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I N   S E N A T E

March 5, 2010

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Introduced by Sens. BRESLIN, DUANE, C. JOHNSON, FOLEY, FUSCHILLO, HUNTLEY, MORAHAN, McDONALD, HASSELL-THOMPSON, ADAMS, ADDABBO, BONACIC, DeFRANCISCO, DIAZ, DILAN, ESPADA, GOLDEN, GRIFFO, HANNON, O. JOHNSON, KRUEGER, KRUGER, LANZA, LAVALLE, LITTLE, MARCELLINO, MAZIARZ, MONTGOMERY, NOZZOLIO, ONORATO, OPPENHEIMER, PADAVAN, PARKER, PERKINS, ROBACH, SALAND, SAMPSON, SAVINO, SCHNEIDERMAN, SERRANO, SMITH, SQUADRON, STAVISKY, STEWART-COUSINS, THOMPSON, VALESKY, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- 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:

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] PROVIDE coverage for THE  
6 SCREENING, diagnosis and treatment of [medical conditions otherwise  
7 covered by the policy solely because the treatment is provided to diag-  
8 nose or treat] autism spectrum disorder IN ACCORDANCE WITH THIS PARA-  
9 GRAPH.     SUCH COVERAGE MAY BE SUBJECT TO ANNUAL DEDUCTIBLES, COPAYMENTS  
10 AND COINSURANCE AS MAY BE DEEMED APPROPRIATE BY THE SUPERINTENDENT AND  
11 SHALL BE CONSISTENT WITH THOSE IMPOSED ON OTHER BENEFITS UNDER THE POLI-  
12 CY. THIS PARAGRAPH SHALL NOT BE CONSTRUED AS LIMITING THE BENEFITS THAT  
13 ARE OTHERWISE AVAILABLE TO AN INDIVIDUAL UNDER THE POLICY. COVERAGE MAY  
14 BE SUBJECT TO UTILIZATION REVIEW OF HEALTH CARE SERVICES, INCLUDING THE  
15 REVIEW OF MEDICAL NECESSITY, CASE MANAGEMENT, AND OTHER MANAGED CARE  
16 PROVISIONS.  
17     (A) For purposes of this [section] PARAGRAPH, "autism spectrum disor-  
18 der" means a GROUP OF neurobiological [condition that includes autism,  
19 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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1 CONDITIONS DEFINED IN THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL  
2 DISORDERS IV REVISED, OR ITS SUCCESSOR, AS PERVASIVE DEVELOPMENTAL  
3 DISORDERS.

