

H. B. 4260

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

[Introduced January 23, 2012; referred to the
Committee on the Judiciary then Finance.]

**Interim
Bill**

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;

1 and that §33-25A-8j of said code be amended and reenacted, all to
2 read as follows:

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

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

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

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

22 (1) Coverages and benefits for X ray and laboratory services
23 in connection with mammograms when medically appropriate and

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

12 (2) Annual checkups for prostate cancer in men age fifty and
13 over;

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

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

1 a vaginal delivery, or prior to ninety-six hours following a
2 caesarean section delivery, if the attending physician considers
3 discharge medically inappropriate;

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

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

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

1 "serious mental illness" also includes attention deficit
2 hyperactivity disorder, separation anxiety disorder and conduct
3 disorder.

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

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

1 sharing in the form of copayments, deductibles and coinsurance.

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

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

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

21 (8) (A) Any plan issued or renewed on or after January 1, 2012,
22 shall include coverage for diagnosis, evaluation and treatment of
23 autism spectrum disorder in individuals ages eighteen months
24 ~~through~~ to eighteen years. To be eligible for coverage and

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

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

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

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

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

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

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

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

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

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

24 ~~(C)~~ (D) On or before January 1 each year, the agency shall

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

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

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

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

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

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

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

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

22 (b) The agency shall make available to each eligible employee,
23 at full cost to the employee, the opportunity to purchase optional
24 group life and accidental death insurance as established under the

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

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

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

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

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

15 (4) Any other categorization which would ensure the stability
16 of the overall program.

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

1 the agency.

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

3 **§5-16B-6e. Coverage for treatment of autism spectrum disorders.**

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

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

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

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

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

23 (c) The certified behavior analyst shall file progress reports
24 with the agency semiannually. In order for treatment to continue,

1 the agency must receive objective evidence or a clinically
2 supportable statement of expectation that:

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

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

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

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

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

21 (1) "Applied Behavior Analysis" means the design,
22 implementation, and evaluation of environmental modifications using
23 behavioral stimuli and consequences, to produce socially
24 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

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

6

CHAPTER 33. INSURANCE.

7 ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

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

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

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

1 to provide services to an individual under the Individuals with
2 Disabilities Education Act, 20 U.S.C. 1400 et seq., as amended from
3 time to time or other publicly funded programs. Nothing in this
4 section shall be construed as requiring reimbursement for services
5 provided by public school personnel.

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

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

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

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

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

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

23 (2) "Autism spectrum disorder" means any pervasive
24 developmental disorder, including autistic disorder, Asperger's

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

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

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

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

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

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

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

9 **§33-24-7k. Coverage for diagnosis and treatment of autism spectrum**
10 **disorders.**

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

1 ~~developed by a certified behavior analyst pursuant to a~~
2 ~~comprehensive evaluation or reevaluation of the individual, subject~~
3 ~~to review by the corporation every six months. Progress reports~~
4 ~~are required to be filed with the corporation semiannually. In~~
5 ~~order for treatment to continue, the agency must receive objective~~
6 ~~evidence or a clinically supportable statement of expectation that:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 ~~(e)~~ (f) To the extent that the application of this section for
24 autism spectrum disorder causes an increase of at least one percent

1 of actual total costs of coverage for the plan year the corporation
2 may apply additional cost containment measures.

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

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

11 **§33-25A-8j. Coverage for diagnosis and treatment of autism**
12 **spectrum disorders.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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