

S. 4005

A. 6305

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

March 11, 2011

IN SENATE -- Introduced by Sens. FUSCHILLO, McDONALD, BRESLIN, DUANE, ADAMS, ADDABBO, AVELLA, BALL, BONACIC, DeFRANCISCO, DILAN, ESPAILLAT, FARLEY, FLANAGAN, GALLIVAN, GOLDEN, GRIFFO, GRISANTI, HANNON, HASSELL-THOMPSON, JOHNSON, KLEIN, KRUEGER, KRUGER, LANZA, LARKIN, LAVALLE, LIBOUS, LITTLE, MARCELLINO, MARTINS, MAZIARZ, MONTGOMERY, NOZZOLIO, O'MARA, OPPENHEIMER, PARKER, PERKINS, RITCHIE, ROBACH, SAMPSON, SKELOS, STAVISKY, STEWART-COUSINS, VALESKY, ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

IN ASSEMBLY -- Introduced by M. of A. MORELLE, SILVER, NOLAN, SCHROEDER, LAVINE, LUPARDO, GOTTFRIED, PERRY, HEVESI, CUSICK, J. RIVERA, SWEENEY, JAFFEE, ZEBROWSKI, GALEF, MAISEL, SPANO, ROSENTHAL, ARROYO, TITONE, WEPRIN, ABINANTI -- Multi-Sponsored by -- M. of A. BARCLAY, CALHOUN, DESTITO, ENGLEBRIGHT, JORDAN, LIFTON, MILLMAN, RAIA, SCHIMEL, TOBACCO -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to coverage for the screening, diagnosis and treatment of 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] 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] DISORDERS IN ACCORDANCE WITH
9 THIS PARAGRAPH AND SHALL NOT EXCLUDE COVERAGE FOR THE SCREENING, DIAGNO-
10 SIS OR TREATMENT OF MEDICAL CONDITIONS OTHERWISE COVERED BY THE POLICY
11 BECAUSE THE INDIVIDUAL IS DIAGNOSED WITH AN AUTISM SPECTRUM DISORDER.

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

LBD08567-01-1

1 SUCH COVERAGE MAY BE SUBJECT TO ANNUAL DEDUCTIBLES, COPAYMENTS AND COIN-
2 SURANCE AS MAY BE DEEMED APPROPRIATE BY THE SUPERINTENDENT AND SHALL BE
3 CONSISTENT WITH THOSE IMPOSED ON OTHER BENEFITS UNDER THE POLICY. THIS
4 PARAGRAPH SHALL NOT BE CONSTRUED AS LIMITING THE BENEFITS THAT ARE
5 OTHERWISE AVAILABLE TO AN INDIVIDUAL UNDER THE POLICY. NO INSURER SHALL
6 TERMINATE COVERAGE OR REFUSE TO DELIVER, EXECUTE, ISSUE, AMEND, ADJUST,
7 OR RENEW COVERAGE TO AN INDIVIDUAL SOLELY BECAUSE THE INDIVIDUAL IS
8 DIAGNOSED WITH ONE OF THE AUTISM SPECTRUM DISORDERS OR HAS RECEIVED
9 TREATMENT FOR AUTISM SPECTRUM DISORDERS. COVERAGE SHALL BE SUBJECT TO
10 UTILIZATION REVIEW AND EXTERNAL APPEALS OF HEALTH CARE SERVICES PURSUANT
11 TO ARTICLE FORTY-NINE OF THIS CHAPTER AS WELL AS, CASE MANAGEMENT, AND
12 OTHER MANAGED CARE PROVISIONS.

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

14 (I) "autism spectrum disorder" means a GROUP OF neurobiological
15 [condition that includes autism, Asperger syndrome, Rett's syndrome, or
16 pervasive developmental disorder.] CONDITIONS THAT INCLUDE AUTISTIC
17 DISORDER, ASPERGER'S DISORDER, RETT'S DISORDER, CHILDHOOD DISINTEGRATIVE
18 DISORDER, AND PERVASIVE DEVELOPMENTAL DISORDER NOT OTHERWISE SPECIFIED
19 (PDD-NOS), AS DEFINED IN THE MOST RECENT EDITION OF THE DIAGNOSTIC AND
20 STATISTICAL MANUAL OF MENTAL DISORDERS.

