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**Senate Select Committee on Autism & Related Disorders  
Informational Hearing on Health Insurance Coverage for Autism Spectrum  
Disorders (ASD): Current Regulatory Oversight of Behavioral Intervention  
Therapy**

(July 13, 2011; 10:00 AM-12:30 PM)

Department of Insurance responses to Panel Questions

Second Panel: Representatives from the Department of Managed Health Care and the Department of Insurance. This panel will be asked to focus on issues that are related to the determination of “coverage” and “medical necessity” for BIT. The following questions and issues will be discussed:

A. DMHC and DOI will be asked to provide a brief introductory statement as to the current status of providing behavioral health treatment for individuals with ASD and whether Behavioral Intervention Therapy (also frequently called ABA therapy) should be viewed as a component of therapy that is regulated under California’s Mental Health Parity Law.

**Based on the numerous decisions of CDI’s independent medical reviewers concerning the medical necessity of behavioral health treatment, which includes Behavioral Intervention Therapies (BIT), such as Applied Behavioral Analysis therapy (ABA), CDI has concluded that ABA therapy is medically necessary treatment for individuals with autism. Those decisions are summarized in Section F below. The voluminous scientific literature cited and relied on by CDI’s independent medical reviewers demonstrates that this treatment is efficacious, well documented through five decades of research, widely accepted as an effective treatment modality for young autistic patients and consistent with the recommendations from the Office of the Surgeon General, the National Institute of Mental Health, and a number of other national governmental agencies, scientific institutions and professional organizations. A summary describing those entities and their recommendations is attached as Exhibit A.**

**CDI’s clinician reviewers consistently find that ABA therapy is neither experimental nor investigational; and leads to significant improvements in IQ, communication and language skills, and adaptive behaviors; as well as to reduction in self injurious behaviors. The reviewers further note that providing such essential health care treatment to children with autism results**

in enabling them to learn in school, succeed at work, and participate fully and productively in family and community activities, thereby providing a better quality of life for the patient and the family. The reviewers also cite the literature to show that early intervention with behavioral health treatment is of crucial importance and results in the young patient being better able to be mainstreamed into school and society, which lessens the burden on the taxpayer provided healthcare network and other support systems as the child matures.

CDI has further concluded as a matter of law that behavioral intervention therapies such as ABA should be viewed as treatment that is mandated under California's Mental Health Parity Act (MHPA). Specifically, California Insurance Code (CIC) Section 10144.5 (a) requires that "every policy of disability insurance that covers hospital, medical or surgical expenses in this state that is issued, amended or renewed on or after July 1, 2000, shall provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses of a person of any age, and of serious emotional disturbance of a child...under the same terms and conditions applied to other medical conditions...". Pervasive development disorder or autism is included in the list of severe mental illnesses set forth in the Insurance Code for which parity is mandated. Moreover, ABA therapy is an outpatient service, which is listed in CIC Section 10144.5(b) as one of the benefits which is mandated.

A recent California appellate case concludes that the plain and unambiguous statutory language of the MHPA makes clear that parity is a mandate. *Yeager v. Blue Cross of California* (2009) 175 Cal.App.4th 1098. At issue was the interpretation of a provision of the California Health and Safety Code which provides a checklist of benefits that are legally required to be offered by a plan, and includes coverage for fertility treatment. In *Yeager* the plaintiff's insurance carrier offered infertility coverage that plaintiff challenged as inadequate. The plaintiff alleged that the applicable Health and Safety Code was a mandate on insurance carriers to offer full coverage for fertility treatment.

The court, construing the statutory language and reviewing the legislative intent, held that the statute's wording only required insurers to offer fertility coverage for purchase and not to actually provide full coverage for the treatment of infertility. The court reasoned that if the legislature had wanted to create a mandate that required insurers to provide full coverage for fertility treatment, they knew how to do so and would have enacted a statute similar to the MHPA. The court described the MHPA as a mandate which obligates "health plans to provide coverage (not merely offer it) for the diagnosis and treatment of mental illness equal to coverage that the plans applied to other medical conditions". *Id* at 1103. By contrast, the statute governing fertility treatment only requires that coverage be available.

The legislative history strongly supports the conclusion that the MHPA mandates diagnosis and treatment for severe mental illnesses. In enacting the MHPA, the authors specifically described the problem they were addressing and stated that "most private health insurance policies provide coverage for mental illness at levels far below other physical illnesses" and that "limitations in coverage for mental illness in private insurance policies have resulted in inadequate treatment for persons with these illnesses" (Stats. 1999, Ch.534(AB88), § (b)(2)-(3)).

The legislature's purpose was explicit. It recognized that autism is a severe mental illness, and that inadequate coverage for treatment of mental illnesses results in significant social harm. It further acknowledged that insurers' failure to cover and provide adequate treatment shifts the burden to state and local governments, by forcing policyholders to seek treatment from local regional centers and other public agencies. In the historical and statutory notes to the legislation the drafters state that inadequate treatment "causes relapses and untold suffering" as well as homelessness ... and other significant social problems experienced by individuals with mental illness and their families", and concluded that: "The failure to provide adequate coverage for mental illnesses in private health insurance policies has resulted in significant increased expenditures for state and local governments". *Id*

The purpose of the Act was to change insurers' practices and mitigate social harm by providing for the adequate treatment of certain severe mental health conditions and putting the burden on the insurers, who are contractually and statutorily obligated to provide medically necessary treatment. Because autism is one of the specifically listed mental illnesses covered by the MHPA, and because ABA therapy has been recognized in the scientific literature as one of the most appropriate treatments for ameliorating the core deficits of autism, CDI has concluded that the MHPA requires insurers to provide coverage for BIT, including ABA.

**B. How is "coverage" and "medical necessity" for BIT determined by each department? What has been the "process" for these making these determinations?**

The Insurance Code has specific statutorily prescribed procedures which CDI's compliance officers follow when CDI receives a consumer or provider complaint or a request for Independent Medical Review (IMR). Beginning in 2008, CDI considered all denials of requests for ABA therapy to be appropriate for independent medical review even if the insurer asserted coverage grounds for the denial of treatment in addition to claiming lack of medical necessity. This determination was based upon CIC Section 10169(b), which provides that a decision regarding a disputed health care service relates to the practice of medicine and is not a coverage decision. Since then, CDI's IMR decisions almost invariably support the doctor's prescription of ABA therapy for the autistic patient. Those decisions also address and refute the assertions made by insurers to deny ABA therapy, finding that it is neither experimental nor investigational and that it is medically necessary. These findings are not based on any specific facts involving an insured, but upon the scientific literature, so are generally applicable to the requests for ABA therapy by all insureds. Moreover, the finding that ABA therapy is medically necessary inescapably includes the determination that it is medical treatment rather than educational.

In light of this history of independent medical review decisions, and consistent with CDI's duty to implement the MHPA, CDI exercises its authority under CIC Section 10169(d)(2) to determine whether an insured grievance is more properly resolved pursuant to IMR. Subsection (d)(3) makes CDI "the final arbiter when there is a question as to whether an insured grievance is a disputed health care service or a coverage decision." Those matters involving a disputed health care service concerning the medical necessity of treatment or continued treatment to individuals may be referred for independent medical review, and CDI will exercise its discretion to determine whether or not IMR is appropriate based on the facts of the specific

**case and the history of IMR decisions involving this type of therapy. If the Department determines that an insured grievance is not a disputed health care service relating to medical necessity and is solely a coverage dispute, it may treat the insured's grievance as a request for the department to review it pursuant to CIC Section 10169(d)(1).**

C. During the hearing in June, 2010 hearing on this issue, Sen. Steinberg recommended that regulations with regards to BIT therapy should be established by both departments; have these been implemented? (please discuss)

**The statutory authority in the MHPA is clear and unambiguous, and is reinforced by the legislative history. Accordingly, CDI has not found it appropriate or necessary to promulgate regulations. Instead, CDI has applied the statutory mandate for diagnosis and medically necessary treatment to insureds with parity diagnoses codified in CIC Section 10144.5 to pursue enforcement of California's mental health parity law for patients with autism.**

D. Can health plans initially deny BIT based on "medical necessity" and subsequently (after exhausting the internal appeals process) deny the same case on the basis of the "coverage" issue?

**No. Insurers may not subsequently assert two different bases to avoid their obligations to provide coverage for medically necessary BIT. While it is true that an insurer may assert any grounds for denial at any time, CIC 10123.13<sup>1</sup> requires an insurer to state the specific factual and legal reasons for denying any portion of a claim. The Fair Claims Settlement Practices Regulations, CCR Title 10, Section 2695.7(b)(1), provides:**

**"Where an insurer denies or rejects a first party claim, in whole or in part, it shall do so in writing and shall provide to the claimant a statement listing all bases for such rejection or denial and the factual and legal bases for each reason given for such rejection or denial which is then within the insurer's knowledge. Where an insurer's denial of a first party claim, in whole or in part, is based on a specific statute, applicable law or policy provision, condition or exclusion, the written denial shall include reference thereto and provide an explanation of the application of the statute, applicable law or provision, condition or exclusion to the claim...."**

**Absent new or subsequent information coming into possession of the insurer, this regulation makes it a violation to come up with a subsequent basis for denial. Moreover, after an IMR decision, any insurer's contention that it need not comply would be irrelevant. Not only is the**

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<sup>1</sup> CIC 10123.13(a) in part..."The notice that a claim is being contested or denied shall identify the portion of the claim that is contested or denied and the specific reasons including for each reason the factual and legal basis known at that time by the insurer for contesting or denying the claim. If the reason is based solely on facts or solely on law, the insurer is required to provide only the factual or the legal basis for its reason for contesting or denying the claim. The insurer shall provide a copy of the notice to each insured who received services pursuant to the claim that was contested or denied and to the insured's health care provider that provided the services at issue.

Department the final arbiter of whether a grievance is a disputed health care service appropriate for IMR under CIC Section 10169(d)(3), but an IMR determination that the treatment is medically necessary, after it is adopted by the commissioner, is binding on the insurer pursuant to CIC Section 10169.3 (f). Therefore, in CDI's opinion, if a health insurer initially denies BIT based on "medical necessity" and subsequently (after exhausting the internal appeals process) denies the same case or claim on the basis that the services is not covered, the insurer is in violation of these statutes.

E. How can consumers determine whether BIT is a covered benefit and should be provided by their health plan?

The CDI public website currently contains information that will be helpful in this regard. Consumers can review the Notice which CDI issued To All Admitted Health Insurers and Other Interested Persons on May 17, 2011 regarding Enforcement of Independent Medical Review Statutes. That Notice reminded insurers that the CDI is committed to enforcing the provisions of the Insurance Code governing IMR of disputed health care services to ensure the full protection under the law of insureds with policies of health care insurance regulated by the CDI, and that the Insurance Commissioner's written decisions adopting the determinations of the IMR organization are binding on the insurer.

The Notice identified nine separate instances in 2010 in which insurers' denials of ABA were overturned in IMR, and specified that in two of those instances, the insurers' denials – based on a contention that the therapy was experimental or investigational – were overturned because such treatment is now recognized as the standard of care for autism. The Notice further stated that in another seven instances, the IMR reviewers overturned the insurer's denial, finding that the treatment was medically necessary for the insured. That Notice is attached as Exhibit B, and is posted on CDI's public website at

<http://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-opinion/index.cfm>

Additional useful information will be posted on the CDI website in the near future. CDI's Information Technology Executive Council has approved putting up a new application on the website, which will allow consumers to search the data base of IMR decisions by diagnosis and other relevant information. This will help parents of children with autism because they will be able to locate all prior IMR decisions dealing with requests for treatment for autism. CDI also contemplates issuing a web notice of IMR rights and of the future availability of the search function and indicating the history of IMR decisions regarding autism treatment. In that context, CDI intends to specify, since January 1, 2009, the number of IMR decisions on the treatment of autism with BIT which were filed with CDI, and the number of insurer denials of treatment which were overturned by the IMR reviewers.

Additionally, consumers should work with their providers who have experience in filing ABA treatment claims. Consumers may also contact CDI's Consumer Services unit via our toll-free hotline (800-927-HELP) or our public website [www.insurance.ca.gov](http://www.insurance.ca.gov). Those sources point out that if a health insurer denies authorization for or treatment of ABA therapy, the insurer is required to deny the claim in writing, provide all the bases for denial and include a

notice that the insured may contact the CDI for its investigation of the insurer's denial. The notice must include a statement that, if the claimant believes all or part of the claim has been wrongfully denied, delayed or modified, he or she may have the matter reviewed by the California Department of Insurance, and shall include the address and telephone number of the unit of the Department which reviews claims practices. CDI will then investigate whether the claim was properly denied and whether the cases should be decided as coverage matters or placed into the IMR program. Insureds must also be notified of their right to seek an IMR with the Department on any Explanation of Benefits denying, in whole or in part, any claim.

Consumers might also consider contacting consumer groups that specialize in assisting parents to obtain insurance coverage for treatment for their children with autism and can provide additional assistance to them in appealing denials of ABA therapy. CDI is in the process of posting information about some of these autism advocacy groups on its public web site.

To date, CDI has added links on its Health Issues website page to two groups focused on assisting consumers with obtaining insurance coverage for treatment for autism. They are Insurance Help for Autism and Autism Health Insurance Project. Other groups may be added as we locate and screen additional advocacy groups that provide competent services at no or minimal cost. The links may be found at <http://www.insurance.ca.gov/0100-consumers/0070-health-issues/index.cfm>

F. What has been the number of cases related to BIT that have gone to IMR during the past 5 years? (Please review and discuss the implications of these findings).

CDI has tracked BIT (ABA) cases since 2009. Since 2009, CDI has received 32 cases related to BIT or ABA therapy that have gone to IMR. Of those 32 insurer denials, 28 were overturned by the reviewers, finding in favor of the insured receiving treatment. See Table A below.

