

5845

2011-2012 Regular Sessions

I N S E N A T E

June 22, 2011

Introduced by COMMITTEE ON RULES -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the insurance law, in relation to coverage for the screening, diagnosis and treatment of autism spectrum disorder; and to amend a chapter of the laws of 2011 amending the insurance law relating to coverage for the screening, diagnosis and treatment of autism spectrum disorder, as proposed in legislative bill numbers S. 4005-A and A. 6305-A, in relation to the effectiveness of such chapter

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

1 Section 1. Subparagraphs (B) and (C) of paragraph 25 of subsection (i)  
2 of section 3216 of the insurance law, as added by a chapter of the laws  
3 of 2011 amending the insurance law relating to coverage for the screen-  
4 ing, diagnosis and treatment of autism spectrum disorder, as proposed in  
5 legislative bill numbers S. 4005-A and A. 6305-A, are amended to read as  
6 follows:  
7 (B) Every policy which provides physician services, medical, major  
8 medical or similar comprehensive-type coverage shall provide coverage  
9 for the screening, diagnosis and treatment of autism spectrum disorder  
10 in accordance with this paragraph and shall not exclude coverage for the  
11 screening, diagnosis or treatment of medical conditions otherwise  
12 covered by the policy because the individual is diagnosed with autism  
13 spectrum disorder. Such coverage may be subject to annual deductibles,  
14 copayments and coinsurance as may be deemed appropriate by the super-  
15 intendent and shall be consistent with those imposed on other benefits  
16 under the policy. *COVERAGE FOR APPLIED BEHAVIOR ANALYSIS SHALL BE*  
17 *SUBJECT TO A MAXIMUM BENEFIT OF FORTY-FIVE THOUSAND DOLLARS PER YEAR PER*  
18 *COVERED INDIVIDUAL AND SUCH MAXIMUM ANNUAL BENEFIT WILL INCREASE BY THE*  
19 *AMOUNT CALCULATED FROM THE AVERAGE TEN YEAR ROLLING AVERAGE INCREASE OF*  
20 *THE MEDICAL COMPONENT OF THE CONSUMER PRICE INDEX. This paragraph shall*  
21 *not be construed as limiting the benefits that are otherwise available*

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

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1 to an individual under the policy, provided however that such policy  
2 shall not contain any limitations on visits that are solely applied to  
3 the treatment of autism spectrum disorder. No insurer shall terminate  
4 coverage or refuse to deliver, execute, issue, amend, adjust, or renew  
5 coverage to an individual solely because the individual is diagnosed  
6 with autism spectrum disorder or has received treatment for autism spec-  
7 trum disorder. Coverage shall be subject to utilization review and  
8 external appeals of health care services pursuant to article forty-nine  
9 of this chapter as well as, case management, and other managed care  
10 provisions.

11 (C) For purposes of this paragraph:

12 (i) "autism spectrum disorder" means any pervasive developmental  
13 disorder as defined in the most recent edition of the diagnostic and  
14 statistical manual of mental disorders, including autistic disorder,  
15 Asperger's disorder, Rett's disorder, childhood disintegrative disorder,  
16 or pervasive developmental disorder not otherwise specified (PDD-NOS).

17 (ii) "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-  
22 ior.

23 (iii) "behavioral health treatment" means counseling and treatment  
24 programs, when provided by a licensed provider, and applied behavior  
25 analysis, when provided or supervised by a behavior analyst certified  
26 pursuant to the behavior analyst certification board, that are necessary  
27 to develop, maintain, or restore, to the maximum extent practicable, the  
28 functioning of an individual. Individuals that provide behavioral health  
29 treatment under the supervision of a certified behavior analyst pursuant  
30 to this paragraph shall be subject to standards of professionalism,  
31 SUPERVISION and relevant experience pursuant to regulations promulgated  
32 by the superintendent in consultation with the [commissioner] COMMIS-  
33 SIONERS of health AND EDUCATION.

34 (iv) "diagnosis of autism spectrum disorder" means assessments, evalu-  
35 ations, or tests to diagnose whether an individual has autism spectrum  
36 disorder.

37 (v) "pharmacy care" means medications prescribed by a licensed health  
38 care provider legally authorized to prescribe under title eight of the  
39 education law.

40 (vi) "psychiatric care" means direct or consultative services provided  
41 by a psychiatrist licensed in the state in which the psychiatrist prac-  
42 tices.

43 (vii) "psychological care" means direct or consultative services  
44 provided by a psychologist licensed in the state in which the psychol-  
45 ogist practices.

