

5365

2011-2012 Regular Sessions

I N A S S E M B L Y

February 16, 2011

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 -- 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 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 AND SHALL NOT EXCLUDE COVERAGE FOR THE TREATMENT OF MEDICAL CONDI-
10 TIONS OTHERWISE COVERED BY THE POLICY BECAUSE THE INDIVIDUAL IS
11 DIAGNOSED WITH AN AUTISM SPECTRUM DISORDER. SUCH COVERAGE MAY BE
12 SUBJECT TO ANNUAL DEDUCTIBLES, COPAYMENTS AND COINSURANCE AS MAY BE
13 DEEMED APPROPRIATE BY THE SUPERINTENDENT AND SHALL BE CONSISTENT WITH
14 THOSE IMPOSED ON OTHER BENEFITS UNDER THE POLICY. THIS PARAGRAPH SHALL
15 NOT BE CONSTRUED AS LIMITING THE BENEFITS THAT ARE OTHERWISE AVAILABLE
16 TO AN INDIVIDUAL UNDER THE POLICY. COVERAGE MAY BE SUBJECT TO UTILIZA-
17 TION REVIEW OF HEALTH CARE SERVICES, INCLUDING THE REVIEW OF MEDICAL
18 NECESSITY, CASE MANAGEMENT, AND OTHER MANAGED CARE PROVISIONS.
19 (A) For purposes of this [section] PARAGRAPH, "autism spectrum disor-
20 der" means a GROUP OF neurobiological [condition that includes autism,

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

LBD05243-01-1

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.

(B) THE COMMISSIONER OF HEALTH, IN CONSULTATION WITH THE SUPERINTENDENT, THE COMMISSIONER OF THE OFFICE OF MENTAL HEALTH AND THE COMMISSIONER OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES SHALL, NO LATER THAN TWELVE MONTHS AFTER THE EFFECTIVE DATE OF THIS SUBPARAGRAPH, PROMULGATE AND THEREAFTER 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 PARAGRAPH. SUCH TREATMENT AND THERAPY OPTIONS SHALL BE EVIDENCE-BASED, PEER-REVIEWED AND CLINICALLY PROVEN. COVERAGE FOR BEHAVIORAL THERAPIES REQUIRED PURSUANT TO THIS SUBPARAGRAPH SHALL NOT BE DENIED ON THE BASIS THAT SUCH THERAPIES ARE EDUCATIONAL OR HABILITATIVE IN NATURE, UNLESS SUCH TREATMENTS ARE BEING PROVIDED TO THE COVERED PERSON PURSUANT TO AN INDIVIDUALIZED EDUCATION PLAN UNDER ARTICLE EIGHTY-NINE OF THE EDUCATION LAW. THE PROVISION OF SERVICES 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 FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES SHALL NOT AFFECT COVERAGE UNDER THE POLICY FOR SERVICES PROVIDED ON A SUPPLEMENTAL BASIS OUTSIDE OF AN EDUCATIONAL SETTING IF SUCH SERVICES ARE DEEMED MEDICALLY NECESSARY.

(C) NOTHING IN THIS PARAGRAPH SHALL 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 FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES.

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

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

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

(17) [A] EVERY group or blanket accident [or] AND health insurance policy [or issuing a group or blanket policy for delivery in this state] DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE which provides coverage for hospital, surgical, or medical care coverage shall [not exclude] PROVIDE coverage for THE SCREENING, diagnosis and treatment of [medical conditions otherwise covered by the policy because the treatment is provided to diagnose or treat] autism spectrum disorder IN ACCORDANCE WITH THIS PARAGRAPH AND SHALL NOT EXCLUDE COVERAGE FOR THE TREATMENT OF MEDICAL CONDITIONS OTHERWISE COVERED BY THE POLICY BECAUSE THE INDIVIDUAL IS DIAGNOSED WITH AN AUTISM SPECTRUM DISORDER. SUCH COVERAGE MAY BE SUBJECT TO ANNUAL DEDUCTIBLES, COPAYMENTS AND COINSURANCE AS MAY BE

DEEMED APPROPRIATE BY THE SUPERINTENDENT AND SHALL BE CONSISTENT WITH THOSE IMPOSED ON OTHER BENEFITS UNDER THE POLICY. THIS PARAGRAPH SHALL NOT BE CONSTRUED AS LIMITING THE BENEFITS THAT ARE OTHERWISE AVAILABLE TO AN INDIVIDUAL UNDER THE POLICY. COVERAGE MAY BE SUBJECT TO UTILIZATION REVIEW OF HEALTH CARE SERVICES, INCLUDING THE REVIEW OF MEDICAL NECESSITY, CASE MANAGEMENT, AND OTHER MANAGED CARE PROVISIONS.

(A) For purposes of this [section] PARAGRAPH, "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.

