

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 4260**

5 (By Delegates Fleischauer, Miley, Brown, Caputo,  
6 Hunt, Longstreth, Pino, Overington and Sobonya)

7 [Passed March 10, 2012; in effect ninety days from passage.]

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10 AN ACT to amend and reenact §5-16-7 of the Code of West Virginia,  
11 1931, as amended; to amend and reenact §5-16B-6e of said code;  
12 to amend and reenact §33-16-3v of said code; to amend and  
13 reenact §33-24-7k of said code; and to amend and reenact §33-  
14 25A-8j of said code, all relating to insurance coverage for  
15 autism spectrum disorders; specifying application of benefit  
16 caps; clarifying time frames; adding evaluation of autism  
17 spectrum disorder to included coverage; clarifying diagnosis,  
18 evaluation and treatment requirements; clarifying reporting  
19 requirements; and making technical corrections.

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

21 That §5-16-7 of the Code of West Virginia, 1931, as amended,  
22 be amended and reenacted; that §5-16B-6e of said code be amended  
23 and reenacted; that §33-16-3v of said code be amended and  
24 reenacted; that §33-24-7k of said code be amended and reenacted;  
25 and that §33-25A-8j of said code be amended and reenacted, all to  
26 read as follows:

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

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

6 **§5-16-7.   Authorization to establish group hospital and surgical**  
7                   **insurance plan, group major medical insurance plan,**  
8                   **group prescription drug plan and group life and**  
9                   **accidental death insurance plan; rules for**  
10                   **administration of plans; mandated benefits; what plans**  
11                   **may provide; optional plans; separate rating for**  
12                   **claims experience purposes.**

13           (a) The agency shall establish a group hospital and surgical  
14 insurance plan or plans, a group prescription drug insurance plan  
15 or plans, a group major medical insurance plan or plans and a group  
16 life and accidental death insurance plan or plans for those  
17 employees herein made eligible, and to establish and promulgate  
18 rules for the administration of these plans, subject to the  
19 limitations contained in this article. Those plans shall include:

20           (1) Coverages and benefits for X ray and laboratory services  
21 in connection with mammograms when medically appropriate and  
22 consistent with current guidelines from the United States  
23 Preventive Services Task Force; pap smears, either conventional or  
24 liquid-based cytology, whichever is medically appropriate and  
25 consistent with the current guidelines from either the United

1 States Preventive Services Task Force or The American College of  
2 Obstetricians and Gynecologists; and a test for the human papilloma  
3 virus (HPV) when medically appropriate and consistent with current  
4 guidelines from either the United States Preventive Services Task  
5 Force or The American College of Obstetricians and Gynecologists,  
6 when performed for cancer screening or diagnostic services on a  
7 woman age eighteen or over;

8       (2) Annual checkups for prostate cancer in men age fifty and  
9 over;

10       (3) Annual screening for kidney disease as determined to be  
11 medically necessary by a physician using any combination of blood  
12 pressure testing, urine albumin or urine protein testing and serum  
13 creatinine testing as recommended by the National Kidney  
14 Foundation;

15       (4) For plans that include maternity benefits, coverage for  
16 inpatient care in a duly licensed health care facility for a mother  
17 and her newly born infant for the length of time which the  
18 attending physician considers medically necessary for the mother or  
19 her newly born child: *Provided*, That no plan may deny payment for  
20 a mother or her newborn child prior to forty-eight hours following  
21 a vaginal delivery, or prior to ninety-six hours following a  
22 caesarean section delivery, if the attending physician considers  
23 discharge medically inappropriate;

24       (5) For plans which provide coverages for post-delivery care  
25 to a mother and her newly born child in the home, coverage for  
26 inpatient care following childbirth as provided in subdivision (4)

1 of this subsection if inpatient care is determined to be medically  
2 necessary by the attending physician. Those plans may also  
3 include, among other things, medicines, medical equipment,  
4 prosthetic appliances and any other inpatient and outpatient  
5 services and expenses considered appropriate and desirable by the  
6 agency; and

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

8 (A) The coverage does not include custodial care, residential  
9 care or schooling. For purposes of this section, "serious mental  
10 illness" means an illness included in the American Psychiatric  
11 Association's diagnostic and statistical manual of mental  
12 disorders, as periodically revised, under the diagnostic categories  
13 or subclassifications of: (i) Schizophrenia and other psychotic  
14 disorders; (ii) bipolar disorders; (iii) depressive disorders; (iv)  
15 substance-related disorders with the exception of caffeine-related  
16 disorders and nicotine-related disorders; (v) anxiety disorders;  
17 and (vi) anorexia and bulimia. With regard to any covered  
18 individual who has not yet attained the age of nineteen years,  
19 "serious mental illness" also includes attention deficit  
20 hyperactivity disorder, separation anxiety disorder and conduct  
21 disorder.