**Table A: Autism, ABA Therapy IMR Data 2009-2011 (YTD)**

	2009	2010	2011 (thru 5/16/11)	Total
Number of Cases CDI received that involve BIT or ABA Therapy	10	18	4	32
Total sent to IMR Program	10	18	4	32
Total IMR decisions that Overturned the insurer denial.	7	17	4	28
Total IMR decisions that Upheld the insurer denial.	3	1	0	4

**Summary and analysis of these findings:** Since the great majority of these ABA IMR cases have overturned insurer denials of treatment and found in favor of the insured, and the clinical literature has established ABA therapy as the gold standard for young autistic patients, CDI concludes that ABA therapy is not an experimental or investigational treatment and, with few exceptions, is a medically necessary treatment for autism. As such, ABA must be covered under all health insurance policies regulated by CDI. CDI regulated health insurers may not legally continue to deny ABA claims unless there is a clear basis for determining that for that specific patient at that point in time, ABA therapy is not medically necessary.

Currently, despite the virtually unanimous findings in IMR, insurers continue to improperly deny insureds' claims for ABA therapy. Insurers have denied ABA therapy on the grounds that include (1) ABA treatment is not medically necessary, (2) ABA is not a covered benefit, (3) Autism is not a covered diagnosis (violation of parity laws), (4) ABA is experimental, (5) ABA is educational, and (6) the ABA provider is not licensed. Therefore, CDI is taking action to stop these practices, as is more fully described in the answer to question D relating to the third panel.

G. What happens if the health plans fail to implement the IMR findings and recommendations?

Section 10169.3(f) requires the Commissioner to immediately adopt the decision resulting from the independent medical review. This section also makes the written decision binding on the insurer. If insurers fail to immediately implement the IMR findings adopted by the Commissioner, as Blue Shield has done recently, they are subject to an enforcement action under the Unfair Practices Act and the Fair Claims Settlement Regulations. See response to question D relating to the third panel.

H. How are the departments monitoring compliance by the health plans?

CDI is monitoring compliance with the IMR decisions, the mental health parity statutes, and the Fair Claims Settlement Practices regulations, through its consumer complaint investigation functions. When violations of law are identified, the insurer is cited and told to correct its actions to comply with the law. The goal is to get corrective action by the insurers so that all consumers, not only the ones that file complaints with CDI, receive the benefits they deserve and pay for. However, we recognize that several insurers continue to improperly deny ABA therapy, even in light of the law, IMR decisions, and previous cases that find ABA therapy is an appropriate, medical necessary treatment for autism and should be covered.

Accordingly, CDI expects shortly to commence enforcement actions, as described in response to question D relating to the third panel. In addition, CDI is in the process of developing a plan to perform targeted market conduct examinations of the major health insurers, beginning immediately and continuing over the next 12 months, to obtain evidence on the insurers' systems, procedures, practices, and policies related to behavioral intervention therapies and ABA.

CDI has also commenced a thorough analysis of existing health insurance policies to evaluate whether current policy forms are in compliance with the MHPA. If any policies are found out of

compliance, CDI will require reformation of those contracts to meet the requirements of the MHPA.

In addition, CDI recently issued a data call to all insurers to identify all ABA providers in their networks and the location of those providers in relation to policyholders. Insurers are required to maintain this information pursuant to CDI regulation. A fuller explanation of that data call is contained in response to question C to the Third Panel.

I. Other questions?

CDI has reviewed the state of the law regarding autism and ABA across the country, and has identified 26 other states which have recently enacted laws specifically requiring that insurers in those states must provide ABA therapy for patients with autism. In so doing, the states acknowledge that ABA is a recognized medical treatment for this order and is neither experimental nor investigational. These 26 state statutes are similar to, but generally more narrow than, California's Mental Health Parity law, which mandates coverage for the diagnosis and medically necessary treatment of severe mental illnesses, and specifically lists autism or pervasive development disorder as a severe mental illness to which CID 10144.5 applies. Thus, a summary of those 26 state laws is included as Exhibit C.

CDI is also undertaking a review of the practices of the Regional Centers, the MIND Institute, and other providers of BIT for patients with autism to inform its decision making and the inquiry by this Select Committee. We intend at this point to provide the results of that review of policies and practices regarding licensure of personnel and the distinction between health care treatment and educational services to the Senate Select Committee as soon as they are available. At present, we are able to provide a letter from Dr. Daniel Shabani, who has a doctoral degree in Behavior Analysis and is a Board Certified Behavior Analyst, and President-Elect of the California Association for Behavior Analysis (CalABA), which is included as Exhibit D, and a letter and curriculum vitae from Peter Himber, M.D., Chief Medical Officer of the Orange County Regional Center, which are included in Exhibit D. Both describe how ABA treatment is provided in the regional centers, using individuals who do not hold state licenses, under the direction of certified or licensed individuals.

Third Panel will include representative from the Department of Managed Health Care and the Department of Insurance. This panel will be asked to focus on issues that are related to the delivery and implementation of BIT. The following questions and issues will be discussed:

- A. What are the licensing/certification requirements that have been established by each department with regards to BIT?

The Insurance Code does not require state licensure of ABA therapists. It is silent on requirements pertaining to licensing/certification requirements for BIT. A related provision of the Government Code defines ABA therapy in section 95021 (d) and is similarly silent about any licensure requirement. Consequently, there is no legal requirement that insurers can impose to require licensing/certification of providers of BIT. Therefore, it is CDI's position that insurers are prohibited from denying payment for BIT claims for medically necessary services provided to insureds by BIT therapists on the grounds that they can impose a state-licensure requirement



on BIT. Additionally, if an insurer applies a policy provision requiring non-existent state licenses for mental health services and does not apply the same requirements to the myriad of allied health professionals who participate in providing services for medical conditions, that insurer would be in violation of the Mental Health Parity Act. CDI is obtaining corrective actions from insurers who continue to improperly deny claims for services provided by BIT therapists on the grounds that these therapists must be state-licensed.

B. What is the regulatory basis for these requirements and what was the process by which these regulations were established?

CDI does not have regulations governing licensing/certification of BIT therapists. CDI relies on California's Insurance Code, and in particular, the Mental Health Parity statute which does not require state-licensure of BIT therapists but which does require coverage for diagnosis and medically necessary services for autistic patients. Because the statutory mandate for diagnosis and medically necessary treatment for autism is clear and unambiguous, regulations to interpret it are neither necessary nor appropriate.

C. How are health plans monitored to determine that they are providing an adequate network of providers?

CDI has regulations at Title 10, Chapter 5, Sections 2240-2240.5 which establish provider network access requirements for mental health care services required by Section 10144.5 in the definition of basic health services. Section 2240.1 (c)(4) requires insurers, in arranging for provider network services to ensure that "there are mental health professionals with skills appropriate to care for the mental health needs of covered persons and with sufficient capacity to accept covered persons within 30 minutes or 15 miles of a covered person's residence or workplace."

CDI has issued a Request for Geographical Access Report and Provider Network Listing of Behavioral Intervention Therapists to all 106 health insurers with covered lives in California. That data call was issued under the Provider Network Access Standards for Health Insurance Policies and Agreements, and is intended to evaluate adequacy and accessibility of behavioral intervention therapy, also referred to as ABA therapy, for the autistic insured population covered by each health issuer. It requires reports showing the geographic distribution of Behavioral Intervention Therapists in each insurer's network in relation to its members, listing all in-network providers, both individuals and organizations, by names, addresses including zip code, telephone numbers, and the number of individuals within an organizational provider who are available under the provider network contract. CDI is requiring insurers to submit separate reports for Individual, Small Group and Large Group policies, organized by county or geographic service areas. Network providers to be included in the reports are limited to network Behavioral Intervention Therapists, who may be mental health professionals who are trained to provide, directly or indirectly, behavioral intervention therapy, for whom the insurer documents that they are capable of providing medically necessary behavioral intervention therapy and have sufficient practice capacity to do so.

D. Please provide an overview and update with regards to any litigation that involve each department and involve ASD issues.

**The Department is aware of private California litigation where access to BIT services is in dispute but we are not currently a party to any litigation involving BIT services. The Department anticipates filing shortly one or more enforcement actions against insurance companies that illegally denied coverage for BIT.**

**CDI is, however, aware of decisions from five federal and state courts in California and elsewhere in the country involving coverage for treatment for autism and related mental disorders. The most informative decision is McHenry, a 2009 federal district court case from Oregon. It contains a thorough discussion of the nature of autism and its behavioral manifestations. The decision also includes a description of ABA therapy, which is based on behavioral conditioning techniques and reinforcement of positive behaviors, to shape behaviors and teach new skills in an individual; and a review of the multiple studies over the past two decades which have confirmed Dr. Lovaas' findings that ABA is generally beneficial to children diagnosed with autism. The decision also analyzed two issues that are now being asserted by insurers and HMOs in California, and made two well researched and persuasive findings. First, the court found that the weight of the evidence demonstrates that ABA therapy is firmly supported by decades of research and application and is a well-established treatment modality of autism which is not an experimental or investigational procedure. Second, the court held that the insurer's contractual exclusions were inapplicable, concluding that ABA therapy is not primarily educational, academic or social skills training, but is behavioral training. Accordingly, ABA is not subject to the exclusions from coverage under the Plan for academic or social skills training.**

**Another matter, Tappert, a Colorado case decided by arbitration, involved other issues currently being raised by insurers and plans in California: whether ABA therapy is medically necessary or excluded as experimental or investigational and whether it is a covered benefit. On the first question, the arbitrator reviewed and rejected Anthem's claim that ABA is experimental and investigational. Instead, he concluded that ABA therapy is the standard of care in treating autism, relying on expert testimony by Dr. Philip Strain that it is the standard of care when dealing with autistic children, reduces problem behaviors 80-90%, as found by many studies; and is endorsed by the National Academy of Sciences, the recognized authority in the United States for resolving scientific disputes, and by the National Institute of Mental Health. As to coverage, the arbitrator rejected Anthem's contention that covered services must be provided in a doctor's office, finding the exclusionary language conflicting and ambiguous and therefore construing the policy in favor of coverage. Finally, the arbitrator concluded that Anthem is required to cover the costs of ABA therapy for the four year old insured under the Other Outpatient Therapy Provisions of the contract, which covers treatment for congenital defects and/or birth abnormalities.**

**The most recent decision, on June 7, 2011 by a Superior Court Judge in Seattle, Washington, involves another issue that is similar to those now prevalent in California: whether refusal to provide treatment comports with state mental health parity law. In that matter, autistic children, identified as D.F. and S.F., among others, sought payment for treatment for autism**

under an insurance contract with the Washington State Health Care Authority. The Court concluded, as a matter of law, that plaintiffs were entitled to a declaration that specific exclusions in the health benefit plans for Applied Behavior Analysis therapy, even when medically necessary and performed by licensed health providers, do not comply with Washington's Mental Health Parity Act, RCW 41.05.600.

Two New Jersey cases, both decided in 2007, are also of interest because they construe the provisions of a New Jersey mental health parity statute which is closely analogous to California mental health parity law as codified in California Insurance Code section 10144.5. In Markowitz, the Superior Court, Appellate Division, characterized the issue to be decided as whether the Legislature intended, when it passed relevant parity statutes recognizing pervasive developmental disorder (PDD) as a "biologically-based mental illness," that the only effective treatments for PDD be barred from coverage by the State Health Benefits Commission under its NJ Plus plan as the result of a contractual exclusion contained in the Member Handbook provided to its subscribers. The Court found the Legislature's intent to have been otherwise, overturning the ruling of the administrative law judge, and holding that the parity statute applicable to health insurance benefits offered by the State Health Benefits Commission required coverage of medically-necessary occupational, speech, and physical therapy for children with biologically-based mental illness.

The governing statute, N.J.S.A. 52:14-17.29e, applicable to health insurance coverage offered by the State Health Benefits Commission, requires parity in coverage for treatments for biologically-based mental illness and for other sickness and provides in relevant part:

The State Health Benefits Commission shall ensure that every contract purchased by the commission on or after the effective date of this act that provides hospital or medical expense benefits shall provide coverage for biologically-based mental illness under the same terms and conditions as provided for any other sickness under the contract.

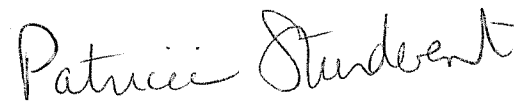
A related statute, N.J.S.A. 52:14-17.29d defines "biologically-based mental illness" to be a "mental or nervous condition that is caused by a biological disorder of the brain and results in a clinically significant or [sic] psychological syndrome or pattern that substantially limits the functioning of the person with the illness, including, but not limited to ... pervasive developmental disorder or autism."

Similarly, in Micheletti, the Superior Court Appellate Division evaluated the propriety of a different argument by the State Health Benefits Commission for denying medically necessary treatment for a child with autism, relying on a purported contractual exclusion for speech and other therapy treatments for development of skills and functions not yet realized. In eloquent language, the Court found the decision of the Commission antithetical to the purpose and spirit of the State Health Benefits Program, the reasonable expectation of its participants, the legislative intention of equal treatment for biologically-based mental illnesses, and the public policy of the State for the nurturing of children. The court held the exclusions relied upon by the Commission to deny coverage for the treatment sought for autism are void because they would render the mental health parity statute a nullity by excluding medically necessary treatment for a parity diagnosis.

Finally in Arce, the only California case involving children with autism, the Court of Appeal concluded that there is a reasonable possibility that plaintiff can demonstrate a predominance of common issues to support a class action claim for violation of the Unfair Competition Law based on allegations that Kaiser has a uniform policy of categorically denying coverage for health care services to treat autism spectrum disorders based on arguments that such treatment is educational and not covered, without determining whether the services are medically necessary for the individual plan members.

CDI appreciates the opportunity to appear before the Committee, present information, and respond to questions.

