

STATE OF NEW YORK

5393

2023-2024 Regular Sessions

IN SENATE

March 3, 2023

Introduced by Sens. HARCKHAM, CLEARE, KENNEDY, LIU -- 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 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. Subparagraphs (B) and (C) of paragraph 25 of subsection
2 (i) of section 3216 of the insurance law, subparagraph (B) as amended by
3 section 2 of subpart A of part BB of chapter 57 of the laws of 2019,
4 subparagraph (C) as amended by chapter 596 of the laws of 2011, items
5 (i) and (iii) of subparagraph (C) as amended by section 3 of subpart A
6 of part BB of chapter 57 of the laws of 2019, are amended to read as
7 follows:

8 (B) Every policy that provides physician services, medical, major
9 medical or similar comprehensive-type coverage shall provide coverage
10 for the screening, diagnosis and treatment of autism spectrum disorder
11 in accordance with this paragraph and shall not exclude coverage for the
12 screening, diagnosis or treatment of medical conditions otherwise
13 covered by the policy because the individual is diagnosed with autism
14 spectrum disorder. Such coverage may be subject to annual deductibles,
15 copayments and coinsurance as may be deemed appropriate by the super-
16 intendent and shall be consistent with those imposed on other benefits
17 under the policy. Coverage for applied behavior analysis and develop-
18 mental, individual-differences, relationship-based treatment shall be
19 subject to a maximum benefit of six hundred eighty hours of treatment
20 per policy during a calendar year per covered individual. This paragraph
21 shall not be construed as limiting the benefits that are otherwise
22 available to an individual under the policy, provided however that such
23 policy shall not contain any limitations on visits that are solely
24 applied to the treatment of autism spectrum disorder, except as provided

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

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1 in this subparagraph for coverage for applied behavior analysis and
2 developmental, individual differences, relationship-based treatment. No
3 insurer shall terminate coverage or refuse to deliver, execute, issue,
4 amend, adjust, or renew coverage to an individual solely because the
5 individual is diagnosed with autism spectrum disorder or has received
6 treatment for autism spectrum disorder. Coverage shall be subject to
7 utilization review and external appeals of health care services pursuant
8 to article forty-nine of this chapter as well as case management and
9 other managed care provisions.

10 (C) For purposes of this paragraph:

11 (i) "autism spectrum disorder" means any pervasive developmental
12 disorder as defined in the most recent edition of the diagnostic and
13 statistical manual of mental disorders, including, but not limited to,
14 autistic spectrum 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) "behavioral health treatment" means counseling and treatment
22 programs, including developmental, individual-differences and relation-
23 ship-based treatment, when provided by a licensed provider with a
24 professional certificate in developmental, individual-differences, rela-
25 tionship-based treatment from the interdisciplinary council on develop-
26 ment and learning, and applied behavior analysis, when provided by a
27 person licensed, certified or otherwise authorized to provide applied
28 behavior analysis, that are necessary to develop, maintain, or restore,
29 to the maximum extent practicable, the functioning of an individual.
30 Individuals that provide behavioral health treatment under the super-
31 vision of a licensed provider pursuant to this paragraph shall be
32 subject to standards of professionalism, supervision and relevant expe-
33 rience pursuant to regulations promulgated by the superintendent in
34 consultation with the commissioners of health and education.

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

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

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

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

47 (viii) "therapeutic care" means services provided by licensed or
48 certified [~~speech therapists, occupational therapists, social workers,~~
49 ~~or physical therapists~~] providers in the fields of counseling, occupa-
50 tional therapy, physical therapy, social work, or speech and language
51 pathology.

52 (ix) "treatment of autism spectrum disorder" shall include the follow-
53 ing care and assistive communication devices prescribed or ordered for
54 an individual diagnosed with autism spectrum disorder by a licensed
55 physician or a licensed psychologist:

56 (1) behavioral health treatment;

(2) psychiatric care;
(3) psychological care;
(4) medical care provided by a licensed health care provider;
(5) therapeutic care, including therapeutic care which is deemed habilitative or nonrestorative, in the event that the policy provides coverage for therapeutic care; and
(6) pharmacy care in the event that the policy provides coverage for prescription drugs.

(x) "developmental, individual-differences, relationship-based treatment" means the implementation of a floortime intervention that is based on an assessment of functional-emotional development and the person's individual profile, while understanding that human development is fostered in the context of relationships with others. The primary goal is to promote development and address developmental challenges and deficits that often accompany autism and other neurodevelopmental disorders.

§ 2. Subparagraphs (B) and (C) of paragraph 17 of subsection (1) of section 3221 of the insurance law, subparagraph (B) as amended by section 19 of subpart A of part BB of chapter 57 of the laws of 2019, subparagraph (C) as amended by chapter 596 of the laws of 2011, items (i) and (iii) of subparagraph (C) as amended by section 20 of subpart A of part BB of chapter 57 of the laws of 2019, are amended to read as follows:

(B) Every group or blanket policy that provides physician services, medical, major medical or similar comprehensive-type coverage shall provide coverage for the screening, diagnosis and treatment of autism spectrum disorder in accordance with this paragraph and shall not exclude coverage for the screening, diagnosis or treatment of medical conditions otherwise covered by the policy because the individual is diagnosed with 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 group or blanket policy. Coverage for applied behavior analysis and developmental, individual-differences, relationship-based treatment shall be subject to a maximum benefit of six hundred eighty hours of treatment per policy during a calendar year per covered individual. This paragraph shall not be construed as limiting the benefits that are otherwise available to an individual under the group or blanket policy, provided however that such policy shall not contain any limitations on visits that are solely applied to the treatment of autism spectrum disorder, except as provided in this subparagraph for coverage for applied behavior analysis and developmental, individual differences, relationship-based treatment. No insurer shall terminate coverage or refuse to deliver, execute, issue, amend, adjust, or renew coverage to an individual solely because the individual is diagnosed with autism spectrum disorder or has received treatment for autism spectrum disorder. Coverage shall be subject to utilization review and external appeals of health care services pursuant to article forty-nine of this chapter as well as case management and other managed care provisions.

