

# Legislative Analysis

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## **AUTISM: MANDATE INSURANCE BENEFITS**

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**House Bill 4183 as passed by the House**  
**Sponsor: Rep. Richard Ball**

**House Bill 4476 as passed by the House**  
**Sponsor: Rep. Kathy Angerer**  
**Committee: Health Policy**

### **First Analysis (11-29-10)**

**BRIEF SUMMARY:** The bills would require health insurers to provide group coverage for the diagnosis and treatment of autism spectrum disorder.

**FISCAL IMPACT:** The bills would have fiscal implications for state and local units of government, as discussed later in the analysis.

### **THE APPARENT PROBLEM:**

Autism is a complex neurological disorder that affects an individual's ability to communicate and develop social relationships. Symptoms vary greatly from person to person and range from mild to profound impairment. Autism spectrum disorders (ASD), which include Asperger's syndrome, occur in all racial and ethnic groups and affect rich and poor. However, the disorder strikes boys four times as often as girls.

Once believed to be rare, a new study published in the journal *Pediatrics* October 5, 2009, found 1 in 91 children are now being diagnosed with ASD. Though the Centers for Disease Control and Prevention currently list the prevalence rate for diagnosis at one out of 150 children in the U.S., the CDC announced that it will release an updated report to reflect the new findings by the end of the year.

No known cause has been discovered, though the condition is believed to have a genetic link. There is no cure for autism disorders. Many children, however, benefit from early interventions. According to some reports, children who receive appropriate treatment can improve greatly, if not completely. For instance, almost half recover "typical" function, 40 percent make significant improvement, with only about 13 percent of those receiving treatment making little to no progress.

The problem is that far fewer individuals diagnosed with ASD actually receive services. The primary reason for this is that early intensive behavioral intervention therapies, such as Applied Behavior Analysis (ABA) therapy, can cost tens of thousands of dollars a year. Many health insurance policies exclude coverage for ABA and other autism-related services, even though some of the same services (e.g., physical and occupational therapy) are covered services if the individual does not have an autism diagnosis.

In 2008, a study conducted by Easter Seals revealed that 1.5 million Americans have an autism spectrum disorder. Twenty percent (about 300,000) of those are 22 years of age or older. Alarming, that means 80 percent (about 1.2 million) are younger than 22 years old. If these persons do not receive the appropriate early interventions, they are more likely to remain unemployable, have high medical costs for other physical conditions, experience depression, and have a lifelong reliance on public assistance.

Some feel that since one of every 91 children born this year, and in each of the years to come, are likely to be diagnosed with ASD, the need for greater access to evidence-based therapies becomes clearer. If appropriate treatment means that 87 percent of diagnosed individuals will need no (or limited) public support services at a future time, then costs to society over an individual's lifetime can be greatly mitigated, if not avoided.

According to advocates, an effective way to increase access to appropriate treatment interventions would be to require health plans to provide coverage for evidence-based therapies. Several models, and the experience of some states that have already enacted similar laws, find that mandating insurance coverage for autism-related therapies has a minimal impact on the rates for insurance premiums.

Thus, legislation has been offered that would require employer-sponsored health plans to provide coverage for autism related services.

#### ***THE CONTENT OF THE BILLS:***

The two bills, which are almost identical, would amend the insurance laws to require health insurers to provide coverage for the diagnosis and treatment of autism spectrum disorder.

House Bill 4183 would amend the Insurance Code (MCL 500.3406s), which regulates commercial insurers and health maintenance organizations (HMOs), to apply to expense-incurred hospital, medical, or surgical group policies or certificates and HMO contracts.

House Bill 4476 would amend the Nonprofit Health Care Corporation Reform Act (MCL 550.1416e), which regulates Blue Cross Blue Shield of Michigan, to apply to group health plans.

