

CHAPTER 398
FORMERLY
SENATE BILL NO. 22
AS AMENDED BY
SENATE AMENDMENT NOS. 1 & 3

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO AUTISM SPECTRUM DISORDERS COVERAGE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 33, Title 18, Delaware Code by inserting therein the following:

“§3361. Autism Spectrum Disorders Coverage

(a) All individual health benefit plans as defined in section §3343(a)(2) of this Title shall provide coverage for the screening and diagnosis of autism spectrum disorders and the treatment of autism spectrum disorders in individuals less than 21 years of age. To the extent that the diagnosis of autism spectrum disorders and the treatment of autism spectrum disorders are not already covered by a health benefit plan, coverage under this section shall be included in health benefit plans that are delivered, issued, executed or renewed in this State pursuant to this Title after this Act takes effect. No insurer shall terminate coverage or refuse to deliver, execute, issue, amend, adjust, or renew coverage to an individual solely because the individual or a family member is diagnosed with one of the autism spectrum disorders or has received treatment for autism spectrum disorders. Coverage under this section shall not be denied on the basis that the treatment is habilitative or nonrestorative in nature.

(b) Coverage for applied behavior analysis services under this section by an insurer shall be subject to a maximum benefit of thirty-six thousand dollars (\$36,000) per twelve month period per person, but shall not be subject to any limits on the number of visits an individual may make to an autism services provider or that a provider may make to an individual regardless of the locations in which services are provided. After December 31, 2012, the Insurance Commissioner shall, on or before April 1 of each calendar year, publish in the Delaware Register of Regulations an adjustment to the maximum benefit equal to the change in the United States Department of Labor Consumer Price Index for all Urban Consumers

(CPI-U) in the preceding year and the published adjusted maximum benefit shall be applicable to all health insurance policies issued or renewed thereafter. Payments made by an insurer on behalf of a covered individual for treatment unrelated to applied behavior analysis shall not be applied toward any maximum benefit established under this subsection.

(c) The coverage required under this section shall not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to physical illness generally under the health benefit plan, except as otherwise provided in subsection (b) of this section.

(d) This section shall not be construed as limiting benefits that are otherwise available to an individual or family member under their health benefit plan.

(e) As used in this section:

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

(2) ‘Autism services provider’ means any person, entity, or group authorized by this section that provides treatment of autism spectrum disorders. This includes licensed physicians, psychologists or their assistants, psychiatrists, speech therapists or their aides, occupational therapists or their aides, physical therapists or their assistants, practitioners with the national certification of board-certified behavior analyst or those working under their supervision, licensed professional counselors of mental health, licensed clinical social workers, advanced practice nurses, or any person, entity, or group meeting the standards set by the Department of Health and Social Services as authorized by subsection (f) of this section.

(3) 'Autism spectrum disorders' means any of the pervasive developmental disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), including Autistic Disorder, Asperger's Disorder and Pervasive Developmental Disorder Not Otherwise Specified, as such may be amended hereafter from time to time.

(4) 'Screening and diagnosis of autism spectrum disorders' means medically necessary assessments, evaluations, or tests to diagnose whether an individual has or is at risk for one of the autism spectrum disorders.

(5) 'Behavioral health treatment' means professional counseling, guidance services or treatment programs, including applied behavior analysis, that are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual. This definition also applies to treatment or counseling to improve social skills and function.

(6) 'Medically necessary' means reasonably expected to do the following:

- a. prevent the onset of an illness, condition, injury, or disability;
- b. reduce or ameliorate the physical, mental, or developmental effects of an illness, condition, injury, or disability; or
- c. assist to achieve or maintain maximum functional capacity in performing daily activities, taking into account both the functional capacity of the individual and the functional capacities that are appropriate for individuals of the same age.

(7) 'Pharmacy care' means medications prescribed by a licensed practitioner and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.

(8) 'Psychiatric care' means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices.

(9) 'Psychological care' means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices or by a psychological assistant acting under the supervision of a psychologist.

(10) 'Therapeutic care' means services provided by speech, occupational, or physical therapists or an aide or assistant under their supervision.