Dated: July 1, 2011



Patricia Sturdevant  
Deputy Insurance Commissioner

**List of Exhibits:**

**Exhibit A: “ABA Therapy for Autism is Nationally Accepted and Approved”  
List of Agencies**

**Exhibit B: “Notice to All Admitted Health Insurers and Other Interested Persons” Enforcement  
of Independent Medical Review Statues**

**Exhibit C: Summary of Insurance Reform Laws Regarding Autism (Treatment) by State**

**Exhibit D: Letters from the California Association of Behavior Analysis and Peter Himber,  
M.D., Chief Medical Officer at the Regional Center of Orange County**

**Exhibit E: Table of Cases**

**Exhibit A**  
**“ABA Therapy for Autism is Nationally Accepted and Approved”**  
**List of Agencies**

## **ABA Therapy for Autism is Nationally Accepted and Approved**

Many governmental agencies, scientific institutions and professional organizations have concluded, based on the empirical evidence, that behavioral intervention therapies, and specifically ABA-based procedures, are efficacious and represent best clinical practices for individuals with autism.

### **The Surgeon General of the United States**

The Surgeon General serves as America's Doctor by providing Americans the best scientific information available on how to improve their health and reduce the risk of illness and injury. The Surgeon General has issued a Report on Mental Health, which is the product of collaboration between the Substance Abuse and Mental Health Services Administration (SAMHSA) and The National Institutes of Health (NIH), which supports and conducts research on mental illness and mental health through the National Institute of Mental Health (NIMH).

The Surgeon General Report recognizes autism as a severe, chronic developmental disorder, which results in significant lifelong disability. The goal of treatment is to promote the child's social and language development and minimize behaviors that are maladaptive and interfere with the child's functioning at home and at school. The Surgeon General's position on behavior therapy, based on thirty years of research is that sustained behavioral therapy and applied behavior analysis (ABA), early in life is effective in reducing inappropriate behavior and in acquiring language skills, increasing communication, ability to learn, and appropriate social behavior. See <http://www.surgeongeneral.gov/library/mentalhealth/chapter3/sec6.html#autism>

### **National Institute of Mental Health**

The mission of the National Institute of Mental Health (NIMH) is to further the understanding and treatment of mental illness through clinical and basic research. Utilizing the evidence and results from their research, their goal is to create a path toward prevention, recovery, and cure for mental illness.

NIMH recognizes that applied behavior analysis (ABA) has become widely accepted as an effective treatment for individuals with autism. The goal of behavioral management is to reinforce desirable behaviors and reduce undesirable ones. Effective programs will teach early communication and social interaction skills. In children younger than 3 years, appropriate interventions usually take place in the home or a child care center. These interventions target specific deficits in learning, language, imitation, attention, motivation, compliance, and initiative of interaction. Included are behavioral methods, communication, occupational and physical therapy along with social play interventions. Often the day will begin with a physical activity to help develop coordination and body awareness; children string beads, piece puzzles together, paint, and participate in other motor skills activities. At snack time the teacher encourages social interaction and models how to use language to ask for more juice. The children learn by doing. Working with the children are students, behavioral therapists, and parents who have received extensive training. Positive reinforcement is used in teaching the children. See <http://www.nimh.nih.gov/health/publications/autism/treatment-options.shtml>

### **American Psychological Association**

Based in Washington, D.C., the American Psychological Association (APA) is a scientific and professional organization that represents psychology in the United States. APA's mission APA is to advance the creation, communication and application of psychological knowledge to benefit society

and improve people's lives. With more than 54,000 members, it is the largest association of psychologists worldwide.

The APA believes that medications on their own rarely improve behavior, so behavioral interventions are crucial. Many treatment programs emphasize "operant conditioning," which uses rewards to encourage good behavior and punishments to discourage bad behavior. APA's position is consistent with the Surgeon General's report on autism treatment. The APA also concurs with the findings of psychologist Ivar Lovaas, Ph.D. First developed in the 1960s by Dr. Lovaas, at the University of California, Los Angeles (UCLA), ABA therapy for autism makes use of the idea that when people--autistic or otherwise--are rewarded for a behavior, they are likely to repeat that behavior. In ABA treatment, the therapist gives the child a stimulus--like a question or a request to sit down--along with the correct response. The therapist uses attention, praise or a tangible incentive like toys or food to reward the child for repeating the right answer or completing the task; any other response is ignored. In a landmark 1987 study, Lovaas found that nearly half the children who received 40 hours per week of ABA therapy were eventually able to complete normal first-grade classes, while none of children who received the therapy only 10 hours per week were able to do the same. See <http://www.apa.org/monitor/dec04/autism.aspx>

### **American Speech-Language-Hearing Association**

The American Speech-Language-Hearing Association (ASHA) is the nation's leading professional, credentialing, and scientific organization for speech-language pathologists, audiologists, and speech/language/hearing scientists. ASHA has been initiating the development of national standards for audiologists and for speech-language pathologists and certifying professionals for 55 years.

The American Speech-Language-Hearing Association's Speech-language pathologists prioritize assessment and intervention. They draw on empirically supported approaches to meet specific needs of children with autism. Speech-language pathologists assist communication partners in recognizing the potential communicative functions of challenging behavior and designing environments to support positive behavior. This treatment option comes from their article from the *American Speech-Language-Hearing Association*. (2004). Preferred practice patterns for the profession of speech-language pathology <http://www.asha.org/policy>.

### **Autism Society of America**

The Autism Society, the nation's leading grassroots autism organization, exists to improve the lives of all affected by autism. They focus on increasing public awareness about the day-to-day issues faced by people on the autism spectrum, advocating for appropriate services for individuals across the lifespan, and providing the latest information regarding treatment, education, research and advocacy. The Autism Society is the leading source of trusted and reliable information about autism. Through its strong chapter network, the Autism Society has spearheaded numerous pieces of state and local legislation, including the 2006 Combating Autism Act, the first federal autism-specific law. The Autism Society's website is one of the most visited websites on autism in the world and its quarterly journal has a broad national readership.

The Autism Society of America believes that Applied Behavior Therapy (ABA) now is the most recognized and scientifically supported treatment for autism. By changing the antecedents and consequences of behaviors symptomatic of autism, ABA specialists teach children the skills in which



they are delayed, thereby replacing challenging and aberrant behaviors with functional and adaptive skills. Research has shown that with early intensive ABA therapy, a large percent of children with autism fully recover and lead healthy lives. See <http://support.autism-society.org/site/Search?query=ABA+therapy&inc=10>

### **National Institute of Neurological Disorders and Stroke Center**

The National Institute of Neurological Disorders and Stroke (NINDS) conducts and supports research on brain and nervous system disorders. Created by the United States Congress in 1950, NINDS is one of the more than two dozen research institutes and centers that comprise the National Institutes of Health (NIH). The NIH, located in Bethesda, Maryland, is an agency of the Public Health Service within the United States Department of Health and Human Services. NINDS has occupied a central position in the world of neuroscience for more than 50 years. NINDS also works with the National Institute of Mental Health to collaborate and share research findings and methods of treatment for serious mental illnesses.

NINDS' stance on the treatment of autism is one that is supportive of the findings of the Lovaas Institute. This stance is also consistent with the National Institute Mental Health. These findings include viewing applied behavior analysis (ABA) as widely accepted as an effective treatment for autism. See <http://www.ninds.nih.gov/disorders/autism/autism.htm>

### **National Institute of Child Health and Human Development**

The NICHD was initially established to investigate the broad aspects of human development as a means of understanding developmental disabilities, including intellectual and developmental disabilities, and the events that occur during pregnancy. Today, the Institute conducts and supports research on all stages of human development, from preconception to adulthood, to better understand the health of children, adults, families, and communities. The NICHD has achieved an impressive array of scientific advances in its pursuit to enhance lives throughout all stages of human development, improving the health of children, adults, families, communities, and populations. Research supported and conducted by the NICHD has helped to explain the unique health needs of many, and has brought about novel and effective ways to fulfill them.

In general the National Institute of Child Health and Human Development concludes that behavior management therapy works to reinforce wanted behaviors and reduce unwanted behaviors. At the same time, these methods also suggest what caregivers should do before or between episodes of problem behaviors, and what to do during or after these episodes. Behavioral therapy is often based on Applied Behavior Analysis (ABA). NICHD believes that ABA therapy is a way to help minimize the symptoms of autism and to maximize learning. See [http://www.nichd.nih.gov/search.cfm?search\\_string=ABA+therapy](http://www.nichd.nih.gov/search.cfm?search_string=ABA+therapy)

### **Lovaas Institute**

The Lovaas Institute has performed rigorous research at the University of California at Los Angeles (UCLA) under the direction of Dr. Ivar Lovaas, for decades, proving its effectiveness in treating children with autism. Treatment follows the procedures described by Dr. Lovaas, published along with

long-term outcome data in peer-reviewed journals, and supported by additional long-term outcome research as recently as 2006. Dr. Lovaas and his staff have conducted countless studies and published more than 500 articles in the field of Applied Behavioral Analysis (ABA). The Lovaas Model of ABA is based on 40 years of research and is backed by published studies showing that half of children with autism who receive this intensive treatment become indistinguishable from other children on tests of cognitive and social skills by the time they complete first grade.

The Lovaas Institute is a proponent of ABA because they have demonstrated that a sizable group of children diagnosed with autism, pervasive developmental disorders and related developmental disorders have been able to achieve normal educational and intellectual functioning by 7 years of age because of ABA therapy. The Lovaas Institute personnel help develop a child's language and social interactions with parents and peers while reducing interfering behaviors such as tantrums. Their research shows these children have been mainstreamed into regular classrooms and have advanced successfully through the school system without additional assistance. After ABA treatment, children show significant increases in intellectual functioning and perform within normal ranges on standardized tests of intelligence. They also appear indistinguishable from their peers in measures of social and emotional functioning. Even for children who do not reach the level of typically-developing peers, their quality of life is greatly improved from what they learn through ABA; sizable decreases in inappropriate behaviors and acquisition of basic language skills are most often achieved. These children become more active members of their family and are usually able to learn in less restrictive special education classrooms or supervised regular education classrooms. See <http://www.lovaas.com/approach-detailed.php>

### **The Kennedy Krieger Institute**

The Kennedy Krieger Institute is an internationally recognized hospital, research, and teaching institution located in Baltimore, Maryland with outpatient clinics specializing in neurobehavioral health services. A renowned authority in research on behalf of children with brain, spinal cord and musculoskeletal related disorders, Kennedy Krieger also provides professional training by eminent experts. Faculty at Kennedy Krieger are among some of the world's leading experts in this field having made crucial medical discoveries leading to innovative treatments involving individuals with disabilities.

The treatment of autistic patients at Kennedy Krieger Institute emphasizes applied behavior analysis (ABA). The institute's official position is that ABA is a form of therapy that has been shown to reduce problem behavior and increase appropriate skills for individuals with intellectual disabilities. Their research, along with the large body of studies into ABA treatment, provides empirical evidence indicating that procedures developed using ABA-based principles are effective at assessing and treating a variety of maladaptive behaviors engaged in by individuals with a variety of diagnoses, including autism, and intellectual and developmental disabilities. See <http://www.kennedykrieger.org>

### **Center for Autism and Related Disorders**

The Center's CARD I and CARD II programs include comprehensive and cutting-edge curricula that can be tailored to the specific needs of individuals from birth to 21 years of age. These programs help children learn to communicate, develop friendships, and lead happy, healthy lives. CARD Specialized Outpatient Services (SOS) provides assistance with specific areas of concern for a family and develops and implements strategies to diminish problem behaviors and teach necessary skills. Its Director, Dr. Doreen, studied autism treatment for 12 years under the direction of renowned autism treatment

scientist Dr. Ivar Lovaas at the University of California, Los Angeles. Dr. Lovaas discovered that intensive early intervention using applied behavior analysis treatment yielded a 47 percent recovery rate among children with autism who participated in his study. Building off these findings, Dr. Doreen and her associates developed the CARD treatment curriculum for children diagnosed with autism. Their methodology and treatment forms are based on the Lovaas model of applied behavior analysis (ABA).

CARD is committed to remaining at the forefront of research on ABA-based methods of autism assessment and treatment. In August 2009, CARD researchers published a study documenting recovery in a large group of children with autism. The primary focus of their research is ABA-based methods of assessment and treatment. They believe treatment approaches grounded in ABA are now considered to be at the forefront of therapeutic and educational interventions for children with autism. In general, this behavioral framework utilizes manipulation of antecedents and consequences of behavior to teach new skills and eliminate maladaptive and excessive behaviors. The Discrete Trial is a particular ABA teaching strategy which enables the learner to acquire complex skills and behaviors by first mastering the subcomponents of the targeted skill. See <http://www.centerforautism.com/card-approach.php>

### **Association for Science in Autism Treatment**

ASAT is a not-for-profit organization of parents and professionals committed to improving the education, treatment, and care of people with autism. Its mission is to educate parents, professionals, and consumers by disseminating accurate, scientifically-sound information about autism and its treatment and by combating inaccurate or unsubstantiated information. In doing so, ASAT promotes the use of effective, science-based treatments for all people with autism, regardless of age, severity of condition, income or place of residence.

ASAT agrees with studies that show ABA is effective in increasing adaptive behaviors and teaching new skills. In addition, many studies demonstrate that ABA is effective in reducing problem behavior. A number of studies also indicate that, when implemented early in life, ABA may produce large gains in development and reductions in the need for special services. ASAT maintains ABA is an effective intervention for many individuals with autism spectrum disorders. ABA interventions should be supervised by behavior analysts. See <http://www.asatonline.org/intervention/treatments/applied.htm>

### **National Alliance of Autism Research**

Autism Speaks was founded in February 2005 by Bob and Suzanne Wright, grandparents of a child with autism. Since then, Autism Speaks has grown into the nation's largest autism science and advocacy organization, dedicated to funding research into the causes, prevention, treatments and cure for autism; increasing awareness of autism spectrum disorders; and advocating for the needs of individuals with autism and their families.

