

6001

2009-2010 Regular Sessions

I N A S S E M B L Y

February 23, 2009

Introduced by M. of A. WEISENBERG -- read once and referred to the
Committee on Insurance

AN ACT to amend the insurance law, in relation to autism spectrum disorders

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

1 Section 1. Paragraph 25 of subsection (i) of section 3216 of the
2 insurance law, as added by chapter 557 of the laws of 2006, is amended
3 to read as follows:
4 (25) Every policy which provides coverage for hospital, surgical, or
5 medical care coverage shall not exclude coverage for diagnosis and
6 treatment of medical conditions otherwise covered by the policy solely
7 because the treatment is provided to diagnose or treat autism spectrum
8 disorder. IN INDIVIDUALS TWENTY-ONE YEARS OF AGE OR LESS, THERE SHALL BE
9 NO LIMITS ON THE NUMBER OF VISITS AN INDIVIDUAL MAY MAKE TO AN AUTISM
10 PROVIDER. COVERAGE UNDER THIS SUBSECTION MAY BE SUBJECT TO COPAYMENT,
11 DEDUCTIBLE AND COINSURANCE PROVISIONS OF A HEALTH INSURANCE POLICY TO
12 THE EXTENT THAT OTHER MEDICAL SERVICE COVERED BY THE HEALTH INSURANCE
13 POLICY ARE SUBJECT TO SUCH PROVISIONS. THIS SUBSECTION SHALL NOT BE
14 CONSTRUED AS LIMITING THE BENEFITS THAT ARE AVAILABLE TO AN INDIVIDUAL
15 UNDER A HEALTH INSURANCE POLICY. COVERAGE SHALL BE SUBJECT TO A MAXIMUM
16 BENEFIT OF THIRTY-SIX THOUSAND DOLLARS. AFTER DECEMBER THIRTY-FIRST, TWO
17 THOUSAND TEN, THE SUPERINTENDENT SHALL, ON AN ANNUAL BASIS, ADJUST THE
18 MAXIMUM BENEFIT FOR INFLATION USING THE MEDICAL CARE COMPONENT OF THE
19 UNITED STATES DEPARTMENT OF LABOR CONSUMER PRICE INDEX FOR ALL URBAN
20 CONSUMERS. THE SUPERINTENDENT SHALL SUBMIT THE ADJUSTED MAXIMUM BENEFIT
21 FOR PUBLICATION ANNUALLY NO LATER THAN APRIL FIRST OF EACH CALENDAR
22 YEAR, AND SUCH PUBLISHED ADJUSTED MAXIMUM BENEFIT SHALL BE APPLICABLE IN
23 THE FOLLOWING CALENDAR YEAR TO HEALTH INSURANCE POLICIES SUBJECT TO THIS
24 SECTION. PAYMENTS MADE BY AN INSURER ON BEHALF OF A COVERED INDIVIDUAL
25 FOR ANY CARE, TREATMENT, INTERVENTION, SERVICE OR ITEM UNRELATED TO

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

LBD06364-03-9

1 AUTISM SPECTRUM DISORDERS SHALL NOT BE APPLIED TOWARDS ANY MAXIMUM BENE-
2 FIT ESTABLISHED PURSUANT TO THIS SECTION. EXCEPT FOR INPATIENT SERVICES,
3 IF AN INDIVIDUAL IS RECEIVING TREATMENT FOR AUTISM SPECTRUM DISORDERS,
4 AN INSURER SHALL HAVE THE RIGHT TO REQUEST A REVIEW OF SUCH TREATMENT
5 NOT MORE THAN ONCE EVERY TWELVE MONTHS UNLESS SUCH INSURER AND THE INDI-
6 VIDUAL'S LICENSED PHYSICIAN OR LICENSED PSYCHOLOGIST AGREE THAT A MORE
7 FREQUENT REVIEW IS NECESSARY. THE COST OF OBTAINING ANY REVIEW SHALL BE
8 BORNE BY THE INSURER.

9 (A) For purposes of this section[,]:

10 (I) "autism spectrum disorder" means a neurobiological condition that
11 includes autism, Asperger syndrome, Rett's syndrome, or pervasive devel-
12 opmental disorder.

