

MAINE STATE LEGISLATURE

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R. S.

Date: 3-17-10

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INSURANCE AND FINANCIAL SERVICES

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STATE OF MAINE

SENATE

124TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 446, L.D. 1198, Bill, "An Act To Reform Insurance Coverage To Include Diagnosis for Autism Spectrum Disorders"

Amend the bill by striking out the title and substituting the following:

'An Act To Reform Insurance Coverage To Include Diagnosis and Treatment for Autism Spectrum Disorders'

Amend the bill by striking out all of sections 1 to 5 and inserting the following:

'Sec. 1. 24 MRSA §2317-B, sub-§12-F is enacted to read:

12-F. Title 24-A, sections 2766, 2847-R and 4258. Coverage for diagnosis and treatment of autism spectrum disorders, Title 24-A, sections 2766, 2847-R and 4258;

Sec. 2. 24-A MRSA §2766 is enacted to read:

§2766. Coverage for the diagnosis and treatment of autism spectrum disorders

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "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 relations between environment and behavior.

B. "Autism spectrum disorders" means any of the pervasive developmental disorders as defined by the Diagnostic and Statistical Manual of Mental Disorders, 4th edition, published by the American Psychiatric Association, including autistic disorder, Asperger's disorder and pervasive developmental disorder not otherwise specified.

C. "Treatment of autism spectrum disorders" includes the following types of care prescribed, provided or ordered for an individual diagnosed with an autism spectrum disorder:

COMMITTEE AMENDMENT

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COMMITTEE AMENDMENT "A" to S.P. 446, L.D. 1198

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(1) Habilitative or rehabilitative services, including applied behavior analysis or other professional or counseling services necessary to develop, maintain and restore the functioning of an individual to the extent possible. To be eligible for coverage, applied behavior analysis must be provided by a person professionally certified by a national board of behavior analysts or performed under the supervision of a person professionally certified by a national board of behavior analysts;

(2) Counseling services provided by a licensed psychiatrist, psychologist, clinical professional counselor or clinical social worker; and

(3) Therapy services provided by a licensed or certified speech therapist, occupational therapist or physical therapist.

2. Required coverage. All individual health insurance policies and contracts must provide coverage for autism spectrum disorders for an individual covered under a policy or contract who is 5 years of age or under in accordance with the following.

A. The policy or contract must provide coverage for any assessments, evaluations or tests by a licensed physician or licensed psychologist to diagnose whether an individual has an autism spectrum disorder.

B. The policy or contract must provide coverage for the treatment of autism spectrum disorders when it is determined by a licensed physician or licensed psychologist that the treatment is medically necessary health care as defined in section 4301-A, subsection 10-A. A licensed physician or licensed psychologist may be required to demonstrate ongoing medical necessity for coverage provided under this section at least annually.

C. The policy or contract may not include any limits on the number of visits.

D. The policy or contract may limit coverage for applied behavior analysis to \$36,000 per year. An insurer may not apply payments for coverage unrelated to autism spectrum disorders to any maximum benefit established under this paragraph.

E. This subsection may not be construed to require coverage for prescription drugs if prescription drug coverage is not provided by the policy or contract. Coverage for prescription drugs for the treatment of autism spectrum disorders must be determined in the same manner as coverage for prescription drugs for the treatment of any other illness or condition is determined under the policy or contract.

3. Limits; coinsurance; deductibles. Except as otherwise provided in this section, any policy or contract that provides coverage for services under this section may contain provisions for maximum benefits and coinsurance and reasonable limitations, deductibles and exclusions to the extent that these provisions are not inconsistent with the requirements of this section.

4. Individualized education plan. This section may not be construed to affect any obligation to provide services to an individual with an autism spectrum disorder under an individualized education plan or an individualized family service plan.

Sec. 3. 24-A MRSA §2847-R is enacted to read:

COMMITTEE AMENDMENT

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§2847-R. Coverage for the diagnosis and treatment of autism spectrum disorders

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "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 relations between environment and behavior.

