S T A T E O F N E W Y O R K

10372--A

I N A S S E M B L Y

March 19, 2010

Introduced by M. of A. MORELLE, SILVER, WEISENBERG, NOLAN, SCHROEDER, LAVINE, LUPARDO, GOTTFRIED, PERRY, STIRPE, HEVESI, CUSICK, J. RIVERA, SWEENEY, JAFFEE, ZEBROWSKI, GALEF, MAISEL, SPANO, BRODSKY, HYER-SPENCER -- Multi-Sponsored by -- M. of A. BALL, CALHOUN, DESTITO, ENGLEBRIGHT, JORDAN, LIFTON, RAIA -- read once and referred to the Committee on Insurance -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law and the public health law, in relation to coverage for the screening, diagnosis and treatment of autism spectrum disorder

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

Section 1. Paragraph 25 of subsection (i) of section 3216 of the insurance law, as added by chapter 557 of the laws of 2006, is amended to read as follows:

(25) Every policy which provides coverage for hospital, surgical, or medical care coverage shall [not exclude] PROVIDE coverage for THE SCREENING, diagnosis and treatment of [medical conditions otherwise covered by the policy solely because the treatment is provided to diagnose or treat] autism spectrum disorder IN ACCORDANCE WITH THIS PARAGRAPH AND SHALL NOT EXCLUDE COVERAGE FOR THE TREATMENT OF MEDICAL CONDITIONS OTHERWISE COVERED BY THE POLICY BECAUSE THE INDIVIDUAL IS DIAGNOSED WITH AN 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. THIS PARAGRAPH SHALL NOT BE CONSTRUED AS LIMITING THE BENEFITS THAT ARE OTHERWISE AVAILABLE TO AN INDIVIDUAL UNDER THE POLICY. COVERAGE MAY BE SUBJECT TO UTILIZATION REVIEW OF HEALTH CARE SERVICES, INCLUDING THE REVIEW OF MEDICAL NECESSITY, CASE MANAGEMENT, AND OTHER MANAGED CARE PROVISIONS.

(A) For purposes of this [section] PARAGRAPH, "autism spectrum disorder" means a GROUP OF neurobiological [condition that includes autism, Asperger syndrome, Rett's syndrome, or pervasive developmental disorder]

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

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CONDITIONS DEFINED IN THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS IV REVISED, OR ITS SUCCESSOR, AS PERVASIVE DEVELOPMENTAL DISORDERS.

(B) THE COMMISSIONER OF HEALTH, IN CONSULTATION WITH THE SUPERINTENDENT, THE COMMISSIONER OF THE OFFICE OF MENTAL HEALTH AND THE COMMISSIONER OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES SHALL, NO LATER THAN TWELVE MONTHS AFTER THE EFFECTIVE DATE OF THIS SUBPARAGRAPH, PROMULGATE AND THEREAFTER REGULARLY UPDATE, REGULATIONS WHICH SHALL IDENTIFY TREATMENT AND THERAPY OPTIONS FOR WHICH COVERAGE SHALL BE REQUIRED FOR THE SCREENING, DIAGNOSIS AND TREATMENT OF AUTISM SPECTRUM DISORDER PURSUANT TO THIS PARAGRAPH. SUCH TREATMENT AND THERAPY OPTIONS SHALL BE EVIDENCE-BASED, PEER-REVIEWED AND CLINICALLY PROVEN. COVERAGE FOR BEHAVIORAL THERAPIES REQUIRED PURSUANT TO THIS SUBPARAGRAPH SHALL NOT BE DENIED ON THE BASIS THAT SUCH THERAPIES ARE EDUCATIONAL OR HABILITATIVE IN NATURE, UNLESS SUCH TREATMENTS ARE BEING PROVIDED TO THE COVERED PERSON PURSUANT TO AN INDIVIDUALIZED EDUCATION PLAN UNDER ARTICLE EIGHTY-NINE OF THE EDUCATION LAW. THE PROVISION OF SERVICES PURSUANT TO AN INDIVIDUALIZED FAMILY SERVICE PLAN UNDER SECTION TWO THOUSAND FIVE HUNDRED FORTY-FIVE OF THE PUBLIC HEALTH LAW, AN INDIVIDUALIZED EDUCATION PLAN UNDER ARTICLE EIGHTY-NINE OF THE EDUCATION LAW OR AN INDIVIDUALIZED SERVICE PLAN PURSUANT TO REGULATIONS OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES SHALL NOT AFFECT COVERAGE UNDER THE POLICY FOR SERVICES PROVIDED ON A SUPPLEMENTAL BASIS OUTSIDE OF AN EDUCATIONAL SETTING IF SUCH SERVICES ARE DEEMED MEDICALLY NECESSARY.