Autism Speaks uses a network of treatment called the Interactive Autism Network (IAN) a project collecting information online from families of children with autism spectrum disorders (ASDs) from throughout the United States, containing reports on the use of speech and language therapy. Autism Speaks has ranked ABA therapy in the top three most used methods for effective

treatment of autism. Moreover, their verbal behavior therapy is based on the applied behavior analysis (ABA), method of treatment. They therefore acknowledge the efficacy of ABA therapy and have adapted and modified its use to gain the desired results in improving verbal skills by intensive behavior treatment. See [http://www.autismspeaks.org/search/apachesolr\\_search/what%20is%20ABA](http://www.autismspeaks.org/search/apachesolr_search/what%20is%20ABA)

**Exhibit B**  
**“Notice to All Admitted Health Insurers and Other Interested Persons”**  
**Enforcement of Independent Medical Review Statutes**

STATE OF CALIFORNIA  
**DEPARTMENT OF INSURANCE**

Dave Jones, *Insurance Commissioner*

Executive Office 45 Fremont Street, Suite 2300 San Francisco, CA 94105  
Consumer Hotline (800) 927-HELP ☐ Producer Licensing (800) 967-9331

**NOTICE**

**TO: All Admitted Health Insurers and Other Interested Persons**

**DATE: May 17, 2011**

**SUBJECT: Enforcement of Independent Medical Review Statutes**

This Notice reminds insurers that the California Department of Insurance (CDI) is committed to enforcing the provisions of the Insurance Code governing Independent Medical Review (IMR) of disputed health care services to ensure the full protection under the law of insureds with policies of health care insurance regulated by the CDI. The CDI requires that insurers fully comply with Insurance Code Section 10169 governing IMR as well as with Insurance Code Section 10169.3(f), which specifies that the Insurance Commissioner's written decisions adopting the determination of the independent medical review organization shall be binding on the insurer.

Please also take notice that CDI evaluates insurers' communications with insureds regarding coverage of health care services, and payment of claims for those services, for compliance with Insurance Code Section 790.03. This statute defines, and prohibits as unfair methods of competition and unfair and deceptive acts or practices, the following conduct, among other acts:

(a)

Making...or causing to be made...any...statement misrepresenting the terms of any policy issued, or the benefits or advantages promised thereby....

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(h)

Knowingly committing or performing with such frequency as to indicate a general business practice any of the following unfair claims settlement practices:

(l)

Misrepresenting to claimants pertinent facts or insurance policy provisions relating to any coverages at issue;

\*\*\*

(5)

Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.

Additionally, please note that the CDI website at <http://www.insurance.ca.gov/0100-consumers/0020-health-related/imr2010stats.cfm>, identifies nine separate instances in 2010 in which insurers' denials of behavioral therapy such as Applied Behavioral Analysis have been overturned in IMR. In two of those instances, the insurers' denials - based on a contention that the therapy was experimental or investigational - were overturned because such treatment is now recognized as the standard of care for autism. In another seven instances, the IMR reviewers overturned the insurer's denial, finding that the treatment was medically necessary for the insured.

All health insurers should take steps to evaluate how they are processing, paying for, and denying health insurance claims to ensure that they are complying with the above statutes.

If you have any questions, please contact Patricia Sturdevant, Deputy Insurance Commissioner, at 916-492-3578 or via email at [patricia.sturdevant@insurance.ca.gov](mailto:patricia.sturdevant@insurance.ca.gov).

**Exhibit C**  
**Summary of Insurance Reform Laws Regarding Autism (Treatment)**  
**By State**

States	Summary of Insurance Reform Laws Regarding Autism (Treatment)	Date Enacted	Citation
Arizona	<p>This law requires many private insurers to begin covering the costs of diagnostic assessments for autism and services for individuals with autism who are under the age of 16. Insurance providers can limit the coverage for behavioral therapy in the following manner: Benefits up to \$50,000 per year for a child under 9; Benefits up to \$25,000 per year for a child ages 9-15. Purchased individual health insurance plans are not subject to the requirements of this act. <b>the law's definition of "behavioral therapy" specifically includes ABA.</b></p>	March 21, 2008	HB 2847 (2008)
Arkansas	<p>Requires health insurance companies to provide coverage of : Diagnosis of an autism spectrum disorder - meaning medically necessary assessments, evaluations, or tests to diagnose whether an individual has an autism spectrum disorders; <b>Applied behavior analysis (ABA)</b>; Pharmacy care; Psychiatric care; Psychological care; Therapeutic care - meaning services provided by licensed speech therapists, occupational therapists, or physical therapists; Any care for individuals with autism spectrum disorders that is</p>	March 4, 2011	House Bill 1315 (2011)



States	Summary of Insurance Reform Laws Regarding Autism (Treatment)	Date Enacted	Citation
	determined by a licensed physician to be medically necessary and evidence-based treatment for autism spectrum disorder.		
Colorado	The law defines “treatment for autism spectrum disorders” as including: evaluation and assessment services; behavior training and behavior management, and <b>applied behavior analysis</b> , including consultations, direct care, supervision, or treatment; habilitative or rehabilitative care, including occupational therapy, physical therapy, or speech therapy; pharmacy care and medication (if covered by the insurance plan for other illness); psychiatric care; psychological care, including family counseling; and therapeutic care.	June 2, 2009	SENATE BILL 244 (2009)
Connecticut	The act requires coverage for the following types of services: <b>Behavioral therapy, including ABA</b> ; Pharmacy care; Direct psychiatric or consultative services; Direct psychological or consultative services; Physical therapy; Speech and language pathology; Occupational therapy Under this law, a policy must cover these services if they are (1) medically necessary, (2) identified and ordered by a licensed physician, psychologist, or clinical social worker for an insured person who has been diagnosed with autism, and (3) based on a treatment plan. The act also requires coverage for evaluations and tests needed to diagnose your child’s autism disorder.	June 9, 2009	SB 301 (2009)
Florida	The autism insurance reform law specifically covers treatment of autism through speech therapy, occupational therapy, physical therapy, and <b>applied behavior analysis</b> . Furthermore, coverage	May 2, 2008	SB 2654 (2008)  <a href="http://www.myfloridaho.gov/Sections/Documents/loadoc.aspx?FileN">http://www.myfloridaho.gov/Sections/Documents/loadoc.aspx?FileN</a>

States	Summary of Insurance Reform Laws Regarding Autism (Treatment)	Date Enacted	Citation
	may not be denied on the basis that the services are habilitative in nature.		<a href="#">ame= s2654er.DOC&amp;DocumentType=Bill&amp;BillNumber=2654&amp;Session=2008</a>
Iowa	The law includes coverage of the following treatments: Diagnosis, Habilitative or rehabilitative care, Pharmacy care, Psychiatric care, Psychological care, Therapeutic care, <b>Applied Behavior Analysis (ABA)</b>	April 29, 2010	House File 2531 (2010) <a href="http://coolice.legis.state.ia.us/linc/HF2531_Enrolled.pdf">http://coolice.legis.state.ia.us/linc/HF2531_Enrolled.pdf</a> (page 59)
Illinois	The law requires coverage for diagnostic assessments, pharmacy care, psychiatric care, psychological care, and therapeutic care. These categories of mandated services are defined in the law. More specifically, the new act will cover evaluations and tests needed to diagnose your child's autism disorder, as well as the development of a plan to provide health care services for your child. This plan may include medically necessary prescribed treatments such as <b>behavioral analysis</b> and rehabilitative care, prescription drugs, psychiatric and psychological services, speech/language therapy, occupational therapy and physical therapy. <b>The law's definition of rehabilitative care specifically includes ABA.</b>		SB 934 (2008) <a href="http://www.autismvotes.org/atf/cf/%7B2A179B73-96E2-44C3-8816-1B1C0BE5334B%7D/IL%20PL%20095-1005.pdf">http://www.autismvotes.org/atf/cf/%7B2A179B73-96E2-44C3-8816-1B1C0BE5334B%7D/IL%20PL%20095-1005.pdf</a>
Indiana	Broadly speaking, coverage is restricted to services prescribed by the individual's treating physician as laid out in a treatment plan. Generally, this coverage is limited to therapies that are commonly accepted by the medical community. These include types of behavior training, speech therapy, occupational therapy, physical therapy, and medications to address symptoms of ASD. <b>ABA coverage is provided and cannot be limited to a certain number of calendar days per year and must be provided year-round.</b>		Indiana Public Law 148 (2001) sec. 2, as amended by Indiana Public Law 173 (2007) sec. 32 <a href="http://www.autismvotes.org/atf/cf/%7B2A179B73-96E2-44C3-8816-1B1C0BE5334B%7D/Bulletin136~1.pdf">http://www.autismvotes.org/atf/cf/%7B2A179B73-96E2-44C3-8816-1B1C0BE5334B%7D/Bulletin136~1.pdf</a>
Kansas	The bill includes coverage of the following		Senate Substitute House Bill 2160 (2010)

States	Summary of Insurance Reform Laws Regarding Autism (Treatment)	Date Enacted	Citation
	treatments: Diagnosis, Habilitative or rehabilitative care, Pharmacy care, Psychiatric care, Psychological care, Therapeutic care, <b>Applied Behavior Analysis (ABA)</b>		
Kentucky	Under this law, health insurance companies would be required to provide coverage of the following: Diagnosis of an autism spectrum disorder - meaning medically necessary assessments, evaluations, including neuropsychological evaluations, genetic testing, or other testing to determine whether an individual has one or more autism spectrum disorders; Habilitative or rehabilitative care - meaning professional counseling, guidance, services, and treatment programs, including <b>applied behavior analysis (ABA)</b> and other behavioral health treatments, that are necessary to develop, maintain, and restore to the maximum possible extent an individuals functioning; Pharmacy care; Psychiatric care; Psychological care; Therapeutic care - meaning services provided by licensed or certified speech language pathologists, occupational therapists, physical therapists, or social workers.	April 14, 2010	HB 159 (2010) <a href="http://www.lrc.ky.gov/record/10RS/HB159/bill.doc">http://www.lrc.ky.gov/record/10RS/HB159/bill.doc</a>
Louisiana	The law requires that affected insurance companies cover treatment for autism spectrum disorders. It defines treatment for autism spectrum disorders as (1) habilitative or rehabilitative care, such as professional, counseling, and guidance services and treatment, including <b>applied behavior analysis (“ABA”)</b> ; (2) pharmacy care, defined as medications prescribed by a licensed physician; (3) psychiatric care, defined as direct or consultative services provided by a state-licensed psychiatrist; (4) psychological care, defined as direct or consultative services provided by a state-licensed psychologist; and (5) therapeutic	July 2, 2008	HB 958 (2008) <a href="http://www.autismvotes.org/atf/cf/%7B2A179B73-96E2-44C3-8816-1B1C0BE5334B%7D/LA%20Act%20648.pdf">http://www.autismvotes.org/atf/cf/%7B2A179B73-96E2-44C3-8816-1B1C0BE5334B%7D/LA%20Act%20648.pdf</a>

States	Summary of Insurance Reform Laws Regarding Autism (Treatment)	Date Enacted	Citation
	care, defined as services provided by licensed or certified speech therapists, occupational therapists, or physical therapists.		
Maine	<p>§ 2766. Coverage for the diagnosis and treatment of autism spectrum disorders</p> <p>1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.</p> <p><b>A. "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 relations between environment and behavior.</b></p> <p>B. "Autism spectrum disorders" means any of the pervasive developmental disorders as defined by the Diagnostic and Statistical Manual of Mental Disorders, 4th edition, published by the American Psychiatric Association, including autistic disorder, Asperger's disorder and pervasive developmental disorder not otherwise specified.</p> <p>C. "Treatment of autism spectrum disorders" includes the following types of care prescribed, provided or ordered for an individual diagnosed with an autism spectrum disorder:</p> <p><b>(1) Habilitative or rehabilitative services, including applied behavior analysis or other professional or counseling services necessary to develop, maintain and restore the functioning of an individual to the extent possible. To be eligible for coverage, applied behavior analysis must be provided by a person professionally certified by a national board of behavior analysts or performed under the</b></p>	April 12, 2010	Chapter 635 S.P. 446 - L.D. 1198 <a href="http://www.mainelegislature.org/ros/LOM/LOM124th/124R2/PUBLIC635.asp">http://www.mainelegislature.org/ros/LOM/LOM124th/124R2/PUBLIC635.asp</a>

States	Summary of Insurance Reform Laws Regarding Autism (Treatment)	Date Enacted	Citation
	<p><b>supervision of a person professionally certified by a national board of behavior analysts;</b></p> <p>(2) Counseling services provided by a licensed psychiatrist, psychologist, clinical professional counselor or clinical social worker; and</p> <p>(3) Therapy services provided by a licensed or certified speech therapist, occupational therapist or physical therapist.</p> <p><b>2. Required coverage. All individual health insurance policies and contracts must provide coverage for autism spectrum disorders</b> for an individual covered under a policy or contract who is 5 years of age or under in accordance with the following.</p>		
Massachusetts	<p>Provides coverage for the diagnosis and treatment of Autism Spectrum Disorder, effective the first policy renewal after 01/01/2011.</p> <p>Private insurers, employees and retirees under the state plan, hospital service plans and HMOs would all be required to comply with law.</p> <p>Self-funded plans are regulated by ERISA – which is federal law - not subject to State laws and not required to provide coverage.</p> <p>No annual or lifetime limit which is less than coverage for physical conditions.</p> <p><b>The law covers the following care prescribed, provided, or ordered for an individual diagnosed with one of the Autism Spectrum Disorders by a licensed physician or a licensed psychologist who determines the care to be medically necessary:</b></p> <p><b>Habilitative or Rehabilitative Care – this includes professional, counseling and guidance services and treatment programs, including but not limited to, applied behavior analysis supervised by a board certified behavior analyst, that</b></p>	August 3, 2010	<p>House 4935 (2010, Chapter 207),</p> <p><a href="http://www.malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter207">http://www.malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter207</a></p>