22 (B) Notwithstanding any other provision in this section to the  
23 contrary, in the event that the agency can demonstrate that its  
24 total costs for the treatment of mental illness for any plan  
25 exceeded two percent of the total costs for such plan in any  
26 experience period, then the agency may apply whatever additional

1 cost-containment measures may be necessary, including, but not  
2 limited to, limitations on inpatient and outpatient benefits, to  
3 maintain costs below two percent of the total costs for the plan  
4 for the next experience period.

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

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

22 (A) Seven years of age or younger or is developmentally  
23 disabled, and is an individual for whom a successful result cannot  
24 be expected from dental care provided under local anesthesia  
25 because of a physical, intellectual or other medically compromising  
26 condition of the individual and for whom a superior result can be

1 expected from dental care provided under general anesthesia;

2 (B) A child who is twelve years of age or younger with  
3 documented phobias, or with documented mental illness, and with  
4 dental needs of such magnitude that treatment should not be delayed  
5 or deferred and for whom lack of treatment can be expected to  
6 result in infection, loss of teeth or other increased oral or  
7 dental morbidity and for whom a successful result cannot be  
8 expected from dental care provided under local anesthesia because  
9 of such condition and for whom a superior result can be expected  
10 from dental care provided under general anesthesia.

11 (8) (A) Any plan issued or renewed on or after January 1, 2012,  
12 shall include coverage for diagnosis, evaluation and treatment of  
13 autism spectrum disorder in individuals ages eighteen months to  
14 eighteen years. To be eligible for coverage and benefits under  
15 this subdivision, the individual must be diagnosed with autism  
16 spectrum disorder at age eight or younger. Such policy shall  
17 provide coverage for treatments that are medically necessary and  
18 ordered or prescribed by a licensed physician or licensed  
19 psychologist and in accordance with a treatment plan developed from  
20 a comprehensive evaluation by a certified behavior analyst for an  
21 individual diagnosed with autism spectrum disorder.

22 (B) The coverage shall include, but not be limited to,  
23 applied behavior analysis. Applied behavior analysis shall be  
24 provided or supervised by a certified behavior analyst. The annual  
25 maximum benefit for applied behavior analysis required by this  
26 subdivision shall be in an amount not to exceed \$30,000 per

1 individual, for three consecutive years from the date treatment  
2 commences. At the conclusion of the third year, coverage for  
3 applied behavior analysis required by this subdivision shall be in  
4 an amount not to exceed \$2,000 per month, until the individual  
5 reaches eighteen years of age, as long as the treatment is  
6 medically necessary and in accordance with a treatment plan  
7 developed by a certified behavior analyst pursuant to a  
8 comprehensive evaluation or reevaluation of the individual. This  
9 subdivision shall not be construed as limiting, replacing or  
10 affecting any obligation to provide services to an individual under  
11 the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et  
12 seq., as amended from time to time or other publicly funded  
13 programs. Nothing in this subdivision shall be construed as  
14 requiring reimbursement for services provided by public school  
15 personnel.

16 (C) The certified behavior analyst shall file progress reports  
17 with the agency semiannually. In order for treatment to continue,  
18 the agency must receive objective evidence or a clinically  
19 supportable statement of expectation that:

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

22 (ii) A maximum improvement is yet to be attained; and

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

26 (D) On or before January 1 each year, the agency shall file an

1 annual report with the Joint Committee on Government and Finance  
2 describing its implementation of the coverage provided pursuant to  
3 this subdivision. The report shall include, but shall not be  
4 limited to, the number of individuals in the plan utilizing the  
5 coverage required by this subdivision, the fiscal and  
6 administrative impact of the implementation, and any  
7 recommendations the agency may have as to changes in law or policy  
8 related to the coverage provided under this subdivision. In  
9 addition, the agency shall provide such other information as may be  
10 required by the Joint Committee on Government and Finance as it may  
11 from time to time request.

12 (E) For purposes of this subdivision, the term:

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

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

25 (iii) "Certified behavior analyst" means an individual who is  
26 certified by the Behavior Analyst Certification Board or certified



1 by a similar nationally recognized organization.

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

9 (F) To the extent that the application of this subdivision for  
10 autism spectrum disorder causes an increase of at least one percent  
11 of actual total costs of coverage for the plan year the agency may  
12 apply additional cost containment measures.

