

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2693**

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

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

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9

10 AN ACT to amend and reenact §5-16-7 of the code of West Virginia,
11 1931, as amended; to amend said code by adding thereto a new
12 section, designated §5-16B-6e; to amend said code by adding
13 thereto a new section, designated §9-5-21; to amend said code
14 by adding thereto a new section, designated §33-16-3v; to
15 amend said code by adding thereto a new section, designated
16 §33-24-7k; and to amend said code by adding thereto a new
17 section, designated §33-25A-8j, all relating to requiring
18 insurance coverage for autism spectrum disorders; providing
19 for an effective date for coverage; providing definitions;
20 setting out age limitations; providing for coverage amounts
21 and time frames; setting forth who may provide appropriate
22 treatment; providing reporting requirements to determine if
23 treatment remains effective; allowing for cost saving measures
24 in specified instances; providing the provisions are only
25 required to the extent required by federal law; and providing
26 reporting requirements by state agencies.

1 *Be it enacted by the Legislature of West Virginia:*

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

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

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

15 **§5-16-7. Authorization to establish group hospital and surgical**
16 **insurance plan, group major medical insurance plan,**
17 **group prescription drug plan and group life and**
18 **accidental death insurance plan; rules for**
19 **administration of plans; mandated benefits; what plans**
20 **may provide; optional plans; separate rating for**
21 **claims experience purposes.**

22 (a) The agency shall establish a group hospital and surgical
23 insurance plan or plans, a group prescription drug insurance plan
24 or plans, a group major medical insurance plan or plans and a group
25 life and accidental death insurance plan or plans for those

1 employees herein made eligible, and to establish and promulgate
2 rules for the administration of these plans, subject to the
3 limitations contained in this article. Those plans shall include:

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

17 (2) Annual checkups for prostate cancer in men age fifty and
18 over;

19 (3) Annual screening for kidney disease as determined to be
20 medically necessary by a physician using any combination of blood
21 pressure testing, urine albumin or urine protein testing and serum
22 creatinine testing as recommended by the National Kidney
23 Foundation;

24 (4) For plans that include maternity benefits, coverage for
25 inpatient care in a duly licensed health care facility for a mother
26 and her newly born infant for the length of time which the

1 attending physician considers medically necessary for the mother or
2 her newly born child: *Provided*, That no plan may deny payment for
3 a mother or her newborn child prior to forty-eight hours following
4 a vaginal delivery, or prior to ninety-six hours following a
5 caesarean section delivery, if the attending physician considers
6 discharge medically inappropriate;

7 (5) For plans which provide coverages for post-delivery care
8 to a mother and her newly born child in the home, coverage for
9 inpatient care following childbirth as provided in subdivision (4)
10 of this subsection if inpatient care is determined to be medically
11 necessary by the attending physician. Those plans may also
12 include, among other things, medicines, medical equipment,
13 prosthetic appliances and any other inpatient and outpatient
14 services and expenses considered appropriate and desirable by the
15 agency; and

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

17 (A) The coverage does not include custodial care, residential
18 care or schooling. For purposes of this section, "serious mental
19 illness" means an illness included in the American Psychiatric
20 Association's diagnostic and statistical manual of mental
21 disorders, as periodically revised, under the diagnostic categories
22 or subclassifications of: (i) Schizophrenia and other psychotic
23 disorders; (ii) bipolar disorders; (iii) depressive disorders; (iv)
24 substance-related disorders with the exception of caffeine-related
25 disorders and nicotine-related disorders; (v) anxiety disorders;
26 and (vi) anorexia and bulimia. With regard to any covered

1 individual who has not yet attained the age of nineteen years,
2 "serious mental illness" also includes attention deficit
3 hyperactivity disorder, separation anxiety disorder and conduct
4 disorder.

5 (B) Notwithstanding any other provision in this section to the
6 contrary, in the event that the agency can demonstrate that its
7 total costs for the treatment of mental illness for any plan
8 exceeded two percent of the total costs for such plan in any
9 experience period, then the agency may apply whatever additional
10 cost-containment measures may be necessary, including, but not
11 limited to, limitations on inpatient and outpatient benefits, to
12 maintain costs below two percent of the total costs for the plan
13 for the next experience period.