(11) 'Treatment for autism spectrum disorders' shall include the following care prescribed or ordered for an individual diagnosed with one of the autism spectrum disorders by a licensed physician or licensed psychologist who determines the care to be medically necessary:

- a. behavioral health treatment;
- b. pharmacy care;
- c. psychiatric care;
- d. psychological care;
- e. therapeutic care;
- f. items and equipment necessary to provide, receive, or advance in the above listed services, including those necessary for applied behavioral analysis; and
- g. any care for individuals with autism spectrum disorders that is determined by the Secretary of the Department of Health and Social Services, based upon their review of best practices and/or evidence-based research, to be medically necessary. The Secretary shall inform the Insurance Commissioner of such determination, and upon receiving notice the Insurance Commissioner shall issue a bulletin stating that any such care, treatment, intervention, service, or item that was not previously covered shall be included in any health benefit plan delivered, executed, issued, amended, adjusted, or renewed on or after 120 days following the date of such bulletin.

(f) The Department of Health and Social Services shall promulgate regulations establishing standards for certifying qualified autism services providers within 6 months after enactment of this Act. If an autism services provider meets recognized national certification as a Board Certified Behavior Analyst, such autism services provider shall be deemed to have met the standards to be established under this section to provide applied behavioral

analysis services. Once the regulations are promulgated, payment for the treatment of autism spectrum disorders covered under this section shall only be required to be made to autism services providers who meet the standards.

(g) Except for inpatient services, if an individual is receiving treatment for autism spectrum disorders, an insurer will have the right to request a review of that treatment not more than once every twelve (12) months unless the insurer and the licensed physician or licensed psychologist agree that a more frequent review is necessary. The cost of obtaining any review shall be borne by the insurer.

(h) This section shall not be construed as affecting any obligation to provide services to an individual under an individualized family service plan (IFSP); an individualized education program (IEP); an individual plan for employment (IPE); a 504 plan; or an individualized service plan, including an essential lifestyle plan (ELP).

(i) The Insurance Commissioner may promulgate rules and regulations as may be necessary or appropriate to implement and administer this section, except for subsection (f) of this section.”.

Section 2. Amend §3343 of Title 18 by adding a new subsection (g) to read as follows:

“(g) Nothing in this section shall be construed to limit or reduce any benefit, entitlement, or coverage conferred by §3361 of this Title including, but not limited to, provider and service eligibility.”.

Section 3. Amend Subchapter III, Chapter 35, Title 18, Delaware Code by inserting therein the following:

“§3570A. Autism Spectrum Disorders Coverage

(a) All group and blanket health benefit plans as defined in §3578(a)(2) of this Title shall provide coverage for the screening and diagnosis of autism spectrum disorders and the treatment of autism spectrum disorders in individuals less than 21 years of age. To the extent that the diagnosis of autism spectrum disorders and the treatment of autism spectrum disorders are not already covered by a health benefit plan, coverage under this section shall be included in health benefit plans that are delivered, issued, executed or renewed in this State pursuant to this Title after this Act takes effect. No insurer shall terminate coverage or refuse to deliver, execute, issue, amend, adjust, or renew coverage to a group solely because an individual in that group or a family member of an individual in that group is diagnosed with one of the autism spectrum disorders or has received treatment for autism spectrum disorders. Coverage under this section shall not be denied on the basis that the treatment is habilitative or nonrestorative in nature.

(b) Coverage for applied behavior analysis services under this section by an insurer shall be subject to a maximum benefit of thirty-six thousand dollars (\$36,000) per twelve month period per person, but shall not be subject to any limits on the number of visits an individual may make to an autism services provider, or that a provider may make to an individual, regardless of the locations in which services are provided. After December 31, 2012, the Insurance Commissioner shall, on or before April 1 of each calendar year, publish in the Delaware Register of Regulations an adjustment to the maximum benefit equal to the change in the United States Department of Labor Consumer Price Index for all Urban Consumers

(CPI-U) in the preceding year and the published adjusted maximum benefit shall be applicable to all health insurance policies issued or renewed thereafter. Payments made by an insurer on behalf of a covered individual for treatment unrelated to applied behavior analysis shall not be applied toward any maximum benefit established under this subsection.

(c) The coverage required under this section shall not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to physical illness generally under the health benefit plan, except as otherwise provided in subsection (b) of this section.

(d) This section shall not be construed as limiting benefits that are otherwise available to an individual or family member under their health benefit plan.

