

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2012



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 4260

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



Passed March 10, 2012

To Take Effect Ninety Days From Passage

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H. B. 4260

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

[Passed March 10, 2012; to take effect ninety days from passage.]

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

Be it enacted by the Legislature of West Virginia:

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

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

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

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

1 (a) The agency shall establish a group hospital and
2 surgical insurance plan or plans, a group prescription drug
3 insurance plan or plans, a group major medical insurance plan
4 or plans and a group life and accidental death insurance plan
5 or plans for those employees herein made eligible, and to
6 establish and promulgate rules for the administration of these
7 plans, subject to the limitations contained in this article.
8 Those plans shall include:

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

19 current guidelines from either the United States Preventive
20 Services Task Force or The American College of
21 Obstetricians and Gynecologists, when performed for cancer
22 screening or diagnostic services on a woman age eighteen or
23 over;

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

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

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

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

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

51 (A) The coverage does not include custodial care,
52 residential care or schooling. For purposes of this section,
53 "serious mental illness" means an illness included in the
54 American Psychiatric Association's diagnostic and statistical
55 manual of mental disorders, as periodically revised, under the
56 diagnostic categories or subclassifications of: (i)
57 Schizophrenia and other psychotic disorders; (ii) bipolar
58 disorders; (iii) depressive disorders; (iv) substance-related
59 disorders with the exception of caffeine-related disorders and
60 nicotine-related disorders; (v) anxiety disorders; and (vi)
61 anorexia and bulimia. With regard to any covered individual
62 who has not yet attained the age of nineteen years, "serious
63 mental illness" also includes attention deficit hyperactivity
64 disorder, separation anxiety disorder and conduct disorder.

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

74 (C) The agency shall not discriminate between medical-
75 surgical benefits and mental health benefits in the
76 administration of its plan. With regard to both medical-
77 surgical and mental health benefits, it may make
78 determinations of medical necessity and appropriateness, and
79 it may use recognized health care quality and cost
80 management tools, including, but not limited to, limitations
81 on inpatient and outpatient benefits, utilization review,
82 implementation of cost-containment measures,

83 preauthorization for certain treatments, setting coverage
84 levels, setting maximum number of visits within certain time
85 periods, using capitated benefit arrangements, using fee-for-
86 service arrangements, using third-party administrators, using
87 provider networks and using patient cost sharing in the form
88 of copayments, deductibles and coinsurance.

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

94 (A) Seven years of age or younger or is developmentally
95 disabled, and is an individual for whom a successful result
96 cannot be expected from dental care provided under local
97 anesthesia because of a physical, intellectual or other
98 medically compromising condition of the individual and for
99 whom a superior result can be expected from dental care
100 provided under general anesthesia;

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

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

115 coverage and benefits under this subdivision, the individual
116 must be diagnosed with autism spectrum disorder at age eight
117 or younger. Such policy shall provide coverage for
118 treatments that are medically necessary and ordered or
119 prescribed by a licensed physician or licensed psychologist
120 and in accordance with a treatment plan developed from a
121 comprehensive evaluation by a certified behavior analyst for
122 an individual diagnosed with autism spectrum disorder.

123 (B) The coverage shall include, but not be limited to,
124 applied behavior analysis. Applied behavior analysis shall be
125 provided or supervised by a certified behavior analyst. The
126 annual maximum benefit for applied behavior analysis
127 required by this subdivision shall be in an amount not to
128 exceed \$30,000 per individual, for three consecutive years
129 from the date treatment commences. At the conclusion of the
130 third year, coverage for applied behavior analysis required by
131 this subdivision shall be in an amount not to exceed \$2,000
132 per month, until the individual reaches eighteen years of age,
133 as long as the treatment is medically necessary and in
134 accordance with a treatment plan developed by a certified
135 behavior analyst pursuant to a comprehensive evaluation or
136 reevaluation of the individual. This subdivision shall not be
137 construed as limiting, replacing or affecting any obligation to
138 provide services to an individual under the Individuals with
139 Disabilities Education Act, 20 U.S.C. 1400 et seq., as
140 amended from time to time or other publicly funded
141 programs. Nothing in this subdivision shall be construed as
142 requiring reimbursement for services provided by public
143 school personnel.

