SB406

185759-1

By Senator Whatley

RFD: Finance and Taxation General Fund

First Read: 27-APR-17

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SYNOPSIS: Under existing law, a health benefit plan is required to offer coverage for the treatment of Autism Spectrum Disorder for a child age nine or under for certain defined group insurance plans and contracts.

This bill would require health benefit plans to cover the treatment of Autism Spectrum Disorder for all insureds under certain insurance plans and contracts, subject to a maximum annual benefit and subject to insurance premiums not increasing by more than a certain percentage as a result of covering this treatment.

This bill would require the Department of Insurance to file an annual report with the Legislature on the costs of providing treatment for Autism Spectrum Disorder.

This bill would also require the Alabama Medicaid program and the Children's Health Insurance Plan (ALL Kids) to provide coverage for the treatment of Autism Spectrum Disorder.

A BILL

TO BE ENTITLED

AN ACT

Relating to health benefit plans; to amend Sections 10A-20-6.16, 27-21A-23, and 27-54A-2, Code of Alabama 1975; to add Section 27-54A-3, Code of Alabama 1975; to require health benefit plans to cover the treatment of Autism Spectrum Disorder certain health insurance plans and contracts, subject to a maximum annual benefit and subject to insurance premiums not increasing by more than a certain percentage as a result of covering this treatment; to require the Department of Insurance to file an annual report with the Legislature on the costs of providing treatment for Autism Spectrum Disorder; and to require the Alabama Medicaid program and the Children's Health Insurance Plan (ALL Kids) to provide coverage for the treatment of Autism Spectrum Disorder.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 10A-20-6.16, 27-21A-23, and 27-54A-2, Code of Alabama 1975, are amended to read as follows:

"§10A-20-6.16.

"(a) No statute of this state applying to insurance companies shall be applicable to any corporation organized under this article and amendments thereto or to any contract

made by the corporation; except the corporation shall be subject to all of the following:

"(1) The provisions regarding annual premium tax to be paid by insurers on insurance premiums.

"(2) Chapter 55 of Title 27, regarding the prohibition of unfair discriminatory acts by insurers on the basis of an applicant's or insured's abuse status.

"(3) The Medicare Supplement Minimum Standards set forth in Article 2 of Chapter 19 of Title 27, and Long-Term Care Insurance Policy Minimum Standards set forth in Article 3 of Chapter 19 of Title 27.

"(4) Section 27-1-17, requiring insurers and health plans to pay health care providers in a timely manner.

"(5) Chapter 56 of Title 27, regarding the Access to Eye Care Act.

"(6) Rules promulgated by the Commissioner of Insurance pursuant to Sections 27-7-43 and 27-7-44.

"(7) Chapter 54 of Title 27.

"(8) Chapter 57 of Title 27, requiring coverage to be offered for the payment of colorectal cancer examinations for covered persons who are 50 years of age or older, or for covered persons who are less than 50 years of age and at high risk for colorectal cancer according to current American Cancer Society colorectal cancer screening guidelines.

"(9) Chapter 58 of Title 27, requiring that policies and contracts including coverage for prostate cancer early

detection be offered, together with identification of associated costs.

"(10) Chapter 59 of Title 27, requiring that policies and contracts including coverage for chiropractic be offered, together with identification of associated costs.

"(11) Chapter 54A of Title 27, requiring that policies and contracts ~~to offer coverage for~~ cover certain treatment for Autism Spectrum Disorder under certain conditions.

"(12) Chapter 12A of Title 27.

"(13) Chapter 2B of Title 27.

"(b) The provisions in subsection (a) that require specific types of coverage to be offered or provided shall not apply when the corporation is administering a self-funded benefit plan or similar plan, fund, or program that it does not insure.

"§27-21A-23.

"(a) Except as otherwise provided in this chapter, provisions of the insurance law and provisions of health care service plan laws shall not be applicable to any health maintenance organization granted a certificate of authority under this chapter. This provision shall not apply to an insurer or health care service plan licensed and regulated pursuant to the insurance law or the health care service plan laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

"(b) Solicitation of enrollees by a health maintenance organization granted a certificate of authority shall not be construed to violate any provision of law relating to solicitation or advertising by health professionals.

"(c) Any health maintenance organization authorized under this chapter shall not be deemed to be practicing medicine and shall be exempt from the provisions of Section 34-24-310, et seq., relating to the practice of medicine.

