for hearing in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), by order, assess a civil penalty not to exceed five thousand dollars ($5,000) for each violation, or, if a violation was willful, a civil penalty not to exceed ten thousand dollars ($10,000) for each violation.