

5845

2011-2012 Regular Sessions

I N S E N A T E

June 22, 2011

Introduced by COMMITTEE ON RULES -- read twice and ordered printed, and
when printed to be committed to the Committee on Rules

AN ACT to amend the insurance law, in relation to coverage for the screening, diagnosis and treatment of autism spectrum disorder; and to amend a chapter of the laws of 2011 amending the insurance law relating to coverage for the screening, diagnosis and treatment of autism spectrum disorder, as proposed in legislative bill numbers S. 4005-A and A. 6305-A, in relation to the effectiveness of such chapter

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subparagraphs (B) and (C) of paragraph 25 of subsection (i)
2 of section 3216 of the insurance law, as added by a chapter of the laws
3 of 2011 amending the insurance law relating to coverage for the screen-
4 ing, diagnosis and treatment of autism spectrum disorder, as proposed in
5 legislative bill numbers S. 4005-A and A. 6305-A, are amended to read as
6 follows:
7 (B) Every policy which provides physician services, medical, major
8 medical or similar comprehensive-type coverage shall provide coverage
9 for the screening, diagnosis and treatment of autism spectrum disorder
10 in accordance with this paragraph and shall not exclude coverage for the
11 screening, diagnosis or treatment of medical conditions otherwise
12 covered by the policy because the individual is diagnosed with autism
13 spectrum disorder. Such coverage may be subject to annual deductibles,
14 copayments and coinsurance as may be deemed appropriate by the super-
15 intendent and shall be consistent with those imposed on other benefits
16 under the policy. COVERAGE FOR APPLIED BEHAVIOR ANALYSIS SHALL BE
17 SUBJECT TO A MAXIMUM BENEFIT OF FORTY-FIVE THOUSAND DOLLARS PER YEAR PER
18 COVERED INDIVIDUAL AND SUCH MAXIMUM ANNUAL BENEFIT WILL INCREASE BY THE
19 AMOUNT CALCULATED FROM THE AVERAGE TEN YEAR ROLLING AVERAGE INCREASE OF
20 THE MEDICAL COMPONENT OF THE CONSUMER PRICE INDEX. This paragraph shall
21 not be construed as limiting the benefits that are otherwise available

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD12076-04-1

1 to an individual under the policy, provided however that such policy
2 shall not contain any limitations on visits that are solely applied to
3 the treatment of autism spectrum disorder. No insurer shall terminate
4 coverage or refuse to deliver, execute, issue, amend, adjust, or renew
5 coverage to an individual solely because the individual is diagnosed
6 with autism spectrum disorder or has received treatment for autism spec-
7 trum disorder. Coverage shall be subject to utilization review and
8 external appeals of health care services pursuant to article forty-nine
9 of this chapter as well as, case management, and other managed care
10 provisions.

11 (C) For purposes of this paragraph:

12 (i) "autism spectrum disorder" means any pervasive developmental
13 disorder as defined in the most recent edition of the diagnostic and
14 statistical manual of mental disorders, including autistic disorder,
15 Asperger's disorder, Rett's disorder, childhood disintegrative disorder,
16 or pervasive developmental disorder not otherwise specified (PDD-NOS).

17 (ii) "applied behavior analysis" means the design, implementation, and
18 evaluation of environmental modifications, using behavioral stimuli and
19 consequences, to produce socially significant improvement in human
20 behavior, including the use of direct observation, measurement, and
21 functional analysis of the relationship between environment and behav-
22 ior.

23 (iii) "behavioral health treatment" means counseling and treatment
24 programs, when provided by a licensed provider, and applied behavior
25 analysis, when provided or supervised by a behavior analyst certified
26 pursuant to the behavior analyst certification board, that are necessary
27 to develop, maintain, or restore, to the maximum extent practicable, the
28 functioning of an individual. Individuals that provide behavioral health
29 treatment under the supervision of a certified behavior analyst pursuant
30 to this paragraph shall be subject to standards of professionalism,
31 SUPERVISION and relevant experience pursuant to regulations promulgated
32 by the superintendent in consultation with the [commissioner] COMMIS-
33 SIONERS of health AND EDUCATION.

34 (iv) "diagnosis of autism spectrum disorder" means assessments, evalu-
35 ations, or tests to diagnose whether an individual has autism spectrum
36 disorder.