13 (G) To the extent that the provisions of this subdivision  
14 require benefits that exceed the essential health benefits  
15 specified under section 1302(b) of the Patient Protection and  
16 Affordable Care Act, Pub. L. No. 111-148, as amended, the specific  
17 benefits that exceed the specified essential health benefits shall  
18 not be required of insurance plans offered by the Public Employees  
19 Insurance Agency.

20 (b) The agency shall make available to each eligible employee,  
21 at full cost to the employee, the opportunity to purchase optional  
22 group life and accidental death insurance as established under the  
23 rules of the agency. In addition, each employee is entitled to have  
24 his or her spouse and dependents, as defined by the rules of the  
25 agency, included in the optional coverage, at full cost to the  
26 employee, for each eligible dependent; and with full authorization

1 to the agency to make the optional coverage available and provide  
2 an opportunity of purchase to each employee.

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

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

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

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

11 (4) Any other categorization which would ensure the stability  
12 of the overall program.

13 (d) The agency shall maintain the medical and prescription  
14 drug coverage for Medicare-eligible retirees by providing coverage  
15 through one of the existing plans or by enrolling the Medicare-  
16 eligible retired employees into a Medicare-specific plan,  
17 including, but not limited to, the Medicare/Advantage Prescription  
18 Drug Plan. In the event that a Medicare specific plan would no  
19 longer be available or advantageous for the agency and the  
20 retirees, the retirees shall remain eligible for coverage through  
21 the agency.

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

23 **§5-16B-6e. Coverage for treatment of autism spectrum disorders.**

24 (a) To the extent that the diagnosis, evaluation and treatment  
25 of autism spectrum disorders are not already covered by this  
26 agency, on or after January 1, 2012, a policy, plan or contract

1 subject to this section shall provide coverage for such diagnosis,  
2 evaluation and treatment, for individuals ages eighteen months to  
3 eighteen years. To be eligible for coverage and benefits under  
4 this section, the individual must be diagnosed with autism spectrum  
5 disorder at age eight or younger. Such policy shall provide  
6 coverage for treatments that are medically necessary and ordered or  
7 prescribed by a licensed physician or licensed psychologist and in  
8 accordance with a treatment plan developed from a comprehensive  
9 evaluation by a certified behavior analyst for an individual  
10 diagnosed with autism spectrum disorder.

11 (b) The coverage shall include, but not be limited to, applied  
12 behavior analysis. Applied behavior analysis shall be provided or  
13 supervised by a certified behavior analyst. The annual maximum  
14 benefit for applied behavior analysis required by this subsection  
15 shall be in an amount not to exceed \$30,000 per individual, for  
16 three consecutive years from the date treatment commences. At the  
17 conclusion of the third year, coverage for applied behavior  
18 analysis required by this subsection shall be in an amount not to  
19 exceed \$2,000 per month, until the individual reaches eighteen  
20 years of age, as long as the treatment is medically necessary and  
21 in accordance with a treatment plan developed by a certified  
22 behavior analyst pursuant to a comprehensive evaluation or  
23 reevaluation of the individual. This section shall not be construed  
24 as limiting, replacing or affecting any obligation to provide  
25 services to an individual under the Individuals with Disabilities  
26 Education Act, 20 U.S.C. 1400 et seq., as amended from time to

1 time, or other publicly funded programs. Nothing in this section  
2 shall be construed as requiring reimbursement for services provided  
3 by public school personnel.

4 (c) The certified behavior analyst shall file progress reports  
5 with the agency semiannually. In order for treatment to continue,  
6 the agency must receive objective evidence or a clinically  
7 supportable statement of expectation that:

8 (1) The individual's condition is improving in response to  
9 treatment; and

10 (2) A maximum improvement is yet to be attained; and

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

14 (d) On or before January 1 each year, the agency shall file an  
15 annual report with the Joint Committee on Government and Finance  
16 describing its implementation of the coverage provided pursuant to  
17 this section. The report shall include, but shall not be limited  
18 to, the number of individuals in the plan utilizing the coverage  
19 required by this section, the fiscal and administrative impact of  
20 the implementation, and any recommendations the agency may have as  
21 to changes in law or policy related to the coverage provided under  
22 this section. In addition, the agency shall provide such other  
23 information as may be requested by the Joint Committee on  
24 Government and Finance as it may from time to time request.

