

COMMITTEE SUBSTITUTE

FOR

**H. B. 4260**

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(BY DELEGATES FLEISCHAUER, MILEY,  
BROWN, CAPUTO, HUNT, LONGSTRETH, PINO,  
OVERINGTON AND SOBONYA)

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(Originating in the Committee on Finance)  
[February 16, 2012]

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

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

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

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

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

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

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

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

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

30 (4) For plans that include maternity benefits, coverage for  
31 inpatient care in a duly licensed health care facility for a  
32 mother and her newly born infant for the length of time  
33 which the attending physician considers medically necessary  
34 for the mother or her newly born child: *Provided*, That no  
35 plan may deny payment for a mother or her newborn child  
36 prior to forty-eight hours following a vaginal delivery, or  
37 prior to ninety-six hours following a caesarean section  
38 delivery, if the attending physician considers discharge  
39 medically inappropriate;

40 (5) For plans which provide coverages for post-delivery  
41 care to a mother and her newly born child in the home,

42 coverage for inpatient care following childbirth as provided  
43 in subdivision (4) of this subsection if inpatient care is  
44 determined to be medically necessary by the attending  
45 physician. Those plans may also include, among other things,  
46 medicines, medical equipment, prosthetic appliances and any  
47 other inpatient and outpatient services and expenses  
48 considered appropriate and desirable by the agency; and

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

50 (A) The coverage does not include custodial care,  
51 residential care or schooling. For purposes of this section,  
52 “serious mental illness” means an illness included in the  
53 American Psychiatric Association’s diagnostic and statistical  
54 manual of mental disorders, as periodically revised, under  
55 the diagnostic categories or subclassifications of: (i)  
56 Schizophrenia and other psychotic disorders; (ii) bipolar  
57 disorders; (iii) depressive disorders; (iv) substance-related  
58 disorders with the exception of caffeine-related disorders and  
59 nicotine-related disorders; (v) anxiety disorders; and (vi)  
60 anorexia and bulimia. With regard to any covered individual

61 who has not yet attained the age of nineteen years, “serious  
62 mental illness” also includes attention deficit hyperactivity  
63 disorder, separation anxiety disorder and conduct disorder.

64 (B) Notwithstanding any other provision in this section  
65 to the contrary, in the event that the agency can demonstrate  
66 that its total costs for the treatment of mental illness for any  
67 plan exceeded two percent of the total costs for such plan in  
68 any experience period, then the agency may apply whatever  
69 additional cost-containment measures may be necessary,  
70 including, but not limited to, limitations on inpatient and  
71 outpatient benefits, to maintain costs below two percent of  
72 the total costs for the plan for the next experience period.

73 (C) The agency shall not discriminate between medical-  
74 surgical benefits and mental health benefits in the  
75 administration of its plan. With regard to both medical-  
76 surgical and mental health benefits, it may make  
77 determinations of medical necessity and appropriateness, and  
78 it may use recognized health care quality and cost

79 management tools, including, but not limited to, limitations  
80 on inpatient and outpatient benefits, utilization review,  
81 implementation of cost-containment measures,  
82 preauthorization for certain treatments, setting coverage  
83 levels, setting maximum number of visits within certain time  
84 periods, using capitated benefit arrangements, using fee-for-  
85 service arrangements, using third-party administrators, using  
86 provider networks and using patient cost sharing in the form  
87 of copayments, deductibles and coinsurance.

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

93 (A) Seven years of age or younger or is developmentally  
94 disabled, and is an individual for whom a successful result  
95 cannot be expected from dental care provided under local  
96 anesthesia because of a physical, intellectual or other

97 medically compromising condition of the individual and for  
98 whom a superior result can be expected from dental care  
99 provided under general anesthesia;

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

110 (8)(A) Any plan issued or renewed on or after January 1,  
111 2012, shall include coverage for diagnosis, evaluation and  
112 treatment of autism spectrum disorder in individuals ages  
113 eighteen months ~~through~~ to eighteen years. To be eligible  
114 for coverage and benefits under this subdivision, the

