

**Department of Legislative Services**  
 Maryland General Assembly  
 2010 Session

**FISCAL AND POLICY NOTE**

House Bill 1091 (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, including applied behavior analysis (ABA), of autism spectrum disorders (ASD). However, after providing the coverage for one year, carriers that provide specified proof that costs for the habilitative or rehabilitative care required under the bill would lead to a premium increase of more than 2% for the following year may qualify for a one-year exemption that may be subject to renewal.

The bill takes effect January 1, 2011, and applies to all policies and contracts issued, delivered, or renewed in the State on or after that date.

**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 2011. 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 \$3.2 million (but could increase by as much as \$11 million) in FY 2012

(\$ in millions)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
SF Revenue	-	\$0	\$0	\$0	\$0
GF Expenditure	\$0	\$1.9	\$2.0	\$2.1	\$2.3
SF Expenditure	\$0	\$1.0	\$1.0	\$1.1	\$1.2
FF Expenditure	\$0	\$.3	\$.4	\$.4	\$.4
Net Effect	\$0	(\$3.2)	(\$3.4)	(\$3.6)	(\$3.9)

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

**Local Effect:** Expenditures increase for some local governments to the extent that autism treatment is not already covered.

**Small Business Effect:** The bill does not apply to the small group health insurance market.

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## Analysis

**Bill Summary:** Diagnosis of ASDs includes medically necessary assessments, evaluations, or tests to diagnose whether an individual has an ASD. Treatment of ASDs includes habilitative or rehabilitative care prescribed to an individual diagnosed with an ASD as part of a specified treatment plan. Treatment of ASDs has to be prescribed by a licensed physician or a licensed psychologist except in the case of speech generating devices – which must be prescribed by either a licensed physician or a licensed speech-language pathologist. Coverage of ASDs is not subject to limits on the number of visits an individual may make to an autism services provider.

ABA must be provided by individuals licensed under the Maryland Medical Practice Act or the Maryland Psychologists Act (or under the supervision of such licensees) or by a board-certified behavior analyst or board-certified associate behavior analyst credentialed by the national Behavior Analyst Certification Board.

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, psychologist, or speech-language pathologist 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 45 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 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 lifetime. 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 federal 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 2009, the waiver served 926 participants at an average annual per capita cost of \$40,626 in Medicaid expenditures (including nonwaiver services). As of July 2009, 2,298 children were on the autism waiver registry (waiting list).

The Developmental Disabilities Administration (DDA) currently serves 1,450 individuals where autism is indicated as their disability category. Another 4,031 individuals with

autism indicated as a disability are waiting for a service from DDA, 875 of whom are already receiving some level of service.

*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 2009 MHCC analysis conducted a financial analysis of the following three autism mandate options:

1. Mandate without limits on annual amount or age, but with a “medical necessity” determination regarding appropriate and established treatments. Under this scenario, carriers would be expected to continue to regard ABA as educational or experimental and not cover it, with no impact on premiums.
2. Mandate without limits on annual amount or age, with ABA specified as a covered service as well as other services determined to be medically necessary; treatment frequency and intensity would be subject to review for appropriateness. Under this scenario, the cost of the mandated benefit is estimated to be 0.76% to 2.17% of the average cost of a group policy, or \$51 to \$145 per employee per year.
3. Mandate with limits on annual amount and age (using updated premium data). Under these scenarios (treated separately), the cost is estimated to be 0.42% to 1.73% of the average cost of a group policy, or \$28 to \$116 per employee per year.

*Federal Restrictions:* The federal Mental Health Parity and Addiction Equity Act of 2008 prohibits a group health plan, or health insurance coverage offered in connection with such a plan, that offers both medical and surgical benefits and mental health and substance use disorder benefits from treating mental health or substance use disorder benefits differently than the medical and surgical benefits under the plan or coverage with respect to lifetime coverage limits, annual limits, financial requirements, treatment limitations, or the use of out-of-network providers. The Parity Act does not apply to health insurance purchased by individuals or in the small group market. While the Parity

Act does not define mental illness, ASDs are listed in the Diagnostic and Statistical Manual of Mental Disorders, and interim final rules published by the U.S. Department of Health and Human Services, U.S. Department of Labor, and U.S. Department of the Treasury seem to indicate that diagnosis and treatment of autism would be considered mental health benefits under the Parity Act.

SB 394/HB 273 of 2009 also would have required coverage for diagnosis and treatment of ASDs, but included limitations on age and annual benefits. As those limitations could be construed as conflicting with the Parity Act, they were removed in this bill.

*Other State Coverage:* The National Conference of State Legislatures reports that 28 states and the District of Columbia have laws related to insurance coverage of autism. At least 15 states specifically require insurers to provide coverage for the treatment of autism.

**State Fiscal Effect:** Although not required to follow health insurance mandates, the State plan generally does. Thus, this estimate is based on the assumption that the State plan will follow the bill's requirements. However, since the State plan contract runs on a fiscal-year basis, the cost sharing specified under the bill would not be included until the fiscal 2012 plan year. Thus, expenditures increase by at least \$3.2 million and as much as \$11.0 million in fiscal 2012. The information and assumptions used in calculating the estimate are stated below:

- the State plan covers approximately 220 individuals diagnosed with autism;
- the hourly rate for ABA ranges from \$15 to \$25 per hour; and
- the average cost per person will range from \$14,400 to the maximum of \$50,000 annually.

In future years, State plan expenditures would be at least \$3.4 million in fiscal 2013; \$3.6 million in fiscal 2014; and \$3.9 million in fiscal 2015. However, they could be as much as \$11.8 million in fiscal 2013; \$12.6 million in fiscal 2014; and \$13.5 million in fiscal 2015. State plan expenditures are split 59% general funds, 30% special funds, and 11% federal 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. 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.

**Local Expenditures:** Local government expenditures (for those that purchase fully insured plans from an insurance company) increase for some local governments that do not already cover the treatment of autism.

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### **Additional Information**

**Prior Introductions:** A similar bill, HB 273 of 2009, was heard in the House Health and Government Operations Committee and subsequently withdrawn. Its cross file, SB 394, was heard in the Senate Finance Committee, but no further action was taken.

**Cross File:** SB 1028 (Senator Klausmeier) - Rules.

**Information Source(s):** CareFirst Blue Cross/Blue Shield, Department of Budget and Management, Maryland Health Insurance Plan, Maryland Insurance Administration, National Conference of State Legislatures, Department of Legislative Services

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