States	Summary of Insurance Reform Laws Regarding Autism (Treatment)	Date Enacted	Citation
	<p><b>are necessary to develop, maintain and restore, to the maximum extent practicable, the functioning of an individual.</b></p> <p>Pharmacy care -medications prescribed by a licensed physician and health-related services deemed medically necessary to determine the need or effectiveness of the medications, to the same extent that pharmacy care is provided by the insurance policy for other medical conditions.</p> <p>Psychiatric care - direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices.</p> <p>Psychological care -direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices.</p> <p>Therapeutic care - services provided by licensed or certified speech therapists, occupational therapists, physical therapists or social workers.</p>		
Missouri	<p>This bill establishes provisions regarding health insurance coverage for individuals diagnosed with autism spectrum disorders (ASD).</p> <p><b>MANDATED INSURANCE COVERAGE</b> Beginning January 1, 2011, <b>all group health benefit plans delivered, issued, continued, or renewed that are written inside the state or written outside the state but insuring a Missouri resident must provide coverage for the diagnosis and treatment of ASD.</b> A health carrier cannot deny or refuse to issue coverage on, refuse to contract with, refuse to renew or reissue, or otherwise terminate or restrict coverage on an individual or his or her dependent because the individual is diagnosed with ASD.</p> <p>LIMITS ON COVERAGE</p>	June 10, 2010	<p>HB 1311 (2010) <a href="http://www.house.mo.gov/content.aspx?info=/bills101/bills/hb1311.htm">http://www.house.mo.gov/content.aspx?info=/bills101/bills/hb1311.htm</a></p>

States	Summary of Insurance Reform Laws Regarding Autism (Treatment)	Date Enacted	Citation
	<p>A health carrier can limit coverage for ASD services to the medically necessary treatment ordered by the insured individual's licensed treating physician or psychologist in accordance with a treatment plan. An ASD treatment plan must include all elements necessary for a health benefit plan or carrier to pay the claim. Except for inpatient services, the carrier must have the right to review, at its expense, the treatment plan not more than once every six months unless the individual's treating physician or psychologist agrees that a more frequent review is necessary.</p> <p>BEHAVIOR ANALYST ADVISORY BOARD AND APPLIED BEHAVIOR ANALYSIS SERVICES</p> <p><b>The Behavior Analyst Advisory Board is established under the State Committee of Psychologists within the Department of Insurance, Financial Institutions and Professional Registration to establish licensure requirements for behavior analysts and assistant behavior analysts who provide applied behavior analysis (ABA) therapies to children with ASD.</b></p> <p>ABA services must be included in the coverage for ASD up to a maximum benefit of \$40,000 per year for an individual younger than 19 years of age. However, the maximum limit may be exceeded upon prior approval by the health benefit plan if additional services are medically necessary.</p>		
Montana	<p>(3) (a) Coverage under this section must include:</p> <p>(i) habilitative or rehabilitative care that is prescribed, provided, or ordered by a licensed physician or licensed psychologist, including but not limited to professional, counseling, and guidance</p>	May 5, 2009	<p>SENATE BILL NO. 234 (2009)</p> <p><a href="http://data.opi.mt.gov/bills/2009/billhtml/SB0234.htm">http://data.opi.mt.gov/bills/2009/billhtml/SB0234.htm</a></p>

States	Summary of Insurance Reform Laws Regarding Autism (Treatment)	Date Enacted	Citation
	<p>services and treatment programs that are medically necessary to develop and restore, to the maximum extent practicable, the functioning of the covered child;</p> <p>(ii) medications prescribed by a physician licensed under Title 37, chapter 3;</p> <p>(iii) psychiatric or psychological care; and</p> <p>(iv) therapeutic care that is provided by a speech-language pathologist, audiologist, occupational therapist, or physical therapist licensed in this state.</p> <p><b>(b) (i) Habilitative and rehabilitative care includes medically necessary interactive therapies derived from evidence-based research, including applied behavior analysis, which is also known as Lovaas therapy, discrete trial training, pivotal response training, intensive intervention programs, and early intensive behavioral intervention.</b></p> <p><b>(ii) Applied behavior analysis covered under this section must be provided by an individual who is licensed by the behavior analyst certification board or is certified by the department of public health and human services as a family support specialist with an autism endorsement.</b></p>		
Nevada	<p>AN ACT relating to insurance; requiring certain policies of health insurance and health care plans to provide an option of coverage for screening for and treatment of autism; authorizing the <b>Board of Psychological Examiners to license behavior analysts and assistant behavior analysts and to certify autism behavior interventionists</b>; increasing the size of the Board of psychological Examiners from five members to seven members; and providing other matters properly relating thereto.</p>	May 29, 2009	<p>AB 169 (2009)</p> <p><a href="http://www.leg.state.nv.us/Session/75th2009/Bills/AB/AB162_EN.pdf">http://www.leg.state.nv.us/Session/75th2009/Bills/AB/AB162_EN.pdf</a></p>
New Hampshire	<p><b>(a) Professional services and treatment programs, including applied behavioral</b></p>	July 23, 2010	House Bill 569 (2010)



States	Summary of Insurance Reform Laws Regarding Autism (Treatment)	Date Enacted	Citation
	<p><b>analysis</b>, necessary to produce socially significant improvements in human behavior or to prevent loss of attained skill or function. <b>To be eligible for coverage, applied behavior analysis must be provided by a person professionally certified by the national Behavior Analyst Certification Board</b> or performed under the supervision of a person professionally certified by the national Behavior Analyst Certification Board.</p>		<p><a href="http://www.nhliberty.org/bills/view/2011/HB569">http://www.nhliberty.org/bills/view/2011/HB569</a></p>
New Jersey	<p>The New Jersey Autism Coverage Act requires coverage for screening and diagnosing autism or another developmental disability, effective the first policy renewal after 02/09/2010. When the insured's primary diagnosis is autism or another developmental disability, the Act requires coverage for expenses incurred for medically necessary occupational therapy, physical therapy, and speech therapy, as prescribed through a treatment plan. When the insured is under 21 years of age and the insured's primary diagnosis is autism, the insurer shall provide coverage for expenses incurred for medically necessary behavioral programs, as prescribed through a treatment plan, subject to provisions of this subsection.</p> <p><b>ABA therapy is covered if the insured is under 21 years of age. In addition, according to Bulletin No: 10-02 provided by the New Jersey Department of Banking and Insurance, ABA must be administered directly by or under the direct supervision of an individual who is credentialed by the national Behavior Analyst Certification Board as either a Board Certified Behavior Analyst – Doctoral (BCBA-D) or a Board Certified Behavior Analyst (BCBA).</b></p>	August 13, 2009	<p>New Jersey Public Law 2009, Chapter 115,</p> <p><a href="http://www.njleg.state.nj.us/2008/Bills/PL09/115.PDF">http://www.njleg.state.nj.us/2008/Bills/PL09/115.PDF</a>; Implementation Letter - Bulletin 10-02, <a href="http://www.state.nj.us/dobi/bulletins/blt10_02.pdf">http://www.state.nj.us/dobi/bulletins/blt10_02.pdf</a></p>

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	<p>The patient's physician determines whether treatment is medically necessary and prescribes the treatment plan. A treatment plan includes a diagnosis, treatment type, frequency and duration and the anticipated goals and outcomes. From the treatment plan, the health plan makes the determination of what services are medically necessary. Additionally, there is a utilization review process once every six months within the insurance company that may review the services ordered on the treatment plan.</p> <p>The law specifically requires that benefits will not be denied on the basis that the treatment is not restorative.</p> <p>Private insurers will use their own medical necessity criteria. The patient's physician or psychologist indicates on the treatment plan what services are medically necessary, however there is a utilization review process within the insurance company that may review the services ordered on the treatment plan.</p> <p>Families can appeal any denial or partial denial of an autism diagnostic or treatment service to your insurance company and obtain a decision on an expedited basis. If your appeal is denied by the insurance company, your family can appeal for an independent, external review. If the independent external review denies your appeal, you can further appeal to a court of competent jurisdiction.</p>		
New Mexico	A. An individual or group health insurance policy, health care plan or certificate of health insurance that is delivered, issued for delivery or renewed in this state shall provide coverage to an eligible individual who is nineteen years of age or younger, or an eligible individual who is twenty-two years of age or younger and is enrolled in high school, for:	April 2, 3009	SB 39 (2009) <a href="http://www.nmlegis.gov/lcs/session.aspx?chamber=S&amp;legtype=B&amp;legno=%20%2039&amp;year=09">http://www.nmlegis.gov/lcs/session.aspx?chamber=S&amp;legtype=B&amp;legno=%20%2039&amp;year=09</a>

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	<p>(1) well-baby and well-child screening for diagnosing the presence of autism spectrum disorder; and</p> <p>(2) <b>treatment of autism spectrum disorder through speech therapy, occupational therapy, physical therapy and applied behavioral analysis.</b></p>		
Pennsylvania	<p>Coverage provided for: Children or young adults under age 21 with a diagnosis of an autism spectrum disorder who:</p> <ul style="list-style-type: none"> <li>- Are covered under an employer group health insurance policy (including HMOs and PPOs) that has more than 50 employees and the policy is not a "self-insured" or "ERISA" policy;</li> <li>- Are on Medical Assistance; or</li> <li>- Are covered by Pennsylvania's Children's Health Insurance Program, CHIP, or adultBasic.</li> </ul> <p>Coverage:</p> <ul style="list-style-type: none"> <li>- Diagnostic assessment and treatment of autism spectrum disorders, which include:</li> <li>- Prescription drugs and blood level tests;</li> <li>- Services of a psychiatrist and/or psychologist (direct or consultation);</li> <li>- <b>Applied behavioral analysis;</b> and</li> <li>- Other rehabilitative care and therapies, such as speech and language pathologists, occupational and physical therapists.</li> </ul>	July 9, 2008	<p>House Bill 1150 (2007)</p> <p><a href="http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=HTM&amp;sessYr=2007&amp;sessInd=0&amp;billBody=H&amp;billType=B&amp;billNumber=1150&amp;pn=4133">http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=HTM&amp;sessYr=2007&amp;sessInd=0&amp;billBody=H&amp;billType=B&amp;billNumber=1150&amp;pn=4133</a></p>
South Carolina	<p>"Section 38-71-280. (A) As used in this section:</p> <p>(1) 'Autism spectrum disorder' means one of the three following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association:</p> <p>(a) Autistic Disorder; (b) Asperger's Syndrome; (c) Pervasive Developmental Disorder - Not Otherwise Specified.</p> <p>(B) <b>A health insurance plan as defined in this section must provide coverage for</b></p>	June 7, 2007	<p>South Carolina Code of Laws: Title 38, Chapter 71, Section 280</p> <p><a href="http://www.scstatehouse.gov/sess117_2007-2008/prever/20_20070523.htm">http://www.scstatehouse.gov/sess117_2007-2008/prever/20_20070523.htm</a></p>

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	<p><b>the treatment of autism spectrum disorder. Coverage provided under this section is limited to treatment that is prescribed by the insured's treating medical doctor in accordance with a treatment plan.</b> With regards to a health insurance plan as defined in this section an insurer 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.</p> <p><b>(D) The treatment plan required pursuant to subsection (B) must 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 medical doctor's signature.</b> The health insurance plan may only request an updated treatment plan once every six months from the treating medical doctor to review medical necessity, unless the health insurance plan and the treating medical doctor agree that a more frequent review is necessary due to emerging clinical circumstances.</p> <p><b>(E) To be eligible for benefits and coverage under this section, an individual must be diagnosed with autistic spectrum disorder at age eight or younger. The benefits and coverage provided pursuant to this section must be provided to any eligible person under sixteen years of age. Coverage for behavioral therapy is</b></p>		

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	<p><b>subject to a fifty thousand dollar maximum benefit per year.</b> Beginning one year after the effective date of this act, 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."</p>		
Texas	<p>HB 1919 adds new Insurance Code §1355.015, which requires in subsection (a) <b>that group health benefit plans that provide benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness provide, at a minimum, coverage to enrollees older than two years of age and younger than six years of age who are diagnosed with autism spectrum disorder.</b> Section 1355.015(b) requires the health benefit plan to provide coverage for all generally recognized services prescribed in relation to autism spectrum disorder by the enrollee's primary care physician in the treatment plan recommended by that physician. Under §1355.015(b), the prescribed treatment must be provided by an appropriately licensed, certified, or registered health care practitioner. <b>Section 1355.015(c) states that generally recognized services may include: (1) evaluation and assessment services; (2) applied behavior analysis; (3) behavior training and behavior management; (4) speech therapy; (5) occupational therapy; (6) physical therapy; or (7) medications or nutritional supplements used to address symptoms of autism spectrum disorder.</b> Under §1355.015(d), the mandated coverage may be subject to annual deductibles, copayments, and coinsurance that are consistent with annual</p>	June 15, 2007	<p>HB 1919  <a href="http://www.tdi.state.tx.us/bulletins/2007/cc51.html">http://www.tdi.state.tx.us/bulletins/2007/cc51.html</a></p>