B. "Autism spectrum disorders" means any of the pervasive developmental disorders as defined by the Diagnostic and Statistical Manual of Mental Disorders, 4th edition, published by the American Psychiatric Association, including autistic disorder, Asperger's disorder and pervasive developmental disorder not otherwise specified.

C. "Treatment of autism spectrum disorders" includes the following types of care prescribed, provided or ordered for an individual diagnosed with an autism spectrum disorder:

(1) Habilitative or rehabilitative services, including applied behavior analysis or other professional or counseling services necessary to develop, maintain and restore the functioning of an individual to the extent possible. To be eligible for coverage, applied behavior analysis must be provided by a person professionally certified by a national board of behavior analysts or performed under the supervision of a person professionally certified by a national board of behavior analysts;

(2) Counseling services provided by a licensed psychiatrist, psychologist, clinical professional counselor or clinical social worker; and

(3) Therapy services provided by a licensed or certified speech therapist, occupational therapist or physical therapist.

2. Required coverage. All group health insurance policies, contracts and certificates must provide coverage for autism spectrum disorders for an individual covered under a policy, contract or certificate who is 5 years of age or under in accordance with the following.

A. The policy, contract or certificate must provide coverage for any assessments, evaluations or tests by a licensed physician or licensed psychologist to diagnose whether an individual has an autism spectrum disorder.

B. The policy, contract or certificate must provide coverage for the treatment of autism spectrum disorders when it is determined by a licensed physician or licensed psychologist that the treatment is medically necessary health care as defined in section 4301-A, subsection 10-A. A licensed physician or licensed psychologist may be required to demonstrate ongoing medical necessity for coverage provided under this section at least annually.

C. The policy, contract or certificate may not include any limits on the number of visits.

1 D. Notwithstanding section 2843 and to the extent allowed by federal law, the
2 policy, contract or certificate may limit coverage for applied behavior analysis to
3 \$36,000 per year. An insurer may not apply payments for coverage unrelated to
4 autism spectrum disorders to any maximum benefit established under this paragraph.

5 E. This subsection may not be construed to require coverage for prescription drugs if
6 prescription drug coverage is not provided by the policy, contract or certificate.
7 Coverage for prescription drugs for the treatment of autism spectrum disorders must
8 be determined in the same manner as coverage for prescription drugs for the
9 treatment of any other illness or condition is determined under the policy, contract or
10 certificate.

11 **3. Limits; coinsurance; deductibles.** Except as otherwise provided in this section,
12 any policy, contract or certificate that provides coverage for services under this section
13 may contain provisions for maximum benefits and coinsurance and reasonable
14 limitations, deductibles and exclusions to the extent that these provisions are not
15 inconsistent with the requirements of this section.

16 **4. Individualized education plan.** This section may not be construed to affect any
17 obligation to provide services to an individual with an autism spectrum disorder under an
18 individualized education plan or an individualized family service plan.

19 **Sec. 4. 24-A MRS §4258** is enacted to read:

20 **§4258. Coverage for the diagnosis and treatment of autism spectrum disorders**

21 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
22 following terms have the following meanings.

23 A. "Applied behavior analysis" means the design, implementation and evaluation of
24 environmental modifications using behavioral stimuli and consequences to produce
25 socially significant improvement in human behavior, including the use of direct
26 observation, measurement and functional analysis of the relations between
27 environment and behavior.

28 B. "Autism spectrum disorders" means any of the pervasive developmental disorders
29 as defined by the Diagnostic and Statistical Manual of Mental Disorders, 4th edition,
30 published by the American Psychiatric Association, including autistic disorder,
31 Asperger's disorder and pervasive developmental disorder not otherwise specified.

