

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4260**

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

6 (Originating in the Committee on Finance)

7 [February 16, 2012]

8
9
10 A BILL to amend and reenact §5-16-7 of the Code of West Virginia,
11 1931, as amended; to amend and reenact §5-16B-6e of said code;
12 to amend and reenact §33-16-3v of said code; to amend and
13 reenact §33-24-7k of said code; and to amend and reenact §33-
14 25A-8j of said code, all relating to insurance coverage for
15 autism spectrum disorders; specifying application of benefit
16 caps; clarifying time frames; adding evaluation of autism
17 spectrum disorder to included coverage; clarifying diagnosis,
18 evaluation and treatment requirements; clarifying reporting
19 requirements; and making technical corrections.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 expected from dental care provided under general anesthesia;

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

11 (8) (A) Any plan issued or renewed on or after January 1, 2012,
12 shall include coverage for diagnosis, evaluation and treatment of
13 autism spectrum disorder in individuals ages eighteen months
14 ~~through~~ to eighteen years. To be eligible for coverage and
15 benefits under this subdivision, the individual must be diagnosed
16 with autism spectrum disorder at age eight or younger. Such policy
17 shall provide coverage for treatments that are medically necessary
18 and ordered or prescribed by a licensed physician or licensed
19 psychologist for an individual diagnosed with autism spectrum
20 disorder. ~~in accordance with a treatment plan developed by a~~
21 ~~certified behavior analyst pursuant to a comprehensive evaluation~~
22 ~~or reevaluation of the individual, subject to review by the agency~~
23 ~~every six months. Progress reports are required to be filed with~~
24 ~~the agency semiannually. In order for treatment to continue, the~~
25 ~~agency must receive objective evidence or a clinically supportable~~
26 ~~statement of expectation that:~~

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

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

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

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

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

8 (iii) 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 subdivision. The report shall include, but shall
15 not be limited to, the number of individuals in the plan utilizing
16 the coverage required by this subdivision, the fiscal and
17 administrative impact of the implementation, and any
18 recommendations the agency may have as to changes in law or policy
19 related to the coverage provided under this subdivision. In
20 addition, the agency shall provide such other information as may be
21 required by the Joint Committee on Government and Finance as it may
22 from time to time request.

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

24 (i) "Applied Behavior Analysis" means the design,
25 implementation, and evaluation of environmental modifications using
26 behavioral stimuli and consequences, to produce socially

1 significant improvement in human behavior, including the use of
2 direct observation, measurement, and functional analysis of the
3 relationship between environment and behavior.

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

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

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

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

24 ~~(F)~~ (G) To the extent that the provisions of this subdivision
25 ~~requires~~ require benefits that exceed the essential health benefits
26 specified under section 1302(b) of the Patient Protection and

1 Affordable Care Act, Pub. L. No. 111-148, as amended, the specific
2 benefits that exceed the specified essential health benefits shall
3 not be required of insurance plans offered by the Public Employees
4 Insurance Agency.

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

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

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

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

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

22 (4) Any other categorization which would ensure the stability
23 of the overall program.

24 (d) The agency shall maintain the medical and prescription
25 drug coverage for Medicare-eligible retirees by providing coverage
26 through one of the existing plans or by enrolling the Medicare-

1 eligible retired employees into a Medicare-specific plan,
2 including, but not limited to, the Medicare/Advantage Prescription
3 Drug Plan. In the event that a Medicare specific plan would no
4 longer be available or advantageous for the agency and the
5 retirees, the retirees shall remain eligible for coverage through
6 the agency.

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

8 **§5-16B-6e. Coverage for treatment of autism spectrum disorders.**

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

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

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

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

7 (b) ~~Such~~ The coverage shall include, but not be limited to,
8 applied ~~behavioral~~ behavior analysis. Applied behavior analysis
9 shall be provided or supervised by a certified behavior analyst.
10 ~~Provided, That~~ The annual maximum benefit for ~~treatment~~ applied
11 behavior analysis required by this ~~section~~ subsection shall be in
12 an amount not to exceed \$30,000 per individual, for three
13 consecutive years from the date treatment commences. At the
14 conclusion of the third year, ~~required~~ coverage for applied
15 behavior analysis required by this subsection shall be in an amount
16 not to exceed \$2,000 per month, until the individual reaches
17 eighteen years of age, as long as the treatment is medically
18 necessary and in accordance with a treatment plan developed by a
19 certified behavior analyst pursuant to a comprehensive evaluation
20 or reevaluation of the individual. This section shall not be
21 construed as limiting, replacing or affecting any obligation to
22 provide services to an individual under the Individuals with
23 Disabilities Education Act, 20 U.S.C. 1400 et seq., as amended from
24 time to time, or other publicly funded programs. Nothing in this
25 section shall be construed as requiring reimbursement for services
26 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
25 behavioral stimuli and consequences, to produce socially
26 significant improvement in human behavior, including the use of

1 direct observation, measurement, and functional analysis of the
2 relationship between environment and behavior.