14 (C) The agency shall not discriminate between medical-surgical
15 benefits and mental health benefits in the administration of its
16 plan. With regard to both medical-surgical and mental health
17 benefits, it may make determinations of medical necessity and
18 appropriateness, and it may use recognized health care quality and
19 cost management tools, including, but not limited to, limitations
20 on inpatient and outpatient benefits, utilization review,
21 implementation of cost-containment measures, preauthorization for
22 certain treatments, setting coverage levels, setting maximum number
23 of visits within certain time periods, using capitated benefit
24 arrangements, using fee-for-service arrangements, using third-party
25 administrators, using provider networks and using patient cost
26 sharing in the form of copayments, deductibles and coinsurance.

1 (7) Coverage for general anesthesia for dental procedures and
2 associated outpatient hospital or ambulatory facility charges
3 provided by appropriately licensed health care individuals in
4 conjunction with dental care if the covered person is:

5 (A) Seven years of age or younger or is developmentally
6 disabled, and is an individual for whom a successful result cannot
7 be expected from dental care provided under local anesthesia
8 because of a physical, intellectual or other medically compromising
9 condition of the individual and for whom a superior result can be
10 expected from dental care provided under general anesthesia;

11 (B) A child who is twelve years of age or younger with
12 documented phobias, or with documented mental illness, and with
13 dental needs of such magnitude that treatment should not be delayed
14 or deferred and for whom lack of treatment can be expected to
15 result in infection, loss of teeth or other increased oral or
16 dental morbidity and for whom a successful result cannot be
17 expected from dental care provided under local anesthesia because
18 of such condition and for whom a superior result can be expected
19 from dental care provided under general anesthesia.

20 (8) (A) Any plan issued or renewed after January 1, 2012, shall
21 include coverage for diagnosis and treatment of autism spectrum
22 disorder in individuals ages eighteen months through eighteen
23 years. To be eligible for coverage and benefits under this
24 subdivision, the individual must be diagnosed with autism spectrum
25 disorder at age 8 or younger. Such policy shall provide coverage
26 for treatments that are medically necessary and ordered or

1 prescribed by a licensed physician or licensed psychologist for an
2 individual diagnosed with autism spectrum disorder, in accordance
3 with a treatment plan developed by a certified behavior analyst
4 pursuant to a comprehensive evaluation or reevaluation of the
5 individual, subject to review by the agency every six months.
6 Progress reports are required to be filed with the agency semi-
7 annually. In order for treatment to continue, the agency must
8 receive objective evidence or a clinically supportable statement of
9 expectation that:

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

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

13 (3) There is an expectation that the anticipated improvement
14 is attainable in a reasonable and generally predictable period of
15 time.

16 (B) Such coverage shall include, but not be limited to,
17 applied behavioral analysis provided or supervised by a certified
18 behavior analyst: *Provided*, That the annual maximum benefit for
19 treatment required by this subdivision shall be in amount not to
20 exceed \$30,000 per individual, for three consecutive years from the
21 date treatment commences. At the conclusion of the third year,
22 required coverage shall be in an amount not to exceed \$2000 per
23 month, until the individual reaches eighteen years of age, as long
24 as the treatment is medically necessary and in accordance with a
25 treatment plan developed by a certified behavior analyst pursuant
26 to a comprehensive evaluation or reevaluation of the individual.

1 This section shall not be construed as limiting, replacing or
2 affecting any obligation to provide services to an individual under
3 the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et
4 seq., as amended from time to time or other publicly funded
5 programs. Nothing in this subdivision shall be construed as
6 requiring reimbursement for services provided by public school
7 personnel.

8 (C) On or before January 1 each year, the agency shall file an
9 annual report with the joint committee on government and finance
10 describing its implementation of the coverage provided pursuant to
11 this subdivision. The report shall include, but shall not be
12 limited to, the number of individuals in the plan utilizing the
13 coverage required by this subdivision, the fiscal and
14 administrative impact of the implementation, and any
15 recommendations the agency may have as to changes in law or policy
16 related to the coverage provided under this subdivision. In
17 addition, the agency shall provide such other information as may be
18 required by the joint committee on government and finance as it may
19 from time to time request.

