

H. B. 2442

(By Delegates Miley, Fleischauer, Hatfield,
Mahan, Manchin, Moore, Morgan and Cann)

[Introduced January 13, 2011; referred to the
Committee on Banking and Insurance then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-7f; to amend said code by adding thereto a new section, designated §9-5-21; and to amend said code by adding thereto a new section, designated §33-16-3v, all relating to requiring health insurance coverage for autism spectrum disorders; setting forth the types of coverage required; requiring medical services to be provided on a nondiscriminatory basis; and defining terms.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-16-7f; that said code be amended by adding thereto a new section, designated §9-5-21; and that said code be amended by adding thereto a new section, designated §33-16-3v, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,

1 **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD**
2 **OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS,**
3 **OFFICES, PROGRAMS, ETC.**

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

5 **§5-16-7f. Required coverage for autism spectrum disorder.**

6 (a) The agency shall provide coverage for the diagnosis of
7 autism spectrum disorders and the treatment of autism spectrum
8 disorders. To the extent that the diagnosis of autism spectrum
9 disorders and the treatment of autism spectrum disorders are not
10 already covered by the agency, coverage under this section shall be
11 included in health insurance policies that are delivered, executed,
12 issued, amended, adjusted or renewed in this state, or outside this
13 state if insuring residents of this state, on or after the
14 effective date of the enactment of this section during the 2011
15 regular session of the Legislature. The agency may not terminate
16 coverage, or refuse to deliver, execute, issue, amend, adjust or
17 renew coverage to an individual solely because the individual is
18 diagnosed with one of the autism spectrum disorders, has received
19 treatment for autism spectrum disorders, or is at risk for a
20 diagnosis of autism spectrum disorders.

21 (b) Coverage under this section is not subject to any limits
22 on the number of visits an individual may make to an autism
23 services provider.

1 (c) The coverage required under this section must not be
2 subject to dollar limits, deductibles or coinsurance provisions
3 that are less favorable to an insured than the dollar limits,
4 deductibles or coinsurance provisions that apply to physical
5 illness generally under the health insurance policy, except as
6 otherwise provided in subsection (d) of this section.

7 (d) This section may not be construed as limiting benefits
8 that are otherwise available to an individual covered by the
9 agency. Coverage for applied behavior analysis will be subject to
10 a maximum benefit of \$36,000 per year. On or before July 30, 2013,
11 the agency shall, on an annual basis, adjust the maximum benefit
12 for inflation by using the Medical Care Component of the United
13 States Department of Labor Consumer Price Index for all urban
14 consumers (CPI-U). The agency is to submit the adjusted maximum
15 benefit for publication annually no later than July 1, of each
16 fiscal year, and the published adjusted maximum benefit will be
17 applicable in the following fiscal year to health insurance
18 policies offered by the agency. Payments made by an insurer on
19 behalf of a covered individual for any care, treatment,
20 intervention, service or item unrelated to autism spectrum
21 disorders will not be applied towards any maximum benefit
22 established under this section.

23 (e) For the purposes of this section, the following terms have
24 the following meaning:

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, and appropriate use
7 of evidence based behavioral interventions for each individual.

8 (2) "Autism services provider" means any person, entity or
9 group that provides treatment of autism spectrum disorders.

10 (3) "Autism spectrum disorders" means any of the pervasive
11 developmental disorders as defined by the most recent edition of
12 the Diagnostic and Statistical Manual of Mental Disorders (DSM),
13 including Autistic Disorder, Asperger's Disorder and Pervasive
14 Developmental Disorder, Not Otherwise Specified (PDD-NOS).

15 (4) "Certified behavior analyst" means a West Virginia
16 licensed psychiatrist or psychologist who is also board certified
17 as a behavior analyst by the Behavior Analyst Certification Board.

18 (5) "Diagnosis of autism spectrum disorders" means medically
19 necessary assessment, evaluations or tests to diagnose whether an
20 individual has one of the autism spectrum disorders provided by a
21 licensed physician or psychiatrist with experience in assessment of
22 autism spectrum disorders.

