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OFFICE OF THE
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2011



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 2693

(By Delegates Fleischauer, Ellem, Overington,
Hunt, Skaff, Lane and Rodighiero)



Passed March 12, 2011

In Effect July 1, 2011

HB 2693

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E N R O L L E D

OFFICE OF THE CLERK
SECRETARY OF STATE

COMMITTEE SUBSTITUTE

FOR

H. B. 2693

(BY DELEGATES FLEISCHAUER, ELLEM, OVERINGTON,
HUNT, SKAFF, LANE AND RODIGHIERO)

[Passed March 12, 2011; in effect July 1, 2011.]

AN ACT to amend and reenact §5-16-7 of the code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5-16B-6e; to amend said code by adding thereto a new section, designated §9-5-21; to amend said code by adding thereto a new section, designated §33-16-3v; to amend said code by adding thereto a new section, designated §33-24-7k; and to amend said code by adding thereto a new section, designated §33-25A-8j, all relating to requiring insurance coverage for autism spectrum disorders; providing for an effective date for coverage; providing definitions; setting out age limitations; providing for coverage amounts and time frames; setting forth who may provide appropriate treatment; providing reporting requirements to

determine if treatment remains effective; allowing for cost saving measures in specified instances; providing the provisions are only required to the extent required by federal law; and providing reporting requirements by state agencies.

Be it enacted by the Legislature of West Virginia:

That §5-16-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §5-16B-6e; that said code be amended by adding thereto a new section, designated §9-5-21; that said code be amended by adding thereto a new section, designated §33-16-3v; that said code be amended by adding thereto a new section, designated §33-24-7k; that said code be amended by adding thereto a new section, designated §33-25A-8j, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES
INSURANCE ACT.**

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

- 1 (a) The agency shall establish a group hospital and
- 2 surgical insurance plan or plans, a group prescription drug
- 3 insurance plan or plans, a group major medical insurance

4 plan or plans and a group life and accidental death insurance
5 plan or plans for those employees herein made eligible, and
6 to establish and promulgate rules for the administration of
7 these plans, subject to the limitations contained in this article.
8 Those plans shall include:

9 (1) Coverages and benefits for X ray and laboratory
10 services in connection with mammograms when medically
11 appropriate and consistent with current guidelines from the
12 United States Preventive Services Task Force; pap smears,
13 either conventional or liquid-based cytology, whichever is
14 medically appropriate and consistent with the current
15 guidelines from either the United States Preventive Services
16 Task Force or The American College of Obstetricians and
17 Gynecologists; and a test for the human papilloma virus
18 (HPV) when medically appropriate and consistent with
19 current guidelines from either the United States Preventive
20 Services Task Force or The American College of
21 Obstetricians and Gynecologists, when performed for cancer
22 screening or diagnostic services on a woman age eighteen or
23 over;

24 (2) Annual checkups for prostate cancer in men age fifty
25 and over;

26 (3) Annual screening for kidney disease as determined to
27 be medically necessary by a physician using any combination
28 of blood pressure testing, urine albumin or urine protein
29 testing and serum creatinine testing as recommended by the
30 National Kidney Foundation;

31 (4) For plans that include maternity benefits, coverage for
32 inpatient care in a duly licensed health care facility for a
33 mother and her newly born infant for the length of time
34 which the attending physician considers medically necessary
35 for the mother or her newly born child: *Provided*, That no

36 plan may deny payment for a mother or her newborn child
37 prior to forty-eight hours following a vaginal delivery, or
38 prior to ninety-six hours following a caesarean section
39 delivery, if the attending physician considers discharge
40 medically inappropriate;

41 (5) For plans which provide coverages for post-delivery
42 care to a mother and her newly born child in the home,
43 coverage for inpatient care following childbirth as provided
44 in subdivision (4) of this subsection if inpatient care is
45 determined to be medically necessary by the attending
46 physician. Those plans may also include, among other
47 things, medicines, medical equipment, prosthetic appliances
48 and any other inpatient and outpatient services and expenses
49 considered appropriate and desirable by the agency; and

50 (6) Coverage for treatment of serious mental illness.

