



SPONSOR: Sen. Sorenson & Rep. Q. Johnson & Sen. Cloutier
Sens. Blevins, Bunting, Connor, Ennis, Hall-Long, Henry,
Peterson, Sokola, Venables, Katz & McDowell; Reps.
Barbieri, Bennett, Carson, George, Heffernan, Jaques, J.
Johnson, Keeley, Kowalko, Mitchell, Osienski, Ramone,
Schooley, Viola, Walker

DELAWARE STATE SENATE
146th GENERAL ASSEMBLY

SENATE BILL NO. 22

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:

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

2 “§3361. Autism Spectrum Disorders Coverage

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

12 (b) Coverage for applied behavior analysis services under this section by an insurer shall be subject to a maximum
13 benefit of thirty-six thousand dollars (\$36,000) per twelve month period, but shall not be subject to any limits on the
14 number of visits an individual may make to an autism services provider or that a provider may make to an individual
15 regardless of the locations in which services are provided. After December 30, 2011, the Insurance Commissioner shall, on
16 or before April 1 of each calendar year, publish in the Delaware Register of Regulations an adjustment to the maximum
17 benefit equal to the change in the United States Department of Labor Consumer Price Index for all Urban Consumers
18 (CPI-U) in the preceding year and the published adjusted maximum benefit shall be applicable to all health insurance
19 policies issued or renewed thereafter. Payments made by an insurer on behalf of a covered individual for treatment
20 unrelated to applied behavior analysis shall not be applied toward any maximum benefit established under this subsection.

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

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

26 (e) As used in this section:

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

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

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

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

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

47 (6) ‘Medically necessary’ means reasonably expected to do the following:

- 48 a. prevent the onset of an illness, condition, injury, or disability;
- 49 b. reduce or ameliorate the physical, mental, or developmental effects of an illness, condition,
50 injury, or disability; or

51 c. assist to achieve or maintain maximum functional capacity in performing daily activities,
52 taking into account both the functional capacity of the individual and the functional capacities that are
53 appropriate for individuals of the same age.

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

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

58 (9) 'Psychological care' means direct or consultative services provided by a psychologist licensed in the
59 state in which the psychologist practices.

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

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

65 a. behavioral health treatment;

66 b. pharmacy care;

67 c. psychiatric care;

68 d. psychological care;

69 e. therapeutic care;

70 f. items and equipment necessary to provide, receive, or advance in the above listed services,
71 including those necessary for applied behavioral analysis; and

72 g. any care for individuals with autism spectrum disorders that is determined by the Secretary of
73 the Department of Health and Social Services, based upon their review of best practices and/or evidence-
74 based research, to be medically necessary. The Secretary shall inform the Insurance Commissioner of
75 such determination, and upon receiving notice the Insurance Commissioner shall issue a bulletin stating
76 that any such care, treatment, intervention, service, or item that was not previously covered shall be
77 included in any health benefit plan delivered, executed, issued, amended, adjusted, or renewed on or after
78 120 days following the date of such bulletin.

79 (f) The Department of Health and Social Services shall promulgate regulations establishing standards for
80 certifying qualified autism services providers within 6 months after enactment of this Act. If an autism services provider

81 meets recognized national certification as a Board Certified Behavior Analyst, such autism services provider shall be
82 deemed to have met the standards to be established under this section, as will those working under the supervision of such
83 providers to provide applied behavioral analysis services. Once the regulations are promulgated, payment for the treatment
84 of autism spectrum disorders covered under this section shall only be required to be made to autism services providers who
85 meet the standards.

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

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

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

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

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

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

99 “§3570A. Autism Spectrum Disorders Coverage

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

109 (b) Coverage for applied behavior analysis services under this section by an insurer shall be subject to a maximum
110 benefit of thirty-six thousand dollars (\$36,000) per twelve month period, but shall not be subject to any limits on the

111 number of visits an individual may make to an autism services provider, or that a provider may make to an individual,
112 regardless of the locations in which services are provided. After December 30, 2011, the Insurance Commissioner shall, on
113 or before April 1 of each calendar year, publish in the Delaware Register of Regulations an adjustment to the maximum
114 benefit equal to the change in the United States Department of Labor Consumer Price Index for all Urban Consumers
115 (CPI-U) in the preceding year and the published adjusted maximum benefit shall be applicable to all health insurance
116 policies issued or renewed thereafter. Payments made by an insurer on behalf of a covered individual for treatment
117 unrelated to applied behavior analysis shall not be applied toward any maximum benefit established under this subsection.

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

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

123 (e) As used in this section:

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

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

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

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

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

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

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

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

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

155 (9) 'Psychological care' means direct or consultative services provided by a psychologist licensed in the
156 state in which the psychologist practices.

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

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

- 162 a. behavioral health treatment;
- 163 b. pharmacy care;
- 164 c. psychiatric care;
- 165 d. psychological care;
- 166 e. therapeutic care;
- 167 f. items and equipment necessary to provide, receive, or advance in the above listed services,
168 including those necessary for applied behavioral analysis; and

169 g. any care for individuals with autism spectrum disorders that is determined by the Secretary of
170 the Department of Health and Social Services, based upon their review of best practices and/or evidence-
171 based research, to be medically necessary. The Secretary shall inform the Insurance Commissioner of
172 such determination, and upon receiving notice the Insurance Commissioner shall issue a bulletin stating
173 that any such care, treatment, intervention, service, or item that was not previously covered shall be
174 included in any health benefit plan delivered, executed, issued, amended, adjusted, or renewed on or after
175 120 days following the date of such bulletin.

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

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

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

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

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

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

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

SYNOPSIS

This Act provides for insurance coverage for the diagnosis and treatment of autism spectrum disorders.

AUTHOR: Sen. Sorenson