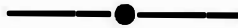


FILED

2012 APR -2 PM 3: 14

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**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

HB 4260

**E N R O L L E D**

**FILED**

2012 APR -2 PM 3: 14

COMMITTEE SUBSTITUTE

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

FOR

**H. B. 4260**

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

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[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 employec, 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.

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.

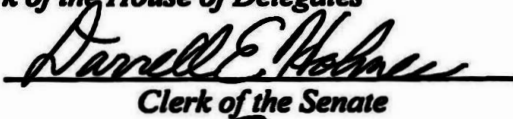
  
\_\_\_\_\_  
Chairman, House Committee

  
\_\_\_\_\_  
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

FILED  
2012 APR -2 PM 3:14  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

The within is approved this the 2nd  
day of April, 2012.

  
\_\_\_\_\_  
GOVERNOR

**PRESENTED TO THE GOVERNOR**

**MAR 26 2012**

**Time** 10:00 am