115 individual must be diagnosed with autism spectrum disorder  
116 at age eight or younger. Such policy shall provide coverage  
117 for treatments that are medically necessary and ordered or  
118 prescribed by a licensed physician or licensed psychologist  
119 for an individual diagnosed with autism spectrum disorder.  
120 ~~in accordance with a treatment plan developed by a certified~~  
121 ~~behavior analyst pursuant to a comprehensive evaluation or~~  
122 ~~reevaluation of the individual, subject to review by the~~  
123 ~~agency every six months. Progress reports are required to be~~  
124 ~~filed with the agency semiannually. In order for treatment to~~  
125 ~~continue, the agency must receive objective evidence or a~~  
126 ~~clinically supportable statement of expectation that:~~

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

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

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

133 (B) ~~Such~~ The coverage shall include, but not be limited  
134 to, applied ~~behavioral~~ behavior analysis. Applied behavior  
135 analysis shall be provided or supervised by a certified  
136 behavior analyst. ~~Provided, That the~~ The annual maximum  
137 benefit for ~~treatment~~ applied behavior analysis required by  
138 this subdivision shall be in an amount not to exceed \$30,000  
139 per individual, for three consecutive years from the date  
140 treatment commences. At the conclusion of the third year,  
141 ~~required~~ coverage for applied behavior analysis required by  
142 this subdivision shall be in an amount not to exceed \$2,000  
143 per month, until the individual reaches eighteen years of age,  
144 as long as the treatment is medically necessary and in  
145 accordance with a treatment plan developed by a certified  
146 behavior analyst pursuant to a comprehensive evaluation or  
147 reevaluation of the individual. This ~~section~~ subdivision shall  
148 not be construed as limiting, replacing or affecting any  
149 obligation to provide services to an individual under the  
150 Individuals with Disabilities Education Act, 20 U.S.C. 1400

151 et seq., as amended from time to time or other publicly  
152 funded programs. Nothing in this subdivision shall be  
153 construed as requiring reimbursement for services provided  
154 by public school personnel.

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

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

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

162 (iii) There is an expectation that the anticipated  
163 improvement is attainable in a reasonable and generally  
164 predictable period of time.

165 ~~(C)~~ (D) On or before January 1 each year, the agency  
166 shall file an annual report with the Joint Committee on  
167 Government and Finance describing its implementation of  
168 the coverage provided pursuant to this subdivision. The

169 report shall include, but shall not be limited to, the number  
170 of individuals in the plan utilizing the coverage required by  
171 this subdivision, the fiscal and administrative impact of the  
172 implementation, and any recommendations the agency may  
173 have as to changes in law or policy related to the coverage  
174 provided under this subdivision. In addition, the agency shall  
175 provide such other information as may be required by the  
176 Joint Committee on Government and Finance as it may from  
177 time to time request.

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

179 (i) “Applied Behavior Analysis” means the design,  
180 implementation, and evaluation of environmental  
181 modifications using behavioral stimuli and consequences, to  
182 produce socially significant improvement in human behavior,  
183 including the use of direct observation, measurement, and  
184 functional analysis of the relationship between environment  
185 and behavior.

186 (ii) “Autism spectrum disorder” means any pervasive  
187 developmental disorder, including autistic disorder,

188 Asperger’s Syndrome, Rett Syndrome, childhood  
189 disintegrative disorder, or Pervasive Development Disorder  
190 as defined in the most recent edition of the Diagnostic and  
191 Statistical Manual of Mental Disorders of the American  
192 Psychiatric Association.

193 (iii) “Certified behavior analyst” means an individual  
194 who is certified by the Behavior Analyst Certification Board  
195 or certified by a similar nationally recognized organization.

196 (iv) “Objective evidence” means standardized patient  
197 assessment instruments, outcome measurements tools or  
198 measurable assessments of functional outcome. Use of  
199 objective measures at the beginning of treatment, during  
200 ~~and/or~~ and after treatment is recommended to quantify  
201 progress and support justifications for continued treatment.  
202 ~~Such~~ The tools are not required, but their use will enhance  
203 the justification for continued treatment.

204 ~~(E)~~ (F) To the extent that the application of this  
205 subdivision for autism spectrum disorder causes an increase  
206 of at least one percent of actual total costs of coverage for the

207 plan year the agency may apply additional cost containment  
208 measures.

