

## 2017 SESSION

LEGISLATION NOT PREPARED BY DLS  
INTRODUCED

17103929D

### HOUSE BILL NO. 1995

Offered January 11, 2017

Prefiled January 10, 2017

A *BILL to amend and reenact § 38.2-3418.17 of the Code of Virginia, relating to health insurance; coverage for autism spectrum disorder.*

Patron—Greason

Referred to Committee on Commerce and Labor

#### Be it enacted by the General Assembly of Virginia:

1. That § 38.2-3418.17 of the Code of Virginia is amended and reenacted as follows:

##### § 38.2-3418.17. Coverage for autism spectrum disorder.

A. Notwithstanding the provisions of § 38.2-3419 and any other provision of law, each insurer proposing to issue group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each corporation providing group accident and sickness subscription contracts; and each health maintenance organization providing a health care plan for health care services shall, as provided in this section, provide coverage for the diagnosis of autism spectrum disorder and the treatment of autism spectrum disorder, in individuals (i) from January 1, 2012, until January 1, 2016, from age two years through age six years and (ii) from and after January 1, 2016, until January 1, 2018, from age two years through age 10 years, (iii) from and after January 1, 2018, of any age, subject to the annual maximum benefit limitation set forth in subsection K and to provisions of subsection G. If an individual who is being treated for autism spectrum disorder becomes older than the applicable maximum age set forth in the preceding sentence and continues to need treatment, this section does not preclude coverage of treatment and services. In addition to the requirements imposed on health insurance issuers by § 38.2-3436, an insurer shall not terminate coverage or refuse to deliver, issue, amend, adjust, or renew coverage of an individual solely because the individual is diagnosed with autism spectrum disorder or has received treatment for autism spectrum disorder.

B. For purposes of this section:

"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 relationship between environment and behavior.

"Autism spectrum disorder" means any pervasive developmental disorder, including (i) autistic disorder, (ii) Asperger's Syndrome, (iii) Rett syndrome, (iv) childhood disintegrative disorder, or (v) Pervasive Developmental Disorder — Not Otherwise Specified, as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

"Behavioral health treatment" means professional, counseling, and guidance services and treatment programs that are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual.

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

"Medically necessary" means based upon evidence and reasonably expected to do any of the following: (i) prevent the onset of an illness, condition, injury, or disability; (ii) reduce or ameliorate the physical, mental, or developmental effects of an illness, condition, injury, or disability; or (iii) assist to achieve or maintain maximum functional capacity in performing daily activities, taking into account both the functional capacity of the individual and the functional capacities that are appropriate for individuals of the same age.

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

"Psychiatric care" means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices.

"Psychological care" means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices.

"Therapeutic care" means services provided by licensed or certified speech therapists, occupational therapists, physical therapists, or clinical social workers.

"Treatment for autism spectrum disorder" shall be identified in a treatment plan and includes the following care prescribed or ordered for an individual diagnosed with autism spectrum disorder by a

INTRODUCED

HB1995

59 licensed physician or a licensed psychologist who determines the care to be medically necessary: (i)  
60 behavioral health treatment, (ii) pharmacy care, (iii) psychiatric care, (iv) psychological care, (v)  
61 therapeutic care, and (vi) applied behavior analysis when provided or supervised by a board certified  
62 behavior analyst who shall be licensed by the Board of Medicine. The prescribing practitioner shall be  
63 independent of the provider of applied behavior analysis.

64 "Treatment plan" means a plan for the treatment of autism spectrum disorder developed by a licensed  
65 physician or a licensed psychologist pursuant to a comprehensive evaluation or reevaluation performed  
66 in a manner consistent with the most recent clinical report or recommendation of the American  
67 Academy of Pediatrics or the American Academy of Child and Adolescent Psychiatry.

68 C. Except for inpatient services, if an individual is receiving treatment for an autism spectrum  
69 disorder, an insurer, corporation, or health maintenance organization shall have the right to request a  
70 review of that treatment, including an independent review, not more than once every 12 months unless  
71 the insurer, corporation, or health maintenance organization and the individual's licensed physician or  
72 licensed psychologist agree that a more frequent review is necessary. The cost of obtaining any review,  
73 including an independent review, shall be covered under the policy, contract, or plan.

74 D. Coverage under this section will not be subject to any visit limits, and shall be neither different  
75 nor separate from coverage for any other illness, condition, or disorder for purposes of determining  
76 deductibles, lifetime dollar limits, copayment and coinsurance factors, and benefit year maximum for  
77 deductibles and copayment and coinsurance factors.

78 E. Nothing shall preclude the undertaking of usual and customary procedures, including prior  
79 authorization, to determine the appropriateness of, and medical necessity for, treatment of autism  
80 spectrum disorder under this section, provided that all such appropriateness and medical necessity  
81 determinations are made in the same manner as those determinations are made for the treatment of any  
82 other illness, condition, or disorder covered by such policy, contract, or plan.