Applicability. The bills apply to group certificates, policies, and contracts delivered, executed, issued, adjusted, or renewed in the state (or – for commercial insurers and HMOs – outside the state if covering residents of Michigan) 180 days after the date the bills are enacted into law. (Policies purchased by individuals would not be affected by the legislation.)

Coverage. There would be no limits on the number of visits a member, insured, or enrollee (hereinafter *insured*) could make to an autism services provider. Except for applied behavior analysis (ABA), coverage would not be subject to dollar limits, copays,

deductibles, or coinsurance provisions that did not apply to physical illness generally. Coverage for ABA could be subject to a maximum annual benefit of \$50,000.

The bill stipulates that these benefits cannot be construed as limiting benefits otherwise available to an insured under a certificate.

These benefits would not be available to a short-term or one-time limited duration policy or certificate of no longer than six months issued by a commercial insurer or HMO under provisions of the Insurance Code. Further, a commercial insurer or HMO could not terminate coverage or refuse to deliver, execute, issue, amend, or renew coverage solely because an individual was diagnosed with, or had received treatment for, an autism spectrum disorder.

Review of services. An insurer could request a review of an autism spectrum disorder treatment consistent with current protocols and could require a treatment plan. The insurer would bear the cost of the review. An insurer would have to utilize evidence-based care and managed care cost-containment practices in accordance with the insurer's procedures.

Definitions. Among the many terms defined by the bills are the following:

"Applied behavior analysis" would be defined to mean the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relations between environment and behavior.

"Autism spectrum disorder" would mean any of the following: autistic disorder, Asperger's disorder, or pervasive developmental disorder not otherwise specified.

"Diagnosis of autism spectrum disorders" would mean assessments, evaluations, or tests performed by a licensed physician or psychologist to diagnose whether an individual has one of the autism spectrum disorders.

"Treatment for autism spectrum disorder" would mean evidence-based treatment that included the following care prescribed, provided, or ordered for an individual diagnosed with one of the autism spectrum disorders by a licensed physician or psychologist who determined the care to be medically necessary: habilitative or rehabilitative care; pharmacy care; psychiatric care; psychological care; and therapeutic care. These terms are defined in the bill, as well.

"Autism services provider" would mean a licensed physician or psychologist, or a behavior analyst certified by the Behavior Analyst Certification Board, or an individual supervised by any of these, who provided treatment of autism spectrum disorders.

"Treatment plan" would mean a written comprehensive evaluation by a multidisciplinary team, individualized for each patient and developed by a licensed physician or licensed psychologist.

## ***BACKGROUND INFORMATION:***

### Causes of autism

There is no known cause of autism spectrum disorder (ASD), though researchers have long suspected that genes play a role. Recently, researchers discovered a set of gene variants that may be responsible for about 12 to 18 percent of autism cases, according to a study published in an April 28, 2009, issue of the journal *Nature*.

Other environmental factors, such as exposure to chemicals or toxins while in the womb or in early childhood, the mother's diet while pregnant, or the age of the parents when the child was born may also be connected to the increasing rates of autism. Recently, scientists have begun researching a possible link between Vitamin D deficiency and autism.

### Vaccines

For several years, much media attention has focused on childhood vaccinations containing thimerosal, a mercury-rich preservative. However, California researchers reported in 2008 that autism rates continued to rise during a 12-year study period (1995 to 2007), even after thimerosal was eliminated from childhood vaccinations in 2001. If thimerosal contributed to the risk of developing ASD, autism rates should have dropped between 2004 and 2007.

The Office of Special Masters of the U.S. Court of Federal Claims, commonly known as the vaccine court, oversees claims for compensation due to vaccine-related injuries. Currently, more than 5,000 cases have been filed with the federal vaccine court claiming that vaccines containing thimerosal and/or the mumps/measles/rubella (MMR) vaccine caused their children's autism. In February 2009, the vaccine court found no evidence in three test cases that vaccines containing thimerosal or the MMR vaccine caused autism. In reaching the decisions in the three cases, the vaccine court reviewed thousands of pages of medical records and scientific literature, as well as testimony from medical experts. In March of 2010, the vaccine court ruled that in the three test cases, thimerosal does not cause autism; this finding supports the consensus of the broader scientific community.