209 ~~(F)~~ (G) To the extent that the provisions of this  
210 subdivision ~~requires~~ require benefits that exceed the essential  
211 health benefits specified under section 1302(b) of the Patient  
212 Protection and Affordable Care Act, Pub. L. No. 111-148, as  
213 amended, the specific benefits that exceed the specified  
214 essential health benefits shall not be required of insurance  
215 plans offered by the Public Employees Insurance Agency.

216 (b) The agency shall make available to each eligible  
217 employee, at full cost to the employee, the opportunity to  
218 purchase optional group life and accidental death insurance  
219 as established under the rules of the agency. In addition, each  
220 employee is entitled to have his or her spouse and  
221 dependents, as defined by the rules of the agency, included  
222 in the optional coverage, at full cost to the employee, for  
223 each eligible dependent; and with full authorization to the  
224 agency to make the optional coverage available and provide  
225 an opportunity of purchase to each employee.

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

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

229 (2) All teaching and professional employees of state  
230 public institutions of higher education and county boards of  
231 education;

232 (3) All nonteaching employees of the Higher Education  
233 Policy Commission, West Virginia Council for Community  
234 and Technical College Education and county boards of  
235 education; or

236 (4) Any other categorization which would ensure the  
237 stability of the overall program.

238 (d) The agency shall maintain the medical and  
239 prescription drug coverage for Medicare-eligible retirees by  
240 providing coverage through one of the existing plans or by  
241 enrolling the Medicare-eligible retired employees into a  
242 Medicare-specific plan, including, but not limited to, the  
243 Medicare/Advantage Prescription Drug Plan. In the event

244 that a Medicare specific plan would no longer be available or  
245 advantageous for the agency and the retirees, the retirees  
246 shall remain eligible for coverage through the agency.

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

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

1 (a) To the extent that the diagnosis, evaluation and  
2 treatment of autism spectrum disorders are not already  
3 covered by this agency, on or after January 1, 2012, a policy,  
4 plan or contract subject to this section shall provide coverage  
5 for such diagnosis, evaluation and treatment, for individuals  
6 ages eighteen months ~~through~~ to eighteen years. To be  
7 eligible for coverage and benefits under this section, the  
8 individual must be diagnosed with autism spectrum disorder  
9 at age eight or younger. Such policy shall provide coverage  
10 for treatments that are medically necessary and ordered or  
11 prescribed by a licensed physician or licensed psychologist  
12 for an individual diagnosed with autism spectrum disorder.

13 ~~in accordance with a treatment plan developed by a certified~~  
14 ~~behavior analyst pursuant to a comprehensive evaluation or~~  
15 ~~reevaluation of the individual subject to review by the agency~~  
16 ~~every six months. Progress reports are required to be filed~~  
17 ~~with the agency semiannually. In order for treatment to~~  
18 ~~continue, objective evidence or a clinically supportable~~  
19 ~~statement of expectation that:~~

20 (1) ~~T~~the individual's condition is improving in response  
21 ~~to treatment; and~~

22 (2) ~~Maximum~~ improvement is yet to be attained; and

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

26 (b) ~~Such~~ The coverage shall include, but not be limited  
27 to, applied ~~behavioral~~ behavior analysis. Applied behavior  
28 analysis shall be provided or supervised by a certified  
29 behavior analyst. ~~Provided, That~~ The annual maximum  
30 benefit for ~~treatment~~ applied behavior analysis required by

31 this ~~section~~ subsection shall be in an amount not to exceed  
32 \$30,000 per individual, for three consecutive years from the date  
33 treatment commences. At the conclusion of the third year,  
34 ~~required~~ coverage for applied behavior analysis required by this  
35 subsection shall be in an amount not to exceed \$2,000 per  
36 month, until the individual reaches eighteen years of age, as long  
37 as the treatment is medically necessary and in accordance with  
38 a treatment plan developed by a certified behavior analyst  
39 pursuant to a comprehensive evaluation or reevaluation of the  
40 individual. This section shall not be construed as limiting,  
41 replacing or affecting any obligation to provide services to an  
42 individual under the Individuals with Disabilities Education Act,  
43 20 U.S.C. 1400 et seq., as amended from time to time, or other  
44 publicly funded programs. Nothing in this section shall be  
45 construed as requiring reimbursement for services provided by  
46 public school personnel.