21 (II) "APPLIED BEHAVIOR ANALYSIS" MEANS THE DESIGN, IMPLEMENTATION, AND
22 EVALUATION OF ENVIRONMENTAL MODIFICATIONS, USING BEHAVIORAL STIMULI AND
23 CONSEQUENCES, TO PRODUCE SOCIALLY SIGNIFICANT IMPROVEMENT IN HUMAN
24 BEHAVIOR, INCLUDING THE USE OF DIRECT OBSERVATION, MEASUREMENT, AND
25 FUNCTIONAL ANALYSIS OF THE RELATIONSHIP BETWEEN ENVIRONMENT AND BEHAV-
26 IOR.

27 (III) "BEHAVIORAL HEALTH TREATMENT" MEANS PROFESSIONAL, COUNSELING,
28 AND GUIDANCE SERVICES AND TREATMENT PROGRAMS, INCLUDING APPLIED BEHAVIOR
29 ANALYSIS WHEN PROVIDED OR SUPERVISED BY A BOARD CERTIFIED BEHAVIOR
30 ANALYST, THAT ARE NECESSARY TO DEVELOP, MAINTAIN, AND RESTORE, TO THE
31 MAXIMUM EXTENT PRACTICABLE, THE FUNCTIONING OF AN INDIVIDUAL.

32 (IV) "DIAGNOSIS OF AUTISM SPECTRUM DISORDERS" MEANS THE ASSESSMENT,
33 EVALUATIONS, OR TESTS TO DIAGNOSE WHETHER AN INDIVIDUAL HAS ONE OF THE
34 AUTISM SPECTRUM DISORDERS.

35 (V) "PHARMACY CARE" MEANS MEDICATIONS PRESCRIBED BY A LICENSED PHYSI-
36 CIAN AND ANY HEALTH-RELATED SERVICES TO DETERMINE THE NEED OR EFFECTIVE-
37 NESS OF THE MEDICATIONS.

38 (VI) "PSYCHIATRIC CARE" MEANS DIRECT OR CONSULTATIVE SERVICES PROVIDED
39 BY A PSYCHIATRIST LICENSED IN THE STATE IN WHICH THE PSYCHIATRIST PRAC-
40 TICES.

41 (VII) "PSYCHOLOGICAL CARE" MEANS DIRECT OR CONSULTATIVE SERVICES
42 PROVIDED BY A PSYCHOLOGIST LICENSED IN THE STATE IN WHICH THE PSYCHOL-
43 OGIST PRACTICES.

44 (VIII) "THERAPEUTIC CARE" MEANS SERVICES PROVIDED BY LICENSED OR
45 CERTIFIED SPEECH THERAPISTS, OCCUPATIONAL THERAPISTS, SOCIAL WORKERS, OR
46 PHYSICAL THERAPISTS.

47 (IX) "TREATMENT FOR AUTISM SPECTRUM DISORDERS" WILL INCLUDE THE
48 FOLLOWING CARE AND RELATED EQUIPMENT PRESCRIBED OR ORDERED FOR AN INDIV-
49 VIDUAL DIAGNOSED WITH ONE OF THE AUTISM SPECTRUM DISORDERS BY A LICENSED
50 PHYSICIAN OR A LICENSED PSYCHOLOGIST:

- 51 (1) BEHAVIORAL HEALTH TREATMENT;
- 52 (2) PHARMACY CARE;
- 53 (3) PSYCHIATRIC CARE;
- 54 (4) PSYCHOLOGICAL CARE;
- 55 (5) THERAPEUTIC CARE; AND
- 56 (6) ANY OTHER MEDICAL CARE PROVIDED BY A LICENSED PHYSICIAN.

1 (B) COVERAGE UNDER THIS PARAGRAPH SHALL NOT BE DENIED ON THE BASIS
2 THAT THE TREATMENT IS HABILITATIVE, NON-RESTORATIVE, OR EDUCATIONAL IN
3 NATURE, UNLESS SUCH TREATMENTS ARE BEING PROVIDED TO THE COVERED PERSON
4 PURSUANT TO AN INDIVIDUALIZED EDUCATION PLAN UNDER ARTICLE EIGHTY-NINE
5 OF THE EDUCATION LAW. THE PROVISION OF SERVICES PURSUANT TO AN INDIVID-
6 UALIZED FAMILY SERVICE PLAN UNDER SECTION TWENTY-FIVE HUNDRED FORTY-FIVE
7 OF THE PUBLIC HEALTH LAW, AN INDIVIDUALIZED EDUCATION PLAN UNDER ARTICLE
8 EIGHTY-NINE OF THE EDUCATION LAW, OR AN INDIVIDUALIZED SERVICE PLAN
9 PURSUANT TO REGULATIONS OF THE OFFICE FOR PERSONS WITH DEVELOPMENTAL
10 DISABILITIES SHALL NOT AFFECT COVERAGE UNDER THE POLICY FOR SERVICES
11 PROVIDED ON A SUPPLEMENTAL BASIS OUTSIDE OF AN EDUCATIONAL SETTING IF
12 SUCH SERVICES ARE PRESCRIBED BY A LICENSED PHYSICIAN OR LICENSED
13 PSYCHOLOGIST.

