

COMMITTEE SUBSTITUTE

FOR

## **H. B. 2693**

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(BY DELEGATES FLEISCHAUER, ELLEM, OVERINGTON,  
HUNT, SKAFF, LANE AND RODIGHIERO)

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(Originating in the Committee on Finance)  
[February 4, 2011]

A BILL to amend and reenact §5-16-7 of the code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5-16B-6e; to amend said code by adding thereto a new section, designated §9-5-21; to amend said code by adding thereto a new section, designated §33-15-4k; to amend said code by adding thereto a new section, designated §33-16-3v; to amend said code by adding thereto a new

section, designated §33-24-7k; and to amend said code by adding thereto a new section, designated §33-25A-8j, all relating to requiring insurance coverage for autism spectrum disorders; providing definitions; and providing reporting requirements by state agencies.

*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 said code be amended by adding thereto a new section, designated §5-16B-6e; that said code be amended by adding thereto a new section, designated §9-5-21; that said code be amended by adding thereto a new section, designated §33-15-4k; that said code be amended by adding thereto a new section, designated §33-16-3v; that said code be amended by adding thereto a new section, designated §33-24-7k; that said code be amended by adding thereto a new section, designated §33-25A-8j, 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  
4 plan or plans and a group life and accidental death insurance  
5 plan or plans for those employees herein made eligible, and  
6 to establish and promulgate rules for the administration of  
7 these 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  
75 medical-surgical benefits and mental health benefits in the  
76 administration of its plan. With regard to both medical-surgical  
77 and mental health benefits, it may make determinations of  
78 medical necessity and appropriateness, and it may use  
79 recognized health care quality and cost management tools,  
80 including, but not limited to, limitations on inpatient and  
81 outpatient benefits, utilization review, case management,  
82 implementation of cost-containment measures, preauthorization  
83 for certain treatments, setting coverage levels, setting maximum  
84 number of visits within certain time periods, using capitated  
85 benefit arrangements, using fee-for-service arrangements, using  
86 third-party administrators, using provider networks and using  
87 patient cost sharing in the form of copayments, deductibles and  
88 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) Coverage for diagnosis and treatment of autism  
112 spectrum disorder in individuals ages three through eighteen  
113 years. Such policy shall provide coverage for treatments that  
114 are medically necessary and ordered or prescribed by a  
115 licensed physician or licensed psychologist for an individual  
116 diagnosed with autism spectrum disorder, in accordance with  
117 a treatment plan developed by a licensed physician or licensed  
118 psychologist pursuant to a comprehensive evaluation or  
119 reevaluation of the individual. Such coverage shall include,  
120 but not be limited to, applied behavioral analysis provided by  
121 a board certified behavior analyst: *Provided*, That the annual  
122 maximum benefit for applied behavioral analysis for autism  
123 spectrum disorder for individuals ages three through six  
124 years required by this subdivision shall be in amount not to  
125 exceed \$30,000 per individual. For individuals ages seven  
126 through eighteen years, coverage for applied behavior  
127 analysis shall be in an amount not to exceed \$1,000 per  
128 month, as long as the treatment is medically necessary and in  
129 accordance with a treatment plan developed by a licensed

130 physician or licensed psychologist pursuant to a comprehensive  
131 evaluation or reevaluation of the individual. This section  
132 shall not be construed as limiting, replacing or affecting any  
133 obligation to provide services to an individual under the  
134 Individuals with Disabilities Education Act, 20 U.S.C. 1400  
135 et seq., as amended from time to time or other publicly  
136 funded programs. Nothing in this section shall be construed  
137 as requiring coverage of benefits for services that are or  
138 should be included in an individualized family service plan  
139 or individualized education program or individualized service  
140 plan or other publicly funded programs, including but not  
141 limited to reimbursement for services provided at public  
142 schools.

143 (B) On or before January 1 each year, the agency shall  
144 file an annual report with the joint committee on government  
145 and finance describing its implementation of the coverage  
146 provided pursuant to this subdivision. The report shall  
147 include, but shall not be limited to the number of individuals  
148 in the plan utilizing the coverage required by this

149 subdivision, the fiscal and administrative impact of the  
150 implementation, and any recommendations the agency may  
151 have as to changes in law or policy related to the coverage  
152 provided under this subdivision. In addition, the agency shall  
153 provide such other information as may be provided by the  
154 joint committee on government and finance as it may from  
155 time to time request.

156 (C) For purposes of this subdivision, the term:

157 (1) “Applied Behavior Analysis” means the design,  
158 implementation, and evaluation of environmental modifications  
159 using behavioral stimuli and consequences, to produce  
160 socially significant improvement in human behavior,  
161 including the use of direct observation, measurement, and  
162 functional analysis of the relationship between environment  
163 and behavior.