(C) NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO AFFECT ANY OBLIGATION TO PROVIDE SERVICES TO AN INDIVIDUAL UNDER AN INDIVIDUALIZED FAMILY SERVICE PLAN UNDER SECTION TWO THOUSAND FIVE HUNDRED FORTY-FIVE OF THE PUBLIC HEALTH LAW, AN INDIVIDUALIZED EDUCATION PLAN UNDER ARTICLE EIGHTY-NINE OF THE EDUCATION LAW OR AN INDIVIDUALIZED SERVICE PLAN PURSUANT TO REGULATIONS OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENT DISABILITIES.

(D) NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO AFFECT ANY OBLIGATION TO PROVIDE COVERAGE FOR OTHERWISE COVERED SERVICES SOLELY ON THE BASIS THAT THE SERVICES CONSTITUTE EARLY INTERVENTION PROGRAM SERVICES PURSUANT TO SECTION THREE THOUSAND TWO HUNDRED THIRTY-FIVE-A OF THIS ARTICLE OR AN INDIVIDUALIZED SERVICE PLAN PURSUANT TO REGULATIONS OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES.

(E) NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO PREVENT A POLICY FROM PROVIDING SERVICES THROUGH A NETWORK OF PARTICIPATING PROVIDERS WHO SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUDING PROVIDER CREDENTIALING.

S 2. Paragraph 17 of subsection (l) of section 3221 of the insurance law, as added by chapter 557 of the laws of 2006, is amended to read as follows:

(17) [A] EVERY group or blanket accident [or] AND health insurance policy [or issuing a group or blanket policy for delivery in this state] DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE which provides coverage for hospital, surgical, or medical care coverage shall [not exclude] PROVIDE coverage for THE SCREENING, diagnosis and treatment of [medical conditions otherwise covered by the policy because the treatment is provided to diagnose or treat] autism spectrum disorder IN ACCORDANCE WITH THIS PARAGRAPH AND SHALL NOT EXCLUDE COVERAGE FOR THE TREATMENT OF MEDICAL CONDITIONS OTHERWISE COVERED BY THE POLICY BECAUSE THE INDIVIDUAL IS DIAGNOSED WITH AN 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. THIS PARAGRAPH SHALL NOT BE CONSTRUED AS LIMITING THE BENEFITS THAT ARE OTHERWISE AVAILABLE TO AN INDIVIDUAL UNDER THE POLICY. COVERAGE MAY BE SUBJECT TO UTILIZATION REVIEW OF HEALTH CARE SERVICES, INCLUDING THE REVIEW OF MEDICAL NECESSITY, CASE MANAGEMENT, AND OTHER MANAGED CARE PROVISIONS.

(A) For purposes of this [section] PARAGRAPH, "autism spectrum disorder" means a GROUP OF neurobiological [condition that includes autism, Asperger syndrome, Rett's syndrome, or pervasive developmental disorder] CONDITIONS DEFINED IN THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS IV REVISED, OR ITS SUCCESSOR, AS PERVASIVE DEVELOPMENTAL DISORDERS.

(B) THE COMMISSIONER OF HEALTH, IN CONSULTATION WITH THE SUPERINTENDENT, THE COMMISSIONER OF THE OFFICE OF MENTAL HEALTH AND THE COMMISSIONER OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES SHALL, NO LATER THAN TWELVE MONTHS AFTER THE EFFECTIVE DATE OF THIS SUBPARAGRAPH, PROMULGATE AND THEREAFTER REGULARLY UPDATE, REGULATIONS WHICH SHALL IDENTIFY TREATMENT AND THERAPY OPTIONS FOR WHICH COVERAGE SHALL BE REQUIRED FOR THE SCREENING, DIAGNOSIS AND TREATMENT OF AUTISM SPECTRUM DISORDER PURSUANT TO THIS PARAGRAPH. SUCH TREATMENT AND THERAPY OPTIONS SHALL BE EVIDENCE-BASED, PEER-REVIEWED AND CLINICALLY PROVEN. COVERAGE FOR BEHAVIORAL THERAPIES REQUIRED PURSUANT TO THIS SUBPARAGRAPH SHALL NOT BE DENIED ON THE BASIS THAT SUCH THERAPIES ARE EDUCATIONAL OR HABILITATIVE IN NATURE, UNLESS SUCH TREATMENTS ARE BEING PROVIDED TO THE COVERED PERSON PURSUANT TO AN INDIVIDUALIZED EDUCATION PLAN UNDER ARTICLE EIGHTY-NINE OF THE EDUCATION LAW. THE PROVISION OF SERVICES PURSUANT TO AN INDIVIDUALIZED FAMILY SERVICE PLAN UNDER SECTION TWO THOUSAND FIVE HUNDRED FORTY-FIVE OF THE PUBLIC HEALTH LAW, AN INDIVIDUALIZED EDUCATION PLAN UNDER ARTICLE EIGHTY-NINE OF THE EDUCATION LAW OR AN INDIVIDUALIZED SERVICE PLAN PURSUANT TO REGULATIONS OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES SHALL NOT AFFECT COVERAGE UNDER THE POLICY FOR SERVICES PROVIDED ON A SUPPLEMENTAL BASIS OUTSIDE OF AN EDUCATIONAL SETTING IF SUCH SERVICES ARE DEEMED MEDICALLY NECESSARY.

