

NOTE: The governor signed this measure on 4/16/2015.

An Act

SENATE BILL 15-015

BY SENATOR(S) Kefalas, Aguilar, Baumgardner, Carroll, Crowder, Donovan, Garcia, Grantham, Guzman, Heath, Hodge, Holbert, Jahn, Johnston, Kerr, Lambert, Lundberg, Marble, Merrifield, Neville T., Newell, Roberts, Scheffel, Scott, Steadman, Todd, Woods, Cadman;
also REPRESENTATIVE(S) Primavera, Arndt, Becker K., Esgar, Foote, Ginal, Kraft-Sharp, Lontine, Mitsch Bush, Moreno, Pettersen, Roupe, Ryden, Salazar, Singer, Young, Hullinghorst.

CONCERNING A CLARIFICATION OF BENEFITS FOR AUTISM SPECTRUM DISORDERS IN HEALTH BENEFIT PLANS ISSUED IN THIS STATE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and determines that:

(a) It is in the interest of the child, the child's family, and the state when a child who is diagnosed with autism spectrum disorder receives proper care and treatment, such as applied behavior analysis therapy, in order to have opportunities to be a fully functioning individual in society;

(b) Colorado mental health parity law provides a parity requirement that is similar to those in federal mental health parity laws, specifying that

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

health benefit plans issued in this state must provide coverage for the treatment of biologically based mental illness and mental disorders that is no less extensive than the coverage provided for a physical illness;

(c) While the terms "biologically based mental illness" and "mental disorder", as defined in the state parity law, do not specifically include autism or autism spectrum disorders (ASD), ASD is included and defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM), which is the standard classification of mental disorders used by mental health professionals in the United States;

(d) Before the passage of mental health parity laws, Colorado enacted legislation specifying that autism is not a mental illness and must be treated as and covered under a health benefit plan like a medical condition. With the development of mental health parity laws, ASD is now covered by the mental health parity laws, yet the state law excluding autism from the definition of a mental illness was never repealed and has resulted in confusion among carriers and consumers as to whether mental health parity applies to ASD.

(e) In 2009, after the passage of the federal "Mental Health Parity and Addiction Equity Act of 2008" (MHPAEA), Colorado enacted Senate Bill 09-244, which requires health benefit plans to provide coverage for the assessment, diagnosis, and treatment of ASD and establishes annual dollar limits on the amount of coverage a health benefit plan must provide to a child eligible for the coverage;

(f) With the passage of the federal "Patient Protection and Affordable Care Act" and the "Health Care and Education Reconciliation Act of 2010" (together referred to as the ACA), the ASD coverage required under state law is now considered part of the essential health benefits that all health plans subject to the ACA must provide without annual limits on the dollar value of the ASD benefits;

(g) To align with the ACA, the general assembly enacted House Bill 13-1266 which, among other items, replaced the dollar limits specified in state law for ASD benefits with actuarial equivalents, as determined by the commissioner of insurance, which contradicts the MHPAEA and the state mental health parity law because such limits on ASD benefits cannot be imposed unless similar limits apply to services for a physical illness;

(h) Thus, it is important to clarify that:

(I) ASD is a mental disorder for purposes of state and federal mental health parity laws, and therefore, the benefits for ASD must be no less extensive than the coverage provided for a physical illness;

(II) Coverage under a health benefit plan for ASD benefits cannot contain any limits on the number of services or visits; and

(III) Providing benefits for ASD that are substantially equivalent to benefits for a physical illness does not constitute an addition to the state's essential health benefits required under the ACA.

(2) Furthermore, the general assembly acknowledges the added expense and difficulty imposed on carriers and state regulators by requiring carriers to adjust health benefit plans they will be issuing, delivering, or renewing for the 2016 plan year and has therefore determined that this act should apply to plans issued, delivered, or renewed on or after January 1, 2017. However, the general assembly recognizes the vital necessity of ensuring access to and full coverage for the range of treatments needed for children diagnosed with autism spectrum disorder and therefore encourages carriers to provide the coverage required by this act as soon as possible.

SECTION 2. In Colorado Revised Statutes, 10-16-104, **amend** (1.4) (a) (II) introductory portion, (1.4) (a) (II) (E), (1.4) (a) (III), (1.4) (a) (XII) introductory portion, (1.4) (b) (I), and (5.5) (a) (IV) (B); and **add** (1.4) (a) (II) (F) as follows:

10-16-104. Mandatory coverage provisions - definitions - rules.