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	deductibles, copayments, and coinsurance required for other coverage under the health benefit plan.		
Vermont	<p>§ 4088i. COVERAGE FOR DIAGNOSIS AND TREATMENT OF AUTISM SPECTRUM DISORDERS</p> <p>(a) <b>A health insurance plan shall provide coverage for the diagnosis and treatment of autism spectrum disorders, including applied behavior analysis supervised by a nationally board-certified behavior analyst, for children, beginning at 18 months of age and continuing until the child reaches age six or enters the first grade, whichever occurs first.</b></p> <p>(d) As used in this section:</p> <p>(1) <b>“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. The term includes the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.</b></p> <p>(2) <b>“Autism services provider” means any licensed or certified person providing treatment of autism spectrum disorders.</b></p> <p>(3) <b>“Autism spectrum disorders” means one or more pervasive developmental disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including autistic disorder and Asperger’s disorder.</b></p> <p>(4) <b>“Diagnosis of autism spectrum disorder” means medically necessary assessments; evaluations, including neuropsychological evaluations; genetic testing; or other testing to determine whether an individual has one or more autism spectrum disorders.</b></p> <p>(5) <b>“Habilitative care” or “rehabilitative care” means professional counseling,</b></p>	May 27, 2010	S. 262 (2009-2010) <a href="http://www.leg.state.vt.us/docs/2010/Acts/ACT127.PDF">http://www.leg.state.vt.us/docs/2010/Acts/ACT127.PDF</a>

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	<p><b>guidance, services, and treatment programs, including applied behavior analysis and other behavioral health treatments, in which the covered individual makes clear, measurable progress, as determined by an autism services provider, toward attaining goals the provider has identified.</b></p> <p>(6) "Health insurance plan" means Medicaid, the Vermont health access plan, and any other public health care assistance program, any individual or group health insurance policy, any hospital or medical service corporation or health maintenance organization subscriber contract, or any other health benefit plan offered, issued, or renewed for any person in this state by a health insurer, as defined in 18 V.S.A. § 9402. The term does not include benefit plans providing coverage for specific diseases or other limited benefit coverage.</p> <p>(7) "Medically necessary" means any care, treatment, intervention, service, or item that is prescribed, provided, or ordered by a physician licensed pursuant to chapter 23 of Title 26 or by a psychologist licensed pursuant to chapter 55 of Title 26 if such treatment is consistent with the most recent relevant report or recommendations of the American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatry, or another professional group of similar standing.</p> <p>(8) "Therapeutic care" means services provided by licensed or certified speech language pathologists, occupational therapists, physical therapists, or social workers.</p> <p>(9) <b>"Treatment of autism spectrum disorders" means the following care prescribed, provided, or ordered for an individual diagnosed with one or more autism spectrum disorders by a</b></p>		

States	Summary of Insurance Reform Laws Regarding Autism (Treatment)	Date Enacted	Citation
	<p>physician licensed pursuant to chapter 23 of Title 26 or a psychologist licensed pursuant to chapter 55 of Title 26 if such physician or psychologist determines the care to be medically necessary:</p> <ul style="list-style-type: none"> <li>(A) habilitative or rehabilitative care;</li> <li>(B) pharmacy care;</li> <li>(C) psychiatric care;</li> <li>(D) psychological care; and</li> <li>(E) therapeutic care.</li> </ul> <p>(e) Nothing in this section shall be construed to affect any obligation to provide services to an individual under an individualized family service plan, individualized education program, or individualized service plan.</p>		
Virginia	<p>Health insurance; mandated coverage for autism spectrum disorder. <b>Requires health insurers, health care subscription plans, and health maintenance organizations to provide coverage for the diagnosis of autism spectrum disorder (ASD) and treatment for ASD in individuals from age two to six, subject to an annual maximum benefit of \$35,000 of coverage for applied behavior analysis. Treatment for ASD includes applied behavior analysis when provided or supervised by a board certified behavior analyst, who shall be licensed by the Board of Medicine, and the prescribing practitioner is independent of the provider of the applied behavior analysis.</b> The mandate to provide coverage will not apply to individual or small group policies, contracts, or plans. The mandate will apply to the state employees' health insurance plan and to the local choice health program. This measure will not apply to an insurer, corporation, or health maintenance organization, or to government employee programs, if the costs associated with coverage exceed one percent of premiums charged over the</p>	May 6, 2011	<p>SB 1062 (2011)  <a href="http://leg1.state.va.us/cgi-bin/legp504.exe?111+sum+SB1062">http://leg1.state.va.us/cgi-bin/legp504.exe?111+sum+SB1062</a></p>



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	experience period.		
West Virginia	<p>(8)(A) Any plan issued or renewed after January 1, 2012, shall include coverage for diagnosis and treatment of autism spectrum disorder in individuals ages eighteen months through eighteen years. To be eligible for coverage and benefits under this subdivision, the individual must be diagnosed with autism spectrum disorder at age 8 or younger. <b>Such policy shall provide coverage for treatments that are medically necessary and ordered or prescribed by a licensed physician or licensed psychologist for an individual diagnosed with autism spectrum disorder, in accordance with a treatment plan developed by a certified behavior analyst pursuant to a comprehensive evaluation or reevaluation of the individual, subject to review by the agency every six months.</b> Progress reports are required to be filed with the agency semi-annually. In order for treatment to continue, the agency must receive objective evidence or a clinically supportable statement of expectation that:</p> <ul style="list-style-type: none"> <li>(1) The individual's condition is improving in response to treatment, and</li> <li>(2) A maximum improvement is yet to be attained, and</li> <li>(3) There is an expectation that the anticipated improvement is attainable in a reasonable and generally predictable period of time.</li> </ul> <p>(B) <b>Such coverage shall include, but not be limited to, applied behavioral analysis provided or supervised by a certified behavior analyst:</b></p> <p>(D) For purposes of this subdivision, the term:</p> <ul style="list-style-type: none"> <li>(i) <b>"Applied Behavior Analysis" means the design, implementation, and evaluation of environmental</b></li> </ul>	April 1, 2011	House Bill 2693 (2011) <a href="http://www.legis.state.wv.us/bill_status/bills_history.cfm?year=2011&amp;sessiontype=RS&amp;i=2693">http://www.legis.state.wv.us/bill_status/bills_history.cfm?year=2011&amp;sessiontype=RS&amp;i=2693</a>

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	<p><b>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.</b></p> <p>(ii) "Autism spectrum disorder" means any pervasive developmental disorder, including autistic disorder, Asperger's Syndrome, Rett syndrome, childhood disintegrative disorder, or Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.</p> <p>(iii) "Certified behavior analyst" means an individual who is certified by the Behavior Analyst Certification Board or certified by a similar nationally recognized organization.</p> <p>(iv) "Objective evidence" means standardized patient assessment instruments, outcome measurements tools or measurable assessments of functional outcome. Use of objective measures at the beginning of treatment, during and/or after treatment is recommended to quantify progress and support justifications for continued treatment. Such tools are not required, but their use will enhance the justification for continued treatment.</p>		
Wisconsin	<p>632.895 (12m) TREATMENT FOR AUTISM SPECTRUM DISORDERS. (a) In this subsection:</p> <ol style="list-style-type: none"> <li>1. "Autism spectrum disorder" means any of the following: <ol style="list-style-type: none"> <li>a. Autism disorder.</li> <li>b. Asperger's syndrome.</li> <li>c. Pervasive developmental disorder not otherwise specified.</li> </ol> </li> <li>2. "Insured" includes an enrollee and a dependent with coverage under the disability insurance policy or self-insured</li> </ol>	October 19, 2009	2009 Wisconsin Act 28 Assembly Bill 75 <a href="http://legis.wisconsin.gov/2009/data/acts/09Act28.pdf">http://legis.wisconsin.gov/2009/data/acts/09Act28.pdf</a>

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	<p>health plan.</p> <p><b>3. “Intensive–level services” means evidence–based behavioral therapy that is designed to help an individual with autism spectrum disorder overcome the cognitive, social, and behavioral deficits associated with that disorder.</b></p> <p>4. “Nonintensive–level services” means evidence–based therapy that occurs after the completion of treatment with intensive–level services and that is designed to sustain and maximize gains made during treatment with intensive–level services or, for an individual who has not and will not receive intensive–level services, evidence–based therapy that will improve the individual’s condition.</p> <p>5. “Physician” has the meaning given in s. 146.34 (1)(g).</p> <p>(b) Subject to pars. (c) and (d), and except as provided in par. (e), <b>every disability insurance policy, and every self–insured health plan of the state or a county, city, town, village, or school district, shall provide coverage for an insured of treatment for the mental health condition of autism spectrum disorder if the treatment is prescribed by a physician and provided by any of the following who are qualified to provide intensive–level services or nonintensive–level services:</b></p> <ol style="list-style-type: none"> <li>1. A psychiatrist, as defined in s. 146.34 (1) (h).</li> <li>2. A person who practices psychology, as described in s. 455.01 (5).</li> <li>3. A social worker, as defined in s. 252.15 (1) (er), who is certified or licensed to practice psychotherapy, as defined in s. 457.01 (8m).</li> <li>4. A paraprofessional working under the supervision of a provider listed under subds. 1. to 3.</li> <li>5. A professional working under the</li> </ol>		

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	supervision of an outpatient mental health clinic certified under s.51.038. 6. A speech–language pathologist, as defined in s.459.20 (4). 7. An occupational therapist, as defined in s. 448.96 (4).		

Exhibit C

**Exhibit D: Letters from the California Association of Behavior Analysis and Peter Himber,  
M.D., Chief Medical Officer at the Regional Center of Orange County**



forces have focused specifically on ABA's effectiveness as a treatment for autism. Their findings reflect the peer-reviewed literature: *Intervention and treatments based on ABA have the strongest evidence of effectiveness and ability to consistently produce meaningful benefits to children diagnosed with autism spectrum disorders.*

Several studies have also demonstrated the cost saving<sup>3</sup> effects of ABA. In a 2007 study by Chasson, Harris, and Neely, costs associated with intensive ABA were compared with special education costs in the state of Texas. Results indicated that Texas would save \$208,500 per child across eighteen years of intensive ABA. Based on approximately 10,000 children with autism in Texas, a total savings of \$2.09 billion was estimated.

In 1998, Jacobson, Mulick, and Green estimated that individuals diagnosed with autism or other pervasive developmental disorders require specialized services costing approximately \$4 million per person. With the implementation of intensive ABA, savings of between \$1 million to over \$2 million per individual were estimated across their life span.

In 2006, researchers in Ontario, Canada completed a study to determine the cost-effectiveness of expanding intensive ABA treatment to all children diagnosed with autism (Motiwala, Gupta, Lilly, Ungar, and Coyte, 2006). Results indicated "total savings from expansion of the current program were \$45,133,011 in 2003 Canadian dollars" (p. 136). In addition, the authors stated that "expansion of IBI (intensive behavioral intervention) to all eligible children represents a cost-savings policy whereby total costs for care of autistic individuals are lower and gains in dependency-free life years are higher" (p. 136).

The implementation of ABA therapy includes some general practices that are important to review.

First, ABA therapy is supervised by certified providers in addition to by licensed medical professionals who are board certified. Although some licensed medical professionals may have ABA in their scope of practice, this is not the focus of their training in medical school. To illustrate, most people *without* any medical training know how to treat common colds or headaches. This knowledge, however, does *not* make them a medical doctor. Similarly, some individuals understand and may have taken a course or two in Behavior Analysis or the principles of reinforcement. However, this does *not* give them the ability to develop and implement an ABA treatment plan for individuals with autism.

The qualifications of those designing the ABA therapy plan (e.g., conducting behavioral assessments, developing treatment plans, providing consultation, parent education/training, and/or ongoing monitoring and supervision) should be, [Preferred] Board Certified Behavior Analysts (BCBA) or be enrolled in formal academic and supervision program leading to BCBA. If not a BCBA, then 1) Master's degree in a related field, 15 units of graduate level coursework in behavior analysis or 2) licensed or certified in related field with behavior analysis in its scope of practice. In addition, the individual should have 3–5 years of experience delivering and supervising treatment programs for children with autism.

The qualifications of those providing the direct services should include, [Preferred] Bachelor's degree in psychology, Board Certified Assistant Behavior Analyst (BCaBA), or a related field with relevant

<sup>3</sup> Chasson, G. S., Harris, G. E., & Neely, W. J. (2007); Jacobson J. W., Mulick J. A., Green G. (1998); Motiwala, S. S., Gupta, S., Lilly, M. B., Ungar, W. J., & Coyte, P. C. (2006).



experience. If no Bachelor's degree, then the individual should have a high school diploma with competency-based training, and in all cases, regular on-site supervision and a background check. Second, the implementation of treatment by unlicensed professionals in the field of ABA is similar in practice to other fields. In the fields of occupational and physical therapy, certified paraprofessionals are often the ones responsible for implementing treatment. In the field of ABA, effective implementation of ABA therapy by paraprofessionals<sup>4</sup> has been demonstrated to be an effective model of intervention.

**Therefore, in the area of ABA therapy for autism, appropriately certified or qualified professionals (as described above) oversee therapy provided by an unlicensed person (as described above). This is the model that ABA therapy for autism has been operating under for many years and has proven to be effective for improving the lives of individual's diagnosed with autism and their families.**

One argument that has been made against the use of ABA therapy is that it is experimental or investigational. A common criticism has been that ABA has not been evaluated using between group designs. Given that between group designs are the "gold-standard" in the area of psychology, this criticism is not surprising. However, it is misleading.

First, as mentioned above, ABA therapy has been shown to be effective for individuals with autism in over 500 studies and has been documented as the treatment of choice for autism spectrum disorders by the U. S. Department of Health and Human Services (1999) and the American Academy of Pediatrics (2007).

Second, there are currently seven controlled between group studies of the Lovaas/UCLA model of ABA therapy for autism and four controlled between-group studies of ABA therapy. In most of these studies, treatment groups received ABA therapy under the supervision of qualified behavior analysts and the comparison groups received "eclectic" treatment. Results of these studies indicated that treatment models based on ABA therapy resulted in larger gains relative to the gains made by individuals receiving other treatments. In addition, a recent meta-analysis<sup>5</sup> reviewed 34 studies, 9 of which were controlled designs that had either a comparison or control group, evaluating the effectiveness of early intensive behavioral intervention. Results indicated that, "at present, and in the absence of other interventions with established efficacy, Early Intensive Behavioral Intervention should be an intervention of choice for children with autism" (p. 439).