51 (A) The coverage does not include custodial care,
52 residential care or schooling. For purposes of this section,
53 "serious mental illness" means an illness included in the
54 American Psychiatric Association's diagnostic and statistical
55 manual of mental disorders, as periodically revised, under the
56 diagnostic categories or subclassifications of: (i)
57 Schizophrenia and other psychotic disorders; (ii) bipolar
58 disorders; (iii) depressive disorders; (iv) substance-related
59 disorders with the exception of caffeine-related disorders and
60 nicotine-related disorders; (v) anxiety disorders; and (vi)
61 anorexia and bulimia. With regard to any covered individual
62 who has not yet attained the age of nineteen years, "serious
63 mental illness" also includes attention deficit hyperactivity
64 disorder, separation anxiety disorder and conduct disorder.

65 (B) Notwithstanding any other provision in this section
66 to the contrary, in the event that the agency can demonstrate
67 that its total costs for the treatment of mental illness for any

68 plan exceeded two percent of the total costs for such plan in
69 any experience period, then the agency may apply whatever
70 additional cost-containment measures may be necessary,
71 including, but not limited to, limitations on inpatient and
72 outpatient benefits, to maintain costs below two percent of
73 the total costs for the plan for the next experience period.

74 (C) The agency shall not discriminate between
75 medical-surgical benefits and mental health benefits in the
76 administration of its plan. With regard to both
77 medical-surgical and mental health benefits, it may make
78 determinations of medical necessity and appropriateness, and
79 it may use recognized health care quality and cost
80 management tools, including, but not limited to, limitations on
81 inpatient and outpatient benefits, utilization review,
82 implementation of cost-containment measures,
83 preauthorization for certain treatments, setting coverage levels,
84 setting maximum number of visits within certain time periods,
85 using capitated benefit arrangements, using fee-for-service
86 arrangements, using third-party administrators, using provider
87 networks and using patient cost sharing in the form of
88 copayments, deductibles and coinsurance.

89 (7) Coverage for general anesthesia for dental procedures
90 and associated outpatient hospital or ambulatory facility
91 charges provided by appropriately licensed health care
92 individuals in conjunction with dental care if the covered
93 person is:

94 (A) Seven years of age or younger or is developmentally
95 disabled, and is an individual for whom a successful result
96 cannot be expected from dental care provided under local
97 anesthesia because of a physical, intellectual or other
98 medically compromising condition of the individual and for
99 whom a superior result can be expected from dental care
100 provided under general anesthesia;

101 (B) A child who is twelve years of age or younger with
102 documented phobias, or with documented mental illness, and
103 with dental needs of such magnitude that treatment should
104 not be delayed or deferred and for whom lack of treatment
105 can be expected to result in infection, loss of teeth or other
106 increased oral or dental morbidity and for whom a successful
107 result cannot be expected from dental care provided under
108 local anesthesia because of such condition and for whom a
109 superior result can be expected from dental care provided
110 under general anesthesia.

111 (8)(A) Any plan issued or renewed after January 1, 2012,
112 shall include coverage for diagnosis and treatment of autism
113 spectrum disorder in individuals ages eighteen months
114 through eighteen years. To be eligible for coverage and
115 benefits under this subdivision, the individual must be
116 diagnosed with autism spectrum disorder at age 8 or younger.
117 Such policy shall provide coverage for treatments that are
118 medically necessary and ordered or prescribed by a licensed
119 physician or licensed psychologist for an individual
120 diagnosed with autism spectrum disorder, in accordance with
121 a treatment plan developed by a certified behavior analyst
122 pursuant to a comprehensive evaluation or reevaluation of the
123 individual, subject to review by the agency every six months.
124 Progress reports are required to be filed with the agency
125 semi-annually. In order for treatment to continue, the agency
126 must receive objective evidence or a clinically supportable
127 statement of expectation that:

128 (1) The individual's condition is improving in response
129 to treatment, and

130 (2) A maximum improvement is yet to be attained, and

131 (3) There is an expectation that the anticipated
132 improvement is attainable in a reasonable and generally
133 predictable period of time.

