

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE

House Bill 273 (Delegate Reznik, *et al.*)
 Health and Government Operations

Health Insurance - Coverage of Autism Spectrum Disorders

This bill requires insurers, nonprofit health service plans, and health maintenance organizations (carriers) to provide coverage for the diagnosis and evidence-based, medically necessary treatment of autism spectrum disorders (ASD) in individuals younger than age 21. Treatment includes applied behavior analysis (ABA) necessary to develop, maintain, and restore functioning.

The bill takes effect on January 1, 2010, and applies to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after January 1, 2010.

Fiscal Summary

State Effect: Minimal increase in special fund revenues for the Maryland Insurance Administration (MIA) from the \$125 rate form and filing fee in FY 2010. The review of rate filings can be handled within existing MIA resources. State Employee and Retiree Health and Welfare Benefits Program (State plan) expenditures increase by at least \$2.7 million (but could increase by as much as \$9.4 million) in FY 2011, assuming the State plan elects to provide this coverage.

(\$ in millions)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
SF Revenue	-	\$0	\$0	\$0	\$0
GF Expenditure	\$0	\$1.6	\$1.7	\$1.9	\$2.0
SF Expenditure	\$0	\$.5	\$.6	\$.6	\$.7
FF Expenditure	\$0	\$.5	\$.6	\$.6	\$.7
Net Effect	\$0	(\$2.7)	(\$2.9)	(\$3.1)	(\$3.3)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potentially significant increase in health insurance expenditures for local governments for their fully insured health benefit plans.

Small Business Effect: None. The bill does not apply to the small group health insurance market.

Analysis

Bill Summary: Diagnosis of ASDs includes medically necessary assessments, evaluations, or tests to diagnose whether an individual has an ASD. Treatment for ASDs includes habilitative or rehabilitative, pharmacy, psychiatric, or psychological care prescribed by a licensed physician or psychologist to an individual diagnosed with an ASD as part of a specified treatment plan.

ABA must be provided by individuals licensed under the Maryland Medical Practice Act or the Maryland Psychologists Act or by a Board Certified Behavior Analyst or Board Certified Associate Behavior Analyst credentialed by the national Behavior Analyst Certification Board.

Coverage of ASDs is limited to a maximum benefit of \$50,000 per year. Beginning January 1, 2011, the maximum benefit must be adjusted annually for inflation. Coverage of ASDs is not subject to limits on the number of visits an individual may make to an autism services provider.

Carriers must provide annual notice to insureds and enrollees about coverage of ASDs. Carriers may request an updated treatment plan, but not more often than every six months, unless the prescribing physician or psychologist agrees that more frequent review is necessary. Carriers must pay the cost of obtaining the plan. Denial of coverage for the diagnosis or treatment of ASDs is an adverse decision and subject to appeal. Carriers are not required to provide reimbursement for ASD services delivered through early intervention or school services.

Current Law: There are 43 mandated health insurance benefits that certain carriers must provide to their enrollees. These mandated benefits include habilitative services for children younger than age 19. Habilitative services are occupational therapy, physical therapy, and speech therapy for the treatment of a child with a congenital or genetic birth defect to enhance the child's ability to function. Congenital or genetic birth defect includes autism or an ASD. Carriers are not required to provide reimbursement for habilitative services delivered through early intervention or school services.

Similar coverage is required under the Code of Maryland Regulations (31.11.06.03) for the Comprehensive Standard Health Benefit Plan sold in the small group market. The services must be delivered through a carrier's managed care system and include services for cleft lip and cleft palate, orthodontics, oral surgery, otologic, audiological and speech therapy, physical therapy, and occupational therapy.

Every four years, the Maryland Health Care Commission (MHCC) examines the fiscal impact of mandated health insurance benefits. In January 2008, MHCC found that these benefits account for 15.4% of total premium costs for group health insurance and 18.6% of total premium costs for individual policies. The full cost of current mandated coverage for habilitative services is reported at 0.1% of premium costs for all types of policies.

Background:

Autism Spectrum Disorders: ASDs are developmental disabilities that cause substantial impairments in social interaction and communication and the presence of unusual behaviors and interests. An ASD begins before age three and lasts throughout a person's life. ASDs include autistic disorder, pervasive developmental disorder – not otherwise specified (PDD-NOS), and Asperger syndrome. ASDs occur in all racial, ethnic, and socioeconomic groups and are four times more likely to occur in boys than in girls. The Centers for Disease Control and Prevention (CDC) estimate that the prevalence of ASDs in Maryland is 6.7 per 1,000 children. While there is no "cure" for ASDs, early diagnosis and intervention may lead to significantly improved outcomes.

Current Services for Children with Autism: Children with autism may access certain services through state and locally administered education programs, as required by the federal Individuals with Disabilities Education Act (IDEA). IDEA parts B and C also require early intervention program services for toddlers and pre-school-aged children. Some of the services provided by these programs are similar to those required under the bill; however, the level and intensity of the services may be more limited than those recommended by treating physicians.

The Maryland Medicaid Waiver for Children with Autism Spectrum Disorder provides intensive individual support services, therapeutic integration services, supported employment, respite care, family training, environmental accessibility adaptations, and residential habilitation to qualified individuals with ASDs. The waiver program is targeted to individuals who likely would be institutionalized without supports. In calendar 2008, the waiver served 929 participants at an average annual per capita cost of \$37,119 in Medicaid expenditures (including nonwaiver services). As of July 2008, 2,589 children were on the Autism waiver registry (waiting list).