Moreover, the British journal *The Lancet*, which published the article by Dr. Andrew Wakefield in 1998 that first suggested vaccines could cause autism, retracted that research paper in February, 2010. According to an article entitled "Journal Retracts 1998 Paper Linking Autism to Vaccines" published in *The New York Times*, Feb. 3, 2010, "an investigation by a British journalist found financial and scientific conflicts that Dr. Wakefield did not reveal in his paper." For example, part of his research was "paid by lawyers for parents seeking to sue vaccine makers for damages." In addition, the British General Medical Council determined that Dr. Wakefield had subjected child test subjects

to unneeded invasive tests, such as lumbar punctures and colonoscopies, for which he had not received ethical approval.

(The vaccine court's rejection of the three test cases should not be confused with the HHS Division of Vaccine Injury Compensation conclusion in 2008 that compensation was appropriate in a case involving a child who had been developing normally but – after receiving multiple vaccines containing thimerosal and the MMR vaccine – was eventually diagnosed with a brain disease with features consistent with ASD. Compensation in that case was awarded based on a finding that the girl had an underlying mitochondrial disorder that, when aggravated by one or more of the vaccines, resulted in regressive encephalopathy with features of ASD.)

### ***FISCAL INFORMATION:***

The bill would have no significant fiscal impact on the Department of Energy, Labor, and Economic Growth (Office of Financial and Insurance Regulation) in administering the additional requirements as set forth in the legislation.

Beyond that, however, the bills would have significant cost implications, which are indeterminate at this time, on the state and on local governmental units, as well as the private sector. The Council for Affordable Health Insurance (CAHI), for instance, notes that mandated autism coverage increases health insurance costs by about one percent, although given the increased incidence of autism diagnoses (and the push for expanded services), the increase is expected to be between one percent and three percent in the coming years<sup>1</sup>. Similarly, the New Jersey Mandated Health Benefits Advisory Commission estimated, in a 2007 study, that mandated autism insurance coverage, based on actuarial data, increased premiums for a family by 0.79%<sup>2</sup>. Similar estimates were submitted to the Pennsylvania Health Care Cost Containment Council<sup>3</sup>.

Beyond the impact on insurance premiums, there is a substantial body of literature assessing the cost effectiveness of applied behavioral analysis (ABA) and expanding early intensive behavioral intervention (EIBI) activities<sup>4</sup>. This analysis will be updated as additional information becomes available.

### ***ARGUMENTS:***

#### ***For:***

The facts are clear and simple: autism is the fastest growing developmental disability worldwide. In the U.S., one in 91 babies born today will be diagnosed with autism

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<sup>1</sup> *The Growing Trend Toward Mandating Autism Coverage*, The Center for Affordable Health Insurance, March 2009, [[http://www.cahi.org/cahi\\_contents/resources/pdf/n152AutismTrend.pdf](http://www.cahi.org/cahi_contents/resources/pdf/n152AutismTrend.pdf)].

<sup>2</sup> *A Study of Assembly Bill A-999*, New Jersey Mandated Health Benefits Advisory Commission, February 2007, [[http://nj.gov/dobi/division\\_insurance/mhbc/070314\\_A999rpt\\_MHBAC.pdf](http://nj.gov/dobi/division_insurance/mhbc/070314_A999rpt_MHBAC.pdf)].

<sup>3</sup> *Autism Spectrum Disorders Mandated Benefits Review Panel Report: Evidence Submitted Concerning Pennsylvania HB 1150*, prepared by ABT Associates Inc. for the Pennsylvania Health Care Cost Containment Council, June 2008, [<http://www.phc4.org/reports/mandates/HB1150/AutismPanelReport061808.pdf>].