83 F. The provisions of this section shall not apply to (i) short-term travel, accident only, limited, or  
84 specified disease policies; (ii) short-term nonrenewable policies of not more than six months' duration;  
85 (iii) policies, contracts, or plans issued in the individual market or small group markets; or (iv) policies  
86 or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social  
87 Security Act, known as Medicare, or any other similar coverage under state or federal governmental  
88 plans.

89 G. The requirements of this section requiring that coverage be provided with regard to individuals  
90 from age two years through age six years shall apply to all insurance policies, subscription contracts,  
91 and health care plans delivered, issued for delivery, reissued, or extended on or after January 1, 2012,  
92 but prior to January 1, 2016, and the requirements of this section requiring that coverage be provided  
93 with regard to individuals from age two years through age 10 years shall apply to all insurance policies,  
94 subscription contracts, and health care plans delivered, issued for delivery, reissued, or extended on or  
95 after January 1, 2016, *but prior to January 1, 2018, and the requirements of this section requiring that*  
96 *coverage be provided to individuals of any age, shall apply to all insurance policies, subscription*  
97 *contracts, and health care plans delivered, issued for delivery, reissued, or extended on or after January*  
98 *1, 2018* and to all such policies, contracts, or plans to which a term is changed or any premium  
99 adjustment is made on or after such date.

100 H. Any coverage required pursuant to this section shall be in addition to the coverage required by  
101 § 38.2-3418.5 and other provisions of law. This section shall not be construed as diminishing any  
102 coverage required by § 38.2-3412.1. This section shall not be construed as affecting any obligation to  
103 provide services to an individual under an individualized family service plan, an individualized education  
104 program, or an individualized service plan.

105 I. Pursuant to the provisions of § 2.2-2818.2, this section shall apply to health coverage offered to  
106 state employees pursuant to § 2.2-2818 and to health insurance coverage offered to employees of local  
107 governments, local officers, teachers, and retirees, and the dependents of such employees, teachers, and  
108 retirees pursuant to § 2.2-1204.

109 J. Notwithstanding any provision of this section to the contrary

110 1. An insurer, corporation, or health maintenance organization, or a governmental entity providing  
111 coverage for such treatment pursuant to subsection I, is exempt from providing coverage for behavioral  
112 health treatment required under this section and not covered by the insurer, corporation, health  
113 maintenance organization, or governmental entity providing coverage for such treatment pursuant to  
114 subsection I as of December 31, 2011, if:

115 a. An actuary, affiliated with the insurer, corporation, or health maintenance organization, who is a  
116 member of the American Academy of Actuaries and meets the American Academy of Actuaries'  
117 professional qualification standards for rendering an actuarial opinion related to health insurance rate  
118 making, certifies in writing to the Commissioner of Insurance that:

119 (1) Based on an analysis to be completed no more frequently than one time per year by each insurer,  
120 corporation, or health maintenance organization, or such governmental entity, for the most recent

121 experience period of at least one year's duration, the costs associated with coverage of behavioral health  
122 treatment required under this section, and not covered as of December 31, 2011, exceeded one percent  
123 of the premiums charged over the experience period by the insurer, corporation, or health maintenance  
124 organization; and

125 (2) Those costs solely would lead to an increase in average premiums charged of more than one  
126 percent for all insurance policies, subscription contracts, or health care plans commencing on inception  
127 or the next renewal date, based on the premium rating methodology and practices the insurer,  
128 corporation, or health maintenance organization, or such governmental entity, employs; and

129 b. The Commissioner approves the certification of the actuary;

130 2. An exemption allowed under subdivision 1 shall apply for a one-year coverage period following  
131 inception or next renewal date of all insurance policies, subscription contracts, or health care plans  
132 issued or renewed during the one-year period following the date of the exemption, after which the  
133 insurer, corporation, or health maintenance organization, or such governmental entity, shall again provide  
134 coverage for behavioral health treatment required under this section;

135 3. An insurer, corporation, or health maintenance organization, or such governmental entity, may  
136 claim an exemption for a subsequent year, but only if the conditions specified in subdivision 1 again are  
137 met; and

138 4. Notwithstanding the exemption allowed under subdivision 1, an insurer, corporation, or health  
139 maintenance organization, or such a governmental entity, may elect to continue to provide coverage for  
140 behavioral health treatment required under this section.

141 K. Coverage for applied behavior analysis under this section will be subject to an annual maximum  
142 benefit of \$35,000, unless the insurer, corporation, or health maintenance organization elects to provide  
143 coverage in a greater amount.

144 L. As of January 1, 2014, to the extent that this section requires benefits that exceed the essential  
145 health benefits specified under § 1302(b) of the federal Patient Protection and Affordable Care Act  
146 (H.R. 3590), as amended (the ACA), the specific benefits that exceed the specified essential health  
147 benefits shall not be required of a qualified health plan when the plan is offered in the Commonwealth  
148 by a health carrier through a health benefit exchange established under § 1311 of the ACA. Nothing in  
149 this subsection shall nullify application of this section to plans offered outside such an exchange.