164 (2) “Autism spectrum disorder” means any pervasive  
165 developmental disorder, including autistic disorder,  
166 Asperger’s Syndrome, Rett syndrome, childhood  
167 disintegrative disorder, or Pervasive Development Disorder -

168 Not otherwise specified as, as defined in the most recent  
169 edition of the Diagnostic and Statistical Manual of Mental  
170 Disorders of the American Psychiatric Association.

171 (3) “Board certified behavior analyst” means an  
172 individual who is certified by the Behavior Analyst  
173 Certification Board or certified by a similar nationally  
174 recognized organization.

175 (b) The agency shall make available to each eligible  
176 employee, at full cost to the employee, the opportunity to  
177 purchase optional group life and accidental death insurance  
178 as established under the rules of the agency. In addition,  
179 each employee is entitled to have his or her spouse and  
180 dependents, as defined by the rules of the agency, included  
181 in the optional coverage, at full cost to the employee, for  
182 each eligible dependent; and with full authorization to the  
183 agency to make the optional coverage available and provide  
184 an opportunity of purchase to each employee.

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

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

188 (2) All teaching and professional employees of state  
189 public institutions of higher education and county boards of  
190 education;

191 (3) All nonteaching employees of the Higher Education  
192 Policy Commission, West Virginia Council for Community  
193 and Technical College Education and county boards of  
194 education; or

195 (4) Any other categorization which would ensure the  
196 stability of the overall program.

197 (d) The agency shall maintain the medical and  
198 prescription drug coverage for Medicare-eligible retirees by  
199 providing coverage through one of the existing plans or by  
200 enrolling the Medicare-eligible retired employees into a  
201 Medicare-specific plan, including, but not limited to, the  
202 Medicare/Advantage Prescription Drug Plan. In the event  
203 that a Medicare-specific plan would no longer be available or  
204 advantageous for the agency and the retirees, the retirees  
205 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 and treatment of  
2       autism spectrum disorders are not already covered by this  
3       agency, a policy, plan or contract subject to this section shall  
4       provide coverage for such diagnosis and treatment, for  
5       individuals ages three through eighteen years. Such policy  
6       shall provide coverage for treatments that are medically  
7       necessary and ordered or prescribed by a licensed physician  
8       or licensed psychologist for an individual diagnosed with  
9       autism spectrum disorder, in accordance with a treatment  
10       plan developed by a licensed physician or licensed  
11       psychologist pursuant to a comprehensive evaluation or  
12       reevaluation of the individual. Such coverage shall include,  
13       but not be limited to, applied behavioral analysis provided by  
14       a board certified behavior analyst: *Provided, That the annual*  
15       maximum benefit for applied behavioral analysis for autism  
16       spectrum disorder required for individuals ages three through

17 six years by this section shall be in amount not to exceed  
18 \$30,000 per individual. For individuals ages seven through  
19 eighteen years, coverage for applied behavior analysis shall be  
20 in an amount not to exceed \$1,000 per month, as long as the  
21 treatment is medically necessary and in accordance with a  
22 treatment plan developed by a licensed physician or licensed  
23 psychologist pursuant to a comprehensive evaluation or  
24 reevaluation of the individual. Nothing in this section shall be  
25 construed to require or permit the agency to reduce benefits for  
26 autism spectrum disorders already provided that exceed the  
27 limits of this section. This section shall not be construed as  
28 limiting, replacing or affecting any obligation to provide services  
29 to an individual under the Individuals with Disabilities  
30 Education Act, 20 U.S.C. 1400 et seq., as amended from time to  
31 time or other publicly funded programs. Nothing in this section  
32 shall be construed as requiring coverage of benefits for services  
33 that are or should be included in an individualized family service  
34 plan or individualized education program or individualized  
35 service plan or other publicly funded programs, including but

36 not limited to reimbursement for services provided at public  
37 schools.

38 (b) On or before January 1 each year, the agency shall  
39 file an annual report with the joint committee on government  
40 and finance describing its implementation of the coverage  
41 provided pursuant to this section. The report shall include,  
42 but shall not be limited to the number of individuals in the  
43 plan utilizing the coverage required by this section, the fiscal  
44 and administrative impact of the implementation, and any  
45 recommendations the agency may have as to changes in law  
46 or policy related to the coverage provided under this  
47 section. In addition, the agency shall provide such other  
48 information as may be provided by the joint committee on  
49 government and finance as it may from time to time request.

