

Date of Hearing: April 3, 2018

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 2423 (Holden) – As Introduced February 14, 2018

SUBJECT: Physical therapists: direct access to services: plan of care approval.

SUMMARY: Exempts physical therapy services as part of an individualized education program (IEP) pursuant to the federal Individuals with Disabilities Education Act (IDEA) from the direct access limitation prohibiting physical therapists from continuing treatment beyond 45 calendar days or 12 visits, whichever occurs first, without receiving a doctor's signed approval of the physical therapist's plan of care.

EXISTING LAW:

- 1) Implements and supplements the federal IDEA law and establishes a state special education program for kindergarten and grades 1-12, administered by the California Department of Education and specified public agencies. (Education Code (EDC) §§ 56000-56865; California Code of Regulations (CCR), Title 5, §§ 3000-3100)
- 2) Defines an IEP as a written document for an individual with exceptional needs that is developed, reviewed, and revised in a meeting with an IEP team. (EDC § 56032)
- 3) Authorizes local special education programs to contract with licensed occupational therapists and physical therapists and requires the licensees to provide services based upon recommendation of the IEP team. (EDC § 56363; CCR, tit. 5, § 3051.6)
- 4) Establishes the Early Start Program under the California Early Intervention Services Act to provide early intervention services for toddlers and infants (0-3 years of age), including physical therapy, administered by the California Department of Developmental Services in collaboration with the California Department of Education. (EDC §§ 56425 - 56432; Government Code §§ 95000-95004; CCR, tit. 17, §§ 52000-52175)
- 5) Defines "individualized family service plan" (IFSP) as a written plan for providing early intervention services to infants or toddlers younger than three years of age and their families who have been determined eligible for early intervention services. (EDC § 56032; CCR, tit. 17, § 52000(b)(28))
- 6) Establishes the Physical Therapy Practice Act, which is enforced by the Physical Therapy Board of California (PTBC), to license and regulate the practice of physical therapists. (Business and Professions Code (BPC) § 2600 *et seq.*)
- 7) Defines physical therapy as the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, light, water, electricity, sound massage, and active, passive, and restrictive exercise, and shall include physical therapy evaluation, treatment planning, instruction, and consultative services. (BPC § 2620)

- 8) Provides that the practice of physical therapy includes the promotion and maintenance of physical fitness to enhance the bodily movement related health and wellness of individuals through the use of physical therapy interventions. (BPC § 2620)
- 9) Specifies that the use of roentgen rays and radioactive materials, for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term “physical therapy.” (BPC § 2620)
- 10) Indicates that a physical therapy license does not authorize the diagnosis of disease. (BPC § 2620)
- 11) Provides that an applicant for a physical therapy license must be a graduate of a professional degree program of an accredited postsecondary institution approved by the PTB, and must complete academic coursework and a clinical internship in physical therapy. (BPC § 2650)
- 12) Permits a physical therapist to perform tissue penetration for the purpose of evaluating neuromuscular performance upon specified authorized of a physician and surgeon, but prohibits the physical therapist from developing or making diagnostic or prognostic interpretations from the data obtained. (BPC § 2620.5)
- 13) Authorizes a patient to access physical therapy treatment directly from a licensed physical therapist for up to 45 calendar days or 12 visits, whichever occurs first. After 45 days or 12 visits, the physical therapist must seek a doctor’s signed approval of the physical therapist’s plan of care. (BPC 2620.1 (a))
- 14) Requires that, if a physical therapist has reason to believe that the patient has signs or symptoms of a condition that requires treatment beyond the scope of practice of a physical therapist or the patient is not progressing toward documented treatment goals as demonstrated by objective, measurable, or functional improvement, the physical therapist must refer the patient to a person holding a physician and surgeon’s certificate issued by the Medical Board of California or by the Osteopathic Medical Board of California or to a person licensed to practice dentistry, podiatric medicine, or chiropractic. (BPC § 2620.1(a)(1))
- 15) Exempts wellness physical therapy interventions from the 45-day or 12-visit direct access limitation. (BPC 2620.1 (b))

THIS BILL:

