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## SENATE BILL NO. 542

Offered January 13, 2012

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

Patrons—Howell, Norment, Saslaw and Stosch

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, 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 from age two through age six, subject to the annual maximum benefit limitation set forth in subsection K. If an individual who is being treated for autism spectrum disorder becomes seven years of age or older 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.

"Board-certified behavior analyst" means an individual certified by the Behavior Analyst Certification Board, or other nationally recognized organization with certification requirements that are no less stringent, as a board-certified behavior analyst.

"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 licensed physician or a licensed psychologist who determines the care to be medically necessary: (i) behavioral health treatment, (ii) pharmacy care, (iii) psychiatric care, (iv) psychological care, (v)

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59 therapeutic care, and (vi) applied behavior analysis when provided or supervised by a board -certified  
60 behavior analyst ~~who shall be licensed by the Board of Medicine~~. The prescribing practitioner shall be  
61 independent of the provider of applied behavior analysis.

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

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

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

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

81 F. The provisions of this section shall not apply to (i) short-term travel, accident only, limited, or  
82 specified disease policies; (ii) short-term nonrenewable policies of not more than six months' duration;  
83 (iii) policies, contracts, or plans issued in the individual market or small group markets to employers  
84 with 50 or fewer employees; or (iv) policies or contracts designed for issuance to persons eligible for  
85 coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar  
86 coverage under state or federal governmental plans.

87 G. The requirements of this section shall apply to all insurance policies, subscription contracts, and  
88 health care plans delivered, issued for delivery, reissued, or extended on or after January 1, 2012, and to  
89 all such policies, contracts, or plans to which a term is changed or any premium adjustment is made on  
90 or after such date.

91 H. Any coverage required pursuant to this section shall be in addition to the coverage required by  
92 § 38.2-3418.5 and other provisions of law. This section shall not be construed as diminishing any  
93 coverage required by § 38.2-3412.1:01. This section shall not be construed as affecting any obligation to  
94 provide services to an individual under an individualized family service plan, an individualized education  
95 program, or an individualized service plan.

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

100 J. Notwithstanding any provision of this section to the contrary:

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

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

110 (1) Based on an analysis to be completed no more frequently than one time per year by each insurer,  
111 corporation, or health maintenance organization, or such governmental entity, for the most recent  
112 experience period of at least one year's duration, the costs associated with coverage of behavioral health  
113 treatment required under this section, and not covered as of December 31, 2011, exceeded one percent  
114 of the premiums charged over the experience period by the insurer, corporation, or health maintenance  
115 organization; and

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

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

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

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

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

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

135 L. As of January 1, 2014, to the extent that this section requires benefits that exceed the essential  
136 health benefits specified under § 1302(b) of the federal Patient Protection and Affordable Care Act (H.R.  
137 3590), as amended (the ACA), the specific benefits that exceed the specified essential health benefits  
138 shall not be required of a qualified health plan when the plan is offered in the Commonwealth by a  
139 health carrier through a health benefit exchange established under § 1311 of the ACA. Nothing in this  
140 subsection shall nullify application of this section to plans offered outside such an exchange.