(C) NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO AFFECT ANY OBLIGATION TO PROVIDE SERVICES TO AN INDIVIDUAL UNDER AN INDIVIDUALIZED FAMILY SERVICE PLAN UNDER SECTION TWO THOUSAND FIVE HUNDRED FORTY-FIVE OF THE PUBLIC HEALTH LAW, AN INDIVIDUALIZED EDUCATION PLAN UNDER ARTICLE EIGHTY-NINE OF THE EDUCATION LAW OR AN INDIVIDUALIZED SERVICE PLAN PURSUANT TO REGULATIONS OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENT DISABILITIES.

(D) NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO AFFECT ANY OBLIGATION TO PROVIDE COVERAGE FOR OTHERWISE COVERED SERVICES SOLELY ON THE BASIS THAT THE SERVICES CONSTITUTE EARLY INTERVENTION PROGRAM SERVICES PURSUANT TO SECTION THREE THOUSAND TWO HUNDRED THIRTY-FIVE-A OF THIS ARTICLE OR AN INDIVIDUALIZED SERVICE PLAN PURSUANT TO REGULATIONS OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES.

(E) NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO PREVENT A POLICY FROM PROVIDING SERVICES THROUGH A NETWORK OF PARTICIPATING PROVIDERS WHO SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUDING PROVIDER CREDENTIALING.

S 3. Subsection (ee) of section 4303 of the insurance law, as added by chapter 557 of the laws of 2006, is amended to read as follows:

(ee) A medical expense indemnity corporation, a hospital service corporation or a health service corporation which provides coverage for hospital, surgical, or medical care coverage shall [not exclude] PROVIDE

coverage for THE SCREENING, diagnosis and treatment of [medical conditions otherwise covered by the policy solely because the treatment is provided to diagnose or treat] autism spectrum disorder IN ACCORDANCE WITH THIS SUBSECTION AND SHALL NOT EXCLUDE COVERAGE FOR THE TREATMENT OF MEDICAL CONDITIONS OTHERWISE COVERED BY THE POLICY BECAUSE THE INDIVIDUAL IS DIAGNOSED WITH AN 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 CONTRACT. THIS SUBSECTION SHALL NOT BE CONSTRUED AS LIMITING THE BENEFITS THAT ARE OTHERWISE AVAILABLE TO AN INDIVIDUAL UNDER THE CONTRACT. COVERAGE MAY BE SUBJECT TO UTILIZATION REVIEW OF HEALTH CARE SERVICES, INCLUDING THE REVIEW OF MEDICAL NECESSITY, CASE MANAGEMENT, AND OTHER MANAGED CARE PROVISIONS.

(1) For purposes of this [section] SUBSECTION, "autism spectrum disorder" means a GROUP OF neurobiological [condition that includes autism, Asperger syndrome, Rett's syndrome, or pervasive developmental disorder] CONDITIONS DEFINED IN THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS IV REVISED, OR ITS SUCCESSOR, AS PERVASIVE DEVELOPMENTAL DISORDERS.