4 (B) THE COMMISSIONER OF HEALTH, IN CONSULTATION WITH THE SUPERINTEN-  
5 DENT, THE COMMISSIONER OF THE OFFICE OF MENTAL HEALTH AND THE COMMIS-  
6 SIONER OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILI-  
7 TIES, SHALL PROMULGATE, AND REGULARLY UPDATE, REGULATIONS WHICH SHALL  
8 IDENTIFY TREATMENT AND THERAPY OPTIONS FOR WHICH COVERAGE SHALL BE  
9 REQUIRED FOR THE SCREENING, DIAGNOSIS AND TREATMENT OF AUTISM SPECTRUM  
10 DISORDER PURSUANT TO THIS PARAGRAPH. SUCH TREATMENT AND THERAPY OPTIONS  
11 SHALL BE EVIDENCE-BASED, PEER-REVIEWED AND CLINICALLY PROVEN. UNTIL SUCH  
12 TIME AS REGULATIONS ARE PROMULGATED, THE CURRENT AND SUBSEQUENTLY  
13 PUBLISHED CLINICAL REPORTS AND TREATMENT GUIDELINES OF THE AMERICAN  
14 ACADEMY OF PEDIATRICS FOR THE SCREENING, DIAGNOSIS AND TREATMENT OF  
15 AUTISM SPECTRUM DISORDER SHALL SERVE AS THE STANDARD OF TREATMENT AND  
16 THERAPY OPTIONS TO BE COVERED PURSUANT TO THIS PARAGRAPH. COVERAGE FOR  
17 MEDICALLY NECESSARY BEHAVIORAL THERAPIES REQUIRED PURSUANT TO THIS  
18 SUBPARAGRAPH SHALL NOT BE DENIED ON THE BASIS THAT SUCH THERAPIES ARE  
19 EDUCATIONAL OR HABILITATIVE IN NATURE, UNLESS SUCH TREATMENTS ARE  
20 PROVIDED PURSUANT TO AN INDIVIDUALIZED FAMILY SERVICE PLAN UNDER SECTION  
21 TWO THOUSAND FIVE HUNDRED FORTY-FIVE OF THE PUBLIC HEALTH LAW, AN INDI-  
22 VIDUALIZED EDUCATION PLAN UNDER ARTICLE EIGHTY-NINE OF THE EDUCATION LAW  
23 OR AN INDIVIDUALIZED SERVICE PLAN PURSUANT TO REGULATIONS OF THE OFFICE  
24 OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES. THE PROVISION OF  
25 SERVICES PURSUANT TO AN INDIVIDUALIZED FAMILY SERVICE PLAN, AN INDIVID-  
26 UALIZED EDUCATION PLAN OR AN INDIVIDUALIZED SERVICE PLAN SHALL NOT  
27 AFFECT COVERAGE UNDER THE POLICY FOR SERVICES PROVIDED ON A SUPPLEMENTAL  
28 BASIS OUTSIDE OF AN EDUCATIONAL SETTING IF SUCH SERVICES ARE DEEMED  
29 MEDICALLY NECESSARY.

30 (C) THIS PARAGRAPH SHALL NOT BE CONSTRUED TO AFFECT ANY OBLIGATION TO  
31 PROVIDE SERVICES TO AN INDIVIDUAL UNDER AN INDIVIDUALIZED FAMILY SERVICE  
32 PLAN UNDER SECTION TWO THOUSAND FIVE HUNDRED FORTY-FIVE OF THE PUBLIC  
33 HEALTH LAW, AN INDIVIDUALIZED EDUCATION PLAN UNDER ARTICLE EIGHTY-NINE  
34 OF THE EDUCATION LAW OR AN INDIVIDUALIZED SERVICE PLAN PURSUANT TO REGU-  
35 LATIONS OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILI-  
36 TIES.

37 (D) NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO PREVENT A POLICY  
38 FROM PROVIDING SERVICES THROUGH A NETWORK OF PARTICIPATING PROVIDERS WHO  
39 SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUDING PROVIDER  
40 CREDENTIALING. THE COMMISSIONER OF HEALTH SHALL ENSURE THAT PROVIDER  
41 NETWORKS ARE ADEQUATE TO IMPLEMENT THIS PARAGRAPH.

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

45 (17) [A] EVERY group or blanket accident [or] AND health insurance  
46 policy [or issuing a group or blanket policy for delivery in this state]  
47 DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE which provides coverage  
48 for hospital, surgical, or medical care coverage shall [not exclude]  
49 PROVIDE coverage for THE SCREENING, diagnosis and treatment of [medical  
50 conditions otherwise covered by the policy because the treatment is  
51 provided to diagnose or treat] autism spectrum disorder IN ACCORDANCE  
52 WITH THIS PARAGRAPH. SUCH COVERAGE MAY BE SUBJECT TO ANNUAL DEDUCTIBLES,  
53 COPAYMENTS AND COINSURANCE AS MAY BE DEEMED APPROPRIATE BY THE SUPER-  
54 INTENDENT AND SHALL BE CONSISTENT WITH THOSE IMPOSED ON OTHER BENEFITS  
55 UNDER THE POLICY. THIS PARAGRAPH SHALL NOT BE CONSTRUED AS LIMITING THE  
56 BENEFITS THAT ARE OTHERWISE AVAILABLE TO AN INDIVIDUAL UNDER THE POLICY.