50 (c) For purposes of this section, the term:

51 (1) “Applied Behavior Analysis” means the design,  
52 implementation, and evaluation of environmental modifications  
53 using behavioral stimuli and consequences, to produce  
54 socially significant improvement in human behavior,

55 including the use of direct observation, measurement, and  
56 functional analysis of the relationship between environment  
57 and behavior.

58 (2) “Autism spectrum disorder” means any pervasive  
59 developmental disorder, including autistic disorder,  
60 Asperger’s Syndrome, Rett syndrome, childhood  
61 disintegrative disorder, or Pervasive Development Disorder -  
62 Not otherwise specified as, as defined in the most recent  
63 edition of the Diagnostic and Statistical Manual of Mental  
64 Disorders of the American Psychiatric Association.

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

## CHAPTER 9. HUMAN SERVICES.

### ARTICLE 5. MISCELLANEOUS PROVISIONS.

**§9-5-21. Annual report to joint committee on government and  
finance regarding treatment for autism spectrum  
disorders provided by the Bureau for Medical  
Services.**

1           (a) On or before January 1 each year, the agency shall file  
2           an annual report with the joint committee on government and  
3           finance describing the number of enrolled individuals with  
4           autism spectrum disorder, including the fiscal and  
5           administrative impact of treatment of autism spectrum  
6           disorders, and any recommendations the agency may have as  
7           to changes in law or policy related to such disorder. In  
8           addition, the agency shall provide such other information as  
9           may be provided by the joint committee on government and  
10          finance as it may from time to time request.

11          (b) For purposes of this section, the term “autism  
12          spectrum disorder” means any pervasive developmental  
13          disorder, including autistic disorder, Asperger’s Syndrome,  
14          Rett syndrome, childhood disintegrative disorder, or  
15          Pervasive Development Disorder - Not otherwise specified  
16          as, as defined in the most recent edition of the Diagnostic and  
17          Statistical Manual of Mental Disorders of the American  
18          Psychiatric Association.

**CHAPTER 33. INSURANCE.**

**ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.**

**§33-15-4k. Required coverage for treatment of autism spectrum disorders.**

1        (a) Notwithstanding any provision of any policy,  
2 provision, contract, plan or agreement applicable to this  
3 article, any entity regulated by this article shall, for policies  
4 issued or renewed on or after September 1, 2011, make  
5 available as benefits to all subscribers and members coverage  
6 for diagnosis and treatment of autism spectrum disorder in  
7 individuals ages three through eighteen years. Such policy  
8 shall provide coverage for treatments that are medically  
9 necessary and ordered or prescribed by a licensed physician  
10 or licensed psychologist for an individual diagnosed with  
11 autism spectrum disorder, in accordance with a treatment  
12 plan developed by a licensed physician or licensed  
13 psychologist pursuant to a comprehensive evaluation or  
14 reevaluation of the individual. Such coverage shall include,  
15 but not be limited to, applied behavioral analysis provided by

16 a board certified behavior analyst: *Provided*, That the annual  
17 maximum benefit for applied behavioral analysis for autism  
18 spectrum disorder for individuals ages three through six  
19 years required by this subsection shall be in amount not to  
20 exceed \$30,000 per individual. For individuals ages seven  
21 through eighteen years, coverage for applied behavior  
22 analysis shall be in an amount not to exceed \$1,000 per  
23 month, as long as the treatment is medically necessary and in  
24 accordance with a treatment plan developed by a licensed  
25 physician or licensed psychologist pursuant to a  
26 comprehensive evaluation or reevaluation of the individual.  
27 Nothing in this section shall be construed to require or permit  
28 the agency to reduce benefits for autism spectrum disorders  
29 already provided that exceed the limits of this section. This  
30 section shall not be construed as limiting, replacing or  
31 affecting any obligation to provide services to an individual  
32 under the Individuals with Disabilities Education Act, 20  
33 U.S.C. 1400 et seq., as amended from time to time or other  
34 publicly funded programs. Nothing in this section shall be

35 construed as requiring coverage of benefits for services that  
36 are or should be included in an individualized family service  
37 plan or individualized education program or individualized  
38 service plan or other publicly funded programs, including but  
39 not limited to reimbursement for services provided at public  
40 schools.

41 (b) For purposes of this section, the term:

42 (1) “Applied Behavior Analysis” means the design,  
43 implementation, and evaluation of environmental modifications  
44 using behavioral stimuli and consequences, to produce  
45 socially significant improvement in human behavior,  
46 including the use of direct observation, measurement, and  
47 functional analysis of the relationship between environment  
48 and behavior.