<sup>4</sup> *Early Intensive Applied Behavior Analytic Intervention for Autism: Selected Resources*, Association of Professional Behavior Analysts, October 2008, [<http://www.apbhome.net/downloads/EarlyIntABARefs10-08.pdf>]

spectrum disorder (ASD). Tomorrow, another one in 91 babies born will be diagnosed with ASD, and the day after that, and the day after that. If these children do not receive early and appropriate services, most are likely to need long-term or lifelong services, with many of those needing lifelong public assistance. By some estimates, the cost of caring for a person with autism over his or her lifespan is about \$3.7 million. Already there are over 1.5 million people diagnosed with ASD in the U.S.; over three-fourths of these people are under 22 years of age. This likely will present a huge challenge, if not a crushing burden, on a public health care system already teetering on collapse due to high expenditures for obesity-related illnesses and the number of boomers reaching Medicare age.

However, with early intensive therapies and treatments, 87 percent of children with an early diagnosis could attain typical functioning, alleviating the need for long-term or lifelong services. Thus, proponents say this really is a case of "pay now or pay later", with the upfront costs of the legislation being far less than what is likely down the road if the bills are not enacted.

***Response:***

Autism is just one of many brain disorders. For years, advocates have lobbied for fair and equal treatment under insurance laws for mental illness and substance abuse as for physical illness. Far too many insurance policies exclude mental health or substance abuse treatment as a covered benefit or severely limit annual visits, in addition to placing low lifetime caps on benefits that are inadequate for chronic, lifelong illnesses such as schizophrenia. In addition, individuals with untreated mental illnesses or addictions tend to take poor care of themselves, ending up presenting with serious and advanced diseases that are costly to treat. Studies show that costs to provide physical health treatment to these populations dramatically decrease when they receive appropriate and timely mental health and/or substance abuse treatment. In addition, persons with a mental illness or who are addicted to alcohol or drugs are less likely to break laws and end up in jail or prison if they receive needed therapies and treatments, thus saving taxpayers additional corrections-related costs. Many states already provide mental health parity and are experiencing dramatic costs savings in their physical health delivery systems. Legislation should not carve out one brain disorder for insurance coverage and ignore others. Therefore, the bills should be amended to include parity for all brain disorders.

***For:***

The legislation is needed for the following reasons:

- Due to exclusions often contained in insurance policies, some estimate that as many as two-thirds of children with autism do not receive needed therapies.
- Without insurance parity, many families are being driven into bankruptcy, home foreclosures, unemployment or loss of promotions (due to the demands of caring for a child with autism).
- Children with autism grow into adults with autism. Though there is no "cure", early and appropriate treatment mitigates the impact on an individual and society.



- Though schools provide some services for children with ASD, they are not equipped to provide all of the intensive services, such as 20 hours or more a week of speech therapy, needed for some individuals.
- Many states already mandate coverage for ASD-related services and have not experienced the surging premium costs touted by opponents.
- Failure to enact the legislation will contribute to Michigan's "brain drain" as leading autism specialists and researchers leave the state or refuse to take positions in the state in favor of jobs in states with insurance parity.
- Providing insurance parity will alleviate the stress experienced by parents, thus improving the parent's health, decreasing medical costs for the parents, and enabling them to be more productive at work.
- By some estimates, 90 percent of parents with autistic children are divorced. Appropriate and timely treatment, by mitigating the impact of the child's disorder on the family, will in turn lessen the types of stressors that damage marital relationships.

***Against:***

Not all would agree that the bills make sense; some oppose insurance mandates in general, saying that businesses should be free to develop the products wanted by their customers – in this case, employers. They also cite independent studies that say higher increases in premium rates are likely if insurers are required to pay for autism treatments. Such increases in premium costs could be detrimental to business owners, especially small businesses, who already struggle to stay alive in the current economic climate. The concern is that more employers could choose to drop health insurance altogether for their employees if the bills were enacted.