46 (viii) "therapeutic care" means services provided by licensed or  
47 certified speech therapists, occupational therapists, social workers, or  
48 physical therapists.

49 (ix) "treatment of autism spectrum disorder" shall include the follow-  
50 ing care and [related equipment] ASSISTIVE COMMUNICATION DEVICES  
51 prescribed or ordered for an individual diagnosed with autism spectrum  
52 disorder by a licensed physician or a licensed psychologist:

53 (1) behavioral health treatment;

54 (2) psychiatric care;

55 (3) psychological care;

56 (4) medical care provided by a licensed health care provider;

1 (5) therapeutic care, including therapeutic care which is deemed habi-  
2 litative or nonrestorative, in the event that the policy provides cover-  
3 age for therapeutic care; and

4 (6) pharmacy care in the event that the policy provides coverage for  
5 prescription drugs.

6 S 2. Subparagraphs (B) and (C) of paragraph 17 of subsection (1) of  
7 section 3221 of the insurance law, as added by a chapter of the laws of  
8 2011 amending the insurance law relating to coverage for the screening,  
9 diagnosis and treatment of autism spectrum disorder, as proposed in  
10 legislative bill numbers S. 4005-A and A. 6305-A, are amended to read as  
11 follows:

12 (B) Every group or blanket policy which provides physician services,  
13 medical, major medical or similar comprehensive-type coverage shall  
14 provide coverage for the screening, diagnosis and treatment of autism  
15 spectrum disorder in accordance with this paragraph and shall not  
16 exclude coverage for the screening, diagnosis or treatment of medical  
17 conditions otherwise covered by the policy because the individual is  
18 diagnosed with autism spectrum disorder. Such coverage may be subject to  
19 annual deductibles, copayments and coinsurance as may be deemed appro-  
20 priate by the superintendent and shall be consistent with those imposed  
21 on other benefits under the group or blanket policy. COVERAGE FOR  
22 APPLIED BEHAVIOR ANALYSIS SHALL BE SUBJECT TO A MAXIMUM BENEFIT OF  
23 FORTY-FIVE THOUSAND DOLLARS PER YEAR PER COVERED INDIVIDUAL AND SUCH  
24 MAXIMUM ANNUAL BENEFIT WILL INCREASE BY THE AMOUNT CALCULATED FROM THE  
25 AVERAGE TEN YEAR ROLLING AVERAGE INCREASE OF THE MEDICAL COMPONENT OF  
26 THE CONSUMER PRICE INDEX. This paragraph shall not be construed as  
27 limiting the benefits that are otherwise available to an individual  
28 under the group or blanket policy, provided however that such policy  
29 shall not contain any limitations on visits that are solely applied to  
30 the treatment of autism spectrum disorder. No insurer shall terminate  
31 coverage or refuse to deliver, execute, issue, amend, adjust, or renew  
32 coverage to an individual solely because the individual is diagnosed  
33 with autism spectrum disorder or has received treatment for autism spec-  
34 trum disorder. Coverage shall be subject to utilization review and  
35 external appeals of health care services pursuant to article forty-nine  
36 of this chapter as well as, case management, and other managed care  
37 provisions.

38 (C) For purposes of this paragraph:

39 (i) "autism spectrum disorder" means any pervasive developmental  
40 disorder as defined in the most recent edition of the diagnostic and  
41 statistical manual of mental disorders, including autistic disorder,  
42 Asperger's disorder, Rett's disorder, childhood disintegrative disorder,  
43 or pervasive developmental disorder not otherwise specified (PDD-NOS).

44 (ii) "applied behavior analysis" means the design, implementation, and  
45 evaluation of environmental modifications, using behavioral stimuli and  
46 consequences, to produce socially significant improvement in human  
47 behavior, including the use of direct observation, measurement, and  
48 functional analysis of the relationship between environment and behav-  
49 ior.

50 (iii) "behavioral health treatment" means counseling and treatment  
51 programs, when provided by a licensed provider, and applied behavior  
52 analysis, when provided or supervised by a behavior analyst certified  
53 pursuant to the behavior analyst certification board, that are necessary  
54 to develop, maintain, or restore, to the maximum extent practicable, the  
55 functioning of an individual. Individuals that provide behavioral health  
56 treatment under the supervision of a certified behavior analyst pursuant

1 to this paragraph shall be subject to standards of professionalism,  
2 SUPERVISION and relevant experience pursuant to regulations promulgated  
3 by the superintendent in consultation with the [commissioner] COMMIS-  
4 SIONERS of health AND EDUCATION.

5 (iv) "diagnosis of autism spectrum disorder" means assessments, evalu-  
6 ations, or tests to diagnose whether an individual has autism spectrum  
7 disorder.