47 (c) The certified behavior analyst shall file progress  
48 reports with the agency semiannually. In order for treatment

49 to continue, the agency must receive objective evidence or a  
50 clinically supportable statement of expectation that:

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

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

54 (3) There is an expectation that the anticipated  
55 improvement is attainable in a reasonable and generally  
56 predictable period of time.

57 ~~(c)~~ (d) On or before January 1 each year, the agency shall  
58 file an annual report with the Joint Committee on  
59 Government and Finance describing its implementation of  
60 the coverage provided pursuant to this section. The report  
61 shall include, but shall not be limited to, the number of  
62 individuals in the plan utilizing the coverage required by this  
63 section, the fiscal and administrative impact of the  
64 implementation, and any recommendations the agency may  
65 have as to changes in law or policy related to the coverage  
66 provided under this section. In addition, the agency shall

67 provide such other information as may be requested by the  
68 Joint Committee on Government and Finance as it may from  
69 time to time request.

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

71 (1) “Applied Behavior Analysis” means the design,  
72 implementation, and evaluation of environmental  
73 modifications using behavioral stimuli and consequences, to  
74 produce socially significant improvement in human behavior,  
75 including the use of direct observation, measurement, and  
76 functional analysis of the relationship between environment  
77 and behavior.

78 (2) “Autism spectrum disorder” means any pervasive  
79 developmental disorder, including autistic disorder,  
80 Asperger’s Syndrome, Rett syndrome, childhood  
81 disintegrative disorder, or Pervasive Development Disorder  
82 as defined in the most recent edition of the Diagnostic and  
83 Statistical Manual of Mental Disorders of the American  
84 Psychiatric Association.

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

88 (4) “Objective evidence” means standardized patient  
89 assessment instruments, outcome measurements tools or  
90 measurable assessments of functional outcome. Use of  
91 objective measures at the beginning of treatment, during  
92 ~~and/or~~ and after treatment is recommended to quantify  
93 progress and support justifications for continued treatment.  
94 ~~Such~~ The tools are not required, but their use will enhance  
95 the justification for continued treatment.

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

100 ~~(f)~~ (g) To the extent that the provisions of this section  
101 ~~requires~~ require benefits that exceed the essential health  
102 benefits specified under section 1302(b) of the Patient

103 Protection and Affordable Care Act, Pub. L. No. 111-148, as  
104 amended, the specific benefits that exceed the specified  
105 essential health benefits shall not be required of the West  
106 Virginia Children's Health Insurance Program.

### **CHAPTER 33. INSURANCE.**

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

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

1 (a) Any insurer who, on or after January 1, 2012,  
2 delivers, renews or issues a policy of group accident and  
3 sickness insurance in this state under the provisions of this  
4 article shall include coverage for diagnosis, evaluation and  
5 treatment of autism spectrum disorder in individuals ages  
6 eighteen months ~~through~~ to eighteen years. To be eligible  
7 for coverage and benefits under this section, the individual  
8 must be diagnosed with autism spectrum disorder at age  
9 eight or younger. Such policy shall provide coverage for  
10 treatments that are medically necessary and ordered or

11 prescribed by a licensed physician or licensed psychologist  
12 for an individual diagnosed with autism spectrum disorder.  
13 ~~in accordance with a treatment plan developed by a certified~~  
14 ~~behavior analyst pursuant to a comprehensive evaluation or~~  
15 ~~reevaluation of the individual, subject to review by the~~  
16 ~~agency every six months. Progress reports are required to be~~  
17 ~~filed with the insurer semiannually. In order for treatment to~~  
18 ~~continue, the insurer must receive objective evidence or a~~  
19 ~~clinically supportable statement of expectation that:~~

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

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

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

26 (b) ~~Such~~ Coverage shall include, but not be limited to,  
27 applied ~~behavioral~~ behavior analysis. Applied behavior  
28 analysis shall be provided or supervised by a certified