- 1) Exempts physical therapy services provided as part of an IFSP or IEP pursuant to the federal IDEA law (20 U.S.C. § 1400 *et seq.*) from the 12-visit or 45-day direct access limitation.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the **California Physical Therapy Association**. According to the author, “[i]n 2013, AB 1000 (Wieckowski) gave Californians the right to directly seek treatment from physical therapists similar to what is allowed in many states. As a concession to concerns raised by medical interests, a 45-day/12-visit limit was included, which, once reached,

requires a patient to see their physician before receiving further treatment. In schools, physical therapy services may be required as a condition of a student's Individualized Educational Program (IEP) as required by federal law. These plans are typically in effect for a year or more, and physical therapists will easily serve students throughout the year. This puts physical therapists at risk for violating AB 1000 while carrying out the demands of federal law and the students' IEPs. [This bill] provides a VERY narrow exception to the laws governing physical therapy services in California. It will allow students with an IEP to be served by physical therapists working in the schools without having to incur the extra cost and time delay of having to go see their physician.”

Background. According to the Physical Therapy Board of California (PTBC), physical therapists provide services to individuals to develop, maintain, and restore movement to maximize functional ability where movement and function are threatened by age, injury, disease, disorder, or other conditions or environmental factors. The physical therapy practice identifies and maximizes quality of life and movement potential by incorporating promotion, prevention, treatment, intervention, and re/habilitation into its scope. Specifically, the practice of physical therapy involves the interaction between the physical therapist, the patient/client, other health professionals, families, and caregivers in a process where restoring movement to maximize functional ability is assessed and goals are agreed upon using the knowledge and skills unique to the physical therapist.

The PTBC states that physical therapists are qualified and required to: perform comprehensive examinations and assessments of patients/clients; evaluate the findings and make clinical judgments; formulate treatment plans; provide consultation and determine when patients/clients need to be referred to another healthcare professional; implement an intervention and/or treatment plan; determine the outcomes of any intervention and/or treatment; and make recommendations for self-management.

45-day or 12-visit Direct Access Limitation. In California, a patient/client may initiate physical therapy treatment directly from a licensed physical therapist without first obtaining a medical diagnosis, for up to 45 calendar days or 12 visits, whichever occurs first. If a patient/client still requires treatment by a physical therapist, a physical therapist may not continue the treatment without receiving a licensed physician/surgeon's medical diagnosis and signed approval of the physical therapist's plan of care.

Currently, physical therapists providing only wellness physical therapy services are exempted from the referral requirement. Wellness physical therapy is evidenced by the promotion and maintenance of physical fitness to enhance the bodily movement through lifestyle changes, including but not limited to, increased physical activity, with the goal of preventing injuries and/or diseases.

Direct Access of Physical Therapy under IDEA. Children covered by the federal IDEA law are not specifically exempted from the direct access limitation under California law. This bill seeks to clarify that physical therapy services as part of an individualized education program under IDEA are not subject to the direct access limitation.

IDEA is a federal law that is implemented by states and public agencies to ensure early intervention, special education, and related services to eligible infants, toddlers, children, and youth with disabilities. The purpose behind IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and

related services designed to meet their unique needs and prepare them for further education, education, and independent living” (20 U.S.C. § 1400 (d)).

Generally, there are two types of individualized programs under IDEA. IFSPs provide early intervention services for infants and toddlers (birth up to 36 months) with disabilities and their families under IDEA Part C. IEPs cover special education and related services for children and youth (ages three through 21) under IDEA Part B.

An IFSP or IEP may or may not involve a medical diagnosis. The services provided pursuant to an IFSP or IEP (such as physical therapy) are primarily habilitative, meaning they are meant to help students with exceptional needs more fully and effectively participate in educational programs. Medically necessary services provided pursuant to a medical diagnosis tend to be rehabilitative, meaning they are intended to address a specific health condition.

According to the sponsor, the 45-day or 12-visit limitation creates as a barrier to both physical therapists in schools and the students without a medical diagnosis but are still in need of physical therapy services. While children that are covered by IDEA are entitled to receive appropriate services to meet their education needs, the current referral requirement under California law can delay a child’s ability to receive proper medical treatment or equipment.