8 (v) "pharmacy care" means medications prescribed by a licensed health  
9 care provider legally authorized to prescribe under title eight of the  
10 education law.

11 (vi) "psychiatric care" means direct or consultative services provided  
12 by a psychiatrist licensed in the state in which the psychiatrist prac-  
13 tices.

14 (vii) "psychological care" means direct or consultative services  
15 provided by a psychologist licensed in the state in which the psychol-  
16 ogist practices.

17 (viii) "therapeutic care" means services provided by licensed or  
18 certified speech therapists, occupational therapists, social workers, or  
19 physical therapists.

20 (ix) "treatment of autism spectrum disorder" shall include the follow-  
21 ing care and [related equipment] ASSISTIVE COMMUNICATION DEVICES  
22 prescribed or ordered for an individual diagnosed with autism spectrum  
23 disorder by a licensed physician or a licensed psychologist:

24 (1) behavioral health treatment;

25 (2) psychiatric care;

26 (3) psychological care;

27 (4) medical care provided by a licensed health care provider;

28 (5) therapeutic care, including therapeutic care which is deemed habi-  
29 litative or nonrestorative, in the event that the policy provides cover-  
30 age for therapeutic care; and

31 (6) pharmacy care in the event that the policy provides coverage for  
32 prescription drugs.

33 S 3. Subsection (ee) of section 4303 of the insurance law, as added by  
34 a chapter of the laws of 2011 amending the insurance law relating to  
35 coverage for the screening, diagnosis and treatment of autism spectrum  
36 disorder, as proposed in legislative bill numbers S. 4005-A and A.  
37 6305-A, is amended to read as follows:

38 (ee) (1) A medical expense indemnity corporation, a hospital service  
39 corporation or a health service corporation which provides coverage for  
40 hospital or surgical care coverage shall not exclude coverage for  
41 screening, diagnosis and treatment of medical conditions otherwise  
42 covered by the [policy] CONTRACT solely because the treatment is  
43 provided to diagnose or treat autism spectrum disorder.

44 (2) Every [policy] CONTRACT which provides physician services,  
45 medical, major medical or similar comprehensive-type coverage shall  
46 provide coverage for the screening, diagnosis and treatment of autism  
47 spectrum disorder in accordance with this subsection and shall not  
48 exclude coverage for the screening, diagnosis or treatment of medical  
49 conditions otherwise covered by the [policy] CONTRACT because the indi-  
50 vidual is diagnosed with autism spectrum disorder. Such coverage may be  
51 subject to annual deductibles, copayments and coinsurance as may be  
52 deemed appropriate by the superintendent and shall be consistent with  
53 those imposed on other benefits under the [policy] CONTRACT. COVERAGE  
54 FOR APPLIED BEHAVIOR ANALYSIS SHALL BE SUBJECT TO A MAXIMUM BENEFIT OF  
55 FORTY-FIVE THOUSAND DOLLARS PER YEAR PER COVERED INDIVIDUAL AND SUCH  
56 MAXIMUM ANNUAL BENEFIT WILL INCREASE BY THE AMOUNT CALCULATED FROM THE

1 AVERAGE TEN YEAR ROLLING AVERAGE INCREASE OF THE MEDICAL COMPONENT OF  
2 THE CONSUMER PRICE INDEX. This paragraph shall not be construed as  
3 limiting the benefits that are otherwise available to an individual  
4 under the [policy] CONTRACT, provided however that such [policy]  
5 CONTRACT shall not contain any limitations on visits that are solely  
6 applied to the treatment of autism spectrum disorder. No insurer shall  
7 terminate coverage or refuse to deliver, execute, issue, amend, adjust,  
8 or renew coverage to an individual solely because the individual is  
9 diagnosed with autism spectrum disorder or has received treatment for  
10 autism spectrum disorder. Coverage shall be subject to utilization  
11 review and external appeals of health care services pursuant to article  
12 forty-nine of this chapter as well as, case management, and other  
13 managed care provisions.

14 (3) For purposes of this subsection:

15 (A) "autism spectrum disorder" means any pervasive developmental  
16 disorder as defined in the most recent edition of the diagnostic and  
17 statistical manual of mental disorders, including autistic disorder,  
18 Asperger's disorder, Rett's disorder, childhood disintegrative disorder,  
19 or pervasive developmental disorder not otherwise specified (PDD-NOS).