1 COVERAGE MAY BE SUBJECT TO UTILIZATION REVIEW OF HEALTH CARE SERVICES,  
2 INCLUDING THE REVIEW OF MEDICAL NECESSITY, CASE MANAGEMENT, AND OTHER  
3 MANAGED CARE PROVISIONS.

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

10 (B) THE COMMISSIONER OF HEALTH, IN CONSULTATION WITH THE SUPERINTEN-  
11 DENT, THE COMMISSIONER OF THE OFFICE OF MENTAL HEALTH AND THE COMMIS-  
12 SIONER OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILI-  
13 TIES, SHALL PROMULGATE, AND REGULARLY UPDATE, REGULATIONS WHICH SHALL  
14 IDENTIFY TREATMENT AND THERAPY OPTIONS FOR WHICH COVERAGE SHALL BE  
15 REQUIRED FOR THE SCREENING, DIAGNOSIS AND TREATMENT OF AUTISM SPECTRUM  
16 DISORDER PURSUANT TO THIS PARAGRAPH. SUCH TREATMENT AND THERAPY OPTIONS  
17 SHALL BE EVIDENCE-BASED, PEER-REVIEWED AND CLINICALLY PROVEN. UNTIL SUCH  
18 TIME AS REGULATIONS ARE PROMULGATED, THE CURRENT AND SUBSEQUENTLY  
19 PUBLISHED CLINICAL REPORTS AND TREATMENT GUIDELINES OF THE AMERICAN  
20 ACADEMY OF PEDIATRICS FOR THE SCREENING, DIAGNOSIS AND TREATMENT OF  
21 AUTISM SPECTRUM DISORDER SHALL SERVE AS THE STANDARD OF TREATMENT AND  
22 THERAPY OPTIONS TO BE COVERED PURSUANT TO THIS PARAGRAPH. COVERAGE FOR  
23 MEDICALLY NECESSARY BEHAVIORAL THERAPIES REQUIRED PURSUANT TO THIS  
24 SUBPARAGRAPH SHALL NOT BE DENIED ON THE BASIS THAT SUCH THERAPIES ARE  
25 EDUCATIONAL OR HABILITATIVE IN NATURE, UNLESS SUCH TREATMENTS ARE  
26 PROVIDED PURSUANT TO AN INDIVIDUALIZED FAMILY SERVICE PLAN UNDER SECTION  
27 TWO THOUSAND FIVE HUNDRED FORTY-FIVE OF THE PUBLIC HEALTH LAW, AN INDI-  
28 VIDUALIZED EDUCATION PLAN UNDER ARTICLE EIGHTY-NINE OF THE EDUCATION LAW  
29 OR AN INDIVIDUALIZED SERVICE PLAN PURSUANT TO REGULATIONS OF THE OFFICE  
30 OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES. THE PROVISION OF  
31 SERVICES PURSUANT TO AN INDIVIDUALIZED FAMILY SERVICE PLAN, AN INDIVID-  
32 UALIZED EDUCATION PLAN OR AN INDIVIDUALIZED SERVICE PLAN SHALL NOT  
33 AFFECT COVERAGE UNDER THE POLICY FOR SERVICES PROVIDED ON A SUPPLEMENTAL  
34 BASIS OUTSIDE OF AN EDUCATIONAL SETTING IF SUCH SERVICES ARE DEEMED  
35 MEDICALLY NECESSARY.