32 C. "Treatment of autism spectrum disorders" includes the following types of care
33 prescribed, provided or ordered for an individual diagnosed with an autism spectrum
34 disorder:

- 35 (1) Habilitative or rehabilitative services, including applied behavior analysis or
36 other professional or counseling services necessary to develop, maintain and
37 restore the functioning of an individual to the extent possible. To be eligible for
38 coverage, applied behavior analysis must be provided by a person professionally
39 certified by a national board of behavior analysts or performed under the
40 supervision of a person professionally certified by a national board of behavior
41 analysts;

1 (2) Counseling services provided by a licensed psychiatrist, psychologist,
2 clinical professional counselor or clinical social worker; and

3 (3) Therapy services provided by a licensed or certified speech therapist,
4 occupational therapist or physical therapist.

5 **2. Required coverage.** All individual and group health maintenance organization
6 contracts must provide coverage for autism spectrum disorders for an individual covered
7 under a contract who is 5 years of age or under in accordance with the following.

8 A. The contract must provide coverage for any assessments, evaluations or tests by a
9 licensed physician or licensed psychologist to diagnose whether an individual has an
10 autism spectrum disorder.

11 B. The contract must provide coverage for the treatment of autism spectrum
12 disorders when it is determined by a licensed physician or licensed psychologist that
13 the treatment is medically necessary health care as defined in section 4301-A,
14 subsection 10-A. A licensed physician or licensed psychologist may be required to
15 demonstrate ongoing medical necessity for coverage provided under this section at
16 least annually.

17 C. The contract may not include any limits on the number of visits.

18 D. Notwithstanding section 4234-A and to the extent allowed by federal law for
19 group contracts, the contract may limit coverage for applied behavior analysis to
20 \$36,000 per year. A health maintenance organization may not apply payments for
21 coverage unrelated to autism spectrum disorders to any maximum benefit established
22 under this paragraph.

23 E. This subsection may not be construed to require coverage for prescription drugs if
24 prescription drug coverage is not provided by the contract. Coverage for prescription
25 drugs for the treatment of autism spectrum disorders must be determined in the same
26 manner as coverage for prescription drugs for the treatment of any other illness or
27 condition is determined under the contract.

28 **3. Limits; coinsurance; deductibles.** Except as otherwise provided in this section,
29 any contract that provides coverage for services under this section may contain provisions
30 for maximum benefits and coinsurance and reasonable limitations, deductibles and
31 exclusions to the extent that these provisions are not inconsistent with the requirements of
32 this section.

33 **4. Individualized education plan.** This section may not be construed to affect any
34 obligation to provide services to an individual with an autism spectrum disorder under an
35 individualized education plan or an individualized family service plan.

36 **Sec. 5. Bureau of Insurance report.** The Department of Professional and
37 Financial Regulation, Bureau of Insurance shall review and evaluate the financial impact,
38 social impact and medical efficacy of the mandated health insurance benefit required in
39 this Act after its enactment in the same manner as required for proposed mandated health
40 benefits legislation in the Maine Revised Statutes, Title 24-A, section 2752. The bureau
41 shall also compare the projected cost impact of this mandated benefit prior to enactment
42 and the actual cost impact of the mandated benefit based on premium information after

1 enactment. As part of its assessment of the financial impact of the mandate, the bureau
2 shall analyze the number of children receiving coverage under the mandated benefit, the
3 costs of treatment services for autism spectrum disorders, including applied behavior
4 analysis, and the extent to which the requirement for coverage of applied behavior
5 analysis has affected the actual cost impact of the mandated benefit on health insurance
6 premiums. The bureau shall contract within the bureau's existing budgeted resources for
7 any necessary consulting and actuarial expertise to complete the report required by this
8 section. The bureau shall submit a report, including any recommendations for legislation,
9 to the joint standing committee of the Legislature having jurisdiction over insurance and
10 financial services matters no later than February 1, 2015. The joint standing committee
11 of the Legislature having jurisdiction over insurance and financial services matters may
12 report out a bill based on the report to the First Regular Session of the 127th Legislature.'

13 Amend the bill in section 6 in the first line (page 4, line 7 in L.D.) by striking out the
14 following: "group"

15 Amend the bill in section 6 in the 3rd line (page 4, line 9 in L.D.) by striking out the
16 following: "2010" and inserting the following: '2011'

17 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
18 section number to read consecutively.