25 (e) For purposes of this section, the term:

26 (1) "Applied Behavior Analysis" means the design,

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

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

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

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

22 (f) To the extent that the application of this section for  
23 autism spectrum disorder causes an increase of at least one percent  
24 of actual total costs of coverage for the plan year the agency may  
25 apply additional cost containment measures.

26 (g) To the extent that the provisions of this section require

1 benefits that exceed the essential health benefits specified under  
2 section 1302(b) of the Patient Protection and Affordable Care Act,  
3 Pub. L. No. 111-148, as amended, the specific benefits that exceed  
4 the specified essential health benefits shall not be required of  
5 the West Virginia Children's Health Insurance Program.

6 **CHAPTER 33. INSURANCE.**

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

8 **§33-16-3v. Required coverage for treatment of autism spectrum**  
9 **disorders.**

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

23 (b) Coverage shall include, but not be limited to, applied  
24 behavior analysis. Applied behavior analysis shall be provided or  
25 supervised by a certified behavior analyst. The annual maximum

1 benefit for applied behavior analysis required by this subsection  
2 shall be in an amount not to exceed \$30,000 per individual, for  
3 three consecutive years from the date treatment commences. At the  
4 conclusion of the third year, required coverage shall be in an  
5 amount not to exceed \$2,000 per month, until the individual reaches  
6 eighteen years of age, as long as the treatment is medically  
7 necessary and in accordance with a treatment plan developed by a  
8 certified behavior analyst pursuant to a comprehensive evaluation  
9 or reevaluation of the individual. This section shall not be  
10 construed as limiting, replacing or affecting any obligation to  
11 provide services to an individual under the Individuals with  
12 Disabilities Education Act, 20 U.S.C. 1400 et seq., as amended from  
13 time to time or other publicly funded programs. Nothing in this  
14 section shall be construed as requiring reimbursement for services  
15 provided by public school personnel.

16 (c) The certified behavior analyst shall file progress reports  
17 with the insurer semiannually. In order for treatment to continue,  
18 the insurer must receive objective evidence or a clinically  
19 supportable statement of expectation that:

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

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

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

26 (d) 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 after treatment is recommended to quantify  
20 progress and support justifications for continued treatment. The  
21 tools are not required, but their use will enhance the  
22 justification for continued treatment.

23           (e) The provisions of this section do not apply to small  
24 employers. For purposes of this section a small employer means any  
25 person, firm, corporation, partnership or association actively  
26 engaged in business in the State of West Virginia who, during the



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

3 (f) 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 insurer may  
6 apply additional cost containment measures.

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

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

15 **§33-24-7k. Coverage for diagnosis and treatment of autism spectrum**  
16 **disorders.**

17 (a) Notwithstanding any provision of any policy, provision,  
18 contract, plan or agreement to which this article applies, any  
19 entity regulated by this article, for policies issued or renewed  
20 on or after January 1, 2012, which delivers, renews or issues a  
21 policy of group accident and sickness insurance in this state under  
22 the provisions of this article shall include coverage for diagnosis  
23 and treatment of autism spectrum disorder in individuals ages  
24 eighteen months to eighteen years. To be eligible for coverage and  
25 benefits under this section, the individual must be diagnosed with

1 autism spectrum disorder at age eight or younger. The policy shall  
2 provide coverage for treatments that are medically necessary and  
3 ordered or prescribed by a licensed physician or licensed  
4 psychologist and in accordance with a treatment plan developed from  
5 a comprehensive evaluation by a certified behavior analyst for an  
6 individual diagnosed with autism spectrum disorder.

7 (b) Coverage shall include, but not be limited to, applied  
8 behavior analysis. Applied behavior analysis shall be provided or  
9 supervised by a certified behavior analyst. The annual maximum  
10 benefit for applied behavior analysis required by this subsection  
11 shall be in an amount not to exceed \$30,000 per individual, for  
12 three consecutive years from the date treatment commences. At the  
13 conclusion of the third year, coverage for applied behavior  
14 analysis required by this subsection shall be in an amount not to  
15 exceed \$2,000 per month, until the individual reaches eighteen  
16 years of age, as long as the treatment is medically necessary and  
17 in accordance with a treatment plan developed by a certified  
18 behavior analyst pursuant to a comprehensive evaluation or  
19 reevaluation of the individual. This section shall not be construed  
20 as limiting, replacing or affecting any obligation to provide  
21 services to an individual under the Individuals with Disabilities  
22 Education Act, 20 U.S.C. 1400 et seq., as amended from time to time  
23 or other publicly funded programs. Nothing in this section shall  
24 be construed as requiring reimbursement for services provided by  
25 public school personnel.