23 (6) "Evidence-based research" means research that applies
24 rigorous, systematic and objective procedures to obtain valid

1 knowledge relevant to autism spectrum disorders.

2 (7) "Habilitative or rehabilitative care" means professional,
3 counseling and guidance services and treatment programs, including
4 applied behavior analysis, that are necessary to develop, maintain
5 and restore, to the maximum extent practicable, the functioning of
6 an individual.

7 (8) "Medically necessary" means reasonably expected to do the
8 following:

9 (A) Prevent the onset of an illness, condition, injury or
10 disability;

11 (B) Reduce or ameliorate the physical, mental or developmental
12 effects of an illness, condition, injury or disability; or

13 (C) Assist to achieve or maintain maximum functional capacity
14 in performing daily activities, taking into account both the
15 functional capacity of the individual and the functional capacities
16 that are appropriate for individuals of the same age.

17 (9) "Pharmacy care" means medications prescribed by a licensed
18 physician and any health-related services deemed medically
19 necessary to determine the need or effectiveness of the
20 medications.

21 (10) "Psychiatric care" means direct or consultative services
22 provided by a psychiatrist licensed in the state in which the
23 psychiatrist practices.

24 (11) "Psychological care" means direct or consultative

1 services provided by a psychologist licensed in the state in which
2 the psychologist practices.

3 (12) "Therapeutic care" means services provided by licensed or
4 certified speech therapists, occupational therapists or physical
5 therapists under the direction of a certified behavioral analyst.

6 (13) "Treatment for autism spectrum disorders" means the
7 following care prescribed, provided or ordered for an individual
8 diagnosed with one of the autism spectrum disorders by a licensed
9 physician or a licensed psychologist who determines the care to be
10 medically necessary:

11 (A) Habilitative or rehabilitative care;

12 (B) Pharmacy care;

13 (C) Psychiatric care;

14 (D) Psychological care; or

15 (E) Therapeutic care.

16 (F) Any care for individuals with autism spectrum disorders
17 that is determined by Department of Health and Human Resources,
18 based upon its review of best practices or evidence-based research,
19 as required by section twenty-one, article five, chapter nine of
20 this code, to be medically necessary shall be covered by the
21 agency.

22 (f) Except for inpatient services, if an individual is
23 receiving treatment for autism spectrum disorders, the agency has
24 the right to request a review of that treatment not more than once

1 every twelve months unless the agency and the individual's licensed
2 physician or licensed psychologist agree that a more frequent
3 review is necessary. The cost of obtaining any review shall be
4 borne by the agency.

5 (g) This section may not be construed as affecting any
6 obligation to provide services to an individual under an
7 individualized family service plan, an individualized education
8 program, or an individualized service plan.

9 **CHAPTER 9. HUMAN SERVICES.**

10 **ARTICLE 5. MISCELLANEOUS PROVISIONS.**

11 **§9-5-21. Medicaid; required coverage for autism spectrum**
12 **disorders.**

13 (a) The Department of Health and Human Resources shall provide
14 coverage for the diagnosis of autism spectrum disorders and the
15 treatment of autism spectrum disorders for Medicaid recipients. To
16 the extent that the diagnosis of autism spectrum disorders and the
17 treatment of autism spectrum disorders are not already covered by
18 Medicaid, coverage under this section shall be provided to current
19 and future Medicaid recipients on or after the effective date of
20 the enactment of this section during the 2011 regular session of
21 the Legislature. The department may not terminate coverage, or
22 refuse to deliver, execute, issue, amend, adjust or renew coverage
23 to an individual solely because the individual is diagnosed with

1 one of the autism spectrum disorders, has received treatment for
2 autism spectrum disorders or is at risk for a diagnosis of autism
3 spectrum disorders.

4 (b) Coverage under this section will not be subject to any
5 limits on the number of visits an individual may make to an autism
6 services provider.

7 (c) The coverage required under this section is not to be
8 subject to dollar limits, deductibles or coinsurance provisions
9 that are less favorable to an insured than the dollar limits,
10 deductibles or coinsurance provisions that apply to physical
11 illness generally under the health insurance policy, except as
12 otherwise provided in subsection (d) of this section.