134 (B) Such coverage shall include, but not be limited to,
135 applied behavioral analysis provided or supervised by a
136 certified behavior analyst: *Provided*, That the annual
137 maximum benefit for treatment required by this subdivision
138 shall be in amount not to exceed \$30,000 per individual, for
139 three consecutive years from the date treatment commences.
140 At the conclusion of the third year, required coverage shall be
141 in an amount not to exceed \$2000 per month, until the
142 individual reaches eighteen years of age, as long as the
143 treatment is medically necessary and in accordance with a
144 treatment plan developed by a certified behavior analyst
145 pursuant to a comprehensive evaluation or reevaluation of the
146 individual. This section shall not be construed as limiting,
147 replacing or affecting any obligation to provide services to an
148 individual under the Individuals with Disabilities Education
149 Act, 20 U.S.C. 1400 et seq., as amended from time to time or
150 other publicly funded programs. Nothing in this subdivision
151 shall be construed as requiring reimbursement for services
152 provided by public school personnel.

153 (C) On or before January 1 each year, the agency shall
154 file an annual report with the joint committee on government
155 and finance describing its implementation of the coverage
156 provided pursuant to this subdivision. The report shall
157 include, but shall not be limited to, the number of individuals
158 in the plan utilizing the coverage required by this subdivision,
159 the fiscal and administrative impact of the implementation,
160 and any recommendations the agency may have as to changes
161 in law or policy related to the coverage provided under this
162 subdivision. In addition, the agency shall provide such other
163 information as may be required by the joint committee on
164 government and finance as it may from time to time request.

165 (D) For purposes of this subdivision, the term:

166 (i) "Applied Behavior Analysis" means the design,
167 implementation, and evaluation of environmental

168 modifications using behavioral stimuli and consequences, to
169 produce socially significant improvement in human behavior,
170 including the use of direct observation, measurement, and
171 functional analysis of the relationship between environment
172 and behavior.

173 (ii) "Autism spectrum disorder" means any pervasive
174 developmental disorder, including autistic disorder,
175 Asperger's Syndrome, Rett Syndrome, childhood
176 disintegrative disorder, or Pervasive Development Disorder
177 as defined in the most recent edition of the Diagnostic and
178 Statistical Manual of Mental Disorders of the American
179 Psychiatric Association.

180 (iii) "Certified behavior analyst" means an individual
181 who is certified by the Behavior Analyst Certification Board
182 or certified by a similar nationally recognized organization.

183 (iv) "Objective evidence" means standardized patient
184 assessment instruments, outcome measurements tools or
185 measurable assessments of functional outcome. Use of
186 objective measures at the beginning of treatment, during
187 and/or after treatment is recommended to quantify progress
188 and support justifications for continued treatment. Such tools
189 are not required, but their use will enhance the justification
190 for continued treatment.

191 (E) To the extent that the application of this subdivision
192 for autism spectrum disorder causes an increase of at least
193 one percent of actual total costs of coverage for the plan year
194 the agency may apply additional cost containment measures.

195 (F) To the extent that the provisions of this subdivision
196 requires benefits that exceed the essential health benefits
197 specified under section 1302(b) of the Patient Protection and
198 Affordable Care Act, Pub. L. No. 111-148, as amended, the

199 specific benefits that exceed the specified essential health
200 benefits shall not be required of insurance plans offered by
201 the public employees insurance agency.

202 (b) The agency shall make available to each eligible
203 employee, at full cost to the employee, the opportunity to
204 purchase optional group life and accidental death insurance
205 as established under the rules of the agency. In addition, each
206 employee is entitled to have his or her spouse and
207 dependents, as defined by the rules of the agency, included in
208 the optional coverage, at full cost to the employee, for each
209 eligible dependent; and with full authorization to the agency
210 to make the optional coverage available and provide an
211 opportunity of purchase to each employee.

212 (c) The finance board may cause to be separately rated
213 for claims experience purposes:

214 (1) All employees of the State of West Virginia;

215 (2) All teaching and professional employees of state
216 public institutions of higher education and county boards of
217 education;

218 (3) All nonteaching employees of the Higher Education
219 Policy Commission, West Virginia Council for Community
220 and Technical College Education and county boards of
221 education; or

222 (4) Any other categorization which would ensure the
223 stability of the overall program.