Other States. Three tiers of physical therapy services exist across the country: limited patient access; patient access with provisions; and unrestricted patient access. 6 states have limited patient access laws, allowing access to evaluation, fitness & wellness, and limited treatment only to certain patient populations or under certain circumstances (i.e. treatment restricted to patients with a previous medical diagnosis or a previous physician referral). 26 states (including California under current law) and Washington, D.C. have patient access laws with provisions allowing access to treatment with some provisions such as time and visit limits. 18 states have unrestricted patient access laws, allowing for treatment absent a physician referral with no restrictions or limitations.

Prior Related Legislation. AB 1000 (Wieckowski), Chapter 620, Statutes of 2013 established the 45 day or 12 visit direct access limitation for physical therapy services.

SB 924 (Price) of 2011 would have, among other things, established a 30-day or 12-visit direct access limitation. *NOTE: SB 924 died in the Senate Committee on Rules.*

AB 721 (Nava) of 2009 would have authorized patients to access physical therapy services directly without referral from a physician. *NOTE: AB 721 failed passage in the Assembly Committee on Business, Professions, and Consumer Protection.*

ARGUMENTS IN SUPPORT:

The **California Physical Therapy Association** (sponsor) writes in support, “[w]e have become aware that there are many cases in which children in schools are receiving services directed by an IEP, including physical therapy services, in which a “diagnosis” does not exist. The provisions of AB 1000 would effectively require services to stop until a visit with an M.D., D.O., or podiatrist was conducted. This conflicts with the mandate of the IEP and is often unnecessary, either because the child has already been seen by a physician or other provider who has not been willing to place a 'diagnosis' on the child at that point or because the services required are not

due to a medical diagnosis but are necessary for the student to be successful in the educational environment.

[This bill] resolves the unintended consequence in these instances by narrowly exempting from the 45-day/12-visit provision of AB 1000 those children who have a standing IEP in place that mandates physical therapy services but for whom an official diagnosis has not been made. It is important to note that such services provided are also still subject to [the requirement that physical therapists must refer patients if the physical therapist has reason to believe that the condition is beyond the physical therapists scope of practice]. [This bill] deftly addresses this issue and makes clear that the [BPC] does not otherwise impede education-related services that *must* be provided under both federal and state law.”

ARGUMENTS IN OPPOSITION:

The **California Medical Association** (CMA) is opposed to this bill unless it is amended to (1) delete the reference to IFSPs and (2) clarify that the individual receiving services does not have a medical diagnosis. According to the CMA, this bill “seeks an exemption to the current direct access requirements for physical therapists that provide physical therapy services as part of an [IFSP or IEP]. An IFSP is a plan that guides and supports parents' efforts to boost their child's development up to age 3. An IEP is a plan for special education and related services for children ages 3 to 21.

Both types of plans require a team-based approach that may include parents, teachers, a school district representative, the student, and, if appropriate, physicians and other health care practitioners, such as physical therapists. However, while the main goal of an IEP is to develop a plan that optimizes the child's educational opportunities, the primary goal of an IFSP is to assess the physical, cognitive, communication, social and emotional development and the vision, hearing and overall health of children with disabilities under 4 years of age. Physical therapists lack the appropriate training to safely provide physical therapy services to toddlers without the child having a medical diagnosis from a physician and surgeon.”

AMENDMENTS:

To clarify that the exemption only applies to individuals receiving services under an IEP without a medical diagnosis and provide additional time to work with stakeholders on the provisions relating to services provided pursuant to an IFSP, the author and sponsor are amending the bill as follows:

On page 3, lines 9 through 12:

(2) Pursuant to Education Code Section 56363 or Government Code Section 7572, when he or she is providing physical therapy services as part of an individualized family service plan or an individualized education plan pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and the individual does not have a medical diagnosis.

REGISTERED SUPPORT:

California Physical Therapy Association (sponsor)

REGISTERED OPPOSITION:

California Medical Association
California Orthopedic Association

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