29 ~~behavioral~~ behavior analyst. ~~Provided, That~~ The annual  
30 maximum benefit for ~~treatment~~ applied behavior analysis  
31 required by this ~~subdivision~~ subsection shall be in an amount  
32 not to exceed \$30,000 per individual, for three consecutive  
33 years from the date treatment commences. At the conclusion  
34 of the third year, required coverage shall be in an amount not  
35 to exceed \$2,000 per month, until the individual reaches  
36 eighteen years of age, as long as the treatment is medically  
37 necessary and in accordance with a treatment plan developed  
38 by a certified ~~behavioral~~ behavior analyst pursuant to a  
39 comprehensive evaluation or reevaluation of the individual.  
40 This section shall not be construed as limiting, replacing or  
41 affecting any obligation to provide services to an individual  
42 under the Individuals with Disabilities Education Act, 20  
43 U.S.C. 1400 et seq., as amended from time to time or other  
44 publicly funded programs. Nothing in this section shall be  
45 construed as requiring reimbursement for services provided  
46 by public school personnel.

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

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

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

54 (3) There is an expectation that the anticipated  
55 improvement is attainable in a reasonable and generally  
56 predictable period of time.

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

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

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

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

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

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

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

94        (f) (g) To the extent that the provisions of this section  
95        ~~requires~~ require benefits that exceed the essential health  
96        benefits specified under section 1302(b) of the Patient  
97        Protection and Affordable Care Act, Pub. L. No. 111-148, as  
98        amended, the specific benefits that exceed the specified  
99        essential health benefits shall not be required of a health  
100        benefit plan when the plan is offered by a health care insurer  
101        in this state.

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

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

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

16 ~~in accordance with a treatment plan developed by a certified~~  
17 ~~behavior analyst pursuant to a comprehensive evaluation or~~  
18 ~~reevaluation of the individual, subject to review by the~~  
19 ~~corporation every six months. Progress reports are required~~  
20 ~~to be filed with the corporation semiannually. In order for~~  
21 ~~treatment to continue, the agency must receive objective~~  
22 ~~evidence or a clinically supportable statement of expectation~~  
23 ~~that:~~

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

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

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

30 (b) ~~Such~~ Coverage shall include, but not be limited to,  
31 applied ~~behavioral~~ behavior analysis. Applied behavior  
32 analysis shall be provided or supervised by a certified  
33 ~~behavioral~~ behavior analyst. ~~Provided, That~~ The annual

34 maximum benefit for ~~treatment~~ applied behavior analysis  
35 required by this ~~section~~ subsection shall be in an amount not  
36 to exceed \$30,000 per individual, for three consecutive years  
37 from the date treatment commences. At the conclusion of  
38 the third year, ~~required~~ coverage for applied behavior  
39 analysis required by this subsection shall be in an amount not  
40 to exceed \$2,000 per month, until the individual reaches  
41 eighteen years of age, as long as the treatment is medically  
42 necessary and in accordance with a treatment plan developed  
43 by a certified behavior analyst pursuant to a comprehensive  
44 evaluation or reevaluation of the individual. This section  
45 shall not be construed as limiting, replacing or affecting any  
46 obligation to provide services to an individual under the  
47 Individuals with Disabilities Education Act, 20 U.S.C. 1400  
48 et seq., as amended from time to time or other publicly  
49 funded programs. Nothing in this section shall be construed  
50 as requiring reimbursement for services provided by public  
51 school personnel.

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

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

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

59 (3) There is an expectation that the anticipated  
60 improvement is attainable in a reasonable and generally  
61 predictable period of time.

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

63 (1) "Applied Behavior Analysis" means the design,  
64 implementation, and evaluation of environmental  
65 modifications using behavioral stimuli and consequences, to  
66 produce socially significant improvement in human behavior,  
67 including the use of direct observation, measurement, and  
68 functional analysis of the relationship between environment  
69 and behavior.

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

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

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

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

95        ~~(e)~~ (f) To the extent that the application of this section for  
96        autism spectrum disorder causes an increase of at least one  
97        percent of actual total costs of coverage for the plan year the  
98        corporation may apply additional cost containment measures.

