

1 SB406  
2 185759-1  
3 By Senator Whatley  
4 RFD: Finance and Taxation General Fund  
5 First Read: 27-APR-17

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

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

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

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

1  
2 A BILL  
3 TO BE ENTITLED  
4 AN ACT  
5

6 Relating to health benefit plans; to amend Sections  
7 10A-20-6.16, 27-21A-23, and 27-54A-2, Code of Alabama 1975; to  
8 add Section 27-54A-3, Code of Alabama 1975; to require health  
9 benefit plans to cover the treatment of Autism Spectrum  
10 Disorder certain health insurance plans and contracts, subject  
11 to a maximum annual benefit and subject to insurance premiums  
12 not increasing by more than a certain percentage as a result  
13 of covering this treatment; to require the Department of  
14 Insurance to file an annual report with the Legislature on the  
15 costs of providing treatment for Autism Spectrum Disorder; and  
16 to require the Alabama Medicaid program and the Children's  
17 Health Insurance Plan (ALL Kids) to provide coverage for the  
18 treatment of Autism Spectrum Disorder.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

23 "§10A-20-6.16.

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

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

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

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

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

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

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

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

18 "(7) Chapter 54 of Title 27.

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

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

1 detection be offered, together with identification of  
2 associated costs.

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

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

10 "(12) Chapter 12A of Title 27.

11 "(13) Chapter 2B of Title 27.

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

17 "§27-21A-23.

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

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

6           "(c) Any health maintenance organization authorized  
7 under this chapter shall not be deemed to be practicing  
8 medicine and shall be exempt from the provisions of Section  
9 34-24-310, et seq., relating to the practice of medicine.

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

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

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

22           "(1) Section 27-1-17.

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

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

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

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

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

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

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

14 "(8) Chapter 12A.

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

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

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

21 "§27-54A-2.

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

24 "(1) APPLIED BEHAVIOR ANALYSIS. The design,  
25 implementation, and evaluation of environmental modifications,  
26 using behavioral stimuli and consequences, to produce socially  
27 significant improvement in human behavior, including the use

1 of direct observation, measurement, and functional analysis of  
2 the relationship between environment and behavior.

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

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

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

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

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



1                   "(4) DIAGNOSIS OF AUTISM SPECTRUM DISORDER.

2           Medically necessary assessment, evaluations, or tests to  
3           diagnose whether an individual has an autism spectrum  
4           disorder.

5                   "(5) HEALTH BENEFIT PLAN. Any individual or group

6           insurance plan, policy, or contract for health care services  
7           that covers hospital, medical, or surgical expenses, health  
8           maintenance organizations, preferred provider organizations,  
9           medical service organizations, physician-hospital  
10          organizations, or any other person, firm, corporation, joint  
11          venture, or other similar business entity that pays for,  
12          purchases, or furnishes group health care services to  
13          patients, insureds, or beneficiaries in this state. For the  
14          purposes of this section, a health benefit plan located or  
15          domiciled outside of the State of Alabama is deemed to be  
16          subject to this section if the plan, policy, or contract is  
17          issued or delivered in the State of Alabama. The term  
18          includes, but is not limited to, entities created pursuant to  
19          Article 6, Chapter 20, Title 10A and health insurance plans  
20          administered or offered by the State Employees Insurance Board  
21          and the Public Education Employees Health Insurance Plan. The  
22          term does not include the Alabama Health Insurance Plan or the  
23          Alabama Small Employer Allocation Program provided in Chapter  
24          52 of this title. The term also includes the terms health  
25          insurance policy and health insurance plan. The term does not  
26          include non-grandfathered plans in the individual and small  
27          group markets that are required to provide essential health

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

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

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

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

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

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

27 "a. Behavioral health treatment.

1            "b. Pharmacy care.

2            "c. Psychiatric care.

3            "d. Psychological care.

4            "e. Therapeutic care.

5            "(b) (1) A health benefit plan shall ~~offer coverage~~  
6 ~~for~~ cover the screening, diagnosis, and treatment of Autism  
7 Spectrum Disorder ~~for an insured nine years of age or under~~ in  
8 policies and contracts issued or delivered in the State of  
9 Alabama. ~~to employers with at least 51 employees for at least~~  
10 ~~50 percent of its working days during the preceding calendar~~  
11 ~~year.~~ Coverage provided under this section is limited to  
12 treatment that is prescribed by the insured's treating  
13 licensed physician or licensed psychologist in accordance with  
14 a treatment plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4           "(k) (1) A health benefit plan that does not provide  
5           coverage for applied behavior analysis as of September 30,  
6           2017, shall be exempt for a period of one year from the  
7           requirement to provide coverage for applied behavior analysis  
8           if the following criteria are met:

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

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

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

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



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

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

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

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

22           §27-54A-3.

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

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

3 Section 3. This act shall become effective October  
4 1, 2017.