49 (2) “Autism spectrum disorder” means any pervasive  
50 developmental disorder, including autistic disorder,  
51 Asperger’s Syndrome, Rett syndrome, childhood  
52 disintegrative disorder, or Pervasive Development Disorder -  
53 Not otherwise specified as, as defined in the most recent

54 edition of the Diagnostic and Statistical Manual of Mental  
55 Disorders of the American Psychiatric Association.

56 (3) “Board certified behavior analyst” means an  
57 individual who is certified by the Behavior Analyst  
58 Certification Board or certified by a similar nationally  
59 recognized organization.

**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 September 1, 2011,  
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 make available as benefits to all subscribers and  
5 members coverage for diagnosis and treatment of autism  
6 spectrum disorder in individuals ages three through eighteen  
7 years. Such policy shall provide coverage for treatments that  
8 are medically necessary and ordered or prescribed by a  
9 licensed physician or licensed psychologist for an individual  
10 diagnosed with autism spectrum disorder, in accordance with

11 a treatment plan developed by a licensed physician or  
12 licensed psychologist pursuant to a comprehensive  
13 evaluation or reevaluation of the individual. Such coverage  
14 shall include, but not be limited to, applied behavioral  
15 analysis provided by a board certified behavior analyst:  
16 *Provided, That the annual maximum benefit for applied*  
17 *behavioral analysis for autism spectrum disorder for*  
18 *individuals ages three through six years required by this*  
19 *subsection shall be in amount not to exceed \$30,000 per*  
20 *individual. For individuals ages seven through eighteen*  
21 *years, coverage for applied behavior analysis shall be in an*  
22 *amount not to exceed \$1,000 per month, as long as the*  
23 *treatment is medically necessary and in accordance with a*  
24 *treatment plan developed by a licensed physician or licensed*  
25 *psychologist pursuant to a comprehensive evaluation or*  
26 *reevaluation of the individual. Nothing in this section shall be*  
27 *construed to require or permit the agency to reduce benefits*  
28 *for autism spectrum disorders already provided that exceed*  
29 *the limits of this section. This section shall not be construed*

30 as limiting, replacing or affecting any obligation to provide  
31 services to an individual under the Individuals with  
32 Disabilities Education Act, 20 U.S.C. 1400 et seq., as  
33 amended from time to time or other publicly funded  
34 programs. Nothing in this section shall be construed as  
35 requiring coverage of benefits for services that are or should  
36 be included in an individualized family service plan or  
37 individualized education program or individualized service  
38 plan or other publicly funded programs, including but not  
39 limited to reimbursement for services provided at public  
40 schools.

41 (b) For purposes of this section, the term:

42 (1) “Applied Behavior Analysis” means the design,  
43 implementation, and evaluation of environmental  
44 modifications using behavioral stimuli and consequences, to  
45 produce socially significant improvement in human behavior,  
46 including the use of direct observation, measurement, and  
47 functional analysis of the relationship between environment  
48 and behavior.

49       (2) “Autism spectrum disorder” means any pervasive  
50 developmental disorder, including autistic disorder,  
51 Asperger’s Syndrome, Rett syndrome, childhood  
52 disintegrative disorder, or Pervasive Development Disorder -  
53 Not otherwise specified as, as defined in the most recent  
54 edition of the Diagnostic and Statistical Manual of Mental  
55 Disorders of the American Psychiatric Association.

56       (3) “Board certified behavior analyst” means an  
57 individual who is certified by the Behavior Analyst  
58 Certification Board or certified by a similar nationally  
59 recognized organization.

**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  
4 issued or renewed on or before September 1, 2011, shall  
5 provide as benefits to its subscribers and members for

6 coverage for diagnosis and treatment of autism spectrum  
7 disorder in individuals ages three through eighteen years.  
8 Such policy shall provide coverage for treatments that are  
9 medically necessary and ordered or prescribed by a licensed  
10 physician or licensed psychologist for an individual  
11 diagnosed with autism spectrum disorder, in accordance with  
12 a treatment plan developed by a licensed physician or  
13 licensed psychologist pursuant to a comprehensive  
14 evaluation or reevaluation of the individual. Such coverage  
15 shall include, but not be limited to, applied behavioral  
16 analysis provided by a board certified behavior analyst:  
17 *Provided, That the annual maximum benefit for applied*  
18 *behavioral analysis for autism spectrum disorder for*  
19 *individuals ages three through six years required by this*  
20 *subsection shall be in amount not to exceed \$30,000 per*  
21 *individual. For individuals ages seven through eighteen*  
22 *years, coverage for applied behavior analysis shall be in an*  
23 *amount not to exceed \$1,000 per month, as long as the*  
24 *treatment is medically necessary and in accordance with a*