224 (d) The agency shall maintain the medical and
225 prescription drug coverage for Medicare-eligible retirees by
226 providing coverage through one of the existing plans or by
227 enrolling the Medicare-eligible retired employees into a

228 Medicare-specific plan, including, but not limited to, the
229 Medicare/Advantage Prescription Drug Plan. In the event that
230 a Medicare-specific plan would no longer be available or
231 advantageous for the agency and the retirees, the retirees
232 shall remain eligible for coverage through the agency.

**ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH
INSURANCE PROGRAM.**

**§5-16B-6e. Coverage for treatment of autism spectrum
disorders.**

1 (a) To the extent that the diagnosis and treatment of
2 autism spectrum disorders are not already covered by this
3 agency, after January 1, 2012, a policy, plan or contract
4 subject to this section shall provide coverage for such
5 diagnosis and treatment, for individuals ages eighteen months
6 through eighteen years. To be eligible for coverage and
7 benefits under this section, the individual must be diagnosed
8 with autism spectrum disorder at age eight or younger. Such
9 policy shall provide coverage for treatments that are
10 medically necessary and ordered or prescribed by a licensed
11 physician or licensed psychologist for an individual
12 diagnosed with autism spectrum disorder, in accordance with
13 a treatment plan developed by a certified behavior analyst
14 pursuant to a comprehensive evaluation or reevaluation of the
15 individual subject to review by the agency every six months.
16 Progress reports are required to be filed with the agency
17 semi-annually. In order for treatment to continue, objective
18 evidence or a clinically supportable statement of expectation
19 that:

20 (1) the individual's condition is improving in response to
21 treatment, and

22 (2) maximum improvement is yet to be attained, and

23 (3) there is an expectation that the anticipated
24 improvement is attainable in a reasonable and generally
25 predictable period of time.

26 (b) Such coverage shall include, but not be limited to,
27 applied behavioral analysis provided or supervised by a
28 certified behavior analyst: *Provided*, That the annual
29 maximum benefit for treatment required by this section shall
30 be in amount not to exceed \$30,000 per individual, for three
31 consecutive years from the date treatment commences. At
32 the conclusion of the third year, required coverage shall be in
33 an amount not to exceed \$2000 per month, until the
34 individual reaches eighteen years of age, as long as the
35 treatment is medically necessary and in accordance with a
36 treatment plan developed by a certified behavior analyst
37 pursuant to a comprehensive evaluation or reevaluation of the
38 individual. This section shall not be construed as limiting,
39 replacing or affecting any obligation to provide services to an
40 individual under the Individuals with Disabilities Education
41 Act, 20 U.S.C. 1400 et seq., as amended from time to time or
42 other publicly funded programs. Nothing in this section shall
43 be construed as requiring reimbursement for services
44 provided by public school personnel.

45 (c) On or before January 1 each year, the agency shall file
46 an annual report with the joint committee on government and
47 finance describing its implementation of the coverage
48 provided pursuant to this section. The report shall include,
49 but shall not be limited to the number of individuals in the
50 plan utilizing the coverage required by this section, the fiscal
51 and administrative impact of the implementation, and any
52 recommendations the agency may have as to changes in law
53 or policy related to the coverage provided under this
54 section. In addition, the agency shall provide such other
55 information as may be requested by the joint committee on
56 government and finance as it may from time to time request.

57 (d) For purposes of this section, the term:

58 (1) “Applied Behavior Analysis” means the design,
59 implementation, and evaluation of environmental
60 modifications using behavioral stimuli and consequences, to
61 produce socially significant improvement in human behavior,
62 including the use of direct observation, measurement, and
63 functional analysis of the relationship between environment
64 and behavior.

65 (2) “Autism spectrum disorder” means any pervasive
66 developmental disorder, including autistic disorder,
67 Asperger’s Syndrome, Rett Syndrome, childhood
68 disintegrative disorder, or Pervasive Development Disorder
69 as defined in the most recent edition of the Diagnostic and
70 Statistical Manual of Mental Disorders of the American
71 Psychiatric Association.

72 (3) “Certified behavior analyst” means an individual who
73 is certified by the Behavior Analyst Certification Board or
74 certified by a similar nationally recognized organization.