(B) THE COMMISSIONER OF HEALTH, IN CONSULTATION WITH THE SUPERINTENDENT, THE COMMISSIONER OF THE OFFICE OF MENTAL HEALTH AND THE COMMISSIONER OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES SHALL, NO LATER THAN TWELVE MONTHS AFTER THE EFFECTIVE DATE OF THIS SUBPARAGRAPH, PROMULGATE AND THEREAFTER 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 PARAGRAPH. SUCH TREATMENT AND THERAPY OPTIONS SHALL BE EVIDENCE-BASED, PEER-REVIEWED AND CLINICALLY PROVEN. COVERAGE FOR BEHAVIORAL THERAPIES REQUIRED PURSUANT TO THIS SUBPARAGRAPH SHALL NOT BE DENIED ON THE BASIS THAT SUCH THERAPIES ARE EDUCATIONAL OR HABITATIVE IN NATURE, UNLESS SUCH TREATMENTS ARE BEING PROVIDED TO THE COVERED PERSON PURSUANT TO AN INDIVIDUALIZED EDUCATION PLAN UNDER ARTICLE EIGHTY-NINE OF THE EDUCATION LAW. THE PROVISION OF SERVICES 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 FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES SHALL NOT AFFECT COVERAGE UNDER THE POLICY FOR SERVICES PROVIDED ON A SUPPLEMENTAL BASIS OUTSIDE OF AN EDUCATIONAL SETTING IF SUCH SERVICES ARE DEEMED MEDICALLY NECESSARY.

(C) NOTHING IN THIS PARAGRAPH SHALL 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 FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES.

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

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

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

(ee) A medical expense indemnity corporation, a hospital service corporation or a health service corporation which provides coverage for hospital, surgical, or medical care coverage shall [not exclude] PROVIDE coverage for THE SCREENING, diagnosis and treatment of [medical condi-

1 tions otherwise covered by the policy solely because the treatment is
2 provided to diagnose or treat] autism spectrum disorder IN ACCORDANCE
3 WITH THIS SUBSECTION AND SHALL NOT EXCLUDE COVERAGE FOR THE TREATMENT OF
4 MEDICAL CONDITIONS OTHERWISE COVERED BY THE POLICY BECAUSE THE INDIVID-
5 UAL IS DIAGNOSED WITH AN AUTISM SPECTRUM DISORDER. SUCH COVERAGE MAY BE
6 SUBJECT TO ANNUAL DEDUCTIBLES, COPAYMENTS AND COINSURANCE AS MAY BE
7 DEEMED APPROPRIATE BY THE SUPERINTENDENT AND SHALL BE CONSISTENT WITH
8 THOSE IMPOSED ON OTHER BENEFITS UNDER THE CONTRACT. THIS SUBSECTION
9 SHALL NOT BE CONSTRUED AS LIMITING THE BENEFITS THAT ARE OTHERWISE
10 AVAILABLE TO AN INDIVIDUAL UNDER THE CONTRACT. COVERAGE MAY BE SUBJECT
11 TO UTILIZATION REVIEW OF HEALTH CARE SERVICES, INCLUDING THE REVIEW OF
12 MEDICAL NECESSITY, CASE MANAGEMENT, AND OTHER MANAGED CARE PROVISIONS.

13 (1) For purposes of this [section] SUBSECTION, "autism spectrum disor-
14 der" means a GROUP OF neurobiological [condition that includes autism,
15 Asperger syndrome, Rett's syndrome, or pervasive developmental disorder]
16 CONDITIONS DEFINED IN THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL
17 DISORDERS IV REVISED, OR ITS SUCCESSOR, AS PERVASIVE DEVELOPMENTAL
18 DISORDERS.

19 (2) THE COMMISSIONER OF HEALTH, IN CONSULTATION WITH THE SUPERINTEN-
20 DENT, THE COMMISSIONER OF THE OFFICE OF MENTAL HEALTH AND THE COMMIS-
21 SIONER OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES SHALL,
22 NO LATER THAN TWELVE MONTHS AFTER THE EFFECTIVE DATE OF THIS SUBPARA-
23 GRAPH, PROMULGATE AND THEREAFTER REGULARLY UPDATE, REGULATIONS WHICH
24 SHALL IDENTIFY TREATMENT AND THERAPY OPTIONS FOR WHICH COVERAGE SHALL BE
25 REQUIRED FOR THE SCREENING, DIAGNOSIS AND TREATMENT OF AUTISM SPECTRUM
26 DISORDER PURSUANT TO THIS SUBSECTION. SUCH TREATMENT AND THERAPY OPTIONS
27 SHALL BE EVIDENCE-BASED, PEER-REVIEWED AND CLINICALLY PROVEN. COVERAGE
28 FOR BEHAVIORAL THERAPIES REQUIRED PURSUANT TO THIS PARAGRAPH SHALL NOT
29 BE DENIED ON THE BASIS THAT SUCH THERAPIES ARE EDUCATIONAL OR HABILITA-
30 TIVE IN NATURE, UNLESS SUCH TREATMENTS ARE BEING PROVIDED TO THE COVERED
31 PERSON PURSUANT TO AN INDIVIDUALIZED EDUCATION PLAN UNDER ARTICLE EIGHT-
32 Y-NINE OF THE EDUCATION LAW. THE PROVISION OF SERVICES PURSUANT TO AN
33 INDIVIDUALIZED FAMILY SERVICE PLAN UNDER SECTION TWO THOUSAND FIVE
34 HUNDRED FORTY-FIVE OF THE PUBLIC HEALTH LAW, AN INDIVIDUALIZED EDUCATION
35 PLAN UNDER ARTICLE EIGHTY-NINE OF THE EDUCATION LAW OR AN INDIVIDUALIZED
36 SERVICE PLAN PURSUANT TO REGULATIONS OF THE OFFICE FOR PEOPLE WITH
37 DEVELOPMENTAL DISABILITIES SHALL NOT AFFECT COVERAGE UNDER THE CONTRACT
38 FOR SERVICES PROVIDED ON A SUPPLEMENTAL BASIS OUTSIDE OF AN EDUCATIONAL
39 SETTING IF SUCH SERVICES ARE DEEMED MEDICALLY NECESSARY.

