

2366

2009-2010 Regular Sessions

I N S E N A T E

February 19, 2009

Introduced by Sens. FUSCHILLO, ADDABBO, DeFRANCISCO, DIAZ, HANNON, HUNT-
LEY, KLEIN, LAVALLE, McDONALD, MORAHAN, NOZZOLIO, PADAVAN, ROBACH,
VOLKER -- read twice and ordered printed, and when printed to be
committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to autism spectrum disor-
ders

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 (IX) "PSYCHIATRIC CARE" MEANS DIRECT OR CONSULTATIVE SERVICES PROVIDED
49 BY A PSYCHIATRIST LICENSED IN THE STATE IN WHICH THE PSYCHIATRIST PRACTICES.
50

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

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

1 (XII) "TREATMENT FOR AUTISM SPECTRUM DISORDERS" WILL INCLUDE THE
2 FOLLOWING CARE PRESCRIBED, PROVIDED, OR ORDERED FOR AN INDIVIDUAL DIAG-
3 NOSED WITH ONE OF THE AUTISM SPECTRUM DISORDERS BY A LICENSED PHYSICIAN
4 OR A LICENSED PSYCHOLOGIST WHO DETERMINES THE CARE TO BE MEDICALLY
5 NECESSARY:

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

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

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

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

26 (17) A group or blanket accident or health insurance policy or issuing
27 a group or blanket policy for delivery in this state which provides
28 coverage for hospital, surgical, or medical care coverage shall not
29 exclude coverage for diagnosis and treatment of medical conditions
30 otherwise covered by the policy because the treatment is provided to
31 diagnose or treat autism spectrum disorder. IN INDIVIDUALS TWENTY-ONE
32 YEARS OF AGE OR LESS, THERE SHALL BE NO LIMITS ON THE NUMBER OF VISITS
33 AN INDIVIDUAL MAY MAKE TO AN AUTISM PROVIDER. COVERAGE UNDER THIS
34 SUBSECTION MAY BE SUBJECT TO COPAYMENT, DEDUCTIBLE AND COINSURANCE
35 PROVISIONS OF A HEALTH INSURANCE POLICY TO THE EXTENT THAT OTHER MEDICAL
36 SERVICE COVERED BY THE HEALTH INSURANCE POLICY ARE SUBJECT TO SUCH
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42 INFLATION USING THE MEDICAL CARE COMPONENT OF THE UNITED STATES DEPART-
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44 INTENDENT SHALL SUBMIT THE ADJUSTED MAXIMUM BENEFIT FOR PUBLICATION
45 ANNUALLY NO LATER THAN APRIL FIRST OF EACH CALENDAR YEAR, AND SUCH
46 PUBLISHED ADJUSTED MAXIMUM BENEFIT SHALL BE APPLICABLE IN THE FOLLOWING
47 CALENDAR YEAR TO HEALTH INSURANCE POLICIES SUBJECT TO THIS SECTION.
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52 INDIVIDUAL IS RECEIVING TREATMENT FOR AUTISM SPECTRUM DISORDERS, AN
53 INSURER SHALL HAVE THE RIGHT TO REQUEST A REVIEW OF SUCH TREATMENT NOT
54 MORE THAN ONCE EVERY TWELVE MONTHS UNLESS SUCH INSURER AND THE INDIVID-
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5 includes autism, Asperger syndrome, Rett's syndrome, or pervasive devel-
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8 EVALUATION OF ENVIRONMENTAL MODIFICATIONS, USING BEHAVIORAL STIMULI AND
9 CONSEQUENCES, TO PRODUCE SOCIALLY SIGNIFICANT IMPROVEMENT IN HUMAN
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25 (VII) "MEDICALLY NECESSARY" MEANS ANY CARE, TREATMENT, INTERVENTION,
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28 ARDS OF PRACTICE AND THAT WILL, OR IS REASONABLY EXPECTED TO, DO ANY OF
29 THE FOLLOWING:

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32 EFFECTS OF AN ILLNESS, CONDITION, INJURY, OR DISABILITY; OR

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2 (6) ANY CARE FOR INDIVIDUALS WITH AUTISM SPECTRUM DISORDERS THAT IS
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10 (B) THIS PARAGRAPH SHALL NOT BE CONSTRUED AS TO AFFECT ANY OBLIGATION
11 TO PROVIDE SERVICES TO AN INDIVIDUAL UNDER AN INDIVIDUALIZED FAMILY
12 SERVICE PLAN, AN INDIVIDUALIZED EDUCATION PROGRAM OR AN INDIVIDUALIZED
13 SERVICE PLAN.