20 (B) "applied behavior analysis" means the design, implementation, and  
21 evaluation of environmental modifications, using behavioral stimuli and  
22 consequences, to produce socially significant improvement in human  
23 behavior, including the use of direct observation, measurement, and  
24 functional analysis of the relationship between environment and behav-  
25 ior.

26 (C) "behavioral health treatment" means counseling and treatment  
27 programs, when provided by a licensed provider, and applied behavior  
28 analysis, when provided or supervised by a behavior analyst certified  
29 pursuant to the behavior analyst certification board, that are necessary  
30 to develop, maintain, or restore, to the maximum extent practicable, the  
31 functioning of an individual. Individuals that provide behavioral health  
32 treatment under the supervision of a certified behavior analyst pursuant  
33 to this subsection shall be subject to standards of professionalism,  
34 SUPERVISION and relevant experience pursuant to regulations promulgated  
35 by the superintendent in consultation with the [commissioner] COMMIS-  
36 SIONERS of health AND EDUCATION.

37 (D) "diagnosis of autism spectrum disorder" means assessments, evalu-  
38 ations, or tests to diagnose whether an individual has autism spectrum  
39 disorder.

40 (E) "pharmacy care" means medications prescribed by a licensed health  
41 care provider legally authorized to prescribe under title eight of the  
42 education law.

43 (F) "psychiatric care" means direct or consultative services provided  
44 by a psychiatrist licensed in the state in which the psychiatrist prac-  
45 tices.

46 (G) "psychological care" means direct or consultative services  
47 provided by a psychologist licensed in the state in which the psychol-  
48 ogist practices.

49 (H) "therapeutic care" means services provided by licensed or certi-  
50 fied speech therapists, occupational therapists, social workers, or  
51 physical therapists.

52 (I) "treatment of autism spectrum disorder" shall include the follow-  
53 ing care and [related equipment] ASSISTIVE COMMUNICATION DEVICES  
54 prescribed or ordered for an individual diagnosed with autism spectrum  
55 disorder by a licensed physician or a licensed psychologist:

56 (i) behavioral health treatment;

- 1 (ii) psychiatric care;  
2 (iii) psychological care;  
3 (iv) medical care provided by a licensed health care provider;  
4 (v) therapeutic care, including therapeutic care which is deemed habi-  
5 litative or nonrestorative, in the event that the policy provides cover-  
6 age for therapeutic care; and  
7 (vi) pharmacy care in the event that the [policy] CONTRACT provides  
8 coverage for prescription drugs.

9 (4) Coverage may be denied on the basis that such treatment is being  
10 provided to the covered person pursuant to an individualized education  
11 plan under article eighty-nine of the education law. The provision of  
12 services pursuant to an individualized family service plan under section  
13 twenty-five hundred forty-five of the public health law, an individual-  
14 ized education plan under article eighty-nine of the education law, or  
15 an individualized service plan pursuant to regulations of the office for  
16 persons with developmental disabilities shall not affect coverage under  
17 the policy for services provided on a supplemental basis outside of an  
18 educational setting if such services are prescribed by a licensed physi-  
19 cian or licensed psychologist.

20 (5) Nothing in this subsection shall be construed to affect any obli-  
21 gation to provide services to an individual under an individualized  
22 family service plan under section twenty-five hundred forty-five of the  
23 public health law, an individualized education plan under article eight-  
24 y-nine of the education law, or an individualized service plan pursuant  
25 to regulations of the office for persons with developmental disabili-  
26 ties.

27 (6) Nothing in this subsection shall be construed to affect any obli-  
28 gation to provide coverage for otherwise-covered services solely on the  
29 basis that the services constitute early intervention program services  
30 pursuant to section three thousand two hundred thirty-five-a of this  
31 article or an individualized service plan pursuant to regulations of the  
32 office for persons with developmental disabilities.

33 (7) Nothing in this subsection shall be construed to prevent a [poli-  
34 cy] CONTRACT from providing services through a network of participating  
35 providers who shall meet certain requirements for participation, includ-  
36 ing provider credentialing.

37 S 4. Section 5 of a chapter of the laws of 2011 amending the insurance  
38 law relating to coverage for the screening, diagnosis and treatment of  
39 autism spectrum disorder, as proposed in legislative bill numbers S.  
40 4005-A and A. 6305-A, is amended to read as follows:

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

45 S 5. This act shall take effect immediately; provided, however, that  
46 sections one, two and three of this act shall take effect on the same  
47 date and in the same manner as a chapter of the laws of 2011 amending  
48 the insurance law relating to coverage for the screening, diagnosis and  
49 treatment of autism spectrum disorder, as proposed in legislative bill  
50 numbers S. 4005-A and A. 6305-A, takes effect.