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

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

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

151 (iii) There is an expectation that the anticipated
152 improvement is attainable in a reasonable and generally
153 predictable period of time.

154 (D) On or before January 1 each year, the agency shall
155 file an annual report with the Joint Committee on
156 Government and Finance describing its implementation of the
157 coverage provided pursuant to this subdivision. The report
158 shall include, but shall not be limited to, the number of
159 individuals in the plan utilizing the coverage required by this
160 subdivision, the fiscal and administrative impact of the
161 implementation, and any recommendations the agency may
162 have as to changes in law or policy related to the coverage
163 provided under this subdivision. In addition, the agency shall
164 provide such other information as may be required by the
165 Joint Committee on Government and Finance as it may from
166 time to time request.

167 (E) For purposes of this subdivision, the term:

168 (i) "Applied Behavior Analysis" means the design,
169 implementation, and evaluation of environmental
170 modifications using behavioral stimuli and consequences, to
171 produce socially significant improvement in human behavior,
172 including the use of direct observation, measurement, and
173 functional analysis of the relationship between environment
174 and behavior.

175 (ii) "Autism spectrum disorder" means any pervasive
176 developmental disorder, including autistic disorder,
177 Asperger's Syndrome, Rett Syndrome, childhood

178 disintegrative disorder, or Pervasive Development Disorder
179 as defined in the most recent edition of the Diagnostic and
180 Statistical Manual of Mental Disorders of the American
181 Psychiatric Association.

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

185 (iv) “Objective evidence” means standardized patient
186 assessment instruments, outcome measurements tools or
187 measurable assessments of functional outcome. Use of
188 objective measures at the beginning of treatment, during and
189 after treatment is recommended to quantify progress and
190 support justifications for continued treatment. The tools are
191 not required, but their use will enhance the justification for
192 continued treatment.

193 (F) To the extent that the application of this subdivision
194 for autism spectrum disorder causes an increase of at least
195 one percent of actual total costs of coverage for the plan year
196 the agency may apply additional cost containment measures.

197 (G) To the extent that the provisions of this subdivision
198 require benefits that exceed the essential health benefits
199 specified under section 1302(b) of the Patient Protection and
200 Affordable Care Act, Pub. L. No. 111-148, as amended, the
201 specific benefits that exceed the specified essential health
202 benefits shall not be required of insurance plans offered by
203 the Public Employees Insurance Agency.

204 (b) The agency shall make available to each eligible
205 employee, at full cost to the employee, the opportunity to
206 purchase optional group life and accidental death insurance
207 as established under the rules of the agency. In addition, each

208 employee is entitled to have his or her spouse and
209 dependents, as defined by the rules of the agency, included in
210 the optional coverage, at full cost to the employee, for each
211 eligible dependent; and with full authorization to the agency
212 to make the optional coverage available and provide an
213 opportunity of purchase to each employee.

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

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

217 (2) All teaching and professional employees of state
218 public institutions of higher education and county boards of
219 education;

220 (3) All nonteaching employees of the Higher Education
221 Policy Commission, West Virginia Council for Community
222 and Technical College Education and county boards of
223 education; or

224 (4) Any other categorization which would ensure the
225 stability of the overall program.

226 (d) The agency shall maintain the medical and
227 prescription drug coverage for Medicare-eligible retirees by
228 providing coverage through one of the existing plans or by
229 enrolling the Medicare-eligible retired employees into a
230 Medicare-specific plan, including, but not limited to, the
231 Medicare/Advantage Prescription Drug Plan. In the event that
232 a Medicare specific plan would no longer be available or
233 advantageous for the agency and the retirees, the retirees
234 shall remain eligible for coverage through the agency.