99        ~~(f)~~ (g) To the extent that the provisions of this section  
100        ~~requires~~ require benefits that exceed the essential health benefits  
101        specified under section 1302(b) of the Patient Protection and  
102        Affordable Care Act, Pub. L. No. 111-148, as amended, the  
103        specific benefits that exceed the specified essential health  
104        benefits shall not be required of a health benefit plan when the  
105        plan is offered by a corporation in this state.

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

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

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

16 ~~in accordance with a treatment plan developed by a certified~~  
17 ~~behavioral analyst pursuant to a comprehensive evaluation or~~  
18 ~~reevaluation of the individual, subject to review by the health~~  
19 ~~maintenance organization every six months. Progress reports~~  
20 ~~are required to be filed with the health maintenance~~  
21 ~~organization semiannually. In order for treatment to~~  
22 ~~continue, the health maintenance organization must receive~~  
23 ~~objective evidence or a clinically supportable statement of~~  
24 ~~expectation that:~~

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

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

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

31 (b) ~~Such~~ Coverage shall include, but not be limited to,  
32 applied ~~behavioral~~ behavior analysis. Applied behavior  
33 analysis shall be provided or supervised by a certified

34 ~~behavioral~~ behavior analyst. ~~Provided, That~~ The annual  
35 maximum benefit for ~~treatment~~ applied behavior analysis  
36 required by this ~~subdivision~~ subsection shall be in amount  
37 not to exceed \$30,000 per individual, for three consecutive  
38 years from the date treatment commences. At the conclusion  
39 of the third year, ~~required~~ coverage for applied behavior  
40 analysis required by this subsection shall be in an amount not  
41 to exceed \$2,000 per month, until the individual reaches  
42 eighteen years of age, as long as the treatment is medically  
43 necessary and in accordance with a treatment plan developed  
44 by a certified behavior analyst pursuant to a comprehensive  
45 evaluation or reevaluation of the individual. This section  
46 shall not be construed as limiting, replacing or affecting any  
47 obligation to provide services to an individual under the  
48 Individuals with Disabilities Education Act, 20 U.S.C. 1400  
49 et seq., as amended from time to time or other publicly  
50 funded programs. Nothing in this section shall be construed  
51 as requiring reimbursement for services provided by public  
52 school personnel.

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

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

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

60 (3) There is an expectation that the anticipated  
61 improvement is attainable in a reasonable and generally  
62 predictable period of time.

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

64 (1) "Applied Behavior Analysis" means the design,  
65 implementation, and evaluation of environmental  
66 modifications using behavioral stimuli and consequences, to  
67 produce socially significant improvement in human behavior,  
68 including the use of direct observation, measurement, and  
69 functional analysis of the relationship between environment  
70 and behavior.

71 (2) “Autism spectrum disorder” means any pervasive  
72 developmental disorder, including autistic disorder, Asperger’s  
73 Syndrome, Rett syndrome, childhood disintegrative disorder,  
74 or Pervasive Development Disorder as defined in the most  
75 recent edition of the Diagnostic and Statistical Manual of  
76 Mental Disorders of the American Psychiatric Association.

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

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

88 ~~(d)~~ (e) The provisions of this section do not apply to small  
89 employers. For purposes of this section a small employer ~~shall~~

90 ~~be defined as~~ means any person, firm, corporation, partnership  
91 or association actively engaged in business in the State of West  
92 Virginia who, during the preceding calendar year, employed  
93 an average of no more than twenty-five eligible employees.

94 ~~(e)~~ (f) To the extent that the application of this section for  
95 autism spectrum disorder causes an increase of at least one  
96 percent of actual total costs of coverage for the plan year the  
97 health maintenance organization may apply additional cost  
98 containment measures.

99 ~~(f)~~ (g) To the extent that the provisions of this section  
100 ~~requires~~ require benefits that exceed the essential health  
101 benefits specified under section 1302(b) of the Patient  
102 Protection and Affordable Care Act, Pub. L. No. 111-148, as  
103 amended, the specific benefits that exceed the specified  
104 essential health benefits shall not be required of a health  
105 benefit plan when the plan is offered by a health maintenance  
106 organization in this state.