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

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

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

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

23 ~~(f)~~ (g) To the extent that the provisions of this section
24 ~~requires~~ require benefits that exceed the essential health benefits
25 specified under section 1302(b) of the Patient Protection and
26 Affordable Care Act, Pub. L. No. 111-148, as amended, the specific

1 benefits that exceed the specified essential health benefits shall
2 not be required of the West Virginia Children's Health Insurance
3 Program.

4 **CHAPTER 33. INSURANCE.**

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

6 **§33-16-3v. Required coverage for treatment of autism spectrum
7 disorders.**

8 (a) Any insurer who, on or after January 1, 2012, delivers,
9 renews or issues a policy of group accident and sickness insurance
10 in this state under the provisions of this article shall include
11 coverage for diagnosis, evaluation and treatment of autism spectrum
12 disorder in individuals ages eighteen months ~~through~~ to eighteen
13 years. To be eligible for coverage and benefits under this
14 section, the individual must be diagnosed with autism spectrum
15 disorder at age eight or younger. Such policy shall provide
16 coverage for treatments that are medically necessary and ordered or
17 prescribed by a licensed physician or licensed psychologist for an
18 individual diagnosed with autism spectrum disorder. ~~in accordance~~
19 ~~with a treatment plan developed by a certified behavior analyst~~
20 ~~pursuant to a comprehensive evaluation or reevaluation of the~~
21 ~~individual, subject to review by the agency every six months.~~
22 ~~Progress reports are required to be filed with the insurer~~
23 ~~semiannually. In order for treatment to continue, the insurer must~~
24 ~~receive objective evidence or a clinically supportable statement of~~
25 ~~expectation that:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 ~~(f)~~ (g) To the extent that the provisions of this section
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 a health benefit plan when the plan is offered
23 by a health care insurer in this state.

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

25 **§33-24-7k. Coverage for diagnosis and treatment of autism spectrum**
26 **disorders.**

1 (a) Notwithstanding any provision of any policy, provision,
2 contract, plan or agreement to which this article applies, any
3 entity regulated by this article, for policies issued or renewed
4 on or after January 1, 2012, which delivers, renews or issues a
5 policy of group accident and sickness insurance in this state under
6 the provisions of this article shall include coverage for diagnosis
7 and treatment of autism spectrum disorder in individuals ages
8 eighteen months ~~through~~ to eighteen years. To be eligible for
9 coverage and benefits under this section, the individual must be
10 diagnosed with autism spectrum disorder at age eight or younger.
11 ~~Such~~ The policy shall provide coverage for treatments that are
12 medically necessary and ordered or prescribed by a licensed
13 physician or licensed psychologist for an individual diagnosed with
14 autism spectrum disorder. ~~in accordance with a treatment plan~~
15 ~~developed by a certified behavior analyst pursuant to a~~
16 ~~comprehensive evaluation or reevaluation of the individual, subject~~
17 ~~to review by the corporation every six months. Progress reports~~
18 ~~are required to be filed with the corporation semiannually. In~~
19 ~~order for treatment to continue, the agency must receive objective~~
20 ~~evidence or a clinically supportable statement of expectation that:~~

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

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

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

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

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

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

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

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

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

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.

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

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

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

1 enhance the justification for continued treatment.

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

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

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

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

20 **§33-25A-8j. Coverage for diagnosis and treatment of autism**
21 **spectrum disorders.**

22 (a) Notwithstanding any provision of any policy, provision,
23 contract, plan or agreement to which this article applies, any
24 entity regulated by this article for policies issued or renewed
25 on or after January 1, 2012, which delivers, renews or issues a

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

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

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

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

25 (b) ~~Such~~ Coverage shall include, but not be limited to,
26 applied ~~behavioral~~ behavior analysis. Applied behavior analysis

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

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

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

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

26 (3) There is an expectation that the anticipated improvement

1 is attainable in a reasonable and generally predictable period of
2 time.

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

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

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

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

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

26 ~~(d)~~ (e) The provisions of this section do not apply to small

1 employers. For purposes of this section a small employer ~~shall be~~
2 ~~defined as~~ means any person, firm, corporation, partnership or
3 association actively engaged in business in the State of West
4 Virginia who, during the preceding calendar year, employed an
5 average of no more than twenty-five eligible employees.

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

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