

4/25/14 REUTERS LEGAL 10:00:01

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April 25, 2014

California court supports coverage for autism therapy

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(Reuters) - A California appeals court has ruled that state regulators and health insurers cannot deny coverage for an intensive autism treatment on the grounds that the therapy was not provided by a licensed physician or psychologist.

A three-judge panel on Wednesday found that, due to a recent change in California law, the treatment, known as applied behavior analysis, should be covered even when it is given by specialists certified by the Behavior Analyst Certification Board, the profession's private credentialing body.

Consumer Watchdog, a California consumer advocacy group, sued the state's insurance regulator, the Department of Managed Health Care, in 2009 to require health plans to cover the treatment when it was provided by a certified, but unlicensed, therapist.

In its ruling, the appeals court prohibited the department from allowing plans to deny coverage on grounds that the provider lacked a state license. The decision reversed part of a lower court ruling.

Consumer Watchdog hailed the court's ruling as a major victory for autistic children.

The decision "now bars state regulators and health insurers from discriminating against children on the basis of whether treatment providers hold state licenses," the group said in a statement on Thursday.

The Department of Managed Health Care said in a statement that the court equated professional certification with state licensing due to a pro-coverage law introduced in 2011.

It said the court's ruling confirmed that the department had "correctly and appropriately protect(ed) health care consumers by ensuring that health care services are provided by licensed professionals."

The field of applied behavior analysis is relatively new, with the first landmark study showing its effectiveness published in 1987. The treatment is expensive and time-intensive, prescribed for 26 to 40 hours a week. It focuses on building a patient's skills in a systematic way with reinforcement, repetition and practice. Studies have found that the technique is the most effective treatment for autistic children and can help create new brain connections, according to the court opinion.

The treatment has been the subject of intense debate around the country, with many insurers refusing to pay for the treatment for a variety of reasons, said Gina Green, the director of the Association of Professional Behavior Analysts.

For years, health insurers denied coverage for the treatment on the grounds that it was experimental and not the medical standard of care, according to the court opinion. By 2007, after the medical community had backed the therapy, health plans continued to deny coverage on the basis that the people who provided it were not licensed by the state, the opinion said.

"The trick was: there was and still is no state license for applied behavior analysis," said Jerry Flanagan, a lawyer with Consumer Watchdog.

To fill the gap, the Behavior Analyst Certification Board, a private nonprofit, was formed in 1998 to grant national

credentials to applied behavior analysts.

2011 STATE LAW

Consumer Watchdog sued the Department of Managed Health Care in Los Angeles Superior Court in 2009, claiming the state regulator's policy of upholding the insurers' coverage denials was causing autistic children to suffer long delays and often denials in coverage because their providers were privately certified but not licensed by the state.

The group accused the state regulator of violating the 1999 Mental Health Parity Act, which requires health plans that provide medical coverage to also cover medically necessary treatment for severe mental illness.

In 2011 the trial court rejected Consumer Watchdog's petition, finding that because providers of applied behavior analysis work intensively with fragile, autistic children, the state regulator could impose state licensing controls on providers.

That same year, however, the California legislature adopted a new law under the state's Health and Safety Code requiring private health plans to provide coverage for behavior health treatment for autism. To be covered under the new law, the treatment had to be provided by a licensed physician, psychologist or someone certified by a national entity such as the Behavior Analyst Certification Board.

Due to budgetary constraints, the legislature exempted certain public health plans from the new coverage requirement, including plans in California's Medicaid program, its Healthy Families Program and plans with the public employees' retirement system, CalPERS, Flanagan said.

In its decision, the California appeals court acknowledged that the 2011 law had already addressed Consumer Watchdog's complaint with regard to private plans. The ruling now extends that policy to people in public plans, affirming the plaintiff's position that a state license is not required to administer applied behavior analysis.

Consumer Watchdog in its statement said that the decision would allow families of firefighters, school employees and others covered by CalPERS-sponsored health plans to obtain critical autism treatment.

To date, 36 states have passed autism insurance reforms requiring coverage of applied behavior analysis, with Nebraska becoming the latest to do so on Monday.

The case is Consumer Watchdog v. Department of Managed Health Care, California Court of Appeal for the 2nd District, No. B232338

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Region: (North America (1NO39); U.S. West Region (1WE46); USA (1US73); California (1CA98); Americas (1AM92))

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Language: EN

Other Indexing: (Consumer Watchdog) (Holly Pearson; Fredric Woocher; Harvey Rosenfield; Gina Green; Jerry Flanagan; Pamela Pressley)

Keywords: health (MCC:OEC); (N2:US); (N2:AMERS); (N2:USA); (MCCL:OVR)

Word Count: 894

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