75 (4) “Objective evidence” means standardized patient
76 assessment instruments, outcome measurements tools or
77 measurable assessments of functional outcome. Use of
78 objective measures at the beginning of treatment, during
79 and/or after treatment is recommended to quantify progress
80 and support justifications for continued treatment. Such tools
81 are not required, but their use will enhance the justification
82 for continued treatment.

83 (e) To the extent that the application of this section for
84 autism spectrum disorder causes an increase of at least one
85 percent of actual total costs of coverage for the plan year the
86 agency may apply additional cost containment measures.

87 (f) To the extent that the provisions of this section
88 requires benefits that exceed the essential health benefits
89 specified under section 1302(b) of the Patient Protection and
90 Affordable Care Act, Pub. L. No. 111-148, as amended, the
91 specific benefits that exceed the specified essential health
92 benefits shall not be required of the West Virginia Children’s
93 Health Insurance Program.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-21. Annual report to joint committee on government and finance regarding treatment for autism spectrum disorders provided by the Bureau for Medical Services.

1 (a) On or before January 1 each year, the agency shall file
2 an annual report with the joint committee on government and
3 finance describing the number of enrolled individuals with
4 autism spectrum disorder, including the fiscal and
5 administrative impact of treatment of autism spectrum
6 disorders, and any recommendations the agency may have as
7 to changes in law or policy related to such disorder. In
8 addition, the agency shall provide such other information as
9 may be requested by the joint committee on government and
10 finance as it may from time to time request.

11 (b) For purposes of this section, the term “autism
12 spectrum disorder” means any pervasive developmental
13 disorder, including autistic disorder, Asperger’s Syndrome,
14 Rett Syndrome, childhood disintegrative disorder, or
15 Pervasive Development Disorder as defined in the most
16 recent edition of the Diagnostic and Statistical Manual of
17 Mental Disorders of the American Psychiatric Association.

CHAPTER 33. INSURANCE.

**ARTICLE 16. GROUP ACCIDENT AND SICKNESS
INSURANCE.**

**§33-16-3v. Required coverage for treatment of autism spectrum
disorders.**

1 (a) Any insurer who, on or after January 1, 2012,
2 delivers, renews or issues a policy of group accident and
3 sickness insurance in this State under the provisions of this
4 article shall include coverage for diagnosis and treatment of
5 autism spectrum disorder in individuals ages eighteen months
6 through eighteen years. To be eligible for coverage and
7 benefits under this section, the individual must be diagnosed
8 with autism spectrum disorder at age 8 or younger. Such
9 policy shall provide coverage for treatments that are
10 medically necessary and ordered or prescribed by a licensed
11 physician or licensed psychologist for an individual
12 diagnosed with autism spectrum disorder, in accordance with
13 a treatment plan developed by a certified behavior analyst
14 pursuant to a comprehensive evaluation or reevaluation of the
15 individual, subject to review by the agency every six months.
16 Progress reports are required to be filed with the insurer
17 semi-annually. In order for treatment to continue, the insurer
18 must receive objective evidence or a clinically supportable
19 statement of expectation that:

20 (1) The individual's condition is improving in response
21 to treatment, and

22 (2) A maximum improvement is yet to be attained, and

23 (3) There is an expectation that the anticipated
24 improvement is attainable in a reasonable and generally
25 predictable period of time.

26 (b) Such coverage shall include, but not be limited to,
27 applied behavioral analysis provided or supervised by a
28 certified behavioral analyst: *Provided*, That the annual
29 maximum benefit for treatment required by this subdivision
30 shall be in amount not to exceed \$30,000 per individual, for
31 three consecutive years from the date treatment commences.
32 At the conclusion of the third year, required coverage shall be
33 in an amount not to exceed \$2000 per month, until the
34 individual reaches eighteen years of age, as long as the
35 treatment is medically necessary and in accordance with a
36 treatment plan developed by a certified behavioral analyst
37 pursuant to a comprehensive evaluation or reevaluation of the
38 individual. This section shall not be construed as limiting,
39 replacing or affecting any obligation to provide services to an
40 individual under the Individuals with Disabilities Education
41 Act, 20 U.S.C. 1400 et seq., as amended from time to time or
42 other publicly funded programs. Nothing in this section shall
43 be construed as requiring reimbursement for services
44 provided by public school personnel.