36 (C) THIS PARAGRAPH SHALL NOT BE CONSTRUED TO AFFECT ANY OBLIGATION TO  
37 PROVIDE SERVICES TO AN INDIVIDUAL UNDER AN INDIVIDUALIZED FAMILY SERVICE  
38 PLAN UNDER SECTION TWO THOUSAND FIVE HUNDRED FORTY-FIVE OF THE PUBLIC  
39 HEALTH LAW, AN INDIVIDUALIZED EDUCATION PLAN UNDER ARTICLE EIGHTY-NINE  
40 OF THE EDUCATION LAW OR AN INDIVIDUALIZED SERVICE PLAN PURSUANT TO REGU-  
41 LATIONS OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILI-  
42 TIES.

43 (D) NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO PREVENT A POLICY  
44 FROM PROVIDING SERVICES THROUGH A NETWORK OF PARTICIPATING PROVIDERS WHO  
45 SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUDING PROVIDER  
46 CREDENTIALING. THE COMMISSIONER OF HEALTH SHALL ENSURE THAT PROVIDER  
47 NETWORKS ARE ADEQUATE TO IMPLEMENT THIS PARAGRAPH.

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

50 (ee) A medical expense indemnity corporation, a hospital service  
51 corporation or a health service corporation which provides coverage for  
52 hospital, surgical, or medical care coverage shall [not exclude] PROVIDE  
53 coverage for THE SCREENING, diagnosis and treatment of [medical condi-  
54 tions otherwise covered by the policy solely because the treatment is  
55 provided to diagnose or treat] autism spectrum disorder IN ACCORDANCE  
56 WITH THIS SUBSECTION. SUCH COVERAGE MAY BE SUBJECT TO ANNUAL DEDUCT-

IBLES, 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 PROMULGATE, 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 THIS SUBSECTION. SUCH TREATMENT AND THERAPY OPTIONS SHALL BE EVIDENCE-BASED, PEER-REVIEWED AND CLINICALLY PROVEN. UNTIL SUCH TIME AS REGULATIONS ARE PROMULGATED, THE CURRENT AND SUBSEQUENTLY PUBLISHED CLINICAL REPORTS AND TREATMENT GUIDELINES OF THE AMERICAN ACADEMY OF PEDIATRICS FOR THE SCREENING, DIAGNOSIS AND TREATMENT OF AUTISM SPECTRUM DISORDER SHALL SERVE AS THE STANDARD OF TREATMENT AND THERAPY OPTIONS TO BE COVERED PURSUANT TO THIS SUBSECTION. COVERAGE FOR MEDICALLY NECESSARY 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 PROVIDED 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. THE PROVISION OF SERVICES PURSUANT TO AN INDIVIDUALIZED FAMILY SERVICE PLAN OR AN INDIVIDUALIZED EDUCATION PLAN OR AN INDIVIDUALIZED SERVICE PLAN 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) THIS PARAGRAPH SHALL NOT 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 PREVENT A CONTRACT FROM PROVIDING SERVICES THROUGH A NETWORK OF PARTICIPATING PROVIDERS WHO SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUDING PROVIDER CREDENTIALING. THE COMMISSIONER OF HEALTH SHALL ENSURE THAT PROVIDER NETWORKS ARE ADEQUATE TO IMPLEMENT THIS PARAGRAPH.

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 DISABILI-

1 TIES, SHALL PROMULGATE, AND REGULARLY UPDATE, REGULATIONS WHICH SHALL  
2 IDENTIFY TREATMENT AND THERAPY OPTIONS FOR WHICH COVERAGE SHALL BE  
3 REQUIRED FOR THE SCREENING, DIAGNOSIS AND TREATMENT OF AUTISM SPECTRUM  
4 DISORDER PURSUANT TO SECTIONS THIRTY-TWO HUNDRED SIXTEEN, THIRTY-TWO  
5 HUNDRED TWENTY-ONE AND FORTY-THREE HUNDRED THREE OF THE INSURANCE LAW.

6 S 5. This act shall take effect on the first of January next succeed-  
7 ing the date on which it shall have become a law and shall apply to all  
8 policies or contracts issued, renewed, modified, altered or amended on  
9 and after such effective date.