13 (d) This section may not be construed as limiting benefits
14 that are otherwise available to an individual covered by the
15 department. Coverage for applied behavior analysis will be subject
16 to a maximum benefit of \$36,000 per year. On or before July 30,
17 2013, the department shall, on an annual basis, adjust the maximum
18 benefit for inflation by using the Medical Care Component of the
19 United States Department of Labor Consumer Price Index for all
20 urban consumers (CPI-U). The department is to submit the adjusted
21 maximum benefit for publication annually no later than July 1, of
22 each fiscal year, and the published adjusted maximum benefit will
23 be applicable in the following fiscal year to Medicaid recipients.
24 Payments made by the department on behalf of a recipient for any

1 care, treatment, intervention, service or item unrelated to autism
2 spectrum disorders will not be applied towards any maximum benefit
3 established under this section.

4 (e) For the purposes of this section, the following terms have
5 the following meaning:

6 (1) "Applied behavior analysis" means the design,
7 implementation and evaluation of environmental modifications, using
8 behavioral stimuli and consequences, to produce socially
9 significant improvement in human behavior, including the use of
10 direct observation, measurement and functional analysis of the
11 relationship between environment and behavior, and appropriate use
12 of evidence based behavioral interventions for each individual.

13 (2) "Autism services provider" means any person, entity or
14 group that provides treatment of autism spectrum disorders.

15 (3) "Autism spectrum disorders" means any of the pervasive
16 developmental disorders as defined by the most recent edition of
17 the Diagnostic and Statistical Manual of Mental Disorders (DSM),
18 including Autistic Disorder, Asperger's Disorder and Pervasive
19 Developmental Disorder, Not Otherwise Specified (PDD-NOS).

20 (4) "Certified behavior analyst" means a West Virginia
21 licensed psychiatrist or psychologist who is also board certified
22 as a behavior analyst by the Behavior Analyst Certification Board.

23 (5) "Diagnosis of autism spectrum disorders" means medically
24 necessary assessment, evaluations or tests to diagnose whether an

1 individual has one of the autism spectrum disorders provided by a
2 licenced physician or psychiatrist with experience in assessment of
3 autism spectrum disorders.

4 (6) "Evidence-based research" means research that applies
5 rigorous, systematic and objective procedures to obtain valid
6 knowledge relevant to autism spectrum disorders.

7 (7) "Habilitative or rehabilitative care" means professional,
8 counseling and guidance services and treatment programs, including
9 applied behavior analysis, that are necessary to develop, maintain
10 and restore, to the maximum extent practicable, the functioning of
11 an individual.

12 (8) "Medically necessary" means reasonably expected to do the
13 following:

14 (A) Prevent the onset of an illness, condition, injury or
15 disability;

16 (B) Reduce or ameliorate the physical, mental or developmental
17 effects of an illness, condition, injury or disability; or

18 (C) Assist to achieve or maintain maximum functional capacity
19 in performing daily activities, taking into account both the
20 functional capacity of the individual and the functional capacities
21 that are appropriate for individuals of the same age.

22 (9) "Pharmacy care" means medications prescribed by a licensed
23 physician and any health-related services deemed medically
24 necessary to determine the need or effectiveness of the

1 medications.

2 (10) "Psychiatric care" means direct or consultative services
3 provided by a psychiatrist licensed in the state in which the
4 psychiatrist practices.

5 (11) "Psychological care" means direct or consultative
6 services provided by a psychologist licensed in the state in which
7 the psychologist practices.

8 (12) "Therapeutic care" means services provided by licensed or
9 certified speech therapists, occupational therapists or physical
10 therapists under the direction of a certified behavioral analyst.

11 (13) "Treatment for autism spectrum disorders" means the
12 following care prescribed, provided or ordered for an individual
13 diagnosed with one of the autism spectrum disorders by a licensed
14 physician or a licensed psychologist who determines the care to be
15 medically necessary:

16 (A) Habilitative or rehabilitative care;

17 (B) Pharmacy care;

18 (C) Psychiatric care;

19 (D) Psychological care; or

20 (E) Therapeutic care.