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

21 (i) "Applied Behavior Analysis" means the design,
22 implementation, and evaluation of environmental modifications using
23 behavioral stimuli and consequences, to produce socially
24 significant improvement in human behavior, including the use of
25 direct observation, measurement, and functional analysis of the
26 relationship between environment and behavior.

1 (ii) "Autism spectrum disorder" means any pervasive
2 developmental disorder, including autistic disorder, Asperger's
3 Syndrome, Rett syndrome, childhood disintegrative disorder, or
4 Pervasive Development Disorder as defined in the most recent
5 edition of the Diagnostic and Statistical Manual of Mental
6 Disorders of the American Psychiatric Association.

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

10 (iv) "Objective evidence" means standardized patient
11 assessment instruments, outcome measurements tools or measurable
12 assessments of functional outcome. Use of objective measures at
13 the beginning of treatment, during and/or after treatment is
14 recommended to quantify progress and support justifications for
15 continued treatment. Such tools are not required, but their use
16 will enhance the justification for continued treatment.

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

21 (F) To the extent that the provisions of this subdivision
22 requires benefits that exceed the essential health benefits
23 specified under section 1302(b) of the Patient Protection and
24 Affordable Care Act, Pub. L. No. 111-148, as amended, the specific
25 benefits that exceed the specified essential health benefits shall

1 not be required of insurance plans offered by the public employees
2 insurance agency.

3 (b) The agency shall make available to each eligible employee,
4 at full cost to the employee, the opportunity to purchase optional
5 group life and accidental death insurance as established under the
6 rules of the agency. In addition, each employee is entitled to have
7 his or her spouse and dependents, as defined by the rules of the
8 agency, included in the optional coverage, at full cost to the
9 employee, for each eligible dependent; and with full authorization
10 to the agency to make the optional coverage available and provide
11 an opportunity of purchase to each employee.

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

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

15 (2) All teaching and professional employees of state public
16 institutions of higher education and county boards of education;

17 (3) All nonteaching employees of the Higher Education Policy
18 Commission, West Virginia Council for Community and Technical
19 College Education and county boards of education; or

20 (4) Any other categorization which would ensure the stability
21 of the overall program.

22 (d) The agency shall maintain the medical and prescription
23 drug coverage for Medicare-eligible retirees by providing coverage
24 through one of the existing plans or by enrolling the Medicare-
25 eligible retired employees into a Medicare-specific plan,
26 including, but not limited to, the Medicare/Advantage Prescription

1 Drug Plan. In the event that a Medicare-specific plan would no
2 longer be available or advantageous for the agency and the
3 retirees, the retirees shall remain eligible for coverage through
4 the agency.

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

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

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

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

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

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

5 (b) Such coverage shall include, but not be limited to,
6 applied behavioral analysis provided or supervised by a certified
7 behavior analyst: *Provided*, That the annual maximum benefit for
8 treatment required by this section shall be in amount not to exceed
9 \$30,000 per individual, for three consecutive years from the date
10 treatment commences. At the conclusion of the third year, required
11 coverage shall be in an amount not to exceed \$2000 per month, until
12 the individual reaches eighteen years of age, as long as the
13 treatment is medically necessary and in accordance with a treatment
14 plan developed by a certified behavior analyst pursuant to a
15 comprehensive evaluation or reevaluation of the individual. This
16 section shall not be construed as limiting, replacing or affecting
17 any obligation to provide services to an individual under the
18 Individuals with Disabilities Education Act, 20 U.S.C. 1400 et
19 seq., as amended from time to time or other publicly funded
20 programs. Nothing in this section shall be construed as requiring
21 reimbursement for services provided by public school personnel.

22 (c) On or before January 1 each year, the agency shall file an
23 annual report with the joint committee on government and finance
24 describing its implementation of the coverage provided pursuant to
25 this section. The report shall include, but shall not be limited to
26 the number of individuals in the plan utilizing the coverage

1 required by this section, the fiscal and administrative impact of
2 the implementation, and any recommendations the agency may have as
3 to changes in law or policy related to the coverage provided under
4 this section. In addition, the agency shall provide such other
5 information as may be requested by the joint committee on
6 government and finance as it may from time to time request.