45 (c) For purposes of this section, the term:

46 (1) “Applied Behavior Analysis” means the design,
47 implementation, and evaluation of environmental
48 modifications using behavioral stimuli and consequences, to
49 produce socially significant improvement in human behavior,
50 including the use of direct observation, measurement, and
51 functional analysis of the relationship between environment
52 and behavior.

53 (2) “Autism spectrum disorder” means any pervasive
54 developmental disorder, including autistic disorder,
55 Asperger’s Syndrome, Rett Syndrome, childhood
56 disintegrative disorder, or Pervasive Development Disorder
57 as defined in the most recent edition of the Diagnostic and

58 Statistical Manual of Mental Disorders of the American
59 Psychiatric Association.

60 (3) “Certified behavior analyst” means an individual who
61 is certified by the Behavior Analyst Certification Board or
62 certified by a similar nationally recognized organization.

63 (4) “Objective evidence” means standardized patient
64 assessment instruments, outcome measurements tools or
65 measurable assessments of functional outcome. Use of
66 objective measures at the beginning of treatment, during
67 and/or after treatment is recommended to quantify progress
68 and support justifications for continued treatment. Such tools
69 are not required, but their use will enhance the justification
70 for continued treatment.

71 (d) The provisions of this section do not apply to small
72 employers. For purposes of this section a small employer
73 shall be defined as any person, firm, corporation, partnership
74 or association actively engaged in business in the state of
75 West Virginia who, during the preceding calendar year,
76 employed an average of no more than twenty-five eligible
77 employees.

78 (e) To the extent that the application of this section for
79 autism spectrum disorder causes an increase of at least one
80 percent of actual total costs of coverage for the plan year the
81 insurer may apply additional cost containment measures.
82

83 (f) To the extent that the provisions of this section
84 requires benefits that exceed the essential health benefits
85 specified under section 1302(b) of the Patient Protection and
86 Affordable Care Act, Pub. L. No. 111-148, as amended, the
87 specific benefits that exceed the specified essential health

88 benefits shall not be required of a health benefit plan when
89 the plan is offered by a health care insurer in this state.

**ARTICLE 24. HOSPITAL MEDICAL AND DENTAL
CORPORATIONS.**

**§33-24-7k. Coverage for diagnosis and treatment of autism
spectrum disorders.**

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this article
3 applies, any entity regulated by this article, for policies issued
4 or renewed on or after January 1, 2012, delivers, renews or
5 issues a policy of group accident and sickness insurance in
6 this State under the provisions of this article shall include
7 coverage for diagnosis and treatment of autism spectrum
8 disorder in individuals ages eighteen months through
9 eighteen years. To be eligible for coverage and benefits
10 under this section, the individual must be diagnosed with
11 autism spectrum disorder at age 8 or younger. Such policy
12 shall provide coverage for treatments that are medically
13 necessary and ordered or prescribed by a licensed physician
14 or licensed psychologist for an individual diagnosed with
15 autism spectrum disorder, in accordance with a treatment
16 plan developed by a certified behavior analyst pursuant to a
17 comprehensive evaluation or reevaluation of the individual,
18 subject to review by the corporation every six months.
19 Progress reports are required to be filed with the corporation
20 semi-annually. In order for treatment to continue, the agency
21 must receive objective evidence or a clinically supportable
22 statement of expectation that:

23 (1) The individual's condition is improving in response
24 to treatment, and

25 (2) A maximum improvement is yet to be attained, and

26 (3) There is an expectation that the anticipated
27 improvement is attainable in a reasonable and generally
28 predictable period of time.

29 (b) Such coverage shall include, but not be limited to,
30 applied behavioral analysis provided or supervised by a
31 certified behavioral analyst: *Provided*, That the annual
32 maximum benefit for treatment required by this section shall
33 be in amount not to exceed \$30,000 per individual, for three
34 consecutive years from the date treatment commences. At
35 the conclusion of the third year, required coverage shall be in
36 an amount not to exceed \$2000 per month, until the
37 individual reaches eighteen years of age, as long as the
38 treatment is medically necessary and in accordance with a
39 treatment plan developed by a certified behavior analyst
40 pursuant to a comprehensive evaluation or reevaluation of the
41 individual. This section shall not be construed as limiting,
42 replacing or affecting any obligation to provide services to an
43 individual under the Individuals with Disabilities Education
44 Act, 20 U.S.C. 1400 et seq., as amended from time to time or
45 other publicly funded programs. Nothing in this section shall
46 be construed as requiring reimbursement for services
47 provided by public school personnel.