37 (v) "pharmacy care" means medications prescribed by a licensed health
38 care provider legally authorized to prescribe under title eight of the
39 education law.

40 (vi) "psychiatric care" means direct or consultative services provided
41 by a psychiatrist licensed in the state in which the psychiatrist prac-
42 tices.

43 (vii) "psychological care" means direct or consultative services
44 provided by a psychologist licensed in the state in which the psychol-
45 ogist practices.

46 (viii) "therapeutic care" means services provided by licensed or
47 certified speech therapists, occupational therapists, social workers, or
48 physical therapists.

49 (ix) "treatment of autism spectrum disorder" shall include the follow-
50 ing care and [related equipment] ASSISTIVE COMMUNICATION DEVICES
51 prescribed or ordered for an individual diagnosed with autism spectrum
52 disorder by a licensed physician or a licensed psychologist:

53 (1) behavioral health treatment;

54 (2) psychiatric care;

55 (3) psychological care;

56 (4) medical care provided by a licensed health care provider;

(5) therapeutic care, including therapeutic care which is deemed habitative or nonrestorative, in the event that the policy provides coverage for therapeutic care; and

(6) pharmacy care in the event that the policy provides coverage for prescription drugs.

S 2. Subparagraphs (B) and (C) of paragraph 17 of subsection (1) of section 3221 of the insurance law, as added by a chapter of the laws of 2011 amending the insurance law relating to coverage for the screening, diagnosis and treatment of autism spectrum disorder, as proposed in legislative bill numbers S. 4005-A and A. 6305-A, are amended to read as follows:

(B) Every group or blanket policy which provides physician services, medical, major medical or similar comprehensive-type coverage shall provide coverage for the screening, diagnosis and treatment of autism spectrum disorder in accordance with this paragraph and shall not exclude coverage for the screening, diagnosis or treatment of medical conditions otherwise covered by the policy because the individual is diagnosed with autism spectrum disorder. Such coverage may be subject to annual deductibles, copayments and coinsurance as may be deemed appropriate by the superintendent and shall be consistent with those imposed on other benefits under the group or blanket policy. COVERAGE FOR APPLIED BEHAVIOR ANALYSIS SHALL BE SUBJECT TO A MAXIMUM BENEFIT OF FORTY-FIVE THOUSAND DOLLARS PER YEAR PER COVERED INDIVIDUAL AND SUCH MAXIMUM ANNUAL BENEFIT WILL INCREASE BY THE AMOUNT CALCULATED FROM THE AVERAGE TEN YEAR ROLLING AVERAGE INCREASE OF THE MEDICAL COMPONENT OF THE CONSUMER PRICE INDEX. This paragraph shall not be construed as limiting the benefits that are otherwise available to an individual under the group or blanket policy, provided however that such policy shall not contain any limitations on visits that are solely applied to the treatment of autism spectrum disorder. No insurer shall terminate coverage or refuse to deliver, execute, issue, amend, adjust, or renew coverage to an individual solely because the individual is diagnosed with autism spectrum disorder or has received treatment for autism spectrum disorder. Coverage shall be subject to utilization review and external appeals of health care services pursuant to article forty-nine of this chapter as well as, case management, and other managed care provisions.

(C) For purposes of this paragraph:

(i) "autism spectrum disorder" means any pervasive developmental disorder as defined in the most recent edition of the diagnostic and statistical manual of mental disorders, including autistic disorder, Asperger's disorder, Rett's disorder, childhood disintegrative disorder, or pervasive developmental disorder not otherwise specified (PDD-NOS).

(ii) "applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

(iii) "behavioral health treatment" means counseling and treatment programs, when provided by a licensed provider, and applied behavior analysis, when provided or supervised by a behavior analyst certified pursuant to the behavior analyst certification board, that are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual. Individuals that provide behavioral health treatment under the supervision of a certified behavior analyst pursuant

to this paragraph shall be subject to standards of professionalism, SUPERVISION and relevant experience pursuant to regulations promulgated by the superintendent in consultation with the [commissioner] COMMISSIONERS of health AND EDUCATION.

(iv) "diagnosis of autism spectrum disorder" means assessments, evaluations, or tests to diagnose whether an individual has autism spectrum disorder.

(v) "pharmacy care" means medications prescribed by a licensed health care provider legally authorized to prescribe under title eight of the education law.

(vi) "psychiatric care" means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices.

(vii) "psychological care" means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices.

(viii) "therapeutic care" means services provided by licensed or certified speech therapists, occupational therapists, social workers, or physical therapists.

(ix) "treatment of autism spectrum disorder" shall include the following care and [related equipment] ASSISTIVE COMMUNICATION DEVICES prescribed or ordered for an individual diagnosed with autism spectrum disorder by a licensed physician or a licensed psychologist:

(1) behavioral health treatment;

(2) psychiatric care;

(3) psychological care;

(4) medical care provided by a licensed health care provider;

(5) therapeutic care, including therapeutic care which is deemed habitative or nonrestorative, in the event that the policy provides coverage for therapeutic care; and

(6) pharmacy care in the event that the policy provides coverage for prescription drugs.

S 3. Subsection (ee) of section 4303 of the insurance law, as added by a chapter of the laws of 2011 amending the insurance law relating to coverage for the screening, diagnosis and treatment of autism spectrum disorder, as proposed in legislative bill numbers S. 4005-A and A. 6305-A, is amended to read as follows:

(ee) (1) A medical expense indemnity corporation, a hospital service corporation or a health service corporation which provides coverage for hospital or surgical care coverage shall not exclude coverage for screening, diagnosis and treatment of medical conditions otherwise covered by the [policy] CONTRACT solely because the treatment is provided to diagnose or treat autism spectrum disorder.

(2) Every [policy] CONTRACT which provides physician services, medical, major medical or similar comprehensive-type coverage shall provide coverage for the screening, diagnosis and treatment of autism spectrum disorder in accordance with this subsection and shall not exclude coverage for the screening, diagnosis or treatment of medical conditions otherwise covered by the [policy] CONTRACT because the individual is diagnosed with autism spectrum disorder. Such coverage may be subject to annual deductibles, copayments and coinsurance as may be deemed appropriate by the superintendent and shall be consistent with those imposed on other benefits under the [policy] CONTRACT. COVERAGE FOR APPLIED BEHAVIOR ANALYSIS SHALL BE SUBJECT TO A MAXIMUM BENEFIT OF FORTY-FIVE THOUSAND DOLLARS PER YEAR PER COVERED INDIVIDUAL AND SUCH MAXIMUM ANNUAL BENEFIT WILL INCREASE BY THE AMOUNT CALCULATED FROM THE

1 AVERAGE TEN YEAR ROLLING AVERAGE INCREASE OF THE MEDICAL COMPONENT OF
2 THE CONSUMER PRICE INDEX. This paragraph shall not be construed as
3 limiting the benefits that are otherwise available to an individual
4 under the [policy] CONTRACT, provided however that such [policy]
5 CONTRACT shall not contain any limitations on visits that are solely
6 applied to the treatment of autism spectrum disorder. No insurer shall
7 terminate coverage or refuse to deliver, execute, issue, amend, adjust,
8 or renew coverage to an individual solely because the individual is
9 diagnosed with autism spectrum disorder or has received treatment for
10 autism spectrum disorder. Coverage shall be subject to utilization
11 review and external appeals of health care services pursuant to article
12 forty-nine of this chapter as well as, case management, and other
13 managed care provisions.

14 (3) For purposes of this subsection:

15 (A) "autism spectrum disorder" means any pervasive developmental
16 disorder as defined in the most recent edition of the diagnostic and
17 statistical manual of mental disorders, including autistic disorder,
18 Asperger's disorder, Rett's disorder, childhood disintegrative disorder,
19 or pervasive developmental disorder not otherwise specified (PDD-NOS).

20 (B) "applied behavior analysis" means the design, implementation, and
21 evaluation of environmental modifications, using behavioral stimuli and
22 consequences, to produce socially significant improvement in human
23 behavior, including the use of direct observation, measurement, and
24 functional analysis of the relationship between environment and behav-
25 ior.