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

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

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

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

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

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

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

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

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

46 (d) On or before January 1 each year, the agency shall file
47 an annual report with the Joint Committee on Government
48 and Finance describing its implementation of the coverage
49 provided pursuant to this section. The report shall include,
50 but shall not be limited to, the number of individuals in the
51 plan utilizing the coverage required by this section, the fiscal
52 and administrative impact of the implementation, and any
53 recommendations the agency may have as to changes in law
54 or policy related to the coverage provided under this section.
55 In addition, the agency shall provide such other information
56 as may be requested by the Joint Committee on Government
57 and Finance as it may from time to time request.

58 (e) For purposes of this section, the term:

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

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

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

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

84 (f) To the extent that the application of this section for
85 autism spectrum disorder causes an increase of at least one
86 percent of actual total costs of coverage for the plan year the
87 agency may apply additional cost containment measures.

88 (g) To the extent that the provisions of this section
89 require benefits that exceed the essential health benefits

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

CHAPTER 33. INSURANCE.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

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

1 (a) Any insurer who, on or after January 1, 2012,
2 delivers, renews or issues a policy of group accident and
3 sickness insurance in this state under the provisions of this
4 article shall include coverage for diagnosis, evaluation and
5 treatment of autism spectrum disorder in individuals ages
6 eighteen months to eighteen years. To be eligible for
7 coverage and benefits under this section, the individual must
8 be diagnosed with autism spectrum disorder at age eight or
9 younger. Such policy shall provide coverage for treatments
10 that are medically necessary and ordered or prescribed by a
11 licensed physician or licensed psychologist and in accordance
12 with a treatment plan developed from a comprehensive
13 evaluation by a certified behavior analyst for an individual
14 diagnosed with autism spectrum disorder.

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

22 third year, required coverage shall be in an amount not to
23 exceed \$2,000 per month, until the individual reaches
24 eighteen years of age, as long as the treatment is medically
25 necessary and in accordance with a treatment plan developed
26 by a certified behavior analyst pursuant to a comprehensive
27 evaluation or reevaluation of the individual. This section
28 shall not be construed as limiting, replacing or affecting any
29 obligation to provide services to an individual under the
30 Individuals with Disabilities Education Act, 20 U.S.C. 1400
31 et seq., as amended from time to time or other publicly
32 funded programs. Nothing in this section shall be construed
33 as requiring reimbursement for services provided by public
34 school personnel.

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

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

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

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

45 (d) For purposes of this section, the term:

46 (1) "Applied Behavior Analysis" means the design,
47 implementation, and evaluation of environmental
48 modifications using behavioral stimuli and consequences, to
49 produce socially significant improvement in human behavior,
50 including the use of direct observation, measurement, and

51 functional analysis of the relationship between environment
52 and behavior.

53 (2) “Autism spectrum disorder” means any pervasive
54 developmental disorder, including autistic disorder,
55 Asperger’s Syndrome, Rett syndrome, childhood
56 disintegrative disorder, or Pervasive Development Disorder
57 as defined in the most recent edition of the Diagnostic and
58 Statistical Manual of Mental Disorders of the American
59 Psychiatric Association.

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

63 (4) “Objective evidence” means standardized patient
64 assessment instruments, outcome measurements tools or
65 measurable assessments of functional outcome. Use of
66 objective measures at the beginning of treatment, during and
67 after treatment is recommended to quantify progress and
68 support justifications for continued treatment. The tools are
69 not required, but their use will enhance the justification for
70 continued treatment.

71 (e) The provisions of this section do not apply to small
72 employers. For purposes of this section a small employer
73 means any person, firm, corporation, partnership or
74 association actively engaged in business in the State of West
75 Virginia who, during the preceding calendar year, employed
76 an average of no more than twenty-five eligible employees.

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

81 (g) To the extent that the provisions of this section
82 require benefits that exceed the essential health benefits
83 specified under section 1302(b) of the Patient Protection and
84 Affordable Care Act, Pub. L. No. 111-148, as amended, the
85 specific benefits that exceed the specified essential health
86 benefits shall not be required of a health benefit plan when
87 the plan is offered by a health care insurer in this state.