13 (II) "APPLIED BEHAVIOR ANALYSIS" MEANS THE DESIGN, IMPLEMENTATION, AND
14 EVALUATION OF ENVIRONMENTAL MODIFICATIONS, USING BEHAVIORAL STIMULI AND
15 CONSEQUENCES, TO PRODUCE SOCIALLY SIGNIFICANT IMPROVEMENT IN HUMAN
16 BEHAVIOR, INCLUDING THE USE OF DIRECT OBSERVATION, MEASUREMENT, AND
17 FUNCTIONAL ANALYSIS OF THE RELATIONSHIP BETWEEN ENVIRONMENT AND BEHAV-
18 IOR.

19 (III) "AUTISM SERVICES PROVIDER" MEANS ANY PERSON, ENTITY, OR GROUP
20 THAT PROVIDES TREATMENT OF AUTISM SPECTRUM DISORDERS.

21 (IV) "DIAGNOSIS OF AUTISM SPECTRUM DISORDERS" MEANS MEDICALLY NECES-
22 SARY ASSESSMENT, EVALUATIONS, OR TESTS TO DIAGNOSE WHETHER AN INDIVIDUAL
23 HAS ONE OF THE AUTISM SPECTRUM DISORDERS.

24 (V) "EVIDENCE-BASED RESEARCH" MEANS RESEARCH THAT APPLIES RIGOROUS,
25 SYSTEMATIC, AND OBJECTIVE PROCEDURES TO OBTAIN VALID KNOWLEDGE RELEVANT
26 TO AUTISM SPECTRUM DISORDERS.

27 (VI) "HABILITATIVE OR REHABILITATIVE CARE" MEANS PROFESSIONAL, COUN-
28 SELING, AND GUIDANCE SERVICES AND TREATMENT PROGRAMS, INCLUDING APPLIED
29 BEHAVIOR ANALYSIS, THAT ARE NECESSARY TO DEVELOP, MAINTAIN, AND RESTORE,
30 TO THE MAXIMUM EXTENT PRACTICABLE, THE FUNCTIONING OF AN INDIVIDUAL.

31 (VII) "MEDICALLY NECESSARY" MEANS ANY CARE, TREATMENT, INTERVENTION,
32 SERVICE, OR ITEM THAT IS PRESCRIBED, PROVIDED, OR ORDERED BY A LICENSED
33 PHYSICIAN OR A LICENSED PSYCHOLOGIST IN ACCORDANCE WITH ACCEPTED STAND-
34 ARDS OF PRACTICE AND THAT WILL, OR IS REASONABLY EXPECTED TO, DO ANY OF
35 THE FOLLOWING:

36 (1) PREVENT THE ONSET OF AN ILLNESS, CONDITION, INJURY, OR DISABILITY;

37 (2) REDUCE OR AMELIORATE THE PHYSICAL, MENTAL, OR DEVELOPMENTAL
38 EFFECTS OF AN ILLNESS, CONDITION, INJURY, OR DISABILITY; OR

39 (3) ASSIST TO ACHIEVE OR MAINTAIN MAXIMUM FUNCTIONAL CAPACITY IN
40 PERFORMING DAILY ACTIVITIES, TAKING INTO ACCOUNT BOTH THE FUNCTIONAL
41 CAPACITY OF THE INDIVIDUAL AND THE FUNCTIONAL CAPACITIES THAT ARE APPRO-
42 PRIATE FOR INDIVIDUALS OF THE SAME AGE.

43 (VIII) "PHARMACY CARE" MEANS MEDICATIONS PRESCRIBED BY A LICENSED
44 PHYSICIAN AND ANY HEALTH-RELATED SERVICES DEEMED MEDICALLY NECESSARY TO
45 DETERMINE THE NEED OR EFFECTIVENESS OF THE MEDICATIONS.

46 (IX) "PSYCHIATRIC CARE" MEANS DIRECT OR CONSULTATIVE SERVICES PROVIDED
47 BY A PSYCHIATRIST LICENSED IN THE STATE IN WHICH THE PSYCHIATRIST PRAC-
48 TICES.