14 (C) NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO AFFECT ANY OBLI-
15 GATION TO PROVIDE SERVICES TO AN INDIVIDUAL UNDER AN INDIVIDUALIZED
16 FAMILY SERVICE PLAN UNDER SECTION TWENTY-FIVE HUNDRED FORTY-FIVE OF THE
17 PUBLIC HEALTH LAW, AN INDIVIDUALIZED EDUCATION PLAN UNDER ARTICLE EIGHT-
18 Y-NINE OF THE EDUCATION LAW, OR AN INDIVIDUALIZED SERVICE PLAN PURSUANT
19 TO REGULATIONS OF THE OFFICE FOR PERSONS WITH DEVELOPMENTAL DISABILI-
20 TIES.

21 (D) NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO AFFECT ANY OBLI-
22 GATION TO PROVIDE COVERAGE FOR OTHERWISE-COVERED SERVICES SOLELY ON THE
23 BASIS THAT THE SERVICES CONSTITUTE EARLY INTERVENTION PROGRAM SERVICES
24 PURSUANT TO SECTION THREE THOUSAND TWO HUNDRED THIRTY-FIVE-A OF THIS
25 ARTICLE OR AN INDIVIDUALIZED SERVICE PLAN PURSUANT TO REGULATIONS OF THE
26 OFFICE FOR PERSONS WITH DEVELOPMENTAL DISABILITIES.

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

31 (F) COVERAGE UNDER THIS SECTION SHALL NOT BE SUBJECT TO ANY LIMITS ON
32 THE NUMBER OF VISITS AN INDIVIDUAL MAY MAKE FOR TREATMENT OF AUTISM
33 SPECTRUM DISORDER. EXCEPT FOR INPATIENT SERVICES, IF AN INDIVIDUAL IS
34 RECEIVING TREATMENT FOR AUTISM SPECTRUM DISORDERS, AN INSURER WILL HAVE
35 THE RIGHT TO REQUEST A REVIEW OF THAT TREATMENT NOT MORE THAN ONCE EVERY
36 TWELVE MONTHS UNLESS THE INSURER AND THE INDIVIDUAL'S LICENSED PHYSICIAN
37 OR LICENSED PSYCHOLOGIST AGREE, ON AN INDIVIDUALIZED BASIS, THAT A MORE
38 FREQUENT REVIEW IS NECESSARY. THE COST OF OBTAINING ANY REVIEW SHALL BE
39 BORNE BY THE INSURER.

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

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

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6 UTILIZATION REVIEW AND EXTERNAL APPEALS OF HEALTH CARE SERVICES PURSUANT
7 TO ARTICLE FORTY-NINE OF THIS CHAPTER AS WELL AS CASE MANAGEMENT, AND
8 OTHER MANAGED CARE PROVISIONS.

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12 pervasive developmental disorder] CONDITIONS THAT INCLUDE AUTISTIC
13 DISORDER, ASPERGER'S DISORDER, RETT'S DISORDER, CHILDHOOD DISINTEGRATIVE
14 DISORDER, AND PERVASIVE DEVELOPMENTAL DISORDER NOT OTHERWISE SPECIFIED
15 (PDD-NOS), AS DEFINED IN THE MOST RECENT EDITION OF THE DIAGNOSTIC AND
16 STATISTICAL MANUAL OF MENTAL DISORDERS.

17 (2) "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-
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23 (3) "BEHAVIORAL HEALTH TREATMENT" MEANS PROFESSIONAL, COUNSELING, AND
24 GUIDANCE SERVICES AND TREATMENT PROGRAMS, INCLUDING APPLIED BEHAVIOR
25 ANALYSIS WHEN PROVIDED OR SUPERVISED BY A BOARD CERTIFIED BEHAVIOR
26 ANALYST, THAT ARE NECESSARY TO DEVELOP, MAINTAIN, AND RESTORE, TO THE
27 MAXIMUM EXTENT PRACTICABLE, THE FUNCTIONING OF AN INDIVIDUAL.