40 (3) NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO AFFECT ANY OBLI-
41 GATION TO PROVIDE SERVICES TO AN INDIVIDUAL UNDER AN INDIVIDUALIZED
42 FAMILY SERVICE PLAN UNDER SECTION TWO THOUSAND FIVE HUNDRED FORTY-FIVE
43 OF THE PUBLIC HEALTH LAW, AN INDIVIDUALIZED EDUCATION PLAN UNDER ARTICLE
44 EIGHTY-NINE OF THE EDUCATION LAW OR AN INDIVIDUALIZED SERVICE PLAN
45 PURSUANT TO REGULATIONS OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL
46 DISABILITIES.

47 (4) NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO AFFECT ANY OBLI-
48 GATION TO PROVIDE COVERAGE FOR OTHERWISE COVERED SERVICES SOLELY ON THE
49 BASIS THAT THE SERVICES CONSTITUTE EARLY INTERVENTION PROGRAM SERVICES
50 PURSUANT TO SECTION THREE THOUSAND TWO HUNDRED THIRTY-FIVE-A OF THIS
51 CHAPTER OR AN INDIVIDUALIZED SERVICE PLAN PURSUANT TO REGULATIONS OF THE
52 OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES.

53 (5) NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO PREVENT A
54 CONTRACT FROM PROVIDING SERVICES THROUGH A NETWORK OF PARTICIPATING
55 PROVIDERS WHO SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUD-
56 ING PROVIDER CREDENTIALING.

1 S 4. Section 2500-j of the public health law is amended by adding a
2 new subdivision 4 to read as follows:

3 4. THE COMMISSIONER, IN CONSULTATION WITH THE SUPERINTENDENT OF INSUR-
4 ANCE, THE COMMISSIONER OF THE OFFICE OF MENTAL HEALTH AND THE COMMIS-
5 SIONER OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, SHALL
6 PROMULGATE NO LATER THAN TWELVE MONTHS AFTER THE EFFECTIVE DATE OF THIS
7 SUBDIVISION, AND REGULARLY UPDATE, REGULATIONS WHICH SHALL IDENTIFY
8 TREATMENT AND THERAPY OPTIONS FOR WHICH COVERAGE SHALL BE REQUIRED FOR
9 THE SCREENING, DIAGNOSIS AND TREATMENT OF AUTISM SPECTRUM DISORDER
10 PURSUANT TO SECTIONS THREE THOUSAND TWO HUNDRED SIXTEEN, THREE THOUSAND
11 TWO HUNDRED TWENTY-ONE AND FOUR THOUSAND THREE HUNDRED THREE OF THE
12 INSURANCE LAW.

13 S 5. Severability clause. If any clause, sentence, paragraph, subdivi-
14 sion, section or part of this act shall be adjudged by any court of
15 competent jurisdiction to be invalid, such judgment shall not affect,
16 impair, or invalidate the remainder thereof, but shall be confined in
17 its operation to the clause, sentence, paragraph, subdivision, section
18 or part thereof directly involved in the controversy in which such judg-
19 ment shall have been rendered. It is hereby declared to be the intent of
20 the legislature that this act would have been enacted even if such
21 invalid provisions had not been included herein.

22 S 6. This act shall take effect immediately, provided that sections
23 one, two and three of this act shall take effect upon the promulgation
24 of either emergency or permanent rules and regulations by the commis-
25 sioner of health outlining the treatment insurers are required to
26 provide to cover autism spectrum disorder as provided for in this act
27 and shall apply to all policies or contracts issued, renewed, modified,
28 altered or amended on and after such effective date; provided that the
29 commissioner of health shall notify the legislative bill drafting
30 commission upon the promulgation of such emergency or permanent rules
31 and regulations in order that the commission may maintain an accurate
32 and timely effective data base of the official text of the laws of the
33 state of New York in furtherance of effectuating the provisions of
34 section 44 of the legislative law and section 70-b of the public offi-
35 cers law.