25 treatment plan developed by a licensed physician or licensed  
26 psychologist pursuant to a comprehensive evaluation or  
27 reevaluation of the individual. This section shall not be  
28 construed as limiting, replacing or affecting any obligation to  
29 provide services to an individual under the Individuals with  
30 Disabilities Education Act, 20 U.S.C. 1400 et seq., as  
31 amended from time to time or other publicly funded  
32 programs. Nothing in this section shall be construed as  
33 requiring coverage of benefits for services that are or should  
34 be included in an individualized family service plan or  
35 individualized education program or individualized service  
36 plan or other publicly funded programs, including but not  
37 limited to reimbursement for services provided at public  
38 schools.

39 (b) For purposes of this section, the term:

40 (1) “Applied Behavior Analysis” means the design,  
41 implementation, and evaluation of environmental modifications  
42 using behavioral stimuli and consequences, to produce  
43 socially significant improvement in human behavior,

44 including the use of direct observation, measurement, and  
45 functional analysis of the relationship between environment  
46 and behavior.

47 (2) “Autism spectrum disorder” means any pervasive  
48 developmental disorder, including autistic disorder,  
49 Asperger’s Syndrome, Rett Syndrome, childhood  
50 disintegrative disorder, or Pervasive Development Disorder -  
51 Not otherwise specified as, as defined in the most recent  
52 edition of the Diagnostic and Statistical Manual of Mental  
53 Disorders of the American Psychiatric Association.

54 (3) “Board certified behavior analyst” means an  
55 individual who is certified by the Behavior Analyst  
56 Certification Board or certified by a similar nationally  
57 recognized organization.

**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, for policies issued or renewed on or before  
4 September 1, 2011, any entity regulated by this article shall  
5 provide as benefits to its subscribers and members for  
6 coverage for diagnosis and treatment of autism spectrum  
7 disorder in individuals ages three through eighteen years.  
8 Such policy shall provide coverage for treatments that are  
9 medically necessary and ordered or prescribed by a licensed  
10 physician or licensed psychologist for an individual diagnosed  
11 with autism spectrum disorder, in accordance with a treatment  
12 plan developed by a licensed physician or licensed psychologist  
13 pursuant to a comprehensive evaluation or reevaluation of the  
14 individual. Such coverage shall include, but not be limited to,  
15 applied behavioral analysis provided by a board certified  
16 behavior analyst: *Provided, That the annual maximum*  
17 benefit for applied behavioral analysis for autism spectrum  
18 disorder for individuals ages three through six years required  
19 by this subsection shall be in amount not to exceed \$30,000  
20 per individual. For individuals ages seven through eighteen  
21 years, coverage for applied behavior analysis shall be in an

22 amount not to exceed \$1,000 per month, as long as the  
23 treatment is medically necessary and in accordance with a  
24 treatment plan developed by a licensed physician or licensed  
25 psychologist pursuant to a comprehensive evaluation or  
26 reevaluation of the individual. This section shall not be  
27 construed as limiting, replacing or affecting any obligation to  
28 provide services to an individual under the Individuals with  
29 Disabilities Education Act, 20 U.S.C. 1400 et seq., as  
30 amended from time to time or other publicly funded  
31 programs. Nothing in this section shall be construed as  
32 requiring coverage of benefits for services that are or should  
33 be included in an individualized family service plan or  
34 individualized education program or individualized service  
35 plan or other publicly funded programs, including but not  
36 limited to reimbursement for services provided at public  
37 schools.

38 (b) For purposes of this section, the term:

39 (1) “Applied Behavior Analysis” means the design,  
40 implementation, and evaluation of environmental

41 modifications using behavioral stimuli and consequences, to  
42 produce socially significant improvement in human behavior,  
43 including the use of direct observation, measurement, and  
44 functional analysis of the relationship between environment  
45 and behavior.

46 (2) “Autism spectrum disorder” means any pervasive  
47 developmental disorder, including autistic disorder,  
48 Asperger’s Syndrome, Rett Syndrome, childhood disintegrative  
49 disorder, or Pervasive Development Disorder - Not otherwise  
50 specified as, as defined in the most recent edition of the  
51 Diagnostic and Statistical Manual of Mental Disorders of the  
52 American Psychiatric Association.

53 (3) “Board certified behavior analyst” means an  
54 individual who is certified by the Behavior Analyst  
55 Certification Board or certified by a similar nationally  
56 recognized organization.