The Developmental Disabilities Administration (DDA) currently serves 1,322 individuals where autism is indicated as their disability category. There are 2,893 individuals with autism indicated as a disability that are waiting for a service from DDA.

Applied Behavior Analysis: ABA is the process of applying interventions based on the principles of learning derived from experimental psychology research to systematically change behavior. According to the American Academy of Pediatrics, the effectiveness of ABA-based intervention in ASDs has been well documented through five decades of research. Children who receive early intensive behavioral treatment have been shown to make substantial, sustained gains in IQ, language, academic performance, and adaptive behavior as well as some measures of social behavior, and their outcomes have been significantly better than those of children in control groups. Others, including several Maryland carriers, believe that ABA is investigative/experimental and an educational rather than a medical treatment. Thus, insurance coverage is not typically provided for these services.

MHCC Evaluation of Coverage of Autism Services: A December 2008 MHCC analysis on coverage of ASDs found that all Maryland health plans appear to have exclusions or limit coverage for autism treatments outside of habilitative services, often denying services under the educational exclusion or on the basis that autism is a chronic condition. Most large employers do not provide significant coverage for autism services; however, TRICARE (the military health plan) and some very large self-insured companies including Microsoft and Home Depot do provide meaningful benefits.

The analysis found that approximately 1 in 460 insured children (0.2% of the insured population) may receive benefits under the bill. Based on treated prevalence, medical costs, and demographic data, the full cost of mandating coverage as required under the bill is estimated to be 0.52% to 1.22% of premiums or \$36 to \$83 per employee per year for group policies.

At least 10 states mandate insurance coverage for treatment of autism. Seven of those states (Arizona, Florida, Indiana, Louisiana, Pennsylvania, South Carolina, and Texas) specifically require coverage of ABA.

State Fiscal Effect: If the State plan chooses to provide this mandated benefit, State plan expenditures increase by at least \$2.7 million and as much as \$9.4 million in fiscal 2011. While the State plan offers both self-insured and fully insured plans, this estimate reflects potential increased claims costs for ABA under the self-insured plans only. The State plan is not required to cover mandated benefits under its self-insured plans but has done so voluntarily in the past. To the extent premiums increase for fully insured plans, State plan expenditures may increase by an additional amount. The information and assumptions used in calculating the estimate are stated below:

- currently 188 children are diagnosed with autism in self-funded plans;
- the hourly rate for ABA ranges from \$15 to \$25 per hour; and
- the average cost per child will range from \$14,400 to the maximum of \$50,000 annually.

As the State plan contract runs on a fiscal year basis, the benefits specified under the bill would not be included until the fiscal 2011 plan year.

In future years, State plan expenditures would be at least \$2.9 million in fiscal 2012; \$3.1 million in fiscal 2013; and \$3.3 million in fiscal 2014. However, they could be as much as \$10.1 million in fiscal 2012; \$10.8 million in fiscal 2013; and \$11.5 million in fiscal 2014. State plan expenditures assume a fund mix of 60% general funds, 20% federal funds, and 20% special funds. Future year estimates reflect 7% medical cost inflation.

To the extent that the bill provides children with autism, currently served in the Medicaid autism waiver, access to private health insurance coverage for treatments such as intensive individual support services, waiver expenses may decline. *For illustrative purposes only*, in fiscal 2007, 757 children in the waiver received intensive individual support services at a cost of roughly \$12.5 million (50% general funds, 50% federal funds). However, while the cost of waiver services may decline under the bill, Legislative Services does not anticipate any *net savings* to the State given the significant number of individuals awaiting waiver services on the waiver registry. While no net savings are anticipated, a reduction in waiver expenses could allow additional individuals with autism to receive waiver services who otherwise would not.

Additional Comments: Maryland's mental health parity law prohibits discrimination against an individual with a mental illness by failing to provide benefits for the diagnosis and treatment of mental illnesses under the same terms and conditions that apply for the diagnosis and treatment of physical illnesses. The Federal Mental Health Parity Act enacted in October 2008 applies a similar requirement to both insured and self-insured plans and specifically imposes parity requirements on all diagnoses that an employer chooses to cover. Concerns have been raised that these parity laws could negate the \$50,000 maximum annual benefit in the bill and expose businesses to significantly higher expenses. However, it is unclear to what extent the mental health parity laws apply to the diagnosis and treatment of autism, including ABA, in Maryland.

Additional Information

Prior Introductions: None.

Cross File: SB 394 (Senator Klausmeier, *et al.*) - Finance.

Information Source(s): *Annual Mandated Health Insurance Services Evaluation*, Maryland Health Care Commission, December 31, 2008; *Study of Mandated Health Insurance Services: A Comparative Evaluation*, Maryland Health Care Commission, January 1, 2008; American Academy of Pediatrics; Centers for Disease Control and Prevention; CareFirst BlueCross BlueShield; Department of Budget and Management; Maryland Health Insurance Plan; Department of Health and Mental Hygiene; Maryland Insurance Administration; Department of Legislative Services

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