49 (X) "PSYCHOLOGICAL CARE" MEANS DIRECT OR CONSULTATIVE SERVICES
50 PROVIDED BY A PSYCHOLOGIST LICENSED IN THE STATE IN WHICH THE PSYCHOL-
51 OGIST PRACTICES.

52 (XI) "THERAPEUTIC CARE" MEANS SERVICES PROVIDED BY LICENSED OR CERTI-
53 FIED SPEECH THERAPISTS, OCCUPATIONAL THERAPISTS, OR PHYSICAL THERAPISTS.

54 (XII) "TREATMENT FOR AUTISM SPECTRUM DISORDERS" WILL INCLUDE THE
55 FOLLOWING CARE PRESCRIBED, PROVIDED, OR ORDERED FOR AN INDIVIDUAL DIAG-
56 NOSED WITH ONE OF THE AUTISM SPECTRUM DISORDERS BY A LICENSED PHYSICIAN

1 OR A LICENSED PSYCHOLOGIST WHO DETERMINES THE CARE TO BE MEDICALLY
2 NECESSARY:

- 3 (1) HABILITATIVE OR REHABILITATIVE CARE;
- 4 (2) PHARMACY CARE;
- 5 (3) PSYCHIATRIC CARE;
- 6 (4) PSYCHOLOGICAL CARE;
- 7 (5) THERAPEUTIC CARE; AND

8 (6) ANY CARE FOR INDIVIDUALS WITH AUTISM SPECTRUM DISORDERS THAT IS
9 DETERMINED BY THE STATE HEALTH DEPARTMENT, BASED UPON ITS REVIEW OF BEST
10 PRACTICES OR EVIDENCE-BASED RESEARCH, TO BE MEDICALLY NECESSARY AND THAT
11 IS PUBLISHED IN THE REGISTER FOR RULEMAKING BY STATE AGENCIES. ANY SUCH
12 CARE, TREATMENT, INTERVENTION, SERVICE, OR ITEM THAT WAS NOT PREVIOUSLY
13 COVERED WILL BE INCLUDED IN ANY HEALTH INSURANCE POLICY DELIVERED,
14 EXECUTED, ISSUED, AMENDED, ADJUSTED, OR RENEWED ON OR AFTER SIXTY DAYS
15 FOLLOWING THE DATE OF ITS PUBLICATION IN THE STATE REGISTER.

16 (B) THIS PARAGRAPH SHALL NOT BE CONSTRUED AS TO AFFECT ANY OBLIGATION
17 TO PROVIDE SERVICES TO AN INDIVIDUAL UNDER AN INDIVIDUALIZED FAMILY
18 SERVICE PLAN, AN INDIVIDUALIZED EDUCATION PROGRAM OR AN INDIVIDUALIZED
19 SERVICE PLAN.

20 S 2. Paragraph 17 of subsection (1) of section 3221 of the insurance
21 law, as added by chapter 557 of the laws of 2006, is amended to read as
22 follows:

23 (17) A group or blanket accident or health insurance policy or issuing
24 a group or blanket policy for delivery in this state which provides
25 coverage for hospital, surgical, or medical care coverage shall not
26 exclude coverage for diagnosis and treatment of medical conditions
27 otherwise covered by the policy because the treatment is provided to
28 diagnose or treat autism spectrum disorder. IN INDIVIDUALS TWENTY-ONE
29 YEARS OF AGE OR LESS, THERE SHALL BE NO LIMITS ON THE NUMBER OF VISITS
30 AN INDIVIDUAL MAY MAKE TO AN AUTISM PROVIDER. COVERAGE UNDER THIS
31 SUBSECTION MAY BE SUBJECT TO COPAYMENT, DEDUCTIBLE AND COINSURANCE
32 PROVISIONS OF A HEALTH INSURANCE POLICY TO THE EXTENT THAT OTHER MEDICAL
33 SERVICE COVERED BY THE HEALTH INSURANCE POLICY ARE SUBJECT TO SUCH
34 PROVISIONS. THIS SUBSECTION SHALL NOT BE CONSTRUED AS LIMITING THE BENE-
35 FITS THAT ARE AVAILABLE TO AN INDIVIDUAL UNDER A HEALTH INSURANCE POLI-
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38 SUPERINTENDENT SHALL, ON AN ANNUAL BASIS, ADJUST THE MAXIMUM BENEFIT FOR
39 INFLATION USING THE MEDICAL CARE COMPONENT OF THE UNITED STATES DEPART-
40 MENT OF LABOR CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS. THE SUPER-
41 INTENDENT SHALL SUBMIT THE ADJUSTED MAXIMUM BENEFIT FOR PUBLICATION
42 ANNUALLY NO LATER THAN APRIL FIRST OF EACH CALENDAR YEAR, AND SUCH
43 PUBLISHED ADJUSTED MAXIMUM BENEFIT SHALL BE APPLICABLE IN THE FOLLOWING
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45 PAYMENTS MADE BY AN INSURER ON BEHALF OF A COVERED INDIVIDUAL FOR ANY
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49 INDIVIDUAL IS RECEIVING TREATMENT FOR AUTISM SPECTRUM DISORDERS, AN
50 INSURER SHALL HAVE THE RIGHT TO REQUEST A REVIEW OF SUCH TREATMENT NOT
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54 BORNE BY THE INSURER.