***Response:***

Requiring health insurers to include autism-related services as covered benefits in their products will only add a few dollars to the annual cost of a family premium. Data shows the increase at only .79 percent for a family premium; based on a policy premium of \$10,000, that is only an additional \$79 for a year, or \$6.58 a month. Compare \$79 a year to the lifetime of productivity by individuals who received appropriate treatment and that the drain on public assistance programs will be decreased, and the need and the logic and the humanity of the legislation becomes very clear and simple, indeed.

***Against:***

The legislation should not be adopted for the following reasons:

- Some insurance companies already offer products that cover services for an ASD diagnosis, including intensive behavioral therapies. More recently, Blue Cross Blue Shield announced that it will offer a benefit option through group plans for autism therapies that provide intensive early intervention. A more appropriate

response is to allow insurance companies to develop products that employers will want to purchase for their employees.

- The legislation would only benefit a few with the costs being shouldered by a few employer-sponsored plans. The legislation would not apply to people covered under plans they purchased themselves, nor would it apply to people covered under Medicare, Medicaid, state health plans, or other self-insured employer plans that are subject to federal ERISA laws.

***Response:***

As introduced, the bills would have included individual plans. In addition, many self-funded plans have elected to follow their state's mandated coverage for autism-related services. For example, Microsoft, Mayo Clinic, Home Depot, Intel, IBM, and Ohio State University are just a few employers with self-funded plans that now include coverage for ASD services.

***POSITIONS:***

CHADD of Grand Rapids (Children and Adults with Attention Deficit/Hyperactivity Disorder) supports the bills as passed by the House. (11-29-10)

**The following organizations, agencies, and associations testified in support of, or indicated support for, the bills as introduced:**

Monroe County ISD  
DTE Energy  
Early Intervention Center  
AIM  
Michigan Environmental Council  
Autism Speaks  
Michigan Council for Maternal & Child Health  
Detroit Medical Center  
William Beaumont Hospital  
Michigan Nurses Association  
Michigan Association of School Psychologists  
Michigan Speech-Language-Hearing Association  
Elder Disability Rights Section of the State Bar of Michigan House of Representatives  
Michigan Association of School Boards  
Michigan Association of School Administrators  
Michigan Secondary School Principals  
Michigan Pharmacists Association  
Michigan Elementary & Middle School Principals Association  
Middle Cities Education Association  
Michigan PTA  
Area Agencies on Aging Association of Michigan



**The following organizations, agencies, and associations testified in or indicated opposition to the bills as introduced:**

Michigan AFL-CIO  
International Union, UAW  
Michigan Manufacturers Association  
Michigan Association of Health Underwriters  
National Federation of Independent Business  
Grand Rapids Chamber of Commerce  
Chrysler LLC  
Economic Alliance for Michigan  
Michigan Association of Health Plans  
Blue Cross Blue Shield of Michigan (opposed the bills as introduced, but indicated the organization was working with the bills' sponsors)  
Michigan Chamber of Commerce  
Small Business Association of Michigan

The Michigan Chapter American Academy of Pediatrics opposes mandating a specific form of treatment to be covered by insurance, as a wide range of evidence based treatments needs to be available for children with ASD and other developmental behavioral disorders. The association also supports mental health parity from all health plans and for all diagnoses.

**The following entities indicated support for the concept of a comprehensive approach for mental health parity, which would provide parity for all brain disorders, including autism spectrum disorder, developmental disorders, mental illness, and substance abuse:**

Michigan Association of Community Mental Health Boards  
National Association of Social Workers – Michigan Chapter  
Michigan Partners for Parity  
The ARC Michigan  
Michigan Psychiatric Society  
Michigan Psychological Association  
Association for Children's Mental Health  
NAMI Michigan Public Policy Committee

Legislative Analyst: Susan Stutzky  
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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.