(e) As used in this section:

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

(2) 'Autism services provider' means any person, entity, or group authorized by this section that provides treatment of autism spectrum disorders. This includes licensed physicians, psychologists or their assistants, psychiatrists, speech therapists or their aides, occupational therapists or their aides, physical therapists or their assistants, practitioners with the national certification of board-certified behavior analyst or those working under their supervision, licensed professional counselors of mental health, licensed clinical social workers, advanced practice nurses, or any person, entity, or group meeting the standards set by the Department of Health and Social Services as authorized by subsection (f) of this section.

(3) 'Autism spectrum disorders' means any of the pervasive developmental disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), including Autistic Disorder, Asperger's Disorder and Pervasive Developmental Disorder Not Otherwise Specified, as such may be amended hereafter from time to time.

(4) 'Screening and diagnosis of autism spectrum disorders' means medically necessary assessments, evaluations, or tests to diagnose whether an individual has or is at risk for one of the autism spectrum disorders.

(5) 'Behavioral health treatment' means professional counseling, guidance services or treatment programs, including applied behavior analysis, that are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual. This definition also applies to treatment or counseling to improve social skills and function.

(6) 'Medically necessary' means reasonably expected to do the following:

- a. prevent the onset of an illness, condition, injury, or disability;
- b. reduce or ameliorate the physical, mental, or developmental effects of an illness, condition, injury, or disability; or
- c. assist to achieve or maintain maximum functional capacity in performing daily activities, taking into account both the functional capacity of the individual and the functional capacities that are appropriate for individuals of the same age.

(7) 'Pharmacy care' means medications prescribed by a licensed practitioner and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.

(8) 'Psychiatric care' means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices.

(9) 'Psychological care' means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices or by a psychological assistant acting under the supervision of a psychologist.

(10) 'Therapeutic care' means services provided by speech, occupational, or physical therapists or an aide or assistant under their supervision.

(11) 'Treatment for autism spectrum disorders' shall include the following care prescribed or ordered for an individual diagnosed with one of the autism spectrum disorders by a licensed physician or licensed psychologist who determines the care to be medically necessary:

- a. behavioral health treatment;
- b. pharmacy care;
- c. psychiatric care;
- d. psychological care;
- e. therapeutic care;
- f. items and equipment necessary to provide, receive, or advance in the above listed services, including those necessary for applied behavioral analysis; and
- g. any care for individuals with autism spectrum disorders that is determined by the Secretary of the Department of Health and Social Services, based upon their review of best practices and/or evidence-based research, to be medically necessary. The Secretary shall inform the Insurance Commissioner of such determination, and upon receiving notice the Insurance Commissioner shall issue a bulletin stating that any such care, treatment,

intervention, service, or item that was not previously covered shall be included in any health benefit plan delivered, executed, issued, amended, adjusted, or renewed on or after 120 days following the date of such bulletin.

(f) The Department of Health and Social Services shall promulgate regulations establishing standards for certifying qualified autism services providers within 6 months of the enactment of this Act. If an autism services provider meets recognized national certification as a Board Certified Behavior Analyst, such autism services provider shall be deemed to have met the standards to be established under this section to provide applied behavioral analysis services. Once the regulations are promulgated, payment for the treatment of autism spectrum disorders covered under this section shall only be required to be made to autism services providers who meet the standards.

(g) Except for inpatient services, if an individual is receiving treatment for autism spectrum disorders, an insurer will have the right to request a review of that treatment not more than once every twelve (12) months unless the insurer and the licensed physician or licensed psychologist agree that a more frequent review is necessary. The cost of obtaining any review shall be borne by the insurer.

(h) This section shall not be construed as affecting any obligation to provide services to an individual under an individualized family service plan (IFSP); an individualized education program (IEP); an individual plan for employment (IPE); a 504 plan; or an individualized service plan, including an essential lifestyle plan (ELP).

(i) The Insurance Commissioner may promulgate rules and regulations as may be necessary or appropriate to implement and administer this section, except for subsection (f) of this section.”.

Section 4. Amend §3578 of Title 18 by adding a new subsection (g) to read as follows:

“(g) Nothing in this section shall be construed to limit or reduce any benefit, entitlement, or coverage conferred by §3570A of this Title including, but not limited to, provider and service eligibility.”.

Section 5. This act shall take effect 120 days after its enactment.

Approved August 13, 2012