26 (C) "behavioral health treatment" means counseling and treatment
27 programs, when provided by a licensed provider, and applied behavior
28 analysis, when provided or supervised by a behavior analyst certified
29 pursuant to the behavior analyst certification board, that are necessary
30 to develop, maintain, or restore, to the maximum extent practicable, the
31 functioning of an individual. Individuals that provide behavioral health
32 treatment under the supervision of a certified behavior analyst pursuant
33 to this subsection shall be subject to standards of professionalism,
34 SUPERVISION and relevant experience pursuant to regulations promulgated
35 by the superintendent in consultation with the [commissioner] COMMIS-
36 SIONERS of health AND EDUCATION.

37 (D) "diagnosis of autism spectrum disorder" means assessments, evalu-
38 ations, or tests to diagnose whether an individual has autism spectrum
39 disorder.

40 (E) "pharmacy care" means medications prescribed by a licensed health
41 care provider legally authorized to prescribe under title eight of the
42 education law.

43 (F) "psychiatric care" means direct or consultative services provided
44 by a psychiatrist licensed in the state in which the psychiatrist prac-
45 tices.

46 (G) "psychological care" means direct or consultative services
47 provided by a psychologist licensed in the state in which the psychol-
48 ogist practices.

49 (H) "therapeutic care" means services provided by licensed or certi-
50 fied speech therapists, occupational therapists, social workers, or
51 physical therapists.

52 (I) "treatment of autism spectrum disorder" shall include the follow-
53 ing care and [related equipment] ASSISTIVE COMMUNICATION DEVICES
54 prescribed or ordered for an individual diagnosed with autism spectrum
55 disorder by a licensed physician or a licensed psychologist:

56 (i) behavioral health treatment;

1 (ii) psychiatric care;
2 (iii) psychological care;
3 (iv) medical care provided by a licensed health care provider;
4 (v) therapeutic care, including therapeutic care which is deemed habi-
5 litative or nonrestorative, in the event that the policy provides cover-
6 age for therapeutic care; and
7 (vi) pharmacy care in the event that the [policy] CONTRACT provides
8 coverage for prescription drugs.

9 (4) Coverage may be denied on the basis that such treatment is being
10 provided to the covered person pursuant to an individualized education
11 plan under article eighty-nine of the education law. The provision of
12 services pursuant to an individualized family service plan under section
13 twenty-five hundred forty-five of the public health law, an individual-
14 ized education plan under article eighty-nine of the education law, or
15 an individualized service plan pursuant to regulations of the office for
16 persons with developmental disabilities shall not affect coverage under
17 the policy for services provided on a supplemental basis outside of an
18 educational setting if such services are prescribed by a licensed physi-
19 cian or licensed psychologist.

20 (5) Nothing in this subsection shall be construed to affect any obli-
21 gation to provide services to an individual under an individualized
22 family service plan under section twenty-five hundred forty-five of the
23 public health law, an individualized education plan under article eight-
24 y-nine of the education law, or an individualized service plan pursuant
25 to regulations of the office for persons with developmental disabili-
26 ties.

27 (6) Nothing in this subsection shall be construed to affect any obli-
28 gation to provide coverage for otherwise-covered services solely on the
29 basis that the services constitute early intervention program services
30 pursuant to section three thousand two hundred thirty-five-a of this
31 article or an individualized service plan pursuant to regulations of the
32 office for persons with developmental disabilities.

33 (7) Nothing in this subsection shall be construed to prevent a [poli-
34 cy] CONTRACT from providing services through a network of participating
35 providers who shall meet certain requirements for participation, includ-
36 ing provider credentialing.

37 S 4. Section 5 of a chapter of the laws of 2011 amending the insurance
38 law relating to coverage for the screening, diagnosis and treatment of
39 autism spectrum disorder, as proposed in legislative bill numbers S.
40 4005-A and A. 6305-A, is amended to read as follows:

41 S 5. This act shall take effect [on the first of January next succeed-
42 ing the date on which] ONE YEAR AFTER it shall have become a law and
43 shall apply to all policies and contracts issued, renewed, modified,
44 altered or amended on or after such date.

45 S 5. This act shall take effect immediately; provided, however, that
46 sections one, two and three of this act shall take effect on the same
47 date and in the same manner as a chapter of the laws of 2011 amending
48 the insurance law relating to coverage for the screening, diagnosis and
49 treatment of autism spectrum disorder, as proposed in legislative bill
50 numbers S. 4005-A and A. 6305-A, takes effect.