48 (c) For purposes of this section, the term:

49 (1) "Applied Behavior Analysis" means the design,
50 implementation, and evaluation of environmental
51 modifications using behavioral stimuli and consequences, to
52 produce socially significant improvement in human behavior,
53 including the use of direct observation, measurement, and
54 functional analysis of the relationship between environment
55 and behavior.

56 (2) "Autism spectrum disorder" means any pervasive
57 developmental disorder, including autistic disorder,

58 Asperger’s Syndrome, Rett Syndrome, childhood
59 disintegrative disorder, or Pervasive Development Disorder
60 as defined in the most recent edition of the Diagnostic and
61 Statistical Manual of Mental Disorders of the American
62 Psychiatric Association.

63 (3) “Certified behavior analyst” means an individual who
64 is certified by the Behavior Analyst Certification Board or
65 certified by a similar nationally recognized organization.

66 (4) “Objective evidence” means standardized patient
67 assessment instruments, outcome measurements tools or
68 measurable assessments of functional outcome. Use of
69 objective measures at the beginning of treatment, during
70 and/or after treatment is recommended to quantify progress
71 and support justifications for continued treatment. Such tools
72 are not required, but their use will enhance the justification
73 for continued treatment.

74 (d) The provisions of this section do not apply to small
75 employers. For purposes of this section a small employer
76 shall be defined as any person, firm, corporation, partnership
77 or association actively engaged in business in the state of
78 West Virginia who, during the preceding calendar year,
79 employed an average of no more than twenty-five eligible
80 employees.

81 (e) To the extent that the application of this section for
82 autism spectrum disorder causes an increase of at least one
83 percent of actual total costs of coverage for the plan year the
84 corporation may apply additional cost containment measures.

85 (f) To the extent that the provisions of this section
86 requires benefits that exceed the essential health benefits
87 specified under section 1302(b) of the Patient Protection and
88 Affordable Care Act, Pub. L. No. 111-148, as amended, the

89 specific benefits that exceed the specified essential health
90 benefits shall not be required of a health benefit plan when
91 the plan is offered by a corporation in this state.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION
ACT.**

**§33-25A-8j. Coverage for diagnosis and treatment of autism
spectrum disorders.**

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this article
3 applies, any entity regulated by this article, for policies issued
4 or renewed on or after January 1, 2012, delivers, renews or
5 issues a policy of group accident and sickness insurance in
6 this State under the provisions of this article shall include
7 coverage for diagnosis and treatment of autism spectrum
8 disorder in individuals ages eighteen months through
9 eighteen years. To be eligible for coverage and benefits
10 under this section, the individual must be diagnosed with
11 autism spectrum disorder at age 8 or younger. Such policy
12 shall provide coverage for treatments that are medically
13 necessary and ordered or prescribed by a licensed physician
14 or licensed psychologist for an individual diagnosed with
15 autism spectrum disorder, in accordance with a treatment
16 plan developed by a certified behavioral analyst pursuant to
17 a comprehensive evaluation or reevaluation of the individual,
18 subject to review by the health maintenance organization
19 every six months. Progress reports are required to be filed
20 with the health maintenance organization semi-annually. In
21 order for treatment to continue, the health maintenance
22 organization must receive objective evidence or a clinically
23 supportable statement of expectation that:

24 (1) The individual's condition is improving in response
25 to treatment, and

26 (2) A maximum improvement is yet to be attained, and

27 (3) There is an expectation that the anticipated
28 improvement is attainable in a reasonable and generally
29 predictable period of time.