Third, although group designs are the "gold-standard" in terms of treatment evaluation, there is more than one way to determine the effectiveness of a therapy. Group designs have their own limitations and single-case designs (the methodology most commonly used in Behavior Analysis) offer a valuable alternative. Single-case designs are well suited to study treatment effectiveness and behavior change. In addition, single-case research designs have been identified to be an acceptable vehicle for identifying evidence based practice guidelines.

A second argument that has been made against the use of ABA therapy is that it is educational and not a medically necessary intervention. In the sense that ABA is used in schools, it is educational. In other words, many teachers commonly use reward systems to promote positive behaviors in the classroom. However, simply because ABA is used in schools does not make it educational. Other interventions

<sup>4</sup> Sheinkopf & Siegel, 1998.

<sup>5</sup> Eldevik, S., Hastings, R. P., Hughes, J. C., Jahr, E., Eikeseth, S. & Cross, S. (2009). Meta-Analysis of Early Intensive Behavioral Intervention for Children With Autism.





## California Association for Behavior Analysis

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commonly done in schools, such as speech, occupational, and physical therapy, are deemed medically necessary. Just because something is done in schools, does *not* mean it is *not* medically necessary. **ABA therapy has been proven effective for reducing the core symptoms of autism and reducing problems that directly jeopardize health and safety. This goes well beyond educational interventions. ABA therapy is medically necessary because it builds skills, improves overall health and safety, and prevents deterioration.** The educational system is not required by law to remediate the core symptoms of any condition. Their job is to address education and what is written in a student's individual education plan. The educational system does not have to address all the areas of functioning that are affected by autism. Schools do not provide the type of comprehensive, evidence-based treatment that is meaningful for individuals with autism and special education teachers often times do not have the specialized training to implement ABA therapy. Finally, schools are responsible for their students Monday to Friday from about 8am to 3pm. Autism does not end on Fridays, nor does it cease to exist after 3pm.

In conclusion, Autism is a pervasive developmental disorder that affects a variety of areas, including the development of language and communication, self-help, and social interaction skills. Therefore, **individuals diagnosed with autism have greater health care needs than people without autism.** However treatments are difficult to access, inadequate, or delayed. In some cases, parents have to pay out of pocket. Mandated insurance coverage will make treatment available to those who need it. In addition, as mentioned previously, the cost of covering ABA treatment is small and will result in greater savings over the long haul.

In addition, it is important to emphasize that **ABA is *not* long-term caretaking; it is, however, an effective approach to treatment that has been demonstrated to remediate the core symptoms of autism and related developmental disabilities to a greater extent than any other intervention.** Therefore, ABA therapy is a medically necessary treatment for autism and should be covered by health plans in the same way that other mental disorders are (mental health parity). Health plans should pay for evidence-based treatment and ABA therapy is clearly the treatment that has been shown to be effective in ameliorating the symptoms of autism.

Thank You,

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310-467-8077

July 1, 2011

Senator Darrell Steinberg  
President Pro Tempore  
Senate Select Committee on Autism  
State Capitol, room 205  
Sacramento, CA 95814

Dear Senator Steinberg:

I am a Board Certified Adult and Child Neurologist and the Chief Medical Officer at the Regional Center of Orange County (RCOC). Much of my professional career has focused on the evaluation and treatment of individuals with developmental disabilities including autism. Applied Behavioral Analysis (ABA) is considered the standard of care for treatment of children with autism and its use is well supported by the peer reviewed medical literature. Below I will detail my professional training and credentials, and the role of ABA in the treatment of autism.

I completed my medical training in pediatrics, neurology and pediatric neurology at the University of California, Irvine (UCI). Please see my attached curriculum vitae for additional details on my background and training. I went on to join the clinical faculty at UCI, then later the faculty of Penn State Hershey, Medical Center. Since 2000 I have worked at the Regional Center of Orange County first as a staff physician, then later as the Medical Director and most recently as the Chief Medical Officer. I am an assistant clinical professor at UCI. I have personally evaluated well over 1000 children with autism and reviewed the records of thousands more in my role at the Regional Center. I am an expert consultant for health plans, families and government agencies and serve as an independent reviewer for insurance plan denials, frequently for issues surrounding the treatment of autism.

To put my opinions into context, I will provide the following background information on autism and its effective treatment.

### **Understanding Autism Spectrum Disorder**

Autism Spectrum Disorders (ASDs) are brain based, neurologic disorders which have a wide spectrum of symptoms and behaviors. There are three core deficits:

- Qualitative impairment in social interactions
- Qualitative impairment in verbal and nonverbal communication skills
- Restrictive, repetitive and stereotypic patterns of behavior, interests or activities
  - Abnormal response to sensations such as sound, smell, etc.
  - Difficulty processing sensation
  - Need for sameness

When I explain autism to parents of a child with newly diagnosed autism that are unfamiliar with the disorder, the best way I can summarize the child's challenges is that, "Your son doesn't understand the

rules of life.” I go on to share that, “Its not that your son is ignoring the rules and intentionally being disobedient, but rather he doesn’t understand the rules.” Parent’s can appreciate this and are relieved that their child is not being “bad.” Many, if not the large majority of parents I meet who have a child just diagnosed with autism believe that their child’s autism is somehow their fault. They are relieved to learn this is not the case and that parenting a child with autism is not something they should automatically know how to do. All parents need guidance to help their child with autism. Often at the top of their list of concerns are behavioral issues.

The severity of ASDs vary along a continuum, with some individuals having more profound problems in one key diagnostic area than others, and is associated with the full range of cognitive abilities. There are children with autism who are intellectually disabled while others have IQs in the genius range. As is true of many other biomedical disorders, there is currently no cure for autism. Rather, autism care is focused on addressing the symptoms and associated impairments. In this way it does not differ from numerous other chronic medical disorders whose treatment is covered routinely by health insurance, including hypertension, diabetes, renal failure, and asthma. The appropriate interventions by qualified personnel can result in a dramatic improvement and sometimes resolution of the atypical behaviors.

There is evidence in the medical literature that a number of diverse treatments can lead to improved functioning in autism even though they do not lead to a “cure” per se. As is true of many other medical conditions, these treatments include non-pharmacologic approaches. For instance, exercise, general diet and avoidance of environmental factors such as salt and concentrated sugars are considered to be key elements of the management of hypertension and diabetes. Very often these treatments lead to markedly improved function, even though the core disorder remains.

Because ASDs are chronic, disabling disorders, by definition *all* children who meet the diagnostic criteria for ASDs have important health and related needs. Recent evidence from multiple epidemiologic studies points to a population prevalence of ASDs of about 1 per 150 children. In addition, some evidence suggests that the population prevalence has been rising in recent decades, but differences in study methods, diagnostic criteria for ASD, and increased attention to ASDs cannot be ruled out as accounting for some, if not most of the apparent increase.

### **Description of ABA therapy**

Applied behavior analysis (ABA) is a discipline concerned with the application of behavioral science in real-world settings such as clinics or schools with the aim of addressing socially important issues such as behavior problems and learning. Procedures derived from the discipline of ABA have been implemented to assess and treat a broad range of behaviors with individuals diagnosed with intellectual and developmental disabilities. The field of ABA is extremely broad and includes a range of techniques, methods, and procedures that have been shown to be effective for many different types of problems. Features common to all ABA-based approaches are the objective measurement of behavior, precise control of the environment, and use of procedures based on scientifically established principles of behavior. Any clinical procedure or research investigation adhering to these basic criteria can be considered to be an ABA-based procedure. This includes “functional behavioral assessment,” and approaches such as “Positive Behavioral Support,” and forms of “Behavior Therapy” that rely on direct observation of behavior and analysis of behavior-environment relations.

Programs using operant conditioning techniques to help autistic individuals develop skills with social value are referred to as ABA (Applied Behavior Analysis). Behavior analysis is a scientific approach to understanding behavior and how the environment affects it. The science of behavior analysis focuses on general principles (such as positive reinforcement) regarding the way that behavior works or learning takes place. ABA is the use of those techniques and principles intended to address socially important problems and bring about clinically significant behavior change.

### **Scientific evidence that ABA therapy is an effective treatment for autism**

Over the past 40 years a large body of literature has shown the successful use of ABA-based procedures to reduce problem behavior and increase appropriate skills for individuals with intellectual disabilities (ID), autism, and related disorders. Several review articles and meta-analyses have been published summarizing this large body of literature. Six of these articles (DeMyer, Hingtgen, & Jackson, 1981; Herbert, Sharp, & Gaudiano, 2002; Hingtgen & Bryson, 1972; Kahng, Iwata, & Lewin, 2002; Matson, Benavidiz, Compton, Paclawskyj, & Baglio, 1996; Sturmey, 2002) collectively reviewed thousands of published studies spanning the years 1946 to 2001. Each of these reviews supported efficacy of ABA-based procedures in the assessment and treatment of problem behavior associated with autism, mental retardation, and related disorders. Similarly, three meta-analyses (Didden, Duker, & Korzilius, 1997; Lundervold & Bourland, 1988; Weisz, Weiss, Han, Granger, & Morton, 1995) that collectively analyzed hundreds of studies published between 1968 and 1994 concluded that treatments based on operant principles of learning were more effective for reducing problem behavior displayed by individuals with ID as well as typically-developing individuals than were alternative treatments.

The large body of literature reviewed in these studies provides empirical evidence indicating that procedures developed using ABA-based principles are effective at assessing and treating a variety of socially important behaviors engaged in by individuals with a variety of diagnoses. Furthermore, ABA-based approaches for educating children with autism and related disorders have been extensively researched and empirically supported (e.g., Howard, Sparkman, Choen, Green, & Stanislaw, 2005; Koegel, Koegel, & Harrower, 1999; Krantz & McClannahan, 1998; Lovaas, 1987; McGee, Morrier, & Daly, 1999; Strain & Kohler, 1998).

Based on the empirical evidence, many scientific, government, and professional agencies and organizations have concluded that ABA-based procedures represent best practices for individuals with autism and mental retardation. For example, the **American Association on Intellectual and Developmental Disabilities** (formerly the American Association on Mental Retardation), the oldest and largest interdisciplinary organization of professionals concerned with mental retardation and related disabilities, designated ABA-based procedures for the treatment of behavioral problems with individuals with mental retardation and related disorders as “highly recommended” (their highest rating). Based on the scientific evidence supporting the efficacy of ABA-based procedures for treating problems associated with mental retardation and autism, various scientific organizations have concluded that ABA-based procedures are highly effective, including:

- National Institute of Mental Health
- The National Academies Press

- Association for Science in Autism Treatment
- Autism Speaks
- Organization For Autism Research
- Surgeon General of the United States
- New York State Department of Health
- Maine Administrators of Services for Children with Disabilities

Several academic and trade journals that represent specific medical disciplines have published articles indicating that treatments for autism and mental retardation derived from ABA-based procedures are empirically supported treatments. For example, the goal of the journal **Current Opinion in Psychiatry**, is to assist clinicians and researchers in keeping up-to-date with the large amount of information published in psychiatry. An article reviewing literature on the assessment and treatment of individuals with mental retardations and psychiatric disorders concluded that: “Interventions based on applied behavior analysis have the strongest empirical basis, although there is some evidence that other therapies have promise.” (Sturmeay, 2002). Also, in **Pediatrics**, the official journal of the

American Academy of Pediatrics, an article offering guidelines on scientifically supported treatments for childhood psychiatric disorders concluded: “The most efficacious psychosocial treatment for autism is applied behavior analysis...” (Lilienfeld, 2005). Discipline-specific journals that have published articles indicating that ABA-based procedures are empirically supported include:

Current Opinion in Psychiatry (Grey & Hastings, 2005; Sturmeay, 2002)

Pediatrics (Lilienfeld , 2005)

Psychiatric Times (Erickson, Swiezy, Stigler, McDougale, & Posey, 2005)

Scientific Review of Mental Health Practice (Herbert, Sharp, & Gaudiano, 2002)

Furthermore, in 1993 Division 12 of the American Psychological Association developed guidelines for what defined an Empirically Supported Treatment (EST). Regarding ESTs based on single-case design research these guidelines state: “A large series of single-case design experiments must demonstrate efficacy with, (a) use of good experimental design and (b) comparison of intervention to another treatment.” (Chambless & Ollendick, 2001). Based on these criteria, ABA-based behavioral treatments have been defined as ESTs for individuals with developmental disabilities (Chambless, et al, 1996). Additionally, substantial evidence in the scientific and medical literature documents that early detection and intervention are critical to the ultimate functioning level of people with ASDs, underscoring the importance of providing care for children under age 21. There is broad consensus across the medical and other fields that provide care to children with ASDs (e.g., pediatrics, psychiatry, neurology and the allied fields of psychology, speech therapy, occupational therapy and

physical therapy) that the best and most efficacious treatment of autism requires early recognition, diagnosis and early intensive treatment while the brain has the maximum potential to recover and/or compensate for the underlying pathophysiologic processes. Intensive remediation through repeated appropriate behaviors in affected brain processes (communication, social responsiveness, sensory processing), which is analogous to physical therapy for victims of stroke or nerve damage, is very widely accepted as a critical element in the treatment of autism. The submitted evidence supporting this point is too numerous to list in their entirety but include the National Institute of Child Health and Human Development Autism Overview:

“Research shows that early diagnosis and interventions delivered early in life, such as in the preschool period, are more likely to result in major positive effects on later skills and symptoms. . . . Because a young child’s brain is still forming, early intervention gives children the best start possible and best chance of developing their full potential. Even so . . . it’s never too late to benefit from treatment. People of all ages with ASDs at all levels of ability generally respond positively to well designed interventions.”