21 (F) Any care for individuals with autism spectrum disorders
22 that is determined by the department to be medically necessary
23 shall be covered by the department. The department shall consult
24 with The Center for Excellence at West Virginia University, the

1 Autism Center at Marshall University, the Insurance Commissioner,
2 and other experts in the diagnosis and treatment of autism spectrum
3 disorders to review best practices or evidence-based research to
4 determine if other types of care or treatment of autism spectrum
5 disorders should be authorized as medically necessary for purposes
6 of Medicaid and other public and private health care programs,
7 plans or policies. The department shall report any such
8 determinations of medically necessary care or treatment of autism
9 spectrum disorders together with recommendations for any necessary
10 legislation to implement the required coverage to the President of
11 the Senate and the Speaker of the House of Delegates on or before
12 January 1 of each year.

13 (f) Except for inpatient services, if an individual is
14 receiving treatment for autism spectrum disorders, the department
15 has the right to request a review of that treatment not more than
16 once every twelve months unless the agency and the individual's
17 licensed physician or licensed psychologist agree that a more
18 frequent review is necessary. The cost of obtaining any review
19 shall be borne by the department.

20 (g) This section will not be construed as affecting any
21 obligation to provide services to an individual under an
22 individualized family service plan, an individualized education
23 program, or an individualized service plan.

24 (h) The department is authorized to seek federal approval

1 through a Medicaid waiver or a state plan amendment for the
2 provision of occupational therapy, speech therapy, physical
3 therapy, applied behavior analysis and treatment and behavior
4 assistant services to individuals who are six years of age and
5 under and have a diagnosed autism spectrum disorder as defined in
6 this section. Coverage for such services shall be limited to
7 \$36,000 annually and may not exceed \$108,000 in total lifetime
8 benefits. This limitation does not apply to activities of daily
9 living and other such supportive services currently provided under
10 the waiver program.

11 (i) The department shall submit an annual report beginning on
12 January 1, 2012, to the President of the Senate, the Speaker of the
13 House of Delegates, regarding progress on obtaining federal
14 approval and recommendations for the implementation of these home
15 and community-based services. The department may not implement
16 subsection (h) of this section without prior legislative approval.

17 **CHAPTER 33. INSURANCE.**

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

19 **§33-16-3v. Requirements for coverage of autism spectrum disorders.**

20 (a) A health insurance policy issued pursuant to the
21 provisions of this chapter, except supplemental health insurance,
22 shall provide coverage for the diagnosis of autism spectrum
23 disorders and the treatment of autism spectrum disorders. To the
24 extent that the diagnosis of autism spectrum disorders and the

1 treatment of autism spectrum disorders are not already covered by
2 a health insurance policy, coverage under this section will be
3 included in health insurance policies that are delivered, executed,
4 issued, amended, adjusted or renewed in this state, or outside this
5 state if insuring residents of this state, on or after sixty days
6 from the effective date of this section. No insurer may terminate
7 coverage, or refuse to deliver, execute, issue, amend, adjust or
8 renew coverage to an individual solely because the individual is
9 diagnosed with one of the autism spectrum disorders or has received
10 treatment for autism spectrum disorders.

11 (b) Coverage under this section is not subject to any limits
12 on the number of visits an individual may make to an autism
13 services provider.

14 (c) The coverage required under this section must not be
15 subject to dollar limits, deductibles or coinsurance provisions
16 that are less favorable to an insured than the dollar limits,
17 deductibles or coinsurance provisions that apply to physical
18 illness generally under the health insurance policy, except as
19 otherwise provided in subsection (d) of this section.

20 (d) This section may not be construed as limiting benefits
21 that are otherwise available to an individual under a health
22 insurance policy.

