

A Bill for an Act Relating to Autism Spectrum Disorders.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to ensure the provision of quality health care by requiring insurance coverage for the diagnosis and treatment of autism.

SECTION 2. This Act shall be known and may be cited as "Luke's Law".

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10A to be appropriately designated and to read as follows:

**"§431:10A- Autism benefits and coverage; notice; definitions.** (a) Each individual or group accident and health or sickness insurance policy issued or renewed in this State after January 1, 2016, shall provide to the policyholder and individuals under fourteen years of age covered under the policy coverage for the diagnosis and treatment of autism.

(b) This section shall not apply to disability, accident-only, medicare, medicare supplement, student accident and health or sickness insurance, dental-only, and vision-only policies or policies or renewals of six months or less.

(c) Every insurer shall provide written notice to its policyholders regarding the coverage required by this section. The notice shall be in writing and prominently positioned in any literature or correspondence sent to policyholders and shall be transmitted to policyholders within calendar year 2016 when annual information is made available to policyholders or in any other mailing to policyholders, but in no case later than December 31, 2016.

(d) Coverage for applied behavioral analysis provided under this section shall be subject to a maximum benefit of \$25,000 per year for services for children ages thirteen and under. This section shall not be construed as limiting benefits that are otherwise available to an individual under an accident and health or sickness insurance policy. Payments made by an insurer on behalf of a covered individual for any care, treatment, intervention, or service other than applied behavioral analysis shall not be applied toward the maximum benefit established under this subsection.

(e) Coverage under this section may be subject to copayment, deductible, and coinsurance provisions of an accident and health or sickness insurance policy that are no less favorable than the copayment, deductible, and coinsurance provisions for substantially all medical services covered by the policy.

(f) Treatment for autism requests shall include a treatment plan. Except for inpatient services, if an individual is receiving treatment for autism, an insurer may request a review of the treatment plan for continued authorization of coverage for treatment for autism at the insurer's discretion.

(g) The medical necessity of treatment covered by this section shall be determined pursuant to the policy and shall be defined in the policy in a manner that is consistent with other services covered under the policy. Except for inpatient services, if an individual is receiving treatment for autism, an insurer may request a review of the medical necessity of that treatment at the insurer's discretion.

(h) This section shall not be construed as reducing any obligation to provide services to an individual under any publicly funded program, an indi-

vidualized family service plan, an individualized education program, or an individualized service plan.

(i) Coverage under this section shall exclude coverage for:

- (1) Care that is custodial in nature;
- (2) Services and supplies that are not clinically appropriate;
- (3) Services provided by family or household members;
- (4) Treatments considered experimental; and
- (5) Services provided outside of the State.

(j) Insurers shall include in their network of approved autism service providers only those providers who have cleared state and federal criminal background checks as determined by the insurer.

(k) If an individual has been diagnosed as having autism meeting the diagnostic criteria described in the Diagnostic and Statistical Manual of Mental Disorders available at the time of diagnosis, upon publication of a more recent edition of the Diagnostic and Statistical Manual of Mental Disorders, that individual may be required to undergo repeat evaluation to remain eligible for coverage under this section.

(l) Treatment for autism shall not be covered pursuant to this section unless provided by an autism service provider that is licensed by a state licensure board. If a state licensure board that licenses providers to provide autism services is unavailable, the autism service provider shall:

- (1) Be certified by the Behavior Analyst Certification Board, Inc.; provided that certification by the Behavior Analyst Certification Board, Inc., shall be valid for purposes of this subsection for no more than one year; or
- (2) Meet any existing credentialing requirements determined by the insurer.

(m) As used in this section, unless the context clearly requires otherwise: "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.

"Autism" means autism spectrum disorder as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders.

"Autism service provider" means any person, entity, or group that provides treatment for autism and meets the minimum requirements pursuant to subsection (l).

"Behavioral health treatment" means evidence based counseling and treatment programs, including applied behavior analysis, that are:

- (1) Necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual; and
- (2) Provided or supervised by an autism service provider.

"Diagnosis of autism" means medically necessary assessments, evaluations, or tests conducted to diagnose whether an individual has autism.

"Pharmacy care" means medications prescribed by a licensed physician or registered nurse practitioner and any health-related services that are deemed medically necessary to determine the need or effectiveness of the medications.

"Psychiatric care" means direct or consultative services provided by a licensed psychiatrist.

"Psychological care" means direct or consultative services provided by a licensed psychologist.

“Therapeutic care” means services provided by licensed speech pathologists, registered occupational therapists, licensed social workers, licensed clinical social workers, or licensed physical therapists.

“Treatment for autism” includes the following care prescribed or ordered for an individual diagnosed with autism by a licensed physician, psychiatrist, psychologist, licensed clinical social worker, or registered nurse practitioner if the care is determined to be medically necessary:

- (1) Behavioral health treatment;
- (2) Pharmacy care;
- (3) Psychiatric care;
- (4) Psychological care; and
- (5) Therapeutic care.”

SECTION 4. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to article 1 to be appropriately designated and to read as follows:

**“§432:1- Autism benefits and coverage; notice; definitions.** (a) Each hospital and medical service plan contract issued or renewed in this State after January 1, 2016, shall provide to the member and individuals under fourteen years of age covered under the plan contract coverage for the diagnosis and treatment of autism.

