

**Senate Bill No. 401**

(By Senators Wills, Beach, Kirkendoll, Klempa, McCabe, Minard,  
Palumbo, Tucker, Williams, K. Facemyer, Nohe, Jenkins, Unger,  
Foster, Yost, Kessler (Mr. President) and Plymale)

**Interim  
Bill**

[Introduced January 24, 2012; referred to the Committee on  
Banking and Insurance; and then to the Committee on the  
Judiciary.]

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

*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 §5-16B-6e of said code be amended

1 and reenacted; that §33-16-3v of said code be amended and  
2 reenacted; that §33-24-7k of said code be amended and reenacted;  
3 and that §33-25A-8j of said code be amended and reenacted, all to  
4 read as follows:

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

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

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

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

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

14           (2) Annual checkups for prostate cancer in men age fifty and  
15 over;

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

21           (4) For plans that include maternity benefits, coverage for  
22 inpatient care in a duly licensed health care facility for a mother  
23 and her newly born infant for the length of time which the  
24 attending physician considers medically necessary for the mother or

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

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

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

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

1 and (vi) anorexia and bulimia. With regard to any covered  
2 individual who has not yet attained the age of nineteen years,  
3 "serious mental illness" also includes attention deficit  
4 hyperactivity disorder, separation anxiety disorder and conduct  
5 disorder.

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

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

1 arrangements, using fee-for-service arrangements, using third-party  
2 administrators, using provider networks and using patient cost  
3 sharing in the form of copayments, deductibles and coinsurance.

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

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

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

23 (8) (A) Any plan issued or renewed on or after January 1, 2012,  
24 shall include coverage for diagnosis, evaluation and treatment of

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

15       ~~(1) The individual's condition is improving in response to~~  
 16 ~~treatment; and~~

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

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

21       (B) ~~Such~~ The coverage shall include, but not be limited to,  
 22 applied ~~behavioral~~ behavior analysis. Applied behavior analysis  
 23 shall be provided or supervised by a certified behavior analyst.  
 24 ~~Provided, That the~~ The annual maximum benefit for ~~treatment~~ applied

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

1 time.

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

14       ~~(D)~~ (E) For purposes of this subdivision, the term:

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

21       (ii) "Autism spectrum disorder" means any pervasive  
22 developmental disorder, including autistic disorder, Asperger's  
23 Syndrome, Rett Syndrome, childhood disintegrative disorder, or  
24 Pervasive Development Disorder as defined in the most recent

1 edition of the Diagnostic and Statistical Manual of Mental  
2 Disorders of the American Psychiatric Association.

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

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

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

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

24 (b) The agency shall make available to each eligible employee,

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

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

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

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

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

17 (4) Any other categorization which would ensure the stability  
18 of the overall program.

19 (d) The agency shall maintain the medical and prescription  
20 drug coverage for Medicare eligible retirees by providing coverage  
21 through one of the existing plans or by enrolling the Medicare  
22 eligible retired employees into a Medicare specific plan,  
23 including, but not limited to, the Medicare/Advantage Prescription  
24 Drug Plan. In the event that a Medicare specific plan would no

1 longer be available or advantageous for the agency and the  
2 retirees, the retirees shall remain eligible for coverage through  
3 the agency.

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

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

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

24 ~~(1) the individual's condition is improving in response to~~

1 ~~treatment, and~~

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

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

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

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

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

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

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

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

22        ~~(d)~~ (e) For purposes of this section, the term:

23        (1) "Applied Behavior Analysis" means the design,  
24 implementation, and evaluation of environmental modifications using

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

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

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

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

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



1 ~~individual, subject to review by the agency every six months.~~  
2 ~~Progress reports are required to be filed with the insurer~~  
3 ~~semiannually. In order for treatment to continue, the insurer must~~  
4 ~~receive objective evidence or a clinically supportable statement of~~  
5 ~~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~~ behavior analysis. Applied behavior analysis  
14 shall be provided or supervised by a certified ~~behavioral~~ behavior  
15 analyst. ~~Provided, That~~ The annual maximum benefit for ~~treatment~~  
16 applied behavior analysis required by this ~~subdivision~~ subsection  
17 shall be in an amount not to exceed \$30,000 per individual, for  
18 three consecutive years from the date treatment commences. At the  
19 conclusion of the third year, required coverage shall be in an  
20 amount not to exceed \$2000 per month, until the individual reaches  
21 eighteen years of age, as long as the treatment is medically  
22 necessary and in accordance with a treatment plan developed by a  
23 certified ~~behavioral~~ behavior analyst pursuant to a comprehensive  
24 evaluation or reevaluation of the individual. This section shall

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

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

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

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

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

17 ~~(c)~~ (d) For purposes of this section, the term:

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

24 (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/or~~ and after treatment is recommended to  
13 quantify progress and support justifications for continued  
14 treatment. ~~Such~~ The tools are not required, but their use will  
15 enhance the justification for continued treatment.

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

22 ~~(e)~~ (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 insurer may

1 apply additional cost containment measures.