"(d) No person participating in the arrangements of a health maintenance organization other than the actual provider of health care services or supplies directly to enrollees and their families shall be liable for negligence, misfeasance, nonfeasance, or malpractice in connection with the furnishing of such services and supplies.

"(e) Nothing in this chapter shall be construed in any way to repeal or conflict with any provision of the certificate of need law.

"(f) Notwithstanding the provisions of subsection (a), a health maintenance organization shall be subject to all of the following:

"(1) Section 27-1-17.

"(2) Chapter 56, regarding the Access to Eye Care Act.

"(3) Chapter 54, regarding mental illness coverage.

"(4) Chapter 57, requiring coverage to be offered for the payment of colorectal cancer examinations for covered

persons who are 50 years of age or older, or for covered persons who are less than 50 years of age and at high risk for colorectal cancer according to current American Cancer Society colorectal cancer screening guidelines.

"(5) Chapter 58, requiring that policies and contracts including coverage for prostate cancer early detection be offered, together with identification of associated costs.

"(6) Chapter 59, requiring that policies and contracts including coverage for chiropractic be offered, together with identification of associated costs.

"(7) Rules promulgated by the Commissioner of Insurance pursuant to Sections 27-7-43 and 27-7-44.

"(8) Chapter 12A.

"(9) Chapter 54A, requiring policies and contracts to ~~offer coverage for~~ cover certain treatment for Autism Spectrum Disorder under certain conditions.

"(10) Chapter 2B, regarding risk-based capital.

"(11) Chapter 29, regarding insurance holding company systems.

"§27-54A-2.

"(a) As used in this ~~section~~ chapter, the following words have the following meanings:

"(1) APPLIED BEHAVIOR ANALYSIS. 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 relationship between environment and behavior.

"(2) AUTISM SPECTRUM DISORDER. Any of the pervasive developmental disorders or autism spectrum disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM)~~, including Autistic Disorder, Asperger's Disorder, and Pervasive Developmental Disorder Not Otherwise Specified~~ or the edition that was in effect at the time of diagnosis.

"(3) BEHAVIORAL HEALTH TREATMENT. Counseling and treatment programs, including applied behavior analysis that are both of the following:

"a. Necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual.

"b. Provided or supervised, either in person or by telemedicine, by a Board Certified Behavior Analyst, licensed in the State of Alabama, or a psychologist, licensed in the State of Alabama, so long as the services performed are commensurate with the psychologist's formal university training and supervised experience.

"c. Behavioral health treatment does not include psychological testing, neuropsychology, psychotherapy, intellectual assessment, cognitive therapy, sex therapy, psychoanalysis, hypotherapy, and long-term counseling as treatment modalities.

"(4) DIAGNOSIS OF AUTISM SPECTRUM DISORDER. Medically necessary assessment, evaluations, or tests to diagnose whether an individual has an autism spectrum disorder.

"(5) HEALTH BENEFIT PLAN. Any individual or group insurance plan, policy, or contract for health care services that covers hospital, medical, or surgical expenses, health maintenance organizations, preferred provider organizations, medical service organizations, physician-hospital organizations, or any other person, firm, corporation, joint venture, or other similar business entity that pays for, purchases, or furnishes group health care services to patients, insureds, or beneficiaries in this state. For the purposes of this section, a health benefit plan located or domiciled outside of the State of Alabama is deemed to be subject to this section if the plan, policy, or contract is issued or delivered in the State of Alabama. The term includes, but is not limited to, entities created pursuant to Article 6, Chapter 20, Title 10A and health insurance plans administered or offered by the State Employees Insurance Board and the Public Education Employees Health Insurance Plan. The term does not include the Alabama Health Insurance Plan or the Alabama Small Employer Allocation Program provided in Chapter 52 of this title. The term also includes the terms health insurance policy and health insurance plan. The term does not include non-grandfathered plans in the individual and small group markets that are required to provide essential health

benefits under the Patient Protection and Affordable Care Act, or accident-only, specified disease, individual hospital indemnity, credit, dental-only, Medicare-supplement, long-term care, or disability income insurance, other limited benefit health insurance policies, coverage issued as a supplemental to liability insurance, workers' compensation or similar insurance, or automobile medical-payment insurance.

"(6) PHARMACY CARE. Medications prescribed by a licensed physician and any health related services deemed medically necessary to determine the need or effectiveness of the medications.