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

8 (1) "Applied Behavior Analysis" means the design,
9 implementation, and evaluation of environmental modifications using
10 behavioral stimuli and consequences, to produce socially
11 significant improvement in human behavior, including the use of
12 direct observation, measurement, and functional analysis of the
13 relationship between environment and behavior.

14 (2) "Autism spectrum disorder" means any pervasive
15 developmental disorder, including autistic disorder, Asperger's
16 Syndrome, Rett syndrome, childhood disintegrative disorder, or
17 Pervasive Development Disorder as defined in the most recent
18 edition of the Diagnostic and Statistical Manual of Mental
19 Disorders of the American Psychiatric Association.

20 (3) "Certified behavior analyst" means an individual who is
21 certified by the Behavior Analyst Certification Board or certified
22 by a similar nationally recognized organization.

23 (4) "Objective evidence" means standardized patient assessment
24 instruments, outcome measurements tools or measurable assessments
25 of functional outcome. Use of objective measures at the beginning
26 of treatment, during and/or after treatment is recommended to

1 quantify progress and support justifications for continued
2 treatment. Such tools are not required, but their use will enhance
3 the justification for continued treatment.

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

8 (f) To the extent that the provisions of this section requires
9 benefits that exceed the essential health benefits specified under
10 section 1302(b) of the Patient Protection and Affordable Care Act,
11 Pub. L. No. 111-148, as amended, the specific benefits that exceed
12 the specified essential health benefits shall not be required of
13 the West Virginia Children's Health Insurance Program.

14 **CHAPTER 9. HUMAN SERVICES.**

15 **ARTICLE 5. MISCELLANEOUS PROVISIONS.**

16 **§9-5-21. Annual report to joint committee on government and finance**
17 **regarding treatment for autism spectrum disorders provided by**
18 **the Bureau for Medical Services.**

19 (a) On or before January 1 each year, the agency shall file an
20 annual report with the joint committee on government and finance
21 describing the number of enrolled individuals with autism spectrum
22 disorder, including the fiscal and administrative impact of
23 treatment of autism spectrum disorders, and any recommendations the
24 agency may have as to changes in law or policy related to such
25 disorder. In addition, the agency shall provide such other

1 information as may be requested by the joint committee on
2 government and finance as it may from time to time request.

3 (b) For purposes of this section, the term "autism spectrum
4 disorder" means any pervasive developmental disorder, including
5 autistic disorder, Asperger's Syndrome, Rett syndrome, childhood
6 disintegrative disorder, or Pervasive Development Disorder as
7 defined in the most recent edition of the Diagnostic and
8 Statistical Manual of Mental Disorders of the American Psychiatric
9 Association.

10 **CHAPTER 33. INSURANCE.**

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

12 **§33-16-3v. Required coverage for treatment of autism spectrum 13 disorders.**

14 (a) Any insurer who, on or after January 1, 2012, delivers,
15 renews or issues a policy of group accident and sickness insurance
16 in this State under the provisions of this article shall include
17 coverage for diagnosis and treatment of autism spectrum disorder in
18 individuals ages eighteen months through eighteen years. To be
19 eligible for coverage and benefits under this section, the
20 individual must be diagnosed with autism spectrum disorder at age
21 8 or younger. Such policy shall provide coverage for treatments
22 that are medically necessary and ordered or prescribed by a
23 licensed physician or licensed psychologist for an individual
24 diagnosed with autism spectrum disorder, in accordance with a
25 treatment plan developed by a certified behavior analyst pursuant

1 to a comprehensive evaluation or reevaluation of the individual,
2 subject to review by the agency every six months. Progress reports
3 are required to be filed with the insurer semi-annually. In order
4 for treatment to continue, the insurer must receive objective
5 evidence or a clinically supportable statement of expectation that:

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

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

9 (3) There is an expectation that the anticipated improvement
10 is attainable in a reasonable and generally predictable period of
11 time.