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

16 (ee) A medical expense indemnity corporation, a hospital service
17 corporation or a health service corporation which provides coverage for
18 hospital, surgical, or medical care coverage shall not exclude coverage
19 for diagnosis and treatment of medical conditions otherwise covered by
20 the policy solely because the treatment is provided to diagnose or treat
21 autism spectrum disorder. IN INDIVIDUALS TWENTY-ONE YEARS OF AGE OR
22 LESS, THERE SHALL BE NO LIMITS ON THE NUMBER OF VISITS AN INDIVIDUAL MAY
23 MAKE TO AN AUTISM PROVIDER. COVERAGE UNDER THIS SUBSECTION MAY BE
24 SUBJECT TO COPAYMENT, DEDUCTIBLE AND COINSURANCE PROVISIONS OF A HEALTH
25 INSURANCE POLICY TO THE EXTENT THAT OTHER MEDICAL SERVICES COVERED BY
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32 MEDICAL CARE COMPONENT OF THE UNITED STATES DEPARTMENT OF LABOR CONSUMER
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35 FIRST OF EACH CALENDAR YEAR, AND SUCH PUBLISHED ADJUSTED MAXIMUM BENEFIT
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39 OR ITEM UNRELATED TO AUTISM SPECTRUM DISORDERS SHALL NOT BE APPLIED
40 TOWARDS ANY MAXIMUM BENEFIT ESTABLISHED PURSUANT TO THIS SECTION. EXCEPT
41 FOR INPATIENT SERVICES, IF AN INDIVIDUAL IS RECEIVING TREATMENT FOR
42 AUTISM SPECTRUM DISORDERS, AN INSURER SHALL HAVE THE RIGHT TO REQUEST A
43 REVIEW OF SUCH TREATMENT NOT MORE THAN ONCE EVERY TWELVE MONTHS UNLESS
44 SUCH INSURER AND THE INDIVIDUAL'S LICENSED PHYSICIAN OR LICENSED
45 PSYCHOLOGIST AGREE THAT A MORE FREQUENT REVIEW IS NECESSARY. THE COST OF
46 OBTAINING ANY REVIEW SHALL BE BORNE BY THE INSURER.

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

48 (I) "autism spectrum disorder" means a neurobiological condition that
49 includes autism, Asperger syndrome, Rett's syndrome, or pervasive devel-
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53 CONSEQUENCES, TO PRODUCE SOCIALLY SIGNIFICANT IMPROVEMENT IN HUMAN
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19 (2) REDUCE OR AMELIORATE THE PHYSICAL, MENTAL, OR DEVELOPMENTAL
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44 (4) PSYCHOLOGICAL CARE;

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51 COVERED WILL BE INCLUDED IN ANY HEALTH INSURANCE POLICY DELIVERED,
52 EXECUTED, ISSUED, AMENDED, ADJUSTED, OR RENEWED ON OR AFTER SIXTY DAYS
53 FOLLOWING THE DATE OF ITS PUBLICATION IN THE STATE REGISTER.

54 (B) THIS SUBSECTION SHALL NOT BE CONSTRUED AS TO AFFECT ANY OBLIGATION
55 TO PROVIDE SERVICES TO AN INDIVIDUAL UNDER AN INDIVIDUALIZED FAMILY

1 SERVICE PLAN, AN INDIVIDUALIZED EDUCATION PROGRAM OR AN INDIVIDUALIZED
2 SERVICE PLAN.

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