30 (b) Such coverage shall include, but not be limited to,
31 applied behavioral analysis provided or supervised by a
32 certified behavioral analyst: *Provided*, That the annual
33 maximum benefit for treatment required by this subdivision
34 shall be in amount not to exceed \$30,000 per individual, for
35 three consecutive years from the date treatment commences.
36 At the conclusion of the third year, required coverage shall be
37 in an amount not to exceed \$2000 per month, until the
38 individual reaches eighteen years of age, as long as the
39 treatment is medically necessary and in accordance with a
40 treatment plan developed by a certified behavior analyst
41 pursuant to a comprehensive evaluation or reevaluation of the
42 individual. This section shall not be construed as limiting,
43 replacing or affecting any obligation to provide services to an
44 individual under the Individuals with Disabilities Education
45 Act, 20 U.S.C. 1400 et seq., as amended from time to time or
46 other publicly funded programs. Nothing in this section shall
47 be construed as requiring reimbursement for services
48 provided by public school personnel.

49 (c) For purposes of this section, the term:

50 (1) "Applied Behavior Analysis" means the design,
51 implementation, and evaluation of environmental
52 modifications using behavioral stimuli and consequences, to
53 produce socially significant improvement in human behavior,
54 including the use of direct observation, measurement, and
55 functional analysis of the relationship between environment
56 and behavior.

57 (2) “Autism spectrum disorder” means any pervasive
58 developmental disorder, including autistic disorder,
59 Asperger’s Syndrome, Rett Syndrome, childhood
60 disintegrative disorder, or Pervasive Development Disorder
61 as defined in the most recent edition of the Diagnostic and
62 Statistical Manual of Mental Disorders of the American
63 Psychiatric Association.

64 (3) “Certified behavior analyst” means an individual who
65 is certified by the Behavior Analyst Certification Board or
66 certified by a similar nationally recognized organization.

67 (4) “Objective evidence” means standardized patient
68 assessment instruments, outcome measurements tools or
69 measurable assessments of functional outcome. Use of
70 objective measures at the beginning of treatment, during
71 and/or after treatment is recommended to quantify progress
72 and support justifications for continued treatment. Such tools
73 are not required, but their use will enhance the justification
74 for continued treatment.

75 (d) The provisions of this section do not apply to small
76 employers. For purposes of this section a small employer
77 shall be defined as any person, firm, corporation, partnership
78 or association actively engaged in business in the state of
79 West Virginia who, during the preceding calendar year,
80 employed an average of no more than twenty-five eligible
81 employees.

82 (e) To the extent that the application of this section for
83 autism spectrum disorder causes an increase of at least one
84 percent of actual total costs of coverage for the plan year the
85 health maintenance organization may apply additional cost
86 containment measures.

87 (f) To the extent that the provisions of this section
88 requires benefits that exceed the essential health benefits
89 specified under section 1302(b) of the Patient Protection and
90 Affordable Care Act, Pub. L. No. 111-148, as amended, the
91 specific benefits that exceed the specified essential health
92 benefits shall not be required of a health benefit plan when
93 the plan is offered by a health maintenance organization in
94 this state.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



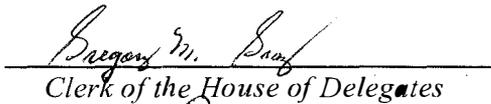
Chairman, House Committee



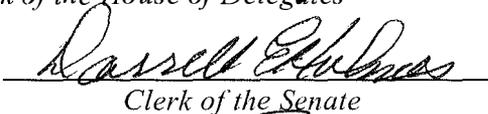
Chairman, Senate Committee

Originating in the House.

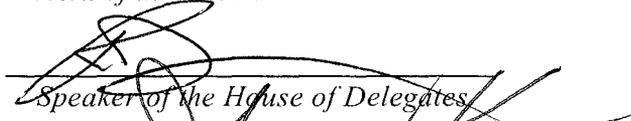
To take effect July 1, 2011.



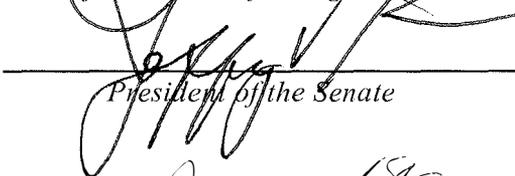
Clerk of the House of Delegates



Clerk of the Senate



Speaker of the House of Delegates



President of the Senate

The within is approved this the 18th
day of April, 2011.



Governor

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SCOFFIN OF STATE
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PRESENTED TO THE GOVERNOR

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