12 (b) Such coverage shall include, but not be limited to,
13 applied behavioral analysis provided or supervised by a certified
14 behavioral analyst: *Provided*, That the annual maximum benefit for
15 treatment required by this subdivision shall be in amount not to
16 exceed \$30,000 per individual, for three consecutive years from the
17 date treatment commences. At the conclusion of the third year,
18 required coverage shall be in an amount not to exceed \$2000 per
19 month, until the individual reaches eighteen years of age, as long
20 as the treatment is medically necessary and in accordance with a
21 treatment plan developed by a certified behavioral analyst pursuant
22 to a comprehensive evaluation or reevaluation of the individual.
23 This section shall not be construed as limiting, replacing or
24 affecting any obligation to provide services to an individual under
25 the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et
26 seq., as amended from time to time or other publicly funded

1 programs. Nothing in this section shall be construed as requiring
2 reimbursement for services provided by public school personnel.

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

4 (1) "Applied Behavior Analysis" means the design,
5 implementation, and evaluation of environmental modifications using
6 behavioral stimuli and consequences, to produce socially
7 significant improvement in human behavior, including the use of
8 direct observation, measurement, and functional analysis of the
9 relationship between environment and behavior.

10 (2) "Autism spectrum disorder" means any pervasive
11 developmental disorder, including autistic disorder, Asperger's
12 Syndrome, Rett syndrome, childhood disintegrative disorder, or
13 Pervasive Development Disorder as defined in the most recent
14 edition of the Diagnostic and Statistical Manual of Mental
15 Disorders of the American Psychiatric Association.

16 (3) "Certified behavior analyst" means an individual who is
17 certified by the Behavior Analyst Certification Board or certified
18 by a similar nationally recognized organization.

19 (4) "Objective evidence" means standardized patient assessment
20 instruments, outcome measurements tools or measurable assessments
21 of functional outcome. Use of objective measures at the beginning
22 of treatment, during and/or after treatment is recommended to
23 quantify progress and support justifications for continued
24 treatment. Such tools are not required, but their use will enhance
25 the justification for continued treatment.

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

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

11 (f) To the extent that the provisions of this section requires
12 benefits that exceed the essential health benefits specified under
13 section 1302(b) of the Patient Protection and Affordable Care Act,
14 Pub. L. No. 111-148, as amended, the specific benefits that exceed
15 the specified essential health benefits shall not be required of a
16 health benefit plan when the plan is offered by a health care
17 insurer in this state..

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

19 **§33-24-7k. Coverage for diagnosis and treatment of autism spectrum**
20 **disorders.**

21 (a) Notwithstanding any provision of any policy, provision,
22 contract, plan or agreement to which this article applies, any
23 entity regulated by this article, for policies issued or renewed
24 on or after January 1, 2012, delivers, renews or issues a policy of
25 group accident and sickness insurance in this State under the

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

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

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

19 (3) There is an expectation that the anticipated improvement
20 is attainable in a reasonable and generally predictable period of
21 time.

22 (b) Such coverage shall include, but not be limited to,
23 applied behavioral analysis provided or supervised by a certified
24 behavioral analyst: *Provided*, That the annual maximum benefit for
25 treatment required by this section shall be in amount not to exceed
26 \$30,000 per individual, for three consecutive years from the date

1 treatment commences. At the conclusion of the third year, required
2 coverage shall be in an amount not to exceed \$2000 per month, until
3 the individual reaches eighteen years of age, as long as the
4 treatment is medically necessary and in accordance with a treatment
5 plan developed by a certified behavior analyst pursuant to a
6 comprehensive evaluation or reevaluation of the individual. This
7 section shall not be construed as limiting, replacing or affecting
8 any obligation to provide services to an individual under the
9 Individuals with Disabilities Education Act, 20 U.S.C. 1400 et
10 seq., as amended from time to time or other publicly funded
11 programs. Nothing in this section shall be construed as requiring
12 reimbursement for services provided by public school personnel.

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

14 (1) "Applied Behavior Analysis" means the design,
15 implementation, and evaluation of environmental modifications using
16 behavioral stimuli and consequences, to produce socially
17 significant improvement in human behavior, including the use of
18 direct observation, measurement, and functional analysis of the
19 relationship between environment and behavior.

20 (2) "Autism spectrum disorder" means any pervasive
21 developmental disorder, including autistic disorder, Asperger's
22 Syndrome, Rett syndrome, childhood disintegrative disorder, or
23 Pervasive Development Disorder as defined in the most recent
24 edition of the Diagnostic and Statistical Manual of Mental
25 Disorders of the American Psychiatric Association.