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

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

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

18 (b) Coverage shall include, but not be limited to, applied
19 behavior analysis. Applied behavior analysis shall be
20 provided or supervised by a certified behavior analyst. The
21 annual maximum benefit for applied behavior analysis

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

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

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

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

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

49 (d) For purposes of this section, the term:

50 (1) "Applied Behavior Analysis" means the design,
51 implementation, and evaluation of environmental

52 modifications using behavioral stimuli and consequences, to
53 produce socially significant improvement in human behavior,
54 including the use of direct observation, measurement, and
55 functional analysis of the relationship between environment
56 and behavior.

57 (2) “Autism spectrum disorder” means any pervasive
58 developmental disorder, including autistic disorder,
59 Asperger’s Syndrome, Rett Syndrome, childhood
60 disintegrative disorder, or Pervasive Development Disorder
61 as defined in the most recent edition of the Diagnostic and
62 Statistical Manual of Mental Disorders of the American
63 Psychiatric Association.

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

67 (4) “Objective evidence” means standardized patient
68 assessment instruments, outcome measurements tools or
69 measurable assessments of functional outcome. Use of
70 objective measures at the beginning of treatment, during and
71 after treatment is recommended to quantify progress and
72 support justifications for continued treatment. The tools are
73 not required, but their use will enhance the justification for
74 continued treatment.

75 (e) The provisions of this section do not apply to small
76 employers. For purposes of this section a small employer
77 means any person, firm, corporation, partnership or
78 association actively engaged in business in the State of West
79 Virginia who, during the preceding calendar year, employed
80 an average of no more than twenty-five eligible employees.

81 (f) To the extent that the application of this section for
82 autism spectrum disorder causes an increase of at least one

83 percent of actual total costs of coverage for the plan year the
84 corporation may apply additional cost containment measures.

85 (g) To the extent that the provisions of this section
86 require benefits that exceed the essential health benefits
87 specified under section 1302(b) of the Patient Protection and
88 Affordable Care Act, Pub. L. No. 111-148, as amended, the
89 specific benefits that exceed the specified essential health
90 benefits shall not be required of a health benefit plan when
91 the plan is offered by a corporation in this state.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

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

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

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

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

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

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

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

49 (d) For purposes of this section, the term:

50 (1) “Applied Behavior Analysis” means the design,
51 implementation, and evaluation of environmental
52 modifications using behavioral stimuli and consequences, to
53 produce socially significant improvement in human behavior,
54 including the use of direct observation, measurement, and
55 functional analysis of the relationship between environment
56 and behavior.

57 (2) “Autism spectrum disorder” means any pervasive
58 developmental disorder, including autistic disorder,
59 Asperger’s Syndrome, Rett syndrome, childhood
60 disintegrative disorder, or Pervasive Development Disorder
61 as defined in the most recent edition of the Diagnostic and
62 Statistical Manual of Mental Disorders of the American
63 Psychiatric Association.

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

67 (4) “Objective evidence” means standardized patient
68 assessment instruments, outcome measurements tools or
69 measurable assessments of functional outcome. Use of
70 objective measures at the beginning of treatment, during and
71 after treatment is recommended to quantify progress and
72 support justifications for continued treatment. The tools are
73 not required, but their use will enhance the justification for
74 continued treatment.

75 (e) The provisions of this section do not apply to small
76 employers. For purposes of this section a small employer
77 means any person, firm, corporation, partnership or
78 association actively engaged in business in the State of West

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

81 (f) To the extent that the application of this section for
82 autism spectrum disorder causes an increase of at least one
83 percent of actual total costs of coverage for the plan year the
84 health maintenance organization may apply additional cost
85 containment measures.

86 (g) To the extent that the provisions of this section
87 require benefits that exceed the essential health benefits
88 specified under section 1302(b) of the Patient Protection and
89 Affordable Care Act, Pub. L. No. 111-148, as amended, the
90 specific benefits that exceed the specified essential health
91 benefits shall not be required of a health benefit plan when
92 the plan is offered by a health maintenance organization in
93 this state.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2012.

Governor