23 (e) Coverage for applied behavior analysis will be subject to
24 a maximum benefit of \$36,000 per year. After December 31, 2013,

1 the Insurance Commissioner shall, on an annual basis, adjust the
2 maximum benefit for inflation by using the Medical Care Component
3 of the United States Department of Labor Consumer Price Index for
4 all urban consumers (CPI-U). The commissioner will submit the
5 adjusted maximum benefit for publication annually no later than
6 January 1 of each calendar year, and the published adjusted maximum
7 benefit will be applicable in the following calendar year to health
8 insurance policies subject to this act. Payments made by an
9 insurer on behalf of a covered individual for any care, treatment,
10 intervention, service, or item unrelated to autism spectrum
11 disorders will not be applied towards any maximum benefit
12 established under this section.

13 (f) As used in this section:

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

21 (2) "Autism services provider" means any person, entity or
22 group that provides treatment of autism spectrum disorders.

23 (3) "Autism spectrum disorders" means any of the pervasive
24 developmental disorders as defined by the most recent edition of

1 the Diagnostic and Statistical Manual of Mental Disorders (DSM),
2 including Autistic Disorder, Asperger's Disorder and Pervasive
3 Developmental Disorder, Not Otherwise Specified(PDD-NOS).

4 (4) "Certified behavior analyst" means a West Virginia
5 licensed psychiatrist or psychologist who is also board certified
6 as a behavior analyst by the Behavior Analyst Certification Board.

7 (5) "Diagnosis of autism spectrum disorders" means medically
8 necessary assessment, evaluations or tests to diagnose whether an
9 individual has one of the autism spectrum disorders provided by a
10 licenced physician or psychiatrist with experience in assessment of
11 autism spectrum disorders.

12 (6) "Evidence-based research" means research that applies
13 rigorous, systematic and objective procedures to obtain valid
14 knowledge relevant to autism spectrum disorders.

15 (7) "Habilitative or rehabilitative care" means professional,
16 counseling and guidance services and treatment programs, including
17 applied behavior analysis, that are necessary to develop, maintain
18 and restore, to the maximum extent practicable, the functioning of
19 an individual.

20 (8) "Medically necessary" means reasonably expected to do the
21 following:

22 (A) Prevent the onset of an illness, condition, injury or
23 disability;

24 (B) Reduce or ameliorate the physical, mental or developmental

1 effects of an illness, condition, injury or disability; or

2 (C) Assist to achieve or maintain maximum functional capacity
3 in performing daily activities, taking into account both the
4 functional capacity of the individual and the functional capacities
5 that are appropriate for individuals of the same age.

6 (9) "Pharmacy care" means medications prescribed by a licensed
7 physician and any health-related services deemed medically
8 necessary to determine the need or effectiveness of the
9 medications.

10 (10) "Psychiatric care" means direct or consultative services
11 provided by a psychiatrist licensed in the state in which the
12 psychiatrist practices.

13 (11) "Psychological care" means direct or consultative
14 services provided by a psychologist licensed in the state in which
15 the psychologist practices.

16 (12) "Therapeutic care" means services provided by licensed or
17 certified speech therapists, occupational therapists or physical
18 therapists under the direction of a certified behavioral analyst.

19 (13) "Treatment for autism spectrum disorders" means the
20 following care prescribed, provided or ordered for an individual
21 diagnosed with one of the autism spectrum disorders by a licensed
22 physician or a licensed psychologist who determines the care to be
23 medically necessary:

24 (A) Habilitative or rehabilitative care;

- 1 (B) Pharmacy care;
2 (C) Psychiatric care;
3 (D) Psychological care; or
4 (E) Therapeutic care.
- 5 (g) Except for inpatient services, if an individual is
6 receiving treatment for autism spectrum disorders, an insurer will
7 have the right to request a review of that treatment not more than
8 once every twelve months unless the insurer and the individual's
9 licensed physician or licensed psychologist agrees that a more
10 frequent review is necessary. The cost of obtaining any review
11 will be borne by the insurer.
- 12 (h) This section may not be construed as affecting any
13 obligation to provide services to an individual under an
14 individualized family service plan, an individualized education
15 program, or an individualized service plan.

NOTE: The purpose of this bill is to require health insurance coverage for autism spectrum disorders. The bill sets forth the types of coverage required and requires therapeutic services to be provided on a nondiscriminatory basis. The bill also defines terms.

These sections are new; therefore, they have been completely underscored.