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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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OFFICE OF THE CLERK  
SECRETARY OF STATE

COMMITTEE SUBSTITUTE

FOR

**H. B. 2693**

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(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.

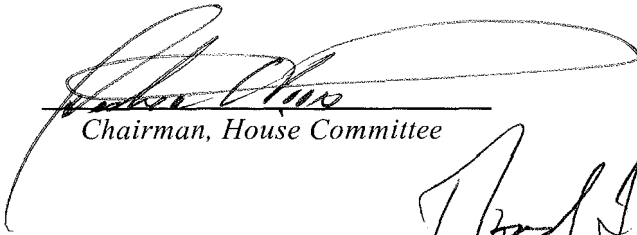
75 (d) The provisions of this section do not apply to small  
76 employers. For purposes of this section a small employer  
77 shall be defined as any person, firm, corporation, partnership  
78 or association actively engaged in business in the state of  
79 West Virginia who, during the preceding calendar 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.



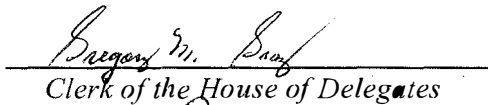
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

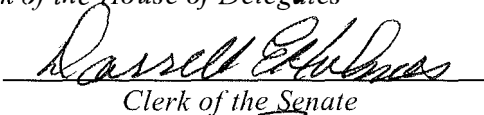
  
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Chairman, House Committee

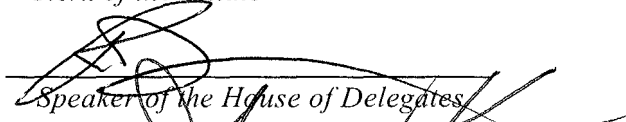
  
\_\_\_\_\_  
Chairman, Senate Committee

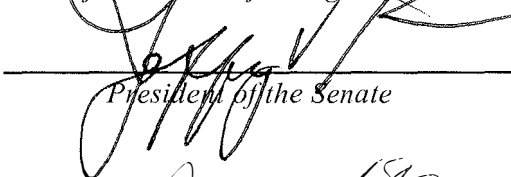
Originating in the House.

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 18<sup>th</sup>  
day of April, 2011.

  
\_\_\_\_\_  
Governor

2011 APR -1 PM 4:55  
SCOFFIN OF STATE  
MONTANA

PRESENTED TO THE GOVERNOR

MAR 31 2011

Time 11:30 am  
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