19 **SUMMARY**

20 This amendment changes the title of the bill and requires individual health insurance
21 policies and contracts as well as group policies, contracts and certificates for health
22 insurance to provide coverage for the diagnosis and treatment of autism spectrum
23 disorders; however, the amendment provides coverage for persons 5 years of age and
24 under rather than 21 years of age and under. To be eligible for coverage, applied
25 behavior analysis services must be provided by a person professionally certified as a
26 behavior analyst or under the supervision of a professionally certified behavior analyst.
27 Coverage for applied behavior therapy is subject to a maximum annual benefit of \$36,000
28 per year. The amendment clarifies that the annual cap on benefits applies to the extent
29 allowed under federal law for group health plans. The amendment also clarifies that
30 coverage for prescription drugs for the treatment of autism spectrum disorders must be
31 determined in the same manner as coverage for prescription drugs for the treatment of
32 other illnesses. The provisions of this amendment apply to individual and group policies,
33 contracts and certificates issued or renewed on or after January 1, 2011.

34 The amendment also requires the Department of Professional and Financial
35 Regulation, Bureau of Insurance to submit a report related to the experience of carriers
36 with the mandate requiring coverage for diagnosis and treatment of autism spectrum
37 disorders, particularly applied behavior analysis services. The report must be submitted
38 by February 1, 2015. The joint standing committee of the Legislature having jurisdiction
39 over insurance and financial services matters is authorized to report out a bill to the First
40 Regular Session of the 127th Legislature.

41 **FISCAL NOTE REQUIRED**

42 (See attached)



124th MAINE LEGISLATURE

LD 1198

LR 969(02)

An Act To Reform Insurance Coverage To Include Diagnosis for Autism Spectrum Disorders

Fiscal Note for Bill as Amended by Committee Amendment "A"
Committee: Insurance and Financial Services
Fiscal Note Required: Yes

Fiscal Note

Potential future biennium cost increase - All Funds
 Potential future biennium savings - General Fund
 Potential future biennium savings - Federal Expenditures Fund

Fiscal Detail and Notes

Assumes requiring individual and group health insurance policies, contracts and certificates to provide coverage for the diagnosis and treatment of autism spectrum disorders for persons 5 year of age and under, with coverage for applied behavioral therapy subject to a maximum annual benefit of \$36,000 per year, would result in potential costs to the State Employee Health Benefit Plan and potential savings to the MaineCare program in the Department of Health and Human Services and to the Child Development Services program in the Department of Education. Given the bill as amended would apply to policies and contracts issued or renewed on or after January 1, 2011, any costs or savings to State programs are expected to be minor for the current biennium.

Estimates of the potential future biennium cost to the State Employee Health Benefit Plan were consistent with the Bureau of Insurance original report to the Insurance and Financial Services Committee that assumed coverage for persons 21 years of age or under and estimated a cost of \$1.90 per member per month. While an actuarial analysis has not been completed on the bill as amended to require coverage for persons five year of age and under, the fiscal impact is assumed to be reduced by approximately one half, resulting in a total estimated annual cost to the plan of \$335,600, with the General Fund portion approximately \$138,000 per year and the Highway Fund portion approximately \$54,000 per year.

Estimates of the potential future biennium savings to the MaineCare program are approximately \$850,000 per year based on Department of Health and Human Services estimates, with resulting savings to the General Fund of approximately \$308,000 per year (assuming a 63.80% federal match). These estimates are consistent with assumptions included in the original Bureau of Insurance study assuming coverage for persons 21 and under as modified to reflect the revised bill's coverage for persons five years of age and under.

Potential future biennium savings to the Child Development Services program in the Department of Education cannot be determined.

Additional costs to the Bureau of Insurance in the Department of Professional and Financial Regulation for the required report are expected to be minor and will be absorbed utilizing existing budgeted resources.