Evidence submitted by multiple insurers clarified that they routinely exclude coverage of some treatments for autism, particularly those that involve behavioral treatments such as speech therapy and Applied Behavioral Analysis (ABA). The reason for excluding speech therapy or limiting the number of sessions seems to be that they do not believe that such therapies have a “reasonable expectation of achieving sustainable, measurable improvement in a reasonable and predictable period of time.” The weight of the available evidence does not support this conclusion. The effectiveness of behavioral treatments for autism has been examined in hundreds of scientific studies, and is considered the most effective medical treatment for autism. Each one of the core symptoms of autism, those caused by the biology of autism, is effectively treated using ABA.

### **Regional Center’s Obligations/Duties Regarding Treatment for Children with Autism**

The Regional Center of Orange County is one of 21 non-profit agencies contracted with the State of California for the provision of services to infants and children under three years of age with, or at high risk for, a developmental disability (“Early Start”) as well as children over the age of three and adults with substantially disabling developmental disabilities (“Lanterman services”). We serve children with autism in both programs. We have six Board Certified Behavior Analysts (BCBAs) on staff which attests to the importance of behavioral services to the consumers that we serve.

Regional Centers are required to be the “funder of last resort” meaning that all other potential funding sources, including health plans and insurance companies must be exhausted before RCOC can fund for a service. This requirement was strengthened in the Budget Trailer Bill of 2009 so that before a Regional Center can provide a service, a family must obtain a written denial from the health plan. The denial must then be appealed and the Regional Center must receive written documentation of the denial as well before the service can be provided by the Regional Center.

### **RCOC Experience with ABA**

RCOC provides behavioral services (i.e., ABA) to children with autism as per our Purchase of Service Guideline, often with a significant improvement in the child’s developmental skills and a

reduction in atypical behaviors, provided that the parents are actively involved in their child's behavioral therapy program. Over 1000 children per year receive ABA services funded by RCOG and those services are generally provided by individuals who do not hold licenses from the State of California.

### **Experience with Insurers**

The Regional Center has received denials of ABA treatment for children with autism from the following **insurers**, on the bases described:

- **United HealthCare:** Intensive behavioral therapy/applied behavioral analysis is unproven for the treatment of autism spectrum disorders (i.e.; autistic disorder, Asperger's disorder, Rett syndrome, pervasive development disorder). There are limited studies to suggest that use of behavioral interventions, such as intensive behavioral therapy/applied behavioral analysis (Lovaas therapy), in very young children with autism may improve behavior, language skills, and cognitive function; however, the evidence is insufficient to establish a relationship between the intensity and duration of the intervention and degree of improvement in these areas, or to define specific criteria by which to select patients who might benefit from intensive intervention.
- **Aetna:** There is insufficient evidence for the superiority of any particular intensive educational intervention strategy (such as applied behavioral analysis, structured teaching, or developmental models) over other intensive educational intervention strategies.
- **CIGNA:** CIGNA does not cover the following procedures/services for the assessment and/or treatment of ASD because they are considered experimental, investigational or unproven for this indication (these lists may not be all-inclusive):  
Treatment:
  - cognitive behavioral therapy
  - cognitive rehabilitation
  - facilitated communication
  - intensive intervention programs for autism (e.g., early intensive behavior intervention [EIBI] intensive behavior intervention [IBI], Lovaas therapy, applied behavior analysis [ABA])

### **Conclusion**

Autism is a complex brain based, neurologic disorder. Finding effective treatments has been difficult given the fact that the presentation and severity varies greatly and that there are multiple etiologies. Of all the treatments currently proposed or in use to treat autism, ABA has by far the most evidence in the peer reviewed medical literature to support its use. Behavioral services are medical in nature, rather than educational, and are neither experimental nor investigational. ABA should be covered by health plans.

If a reader of this letter has questions or has additional questions, they are welcome to contact me at:

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Note: Please see attached list of references below.

Respectfully,

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Hayes Guidelines: Lovaas Therapy for Autism; 2003

## Curriculum Vitae

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### Education:

1978 – 1982 Cornell University, Bachelor of Science, Animal Science Member Ho-Nun-De-Kah (agricultural Honor Society)  
1982 – 1986 University of California, Irvine, College of Medicine  
Member A.O.A

### Post Doctoral Training:

7/86 – 8/87 Intern, Department of Internal Medicine, Worcester Memorial Hospital, Worcester, MA.  
12/90 – 6/92 Neurology Residency University of California, Irvine (50% time)  
6/92 – 6/94 Neurology Residency University of California, Irvine (100% time)  
7/94 – 6/95 Intern, Department of Pediatrics, University of California, Irvine  
7/95 – 6/97 Fellow, Child Neurology, University of California, Irvine  
7/96 – 6/98 Spinal Cord Injury and Neurorehabilitation Fellowship, Long Beach Veterans Hospital, Long Beach, CA

### Hospital Appointments:

2005 – Present Assistant Clinical Professor, Department of Pediatrics  
University of California, Irvine; Volunteer Faculty  
2/99 – 3/00 Assistant Clinical Professor, Department of Pediatrics  
Penn State-Hershey Medial Center, Hershey, PA  
1/97 – 2/99 Assistant Clinical Professor, Department of Pediatrics  
University of California, Irvine  
1998 – 1989 Staff Physician Orange Coast College Health Services  
Costa Mesa, CA  
1988 – 1990 Staff Physician Rancho Santiago College, Student Health Services  
Santa Ana, California

**Positions Held:**

- 2000 - 2007 Staff Physician, Health Resources Group, Regional Center of Orange County  
2007 - 2010 Director, Health Resources Group, Regional Center of Orange County
- 2010- Present Chief Medical Officer, Regional Center of Orange County
- 1988 – 1990 Santa Ana, CA  
Utilization Review Consultant, Researcher on Medical Policies and Guidelines,  
Cost Care  
Huntington Beach, CA

**Certifications and Licensure:**

- 2008 Maintenance of Certification, American Board of Neurology with Special  
Qualification in Child Neurology
- 1999 Diplomate American Board of Neurology with Special Qualification in Child  
Neurology #1172
- 1999 Pennsylvania State Medical License MD067460
- 1991 Diplomate, American Board of Quality Assurance and Utilization Review  
Physicians
- 1988 California Board of Medical Quality Assurance #G64751
- 1987 National Board of Medical Examiners #322133
- 1988 DEA #BH17520280

**Societies and Organizations:**

- 1986 Alpha Omega Alpha
- 1994 American Academy of Pediatrics
- 1990 American Academy of Neurology
- 1997 Child Neurology Society

**Grants:**

- 6/90 – 12/90 The Use of Valproic Acid in the Control of Complex Partial Seizures; Linda  
Kaplan M.D. principle investigator, Funding: Abbott Laboratories
- 6/96 – 3/98 The Efficacy of Tigabine in the Control of Refractory Complex Partial Seizures;  
Tallie Z. Baram M.D., Ph.D., principle investigator, Funding: Abbott  
Laboratories
- 2/96 – 6/98 The use of 4-Aminopyridine in Spinal Cord Injury Patients; Jack Siegel M.D.  
Principle investigator, Funding: Paralyzed Veterans Association

**Articles:**

1. **Himber PL.** (1992) The Wrong Side of the Bed. *Postgraduate Medicine* 92 (6):37 - 39
2. Segal JL, Hernandez JP, **Himber PL**, Brunnemann SR, Charter RS. Safety and Efficacy of 4-Aminopyridine in Humans with Spinal Cord Injury: A Long Term Controlled Trial. *Pharmacotherapy* 1999; 19(6):713:723 - 726

**Chapters:**

1. Filipek PA, Roth G, **Himber PL**, Dietrich RB. (1997). *Neuroimaging Techniques*. [In] R David (Ed.), *Child and Adolescent Neurology*. Philadelphia: Mosby
2. Himber PL, Barron TB. (2000). Increased Intracranial Pressure. [In] R Hoekelman RB, et al (Ed.), *Primary Pediatric Care*. Philadelphia: Mosby

**Lectures:**

- 7/3/95 "The Pediatric Neurologic Exam." Department of Pediatrics, U.C.I. Resident Lecture Series
- 12/18/95 "Pediatric Neurologic Emergencies." Paramedic Continuing Education Program, Queen of the Valley Hospital, West Covina, California
- 12/19/96 "The Comatose Child." Pediatric Lecture Series for U.C.I. Medical Students, Orange, California
- 1/5/00 "Everything You Wanted to Know About Autism But Were Afraid to Ask." Pediatric Lecture Series for U.C.I. Medical Students, Orange, California
- 2/1/96 "Review of Pediatric Neurology." U.C.I. Nurse Practitioner Program, Irvine, California

**Lectures (cont'd)**

- 7/8/96 "A Practical Approach to the Diagnosis and Treatment of Seizures." Department of Internal Medicine, Resident Lecture Series, Long Beach Veterans Hospital, Long Beach, California
- 9/9/96 "Febrile Seizures." Pediatric Lecture Series for U.C.I. Medical Students, Orange, California
- 12/2/96 "When Can Anti-convulsants be Discontinued in Children With Epilepsy?" Pediatric Epilepsy Lecture Series, Department of Pediatrics, U.C.I. Medical Center, Orange, California
- 12/3/96 "The diagnosis and Treatment and Autism." Pediatric Epilepsy Lecture Series, Department of Pediatrics, U.C.I. Medical Center Orange, California

- 3/9/99 "A Practical Approach to the Diagnosis and Treatment of Childhood Seizures." Department of Pediatrics, Resident Lecture Series, Hershey Medical Center, Hershey, PA
- 7/8/99 "A Practical Approach to the Diagnosis and Treatment of Headache." Department of Pediatrics, Resident Lecture Series, Hershey Medical Center, Hershey, PA
- 10/13/99 "The Use of Botox in the Treatment of Spasticity." Pediatric Grand Rounds, Hershey Medical Center, Hershey, PA
- 11/14/99 "The Diagnosis and Treatment of Autism." Pediatric Resident Rounds, Hershey Medical Center, Hershey, PA
- 11/16/99 "A Case of Pediatric Stroke." Monthly Educational Conference Department of Neurology, Hershey Medical Center, Hershey, PA
- 12/20/99 "An Eight-Year-Old with Ataxia." Monthly Educational Conference Department of Neurology, Hershey Medical Center, Hershey, PA
- 1/16/00 "The Diagnosis and Treatment of Cerebral Palsy." The Pediatric Medical Student Lecture Series, Department of Neurology, Hershey, PA
- 2/17/00 "The Approach to Coma in the Pediatric Patient." The Pediatric Resident Student Lecture Series, Department of Pediatrics, Hershey Medical Center, Hershey, PA
- 2/24/00 "Everything You Wanted to Know About Autism But Were Afraid to Ask." Pediatric Resident Ward Rounds, Department of Neurology, Hershey Medical Center, Hershey, PA
- 2/22/00 "Head Trauma in the Pediatric Patient." The Pediatric Student Lecture Series, Department of Pediatrics, Hershey Medical Center, Hershey, PA
- 10/21/00 "Is My Kid Normal?" Irvine Coast Mother of Twins Club, Child Development Seminar
- 5/07/01 "Normal Language Development." Rehabilitation Institute of Orange, Staff Development Series, Orange, CA

### Lectures (cont'd)

- 7/09/01 "Understanding Autism." Rehabilitation of Orange, Staff Development Series, Orange, CA
- 12/19/01 "Understanding Cerebral Palsy." Rehabilitation Institute of Orange, Staff Development Series, Orange, CA
- 5/14/02 "Understanding Autism." Western Medical Center, Grand Rounds, Santa Ana, CA
- 9/23/03 "Autism and the Regional Center of Orange County, What Practicing Doctors Need to Know." West Anaheim Medical Center, Grand Rounds, Anaheim, CA
- 10/1/03 "Autism and the Regional Center of Orange County, What Practicing Doctors Need to Know." Fountain Valley Regional Center, Grand Rounds, Fountain Valley, CA
- 2/17/04 "Autism and the Regional Center of Orange County, What Practicing Doctors Need to Know." CHOC Mission Medical Center, Pediatric Grand Rounds, and Anaheim, CA

- 3/10/04 "Medications and Autism, What Parents Need to Know." Orange County Asperger's Support Group
- 6/2/06 "Communicable Diseases, Universal Precautions and Restricted Health Conditions." Regional Center of Orange County Vendor Training:
- 6/8/07 "An Overview of the Assessment and Treatment of People with Developmental Disabilities." Presented to Administrative Law Judges State of California.
- 9/22/08 "How Do I Access Services for My Pediatric Patients with Special Needs?" Presentation to CalOptima Staff
- 10/2/08 "Determining Regional Center Eligibility." Saddleback Valley School District Psychologists
- 12/5/08 "How Do I Access Services for My Special Needs Child?" Presentation to Orange County School Nurses
- 7/29/10 "The California Early Start System and Regional Center Services" ARTA Healthcare Plan Personnel
- 9/20/10 "The California Early Start System and Regional Center Services" ARTA Healthcare Plan Personnel
- 3/23/11 "Roundtable for Children with Special Needs" CalOptima

**Conference Presentations:**

- 7/12/03 "Issues in Pediatric Epilepsy." Orange County Epilepsy Conference; Epilepsy Foundation of America, Orange County Chapter
- 9/24/08 "Regional Center of Orange County and CalOptima's Collaboration to Improve Services to People with Autism." California Department of Developmental Services Wellness Conference 2008, San Diego CA
- 9/25/08 "Using Multidisciplinary Team Practice to Reduce Rates of Consumer Hospitalization." Department of Developmental Services Wellness Conference 2008, San Diego CA
- 4/28/09 "Communicating With Doctors and Families About Medication Related Issues." Orange County/Los Angeles Transitions Conference. Los Angeles, CA