"(7) PSYCHIATRIC CARE. Direct or consultative services provided by a psychiatrist licensed in the State of Alabama.

"(8) PSYCHOLOGICAL CARE. Direct or consultative services provided by a psychologist licensed in the State of Alabama.

"(9) THERAPEUTIC CARE. Services provided by licensed and certified speech therapists, occupational therapists, or physical therapists.

"(10) TREATMENT FOR AUTISM SPECTRUM DISORDER. Evidence-based care prescribed or ordered for an individual diagnosed with an autism spectrum disorder by a licensed physician or a licensed psychologist who determines the care to be medically necessary, including, but not limited to, all of the following:

"a. Behavioral health treatment.

"b. Pharmacy care.

"c. Psychiatric care.

"d. Psychological care.

"e. Therapeutic care.

"(b)(1) A health benefit plan shall ~~offer coverage for~~ cover the screening, diagnosis, and treatment of Autism Spectrum Disorder ~~for an insured nine years of age or under~~ in policies and contracts issued or delivered in the State of Alabama. ~~to employers with at least 51 employees for at least 50 percent of its working days during the preceding calendar year.~~ Coverage provided under this section is limited to treatment that is prescribed by the insured's treating licensed physician or licensed psychologist in accordance with a treatment plan.

"(2) To the extent that the screening, diagnosis, and treatment of ~~autism spectrum disorder~~ Autism Spectrum Disorder are not already covered by a health insurance policy, coverage under this section shall be ~~offered for inclusion~~ included in health insurance policies that are delivered, executed, issued, amended, adjusted, or renewed in the State of Alabama at the date of the annual renewal for coverage.

"(3) A health benefit plan may not deny or refuse to issue coverage on, refuse to contract with, or refuse to renew or refuse to reissue or otherwise terminate or restrict coverage on an individual solely because the individual is diagnosed with Autism Spectrum Disorder.

"(c)(1) ~~The~~ Except as provided in subsection (g), the coverage required pursuant to this section ~~may~~ shall not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to ~~physical illness generally~~ substantially all medical and surgical benefits under the health insurance plan~~, except as otherwise provided for in subsection (e)~~.

"(2) The coverage required pursuant to subsection (b) may be subject to other general exclusions and limitations of the health benefit plan, including, but not limited to, coordination of benefits, participating provider requirements, restrictions on services provided by family or household members, utilization review of health care services including review of medical necessity, case management, and other managed care provisions.

"(d) Coverage under this section shall not be subject to any limits on the number of visits an individual may make for treatment of Autism Spectrum Disorder.

"(e) This section may not be construed as limiting benefits that are otherwise available to an individual under a health insurance policy.

"(f) Coverage for applied behavior analysis shall include the services of the personnel who work under the supervision of the board certified behavior analyst or the licensed psychologist overseeing the program.

"(g)(1) Except as provided in subdivision (2), coverage provided under this section for applied behavior analysis shall be subject to a maximum benefit as follows:

"a. Forty thousand dollars ($40,000) per year for an insured individual between zero and nine years of age.

"b. Thirty thousand dollars ($30,000) per year for an insured individual between 10 and 13 years of age.

"c. Twenty thousand dollars ($20,000) per year for an insured individual between 14 and 18 years of age.

"d. Ten thousand dollars ($10,000) per year for an insured individual 19 years of age or older.

"(2) The maximum benefit limitation for applied behavior analysis described in subdivision (1) shall be adjusted for inflation to reflect the aggregate increase in the general price level as measured by the Consumer Price Index for All Urban Consumers. Beginning January 1, 2018, and annually thereafter, the current value of the maximum benefit limitation for applied behavior analysis coverage adjusted for inflation shall be calculated by the Commissioner of Insurance. The commissioner shall publish, on an annual basis, the calculated value pursuant to rules adopted by the department.

"(3) The maximum benefit limit may be exceeded, upon prior approval by the insurer administering a health benefit plan, if the provision of applied behavior analysis services beyond the maximum limit is medically necessary for the insured individual. Payments made by a health benefit plan on

behalf of an individual for any care, treatment, intervention, service, or item, the provision of which was for the treatment of a health condition unrelated to the individual's Autism Spectrum Disorder, shall not be applied toward any maximum benefit established under this subsection. Any coverage required under this section, other than the coverage for applied behavior analysis, shall not be subject to the dollar limitations described in this subsection.