28 (4) "DIAGNOSIS OF AUTISM SPECTRUM DISORDERS" MEANS THE ASSESSMENT,
29 EVALUATIONS, OR TESTS TO DIAGNOSE WHETHER AN INDIVIDUAL HAS ONE OF THE
30 AUTISM SPECTRUM DISORDERS.

31 (5) "PHARMACY CARE" MEANS MEDICATIONS PRESCRIBED BY A LICENSED PHYSI-
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48 (II) PHARMACY CARE;

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52 (VI) ANY OTHER MEDICAL CARE PROVIDED BY A LICENSED PHYSICIAN.

53 (B) COVERAGE UNDER THIS PARAGRAPH SHALL NOT BE DENIED ON THE BASIS
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55 NATURE, UNLESS SUCH TREATMENTS ARE BEING PROVIDED TO THE COVERED PERSON
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31 THE RIGHT TO REQUEST A REVIEW OF THAT TREATMENT NOT MORE THAN ONCE EVERY
32 TWELVE MONTHS UNLESS THE INSURER AND THE INDIVIDUAL'S LICENSED PHYSICIAN
33 OR LICENSED PSYCHOLOGIST AGREE, ON AN INDIVIDUALIZED BASIS, THAT A MORE
34 FREQUENT REVIEW IS NECESSARY. THE COST OF OBTAINING ANY REVIEW SHALL BE
35 BORNE BY THE INSURER.

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

38 (ee) A medical expense indemnity corporation, a hospital service
39 corporation or a health service corporation which provides coverage for
40 hospital, surgical, or medical care coverage shall [not exclude] PROVIDE
41 coverage for THE SCREENING, diagnosis and treatment of [medical condi-
42 tions otherwise covered by the policy solely because the treatment is
43 provided to diagnose or treat] autism spectrum [disorder] DISORDERS IN
44 ACCORDANCE WITH THIS SUBSECTION AND SHALL NOT EXCLUDE COVERAGE FOR THE
45 SCREENING, DIAGNOSIS OR TREATMENT OF MEDICAL CONDITIONS OTHERWISE
46 COVERED BY THE POLICY BECAUSE THE INDIVIDUAL IS DIAGNOSED WITH AN AUTISM
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48 COPAYMENTS AND COINSURANCE AS MAY BE DEEMED APPROPRIATE BY THE SUPER-
49 INTENDENT AND SHALL BE CONSISTENT WITH THOSE IMPOSED ON OTHER BENEFITS
50 UNDER THE CONTRACT. THIS SUBSECTION SHALL NOT BE CONSTRUED AS LIMITING
51 THE BENEFITS THAT ARE OTHERWISE AVAILABLE TO AN INDIVIDUAL UNDER THE
52 CONTRACT. NO INSURER CAN TERMINATE COVERAGE OR REFUSE TO DELIVER,
53 EXECUTE, ISSUE, AMEND, ADJUST, OR RENEW COVERAGE TO AN INDIVIDUAL SOLELY
54 BECAUSE THE INDIVIDUAL IS DIAGNOSED WITH ONE OF THE AUTISM SPECTRUM
55 DISORDERS OR HAS RECEIVED TREATMENT FOR AUTISM SPECTRUM DISORDERS.
56 COVERAGE SHALL BE SUBJECT TO UTILIZATION REVIEW AND EXTERNAL APPEALS OF

1 HEALTH CARE SERVICES PURSUANT TO ARTICLE FORTY-NINE OF THIS CHAPTER AS
2 WELL AS CASE MANAGEMENT, OR OTHER MANAGED CARE PROVISIONS.

3 (A)(1) For purposes of this [section] SUBSECTION, "autism spectrum
4 disorder" means a GROUP OF neurobiological [condition that includes
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9 THE MOST RECENT EDITION OF THE DIAGNOSTIC AND STATISTICAL MANUAL OF
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47 (B) COVERAGE UNDER THIS SUBSECTION SHALL NOT BE DENIED ON THE BASIS
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28 FREQUENT REVIEW IS NECESSARY. THE COST OF OBTAINING ANY REVIEW SHALL BE
29 BORNE BY THE INSURER.

30 S 4. Severability clause. If any clause, sentence, paragraph, subdivi-
31 sion, section or part of this act shall be adjudged by any court of
32 competent jurisdiction to be invalid, such judgement shall not affect,
33 impair, or invalidate the remainder thereof, but shall be confined in
34 its operation to the clause, sentence, paragraph, subdivision, section
35 or part thereof directly involved in the controversy in which such judg-
36 ment shall have rendered. It is hereby declared to be the intent of the
37 legislature that this act would have been enacted even if such invalid
38 provisions had not been included herein.

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