(C) For purposes of this paragraph:

(i) "autism spectrum disorder" means any pervasive developmental disorder as defined in the most recent edition of the diagnostic and statistical manual of mental disorders, including, but not limited to, autistic spectrum disorder.

(ii) "applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and

consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

(iii) "behavioral health treatment" means counseling and treatment programs, including developmental, individual-differences, relationship-based treatment, when provided by a licensed provider with a professional certificate in developmental, individual-differences, relationship-based treatment from the interdisciplinary council on development and learning, and applied behavior analysis, when provided by a person licensed, certified or otherwise authorized to provide applied behavior analysis, that are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual. Individuals that provide behavioral health treatment under the supervision of a licensed provider pursuant to this paragraph shall be subject to standards of professionalism, supervision and relevant experience pursuant to regulations promulgated by the superintendent in consultation with the commissioners of health and education.

(iv) "diagnosis of autism spectrum disorder" means assessments, evaluations, or tests to diagnose whether an individual has autism spectrum disorder.

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

(vi) "psychiatric care" means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices.

(vii) "psychological care" means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices.

(viii) "therapeutic care" means services provided by licensed or certified ~~[speech therapists, occupational therapists, social workers, or physical therapists]~~ providers in the fields of counseling, occupational therapy, physical therapy, social work, or speech and language pathology.

(ix) "treatment of autism spectrum disorder" shall include the following care and assistive communication devices prescribed or ordered for an individual diagnosed with autism spectrum disorder by a licensed physician or a licensed psychologist:

- (1) behavioral health treatment;
- (2) psychiatric care;
- (3) psychological care;
- (4) medical care provided by a licensed health care provider;
- (5) therapeutic care, including therapeutic care which is deemed habitative or nonrestorative, in the event that the policy provides coverage for therapeutic care; and
- (6) pharmacy care in the event that the policy provides coverage for prescription drugs.

(x) "developmental, individual-differences, relationship-based treatment" means the implementation of a floortime intervention that is based on an assessment of functional-emotional development and the person's individual profile, while understanding that human development is fostered in the context of relationships with others. The primary goal is to promote development and address developmental challenges and deficits that often accompany autism and other neurodevelopmental disorders.

§ 3. Paragraphs 2 and 3 of subsection (ee) of section 4303 of the insurance law, paragraph 2 as amended by section 31 of subpart A of part BB of chapter 57 of the laws of 2019, paragraph 3 as amended by chapter 596 of the laws of 2011, subparagraphs (A) and (C) of paragraph 3 as amended by section 32 of subpart A of part BB of chapter 57 of the laws of 2019, are amended to read as follows:

(2) Every contract that provides physician services, medical, major medical or similar comprehensive-type coverage shall provide coverage for the screening, diagnosis and treatment of autism spectrum disorder in accordance with this paragraph and shall not exclude coverage for the screening, diagnosis or treatment of medical conditions otherwise covered by the contract because the individual is diagnosed with 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 contract. Coverage for applied behavior analysis and developmental, individual-differences, relationship-based treatment shall be subject to a maximum benefit of six hundred eighty hours of treatment per policy during a calendar year per covered individual. This paragraph shall not be construed as limiting the benefits that are otherwise available to an individual under the contract, provided however that such contract shall not contain any limitations on visits that are solely applied to the treatment of autism spectrum disorder, except as provided in this subparagraph for coverage for applied behavior analysis and developmental, individual differences, relationship-based treatment. No insurer shall terminate coverage or refuse to deliver, execute, issue, amend, adjust, or renew coverage to an individual solely because the individual is diagnosed with autism spectrum disorder or has received treatment for autism spectrum disorder. Coverage shall be subject to utilization review and external appeals of health care services pursuant to article forty-nine of this chapter as well as case management and other managed care provisions.

(3) For purposes of this subsection:

(A) "autism spectrum disorder" means any pervasive developmental disorder as defined in the most recent edition of the diagnostic and statistical manual of mental disorders, including, but not limited to, autistic spectrum disorder.

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

(C) "behavioral health treatment" means counseling and treatment programs, including developmental, individual-differences, relationship-based treatment, when provided by a licensed provider with a professional certificate in developmental, individual-differences, relationship-based treatment from the interdisciplinary council on development and learning, and applied behavior analysis, when provided by a person that is licensed, certified or otherwise authorized to provide applied behavior analysis, that are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual. Individuals that provide behavioral health treatment under the supervision of a licensed provider pursuant to this subsection shall be subject to standards of professionalism, supervision and relevant expe-

1 rience pursuant to regulations promulgated by the superintendent in
2 consultation with the commissioners of health and education.

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

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

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

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

15 (H) "therapeutic care" means services provided by licensed or certi-
16 fied [~~speech therapists, occupational therapists, social workers, or~~
17 ~~physical therapists~~] providers in the fields of counseling, occupational
18 therapy, physical therapy, social work, or speech and language
19 pathology.

20 (I) "treatment of autism spectrum disorder" shall include the follow-
21 ing care and assistive communication devices prescribed or ordered for
22 an individual diagnosed with autism spectrum disorder by a licensed
23 physician or a licensed psychologist:

24 (i) behavioral health treatment;

25 (ii) psychiatric care;

26 (iii) psychological care;

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

28 (v) 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 (vi) pharmacy care in the event that the contract provides coverage
32 for prescription drugs.

33 § 4. This act shall take effect on the ninetieth day after it shall
34 have become a law.