"(h) This section may not be construed as affecting any obligation to provide services to an individual under an individualized family service plan, an individualized education program, or an individualized service plan.

"~~(d)~~ (i) The treatment plan required pursuant to subsection (b) shall include all elements necessary for the health insurance plan to appropriately pay claims. These elements include, but are not limited to, a diagnosis, proposed treatment by type, frequency, and duration of treatment, the anticipated outcomes stated as goals, the frequency by which the treatment plan will be updated, and the treating licensed physician's or licensed psychologist's signature. The health insurance plan may ~~only~~ request an updated treatment plan only once every six months from the treating licensed physician or licensed psychologist to review medical necessity, unless the health insurance plan and the treating licensed physician or licensed psychologist agree that a more frequent review is necessary for a particular patient. Any agreement regarding the right to review a

treatment plan more frequently applies only to a particular insured being treated for an autism spectrum disorder and does not apply to all individuals being treated for Autism Spectrum Disorder by a physician or psychologist. The cost of obtaining any review or treatment plan shall be borne by the insurer.

"~~(e)~~(j)(1) ~~The benefits and coverage provided pursuant to this section shall be provided to any eligible person nine years of age or under. Coverage for behavioral therapy is subject to a thirty-six thousand dollars ($36,000) maximum benefit per year. Beginning October 1, 2013, this maximum benefit shall be adjusted annually on January 1 of each calendar year to reflect any change from the previous year in the current Consumer Price Index, All Urban Consumers, as published by the United States Department of Labor's Bureau of Labor Statistics.~~ By February 1, 2019, and every February first thereafter, the Department of Insurance shall submit a report to the Legislature regarding the implementation of the coverage required under this section. The report shall include, but not be limited to, all of the following:

"a. The total number of insureds diagnosed with Autism Spectrum Disorder.

"b. The total cost of all claims paid out in the preceding calendar year for coverage required by this section.

"c. The cost of coverage required by this section per insured per month.

"d. The average cost per insured for coverage of applied behavior analysis.

"(2) All health benefit plans subject to this section shall provide the department with the data requested by the department for inclusion in the annual report.

"(k)(1) A health benefit plan that does not provide coverage for applied behavior analysis as of September 30, 2017, shall be exempt for a period of one year from the requirement to provide coverage for applied behavior analysis if the following criteria are met:

"a. An actuary who is affiliated with the insurer administering the health benefit plan, who is a member of the American Academy of Actuaries and who meets the American Academy of Actuaries' professional qualification standards for rendering an actuarial opinion relating to health insurance ratemaking, certifies in writing to the Commissioner of Insurance both of the following:

"1. Based on an analysis to be completed by the insurer, for the most recent experience period of at least one year's duration, that the costs associated with coverage of applied behavior analysis exceeded one percent of the premiums charged over the experience period by the health benefit plan.

"2. That those costs solely would lead to an increase in average premiums charged of more than one percent for all health benefit plans commencing on inception or the next renewal date, based on the premium rating methodology and practices the insurer employs.

"b. The Commissioner of Insurance approves the certification of the actuary.

"(2) An exemption allowed under subdivision (1) shall apply for a one-year coverage period following inception or the next renewal date for all health benefit plans issued or renewed during the one-year period following the date of the exemption, after which the health benefit plan shall again provide coverage for applied behavior analysis required under this section. An insurer may claim an exemption for a subsequent year, provided the conditions specified in subdivision (1) again are met.

"(3) If, upon investigation, the Commissioner of Insurance finds that any statement or certification made pursuant to subdivision (1) by an insurer is knowingly false, the health benefit plan may be subject to suspension or loss of license or any other penalty as determined by the commissioner.

"(4) Notwithstanding the exemption allowed under subdivision (1), an insurer may elect to continue to provide coverage for applied behavior analysis required under this section."

Section 2. Section 27-54A-3 is added to the Code of Alabama 1975, to read as follows:

§27-54A-3.

In the administration of and provision of benefits for the Alabama Medicaid program and the Children's Health Insurance Plan (ALL Kids), the Alabama Medicaid Agency and the Alabama Department of Public Health shall provide coverage and

reimbursement for the treatment of Autism Spectrum Disorder in the same manner and same levels as health benefit plans.

Section 3. This act shall become effective October 1, 2017.