(b) This section shall not apply to disability, accident-only, medicare, medicare supplement, student accident and health or sickness insurance, dental-only, and vision-only policies or policies or renewals of six months or less.

(c) Every mutual benefit society shall provide written notice to its members regarding the coverage required by this section. The notice shall be in writing and prominently positioned in any literature or correspondence sent to members and shall be transmitted to members within calendar year 2016 when annual information is made available to members or in any other mailing to members, but in no case later than December 31, 2016.

(d) Coverage for applied behavioral analysis provided under this section shall be subject to a maximum benefit of \$25,000 per year for services for children ages thirteen and under. This section shall not be construed as limiting benefits that are otherwise available to a member under a hospital and medical service plan contract. Payments made on behalf of a member for any care, treatment, intervention, or service other than applied behavioral analysis shall not be applied toward the maximum benefit established under this subsection.

(e) Coverage under this section may be subject to copayment, deductible, and coinsurance provisions of a policy that are no less favorable than the copayment, deductible, and coinsurance provisions for substantially all medical services covered by the plan contract.

(f) Treatment for autism requests shall include a treatment plan. Except for inpatient services, if an individual is receiving treatment for autism, a mutual benefit society may request a review of the treatment plan for continued authorization of coverage for treatment for autism at the mutual benefit society’s discretion.

(g) The medical necessity of treatment covered by this section shall be determined pursuant to the plan contract and shall be defined in the plan contract in a manner that is consistent with other services covered under the plan contract. Except for inpatient services, if an individual is receiving treatment for autism, a mutual benefit society may request a review of the medical necessity of that treatment at the society’s discretion.

(h) This section shall not be construed as reducing any obligation to provide services to an individual under any publicly funded program, an individualized family service plan, an individualized education program, or an individualized service plan.

(i) Coverage under this section shall exclude coverage for:

- (1) Care that is custodial in nature;
- (2) Services and supplies that are not clinically appropriate;
- (3) Services provided by family or household members;
- (4) Treatments considered experimental; and
- (5) Services provided outside of the State.

(j) Mutual benefit societies shall include in their network of approved autism service providers only those providers who have cleared state and federal criminal background checks as determined by the society.

(k) If an individual has been diagnosed as having autism meeting the diagnostic criteria described in the Diagnostic and Statistical Manual of Mental Disorders available at the time of diagnosis, upon publication of a more recent edition of the Diagnostic and Statistical Manual of Mental Disorders, that individual may be required to undergo repeat evaluation to remain eligible for coverage under this section.

(l) Treatment for autism shall not be covered pursuant to this section unless provided by an autism service provider that is licensed by a state licensure board. If a state licensure board that licenses providers to provide autism services is unavailable, the autism service provider shall:

- (1) Be certified by the Behavior Analyst Certification Board, Inc.; provided that certification by the Behavior Analyst Certification Board, Inc., shall be valid for purposes of this subsection for no more than one year; or
- (2) Meet any existing credentialing requirements determined by the mutual benefit society.

(m) As used in this section, unless the context clearly requires otherwise: "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.

"Autism" means autism spectrum disorder as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders.

"Autism service provider" means any person, entity, or group that provides treatment for autism and meets the minimum requirements pursuant to subsection (l).

"Behavioral health treatment" means evidence based counseling and treatment programs, including applied behavior analysis, that are:

- (1) Necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual; and
- (2) Provided or supervised by an autism service provider.

"Diagnosis of autism" means medically necessary assessments, evaluations, or tests conducted to diagnose whether an individual has autism.

"Pharmacy care" means medications prescribed by a licensed physician or registered nurse practitioner and any health-related services that are deemed medically necessary to determine the need or effectiveness of the medications.

"Psychiatric care" means direct or consultative services provided by a licensed psychiatrist.

"Psychological care" means direct or consultative services provided by a licensed psychologist.

“Therapeutic care” means services provided by licensed speech pathologists, registered occupational therapists, licensed social workers, licensed clinical social workers, or licensed physical therapists.

“Treatment for autism” includes the following care prescribed or ordered for an individual diagnosed with autism by a licensed physician, psychiatrist, psychologist, licensed clinical social worker, or registered nurse practitioner if the care is determined to be medically necessary:

- (1) Behavioral health treatment;
- (2) Pharmacy care;
- (3) Psychiatric care;
- (4) Psychological care; and
- (5) Therapeutic care.”

SECTION 5. Section 432D-23, Hawaii Revised Statutes, is amended to read as follows:

“**§432D-23 Required provisions and benefits.** Notwithstanding any provision of law to the contrary, each policy, contract, plan, or agreement issued in the State after January 1, 1995, by health maintenance organizations pursuant to this chapter, shall include benefits provided in sections 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-116.2, 431:10A-116.5, 431:10A-116.6, 431:10A-119, 431:10A-120, 431:10A-121, 431:10A-122, 431:10A-125, 431:10A-126, [~~431:10A-122, and 431:10A-116.2,~~] and 431:10A-, and chapter 431M.”

SECTION 6. Notwithstanding section 432D-23, Hawaii Revised Statutes, the coverage and benefit for autism to be provided by a health maintenance organization under section 4 of this Act shall apply to all policies, contracts, plans, or agreements issued or renewed in this State by a health maintenance organization after January 1, 2016.

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 9. This Act shall take effect on July 1, 2015.

(Approved July 13, 2015.)

**Note**

1. Edited pursuant to HRS §23G-16.5.