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

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

10 **§33-24-7k. Coverage for diagnosis and treatment of autism spectrum**  
11 **disorders.**

12 (a) Notwithstanding any provision of any policy, provision,  
13 contract, plan or agreement to which this article applies, any  
14 entity regulated by this article for policies issued or renewed  
15 on or after January 1, 2012, which delivers, renews or issues a  
16 policy of group accident and sickness insurance in this state under  
17 the provisions of this article shall include coverage for diagnosis  
18 and treatment of autism spectrum disorder in individuals ages  
19 eighteen months ~~through~~ to eighteen years. To be eligible for  
20 coverage and benefits under this section, the individual must be  
21 diagnosed with autism spectrum disorder at age 8 or younger. ~~Such~~  
22 The policy shall provide coverage for treatments that are medically  
23 necessary and ordered or prescribed by a licensed physician or  
24 licensed psychologist for an individual diagnosed with autism

1 spectrum disorder. ~~in accordance with a treatment plan developed by~~  
2 ~~a certified behavior analyst pursuant to a comprehensive evaluation~~  
3 ~~or reevaluation of the individual, subject to review by the~~  
4 ~~corporation every six months. Progress reports are required to be~~  
5 ~~filed with the corporation semiannually. In order for treatment to~~  
6 ~~continue, the agency must receive objective evidence or a~~  
7 ~~clinically 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       (b) ~~Such~~ Coverage shall include, but not be limited to,  
15 applied ~~behavioral~~ behavior analysis. Applied behavior analysis  
16 shall be provided or supervised by a certified ~~behavioral~~ behavior  
17 analyst. ~~Provided, That~~ The annual maximum benefit for ~~treatment~~  
18 applied behavior analysis required by this ~~section~~ subsection shall  
19 be in an amount not to exceed \$30,000 per individual, for three  
20 consecutive years from the date treatment commences. At the  
21 conclusion of the third year, required coverage shall be in an  
22 amount not to exceed \$2,000 per month, until the individual reaches  
23 eighteen years of age, as long as the treatment is medically  
24 necessary and in accordance with a treatment plan developed by a

1 certified behavior analyst pursuant to a comprehensive evaluation  
2 or 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 insurer 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 ~~(c)~~ (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

1 relationship between environment and behavior.

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

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

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

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

24 ~~(e)~~ (f) To the extent that the application of this section for

1 autism spectrum disorder causes an increase of at least one percent  
 2 of actual total costs of coverage for the plan year the corporation  
 3 may apply additional cost containment measures.

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

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

12 **§33-25A-8j. Coverage for diagnosis and treatment of autism**  
 13 **spectrum disorders.**

14 (a) Notwithstanding any provision of any policy, provision,  
 15 contract, plan or agreement to which this article applies, any  
 16 entity regulated by this article for policies issued or renewed  
 17 on or after January 1, 2012, which delivers, renews or issues a  
 18 policy of group accident and sickness insurance in this state under  
 19 the provisions of this article shall include coverage for  
 20 diagnosis, evaluation and treatment of autism spectrum disorder in  
 21 individuals ages eighteen months ~~through~~ to eighteen years. To be  
 22 eligible for coverage and benefits under this section, the  
 23 individual must be diagnosed with autism spectrum disorder at age  
 24 8 or younger. ~~Such~~ The policy shall provide coverage for

1 treatments that are medically necessary and ordered or prescribed  
2 by a licensed physician or licensed psychologist for an individual  
3 diagnosed with autism spectrum disorder. ~~in accordance with a~~  
4 ~~treatment plan developed by a certified behavioral analyst pursuant~~  
5 ~~to a comprehensive evaluation or reevaluation of the individual,~~  
6 ~~subject to review by the health maintenance organization every six~~  
7 ~~months. Progress reports are required to be filed with the health~~  
8 ~~maintenance organization semiannually. In order for treatment to~~  
9 ~~continue, the health maintenance organization must receive~~  
10 ~~objective evidence or a clinically supportable statement of~~  
11 ~~expectation that:~~

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

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

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

18       (b) ~~Such~~ Coverage shall include, but not be limited to,  
19 applied ~~behavioral~~ behavior analysis. Applied behavior analysis  
20 shall be provided or supervised by a certified ~~behavioral~~ behavior  
21 analyst. ~~Provided, That~~ The annual maximum benefit for ~~treatment~~  
22 applied behavior analysis required by this ~~subdivision~~ subsection  
23 shall be in amount not to exceed \$30,000 per individual, for three  
24 consecutive years from the date treatment commences. At the

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

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

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

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

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

23 ~~(c)~~ (d) For purposes of this section, the term:

24 (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/or~~ and after treatment is recommended to  
19 quantify progress and support justifications for continued  
20 treatment. ~~Such~~ The tools are not required, but their use will  
21 enhance the justification for continued treatment.

22 ~~(d)~~ (e) The provisions of this section do not apply to small  
23 employers. For purposes of this section a small employer ~~shall be~~  
24 ~~defined as~~ means any person, firm, corporation, partnership or

1 association actively engaged in business in the State of West  
2 Virginia who, during the preceding calendar year, employed an  
3 average of no more than twenty-five eligible employees.

4 ~~(e)~~ (f) 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 health  
7 maintenance organization may apply additional cost containment  
8 measures.

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

NOTE: The purpose of this bill is to clean up the autism bill passed during the 2011 regular session to clarify some of the requirements, namely that evaluation of autism is covered and specifications as to who files progress reports. The bill also makes other technical cleanup.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

This bill was recommended for introduction and enactment by the Joint Judiciary Committee.