(2) THE COMMISSIONER OF HEALTH, IN CONSULTATION WITH THE SUPERINTENDENT, THE COMMISSIONER OF THE OFFICE OF MENTAL HEALTH AND THE COMMISSIONER OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES SHALL, NO LATER THAN TWELVE MONTHS AFTER THE EFFECTIVE DATE OF THIS SUBPARAGRAPH, PROMULGATE AND THEREAFTER REGULARLY UPDATE, REGULATIONS WHICH SHALL IDENTIFY TREATMENT AND THERAPY OPTIONS FOR WHICH COVERAGE SHALL BE REQUIRED FOR THE SCREENING, DIAGNOSIS AND TREATMENT OF AUTISM SPECTRUM DISORDER PURSUANT TO THIS SUBSECTION. SUCH TREATMENT AND THERAPY OPTIONS SHALL BE EVIDENCE-BASED, PEER-REVIEWED AND CLINICALLY PROVEN. COVERAGE FOR BEHAVIORAL THERAPIES REQUIRED PURSUANT TO THIS PARAGRAPH SHALL NOT BE DENIED ON THE BASIS THAT SUCH THERAPIES ARE EDUCATIONAL OR HABILITATIVE IN NATURE, UNLESS SUCH TREATMENTS ARE BEING PROVIDED TO THE COVERED PERSON PURSUANT TO AN INDIVIDUALIZED EDUCATION PLAN UNDER ARTICLE EIGHTY-NINE OF THE EDUCATION LAW. THE PROVISION OF SERVICES PURSUANT TO AN INDIVIDUALIZED FAMILY SERVICE PLAN UNDER SECTION TWO THOUSAND FIVE HUNDRED FORTY-FIVE OF THE PUBLIC HEALTH LAW, AN INDIVIDUALIZED EDUCATION PLAN UNDER ARTICLE EIGHTY-NINE OF THE EDUCATION LAW OR AN INDIVIDUALIZED SERVICE PLAN PURSUANT TO REGULATIONS OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES SHALL NOT AFFECT COVERAGE UNDER THE CONTRACT FOR SERVICES PROVIDED ON A SUPPLEMENTAL BASIS OUTSIDE OF AN EDUCATIONAL SETTING IF SUCH SERVICES ARE DEEMED MEDICALLY NECESSARY.

(3) NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO AFFECT ANY OBLIGATION TO PROVIDE SERVICES TO AN INDIVIDUAL UNDER AN INDIVIDUALIZED FAMILY SERVICE PLAN UNDER SECTION TWO THOUSAND FIVE HUNDRED FORTY-FIVE OF THE PUBLIC HEALTH LAW, AN INDIVIDUALIZED EDUCATION PLAN UNDER ARTICLE EIGHTY-NINE OF THE EDUCATION LAW OR AN INDIVIDUALIZED SERVICE PLAN PURSUANT TO REGULATIONS OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES.

(4) NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO AFFECT ANY OBLIGATION TO PROVIDE COVERAGE FOR OTHERWISE COVERED SERVICES SOLELY ON THE BASIS THAT THE SERVICES CONSTITUTE EARLY INTERVENTION PROGRAM SERVICES PURSUANT TO SECTION THREE THOUSAND TWO HUNDRED THIRTY-FIVE-A OF THIS CHAPTER OR AN INDIVIDUALIZED SERVICE PLAN PURSUANT TO REGULATIONS OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES.

(5) NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO PREVENT A CONTRACT FROM PROVIDING SERVICES THROUGH A NETWORK OF PARTICIPATING

PROVIDERS WHO SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUDING PROVIDER CREDENTIALING.

S 4. Section 2500-j of the public health law is amended by adding a new subdivision 4 to read as follows:

4. THE COMMISSIONER, IN CONSULTATION WITH THE SUPERINTENDENT OF INSURANCE, THE COMMISSIONER OF THE OFFICE OF MENTAL HEALTH AND THE COMMISSIONER OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES, SHALL PROMULGATE NO LATER THAN TWELVE MONTHS AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION, AND REGULARLY UPDATE, REGULATIONS WHICH SHALL IDENTIFY TREATMENT AND THERAPY OPTIONS FOR WHICH COVERAGE SHALL BE REQUIRED FOR THE SCREENING, DIAGNOSIS AND TREATMENT OF AUTISM SPECTRUM DISORDER PURSUANT TO SECTIONS THREE THOUSAND TWO HUNDRED SIXTEEN, THREE THOUSAND TWO HUNDRED TWENTY-ONE AND FOUR THOUSAND THREE HUNDRED THREE OF THE INSURANCE LAW.

S 5. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 6. This act shall take effect immediately, provided that sections one, two and three of this act shall take effect upon the promulgation of either emergency or permanent rules and regulations by the commissioner of health outlining the treatment insurers are required to provide to cover autism spectrum disorder as provided for in this act and shall apply to all policies or contracts issued, renewed, modified, altered or amended on and after such effective date; provided that the commissioner of health shall notify the legislative bill drafting commission upon the promulgation of such emergency or permanent rules and regulations in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.