1 (3) "Certified behavior analyst" means an individual who is
2 certified by the Behavior Analyst Certification Board or certified
3 by a similar nationally recognized organization.

4 (4) "Objective evidence" means standardized patient assessment
5 instruments, outcome measurements tools or measurable assessments
6 of functional outcome. Use of objective measures at the beginning
7 of treatment, during and/or after treatment is recommended to
8 quantify progress and support justifications for continued
9 treatment. Such tools are not required, but their use will enhance
10 the justification for continued treatment.

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

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

21 (f) To the extent that the provisions of this section requires
22 benefits that exceed the essential health benefits specified under
23 section 1302(b) of the Patient Protection and Affordable Care Act,
24 Pub. L. No. 111-148, as amended, the specific benefits that exceed
25 the specified essential health benefits shall not be required of

1 a health benefit plan when the plan is offered by a corporation in
2 this state.

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

4 **§33-25A-8j. Coverage for diagnosis and treatment of autism**
5 **spectrum disorders.**

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

1 maintenance organization must receive objective evidence or a
2 clinically supportable statement of expectation that:

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

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

6 (3) There is an expectation that the anticipated improvement
7 is attainable in a reasonable and generally predictable period of
8 time.

9 (b) Such coverage shall include, but not be limited to,
10 applied behavioral analysis provided or supervised by a certified
11 behavioral analyst: *Provided*, That the annual maximum benefit for
12 treatment required by this subdivision shall be in amount not to
13 exceed \$30,000 per individual, for three consecutive years from the
14 date treatment commences. At the conclusion of the third year,
15 required coverage shall be in an amount not to exceed \$2000 per
16 month, until the individual reaches eighteen years of age, as long
17 as the treatment is medically necessary and in accordance with a
18 treatment plan developed by a certified behavior analyst pursuant
19 to a comprehensive evaluation or reevaluation of the individual.
20 This section shall not be construed as limiting, replacing or
21 affecting any obligation to provide services to an individual under
22 the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et
23 seq., as amended from time to time or other publicly funded
24 programs. Nothing in this section shall be construed as requiring
25 reimbursement for services provided by public school personnel.

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

1 (1) "Applied Behavior Analysis" means the design,
2 implementation, and evaluation of environmental modifications using
3 behavioral stimuli and consequences, to produce socially
4 significant improvement in human behavior, including the use of
5 direct observation, measurement, and functional analysis of the
6 relationship between environment and behavior.

7 (2) "Autism spectrum disorder" means any pervasive
8 developmental disorder, including autistic disorder, Asperger's
9 Syndrome, Rett syndrome, childhood disintegrative disorder, or
10 Pervasive Development Disorder as defined in the most recent
11 edition of the Diagnostic and Statistical Manual of Mental
12 Disorders of the American Psychiatric Association.

13 (3) "Certified behavior analyst" means an individual who is
14 certified by the Behavior Analyst Certification Board or certified
15 by a similar nationally recognized organization.

16 (4) "Objective evidence" means standardized patient assessment
17 instruments, outcome measurements tools or measurable assessments
18 of functional outcome. Use of objective measures at the beginning
19 of treatment, during and/or after treatment is recommended to
20 quantify progress and support justifications for continued
21 treatment. Such tools are not required, but their use will enhance
22 the justification for continued treatment.

23 (d) The provisions of this section do not apply to small
24 employers. For purposes of this section a small employer shall be
25 defined as any person, firm, corporation, partnership or
26 association actively engaged in business in the state of West

1 Virginia who, during the preceding calendar year, employed an
2 average of no more than twenty-five eligible employees.

3 (e) To the extent that the application of this section for
4 autism spectrum disorder causes an increase of at least one percent
5 of actual total costs of coverage for the plan year the health
6 maintenance organization may apply additional cost containment
7 measures.

8 (f) To the extent that the provisions of this section requires
9 benefits that exceed the essential health benefits specified under
10 section 1302(b) of the Patient Protection and Affordable Care Act,
11 Pub. L. No. 111-148, as amended, the specific benefits that exceed
12 the specified essential health benefits shall not be required of a
13 health benefit plan when the plan is offered by a health
14 maintenance organization in this state.

Adopted

Rejected