HB 783

Department of Legislative Services

Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 783 (Delegate Reznik, *et al.*)
Health and Government Operations

Health Insurance - Coverage for 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).

The bill takes effect January 1, 2012, 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 2012. 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 $5.4 million (but could increase by as much as $20.3 million) in FY 2013.

($ in millions)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
SF Revenue	-	$0	$0	$0	$0
GF Expenditure	$0	$3.2	$3.4	$3.8	$4.1
SF Expenditure	$0	$1.6	$1.8	$1.9	$2.1
FF Expenditure	$0	$.6	$.6	$.7	$.8
Net Effect	$.0	($5.4)	($5.8)	($6.4)	($7.0)

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: 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 of ASDs includes habilitative or rehabilitative care prescribed to an individual diagnosed with an ASD as part of a specified treatment plan. Habilitative or rehabilitative care means professional, counseling, and guidance services and treatment programs, including behavioral health treatments such as ABA, and specified devices. Treatment of ASDs has to be prescribed by a licensed physician, a licensed psychologist, a licensed speech-language pathologist, or a board-certified behavior analyst credentialed by the national Behavior Analyst Certification Board. Coverage of ASDs is not subject to limits on the number of visits an individual may make to an autism services provider. This does not prohibit utilization review to determine the duration and intensity of ASD treatment.

Treatment of ASDs may be provided by individuals under the supervision of a licensed psychologist or a board-certified 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 12 months, unless the prescribing physician, psychologist, speech-language pathologist, or board-certified behavior analyst 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 preschool-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 2010, the waiver served 983 participants at an average annual per capita cost of $46,616 in Medicaid expenditures (including nonwaiver services). As of February 2011, 3,362 children were on the autism waiver registry (waiting list).

The Developmental Disabilities Administration (DDA) currently serves 1,591 individuals where autism is indicated as their disability category. Another 1,557 individuals with autism indicated as a disability are waiting for a service from DDA. DDA also maintains a Future Needs Registry for individuals with service needs that are more than three years away. There are 1,046 individuals on this registry who indicate autism as a disability.

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.

Other State Coverage: The National Conference of State Legislatures reports that a total of 35 states and the District of Columbia have laws related to autism and insurance coverage. At least 24 states (including Pennsylvania) 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 ASD benefits specified under the bill would not be included until the fiscal 2013 plan year.

According to the Department of Budget and Management, the State plan already covers much more than most employer plans with regard to treatment of ASDs. However, the State plan does not currently cover ABA. Thus, expenditures increase by at least $5.4 million and as much as $20.3 million in fiscal 2013. The information and assumptions used in calculating the estimate are stated below:

- the State plan covers approximately 285 individuals diagnosed with autism;
- the number of individuals with autism covered by the State plan will increase by at least 1% annually (to an estimated 291 in fiscal 2013);
- based on fiscal 2010 claims data for other autism services, the estimated cost per child under the bill will be $18,429 in fiscal 2013 – this amount represents the low-end estimate;
- the hourly rate for ABA ranges from $15 to $30 per hour in fiscal 2011;
- assuming ABA is provided 40 hours per week and 50 weeks per year, and including 8% medical inflation, if a child utilizes the maximum benefit allowed, the annual cost could be as high as $69,984 per child in fiscal 2013.

In future years, State plan expenditures will be at least $5.8 million in fiscal 2014; $6.4 million in fiscal 2015; and $7.0 million in fiscal 2016. However, they could be as much as $22.2 million in fiscal 2014; $24.2 million in fiscal 2015; and $26.4 million in fiscal 2016. State plan expenditures are split 59% general funds, 30% special funds, and 11% federal funds. Future year estimates reflect 8% medical cost inflation.

For illustrative purposes only, using the estimated cost range provided in the 2009 MHCC evaluation of coverage of autism services ($51 to $145 per employee per year for a mandate without limits on annual amount or age, with ABA specified as a covered service), State plan expenditures could increase by an estimated $5.8 million to

$16.4 million per year based on fiscal 2011 enrollment figures. This figure does not include any inflationary adjustments.

To the extent that the bill provides children with autism who are 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.

Additional Information

Prior Introductions: Similar bills, SB 1028/HB 1091 of 2010 and SB 394/HB 273 of 2009, were heard in the Senate Finance and House Health and Government Operations committees, respectively. While HB 273 of 2009 was withdrawn, no further action was taken on the other bills.

Cross File: SB 759 (Senator Klausmeier, *et al.*) - Finance.

Information Source(s): American Academy of Pediatrics, National Conference of State Legislatures, Department of Budget and Management, Department of Health and Mental Hygiene, Maryland Health Insurance Plan, Maryland Insurance Administration, Department of Legislative Services

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