55 (A) For purposes of this section[,]:

- 1 (I) "autism spectrum disorder" means a neurobiological condition that
2 includes autism, Asperger syndrome, Rett's syndrome, or pervasive devel-
3 opmental disorder.
- 4 (II) "APPLIED BEHAVIOR ANALYSIS" MEANS THE DESIGN, IMPLEMENTATION, AND
5 EVALUATION OF ENVIRONMENTAL MODIFICATIONS, USING BEHAVIORAL STIMULI AND
6 CONSEQUENCES, TO PRODUCE SOCIALLY SIGNIFICANT IMPROVEMENT IN HUMAN
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10 SERVICE PLAN.

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

13 (ee) A medical expense indemnity corporation, a hospital service
14 corporation or a health service corporation which provides coverage for
15 hospital, surgical, or medical care coverage shall not exclude coverage
16 for diagnosis and treatment of medical conditions otherwise covered by
17 the policy solely because the treatment is provided to diagnose or treat
18 autism spectrum disorder. IN INDIVIDUALS TWENTY-ONE YEARS OF AGE OR
19 LESS, THERE SHALL BE NO LIMITS ON THE NUMBER OF VISITS AN INDIVIDUAL MAY
20 MAKE TO AN AUTISM PROVIDER. COVERAGE UNDER THIS SUBSECTION MAY BE
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41 (4) PSYCHOLOGICAL CARE;

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43 (6) ANY CARE FOR INDIVIDUALS WITH AUTISM SPECTRUM DISORDERS THAT IS
44 DETERMINED BY THE STATE HEALTH DEPARTMENT, BASED UPON ITS REVIEW OF BEST
45 PRACTICES OR EVIDENCE-BASED RESEARCH, TO BE MEDICALLY NECESSARY AND THAT
46 IS PUBLISHED IN THE GAZETTE FOR RULEMAKING BY STATE AGENCIES. ANY SUCH
47 CARE, TREATMENT, INTERVENTION, SERVICE, OR ITEM THAT WAS NOT PREVIOUSLY
48 COVERED WILL BE INCLUDED IN ANY HEALTH INSURANCE POLICY DELIVERED,
49 EXECUTED, ISSUED, AMENDED, ADJUSTED, OR RENEWED ON OR AFTER SIXTY DAYS
50 FOLLOWING THE DATE OF ITS PUBLICATION IN THE STATE REGISTER.

51 (B) THIS SUBSECTION SHALL NOT BE CONSTRUED AS TO AFFECT ANY OBLIGATION
52 TO PROVIDE SERVICES TO AN INDIVIDUAL UNDER AN INDIVIDUALIZED FAMILY
53 SERVICE PLAN, AN INDIVIDUALIZED EDUCATION PROGRAM OR AN INDIVIDUALIZED
54 SERVICE PLAN.
55

1 S 4. This act shall take effect on the first of January after it
2 shall have become a law and shall apply to all policies and contracts
3 issued, renewed, modified, altered or amended on or after the effective
4 date; provided, however, that any rules and regulations necessary for
5 the implementation of this act shall be promulgated on or before such
6 effective date.