26 (c) The certified behavior analyst shall file progress reports

1 with the agency semiannually. In order for treatment to continue,  
2 the insurer must receive objective evidence or a clinically  
3 supportable statement of expectation that:

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

6 (2) A maximum improvement is yet to be attained; and

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

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

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

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

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

26 (4) "Objective evidence" means standardized patient assessment

1 instruments, outcome measurements tools or measurable assessments  
2 of functional outcome. Use of objective measures at the beginning  
3 of treatment, during and after treatment is recommended to quantify  
4 progress and support justifications for continued treatment. The  
5 tools are not required, but their use will enhance the  
6 justification for continued treatment.

7 (e) The provisions of this section do not apply to small  
8 employers. For purposes of this section a small employer means any  
9 person, firm, corporation, partnership or association actively  
10 engaged in business in the State of West Virginia who, during the  
11 preceding calendar year, employed an average of no more than  
12 twenty-five eligible employees.

13 (f) To the extent that the application of this section for  
14 autism spectrum disorder causes an increase of at least one percent  
15 of actual total costs of coverage for the plan year the corporation  
16 may apply additional cost containment measures.

17 (g) To the extent that the provisions of this section require  
18 benefits that exceed the essential health benefits specified under  
19 section 1302(b) of the Patient Protection and Affordable Care Act,  
20 Pub. L. No. 111-148, as amended, the specific benefits that exceed  
21 the specified essential health benefits shall not be required of a  
22 health benefit plan when the plan is offered by a corporation in  
23 this state.

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

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

1 (a) Notwithstanding any provision of any policy, provision,  
2 contract, plan or agreement to which this article applies, any  
3 entity regulated by this article for policies issued or renewed  
4 on or after January 1, 2012, which delivers, renews or issues a  
5 policy of group accident and sickness insurance in this state under  
6 the provisions of this article shall include coverage for  
7 diagnosis, evaluation and treatment of autism spectrum disorder in  
8 individuals ages eighteen months to eighteen years. To be eligible  
9 for coverage and benefits under this section, the individual must  
10 be diagnosed with autism spectrum disorder at age eight or younger.  
11 The policy shall provide coverage for treatments that are medically  
12 necessary and ordered or prescribed by a licensed physician or  
13 licensed psychologist and in accordance with a treatment plan  
14 developed from a comprehensive evaluation by a certified behavior  
15 analyst for an individual diagnosed with autism spectrum disorder.

16 (b) Coverage shall include, but not be limited to, applied  
17 behavior analysis. Applied behavior analysis shall be provided or  
18 supervised by a certified behavior analyst. The annual maximum  
19 benefit for applied behavior analysis required by this subsection  
20 shall be in amount not to exceed \$30,000 per individual, for three  
21 consecutive years from the date treatment commences. At the  
22 conclusion of the third year, coverage for applied behavior  
23 analysis required by this subsection shall be in an amount not to  
24 exceed \$2,000 per month, until the individual reaches eighteen  
25 years of age, as long as the treatment is medically necessary and  
26 in accordance with a treatment plan developed by a certified

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

9 (c) The certified behavior analyst shall file progress reports  
10 with the agency semiannually. In order for treatment to continue,  
11 the agency must receive objective evidence or a clinically  
12 supportable statement of expectation that:

13 (1) The individual's condition is improving in response to  
14 treatment; and

15 (2) A maximum improvement is yet to be attained; and

16 (3) There is an expectation that the anticipated improvement  
17 is attainable in a reasonable and generally predictable period of  
18 time.

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

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

26 (2) "Autism spectrum disorder" means any pervasive

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

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

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

16 (e) The provisions of this section do not apply to small  
17 employers. For purposes of this section a small employer means any  
18 person, firm, corporation, partnership or association actively  
19 engaged in business in the State of West Virginia who, during the  
20 preceding calendar year, employed an average of no more than  
21 twenty-five eligible employees.

22 (f) To the extent that the application of this section for  
23 autism spectrum disorder causes an increase of at least one percent  
24 of actual total costs of coverage for the plan year the health  
25 maintenance organization may apply additional cost containment  
26 measures.

1           (g) To the extent that the provisions of this section require  
2 benefits that exceed the essential health benefits specified under  
3 section 1302(b) of the Patient Protection and Affordable Care Act,  
4 Pub. L. No. 111-148, as amended, the specific benefits that exceed  
5 the specified essential health benefits shall not be required of a  
6 health benefit plan when the plan is offered by a health  
7 maintenance organization in this state.