(1.4) **Autism spectrum disorders.** (a) As used in this subsection (1.4), unless the context otherwise requires:

(II) "Autism services provider" means any person who provides direct services to a person with autism spectrum disorder, is licensed, certified, or registered by the applicable state licensing board or by a nationally recognized organization, and ~~who~~ meets one of the following:

(E) Has a baccalaureate degree or higher in behavioral sciences and is nationally certified as a "board certified associate behavior analyst" ~~or certified~~ BY THE BEHAVIOR ANALYST CERTIFICATION BOARD OR by a similar

nationally recognized organization; OR

(F) IS NATIONALLY REGISTERED AS A "REGISTERED BEHAVIOR TECHNICIAN" BY THE BEHAVIOR ANALYST CERTIFICATION BOARD OR BY A SIMILAR NATIONALLY RECOGNIZED ORGANIZATION AND PROVIDES DIRECT SERVICES TO A PERSON WITH AN AUTISM SPECTRUM DISORDER UNDER THE SUPERVISION OF AN AUTISM SERVICES PROVIDER DESCRIBED IN SUB-SUBPARAGRAPH (A), (B), (C), (D), OR (E) OF THIS SUBPARAGRAPH (II).

(III) "Autism spectrum disorders" or "ASD":

(A) HAS THE SAME MEANING AS SET FORTH IN THE MOST RECENT EDITION OF THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS IN EFFECT AT THE TIME OF THE DIAGNOSIS; AND

(B) Includes the following ~~neurobiological~~ disorders, AS DEFINED IN THE MOST RECENT EDITION OF THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS IN EFFECT AT THE TIME OF THE DIAGNOSIS: Autistic disorder, Asperger's disorder, and atypical autism as a diagnosis within pervasive developmental disorder not otherwise specified. ~~as defined in the most recent edition of the diagnostic and statistical manual of mental disorders, at the time of the diagnosis.~~

(XII) "Treatment for autism spectrum disorders" shall be for treatments that are medically necessary. ~~appropriate, effective, or efficient.~~ The treatments listed in this subparagraph (XII) are not considered experimental or investigational and are considered appropriate, effective, or efficient for the treatment of autism. "Treatment for autism spectrum disorders" shall include the following, AS MEDICALLY NECESSARY:

(b) (I) All health benefit plans issued or renewed in this state must provide coverage for the assessment, diagnosis, and treatment of autism spectrum disorders for a child pursuant to this subsection (1.4). ~~as prescribed by the commissioner by rule. The rule must require coverage of a number of services or visits that is actuarially equivalent to the dollar limit of the benefit as it existed prior to May 13, 2013.~~

(5.5) Biologically based mental illness and mental disorders - rules. (a) (IV) As used in this subsection (5.5):

(B) "Mental disorder" means posttraumatic stress disorder, drug and alcohol disorders, dysthymia, cyclothymia, social phobia, agoraphobia with panic disorder, anorexia nervosa, bulimia nervosa, and general anxiety disorder, AND AUTISM SPECTRUM DISORDERS, AS DEFINED IN SUBPARAGRAPH (III) OF PARAGRAPH (a) OF SUBSECTION (1.4) OF THIS SECTION.

SECTION 3. In Colorado Revised Statutes, **repeal** 10-16-104.5 as follows:

10-16-104.5. Autism - treatment - not mental illness. ~~(1) Any sickness and accident insurance policy providing indemnity for disability due to sickness issued by an entity subject to the provisions of part 2 of this article and any individual policies issued by an entity subject to the provisions of part 3 or 4 of this article which provide coverage for autism shall provide such coverage in the same manner as for any other accident or sickness, other than mental illness, otherwise covered under such policy.~~

~~(2) Nothing in this section shall mandate or be construed or interpreted to mandate that any individual policy must provide coverage for autism.~~

~~(3) Nothing in this section shall prohibit or prevent a person with an autism spectrum disorder from receiving mental health benefits in his or her health benefit plan.~~

SECTION 4. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2017; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to health benefit plans issued, delivered, or renewed on or after the applicable effective date of this act.

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APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO