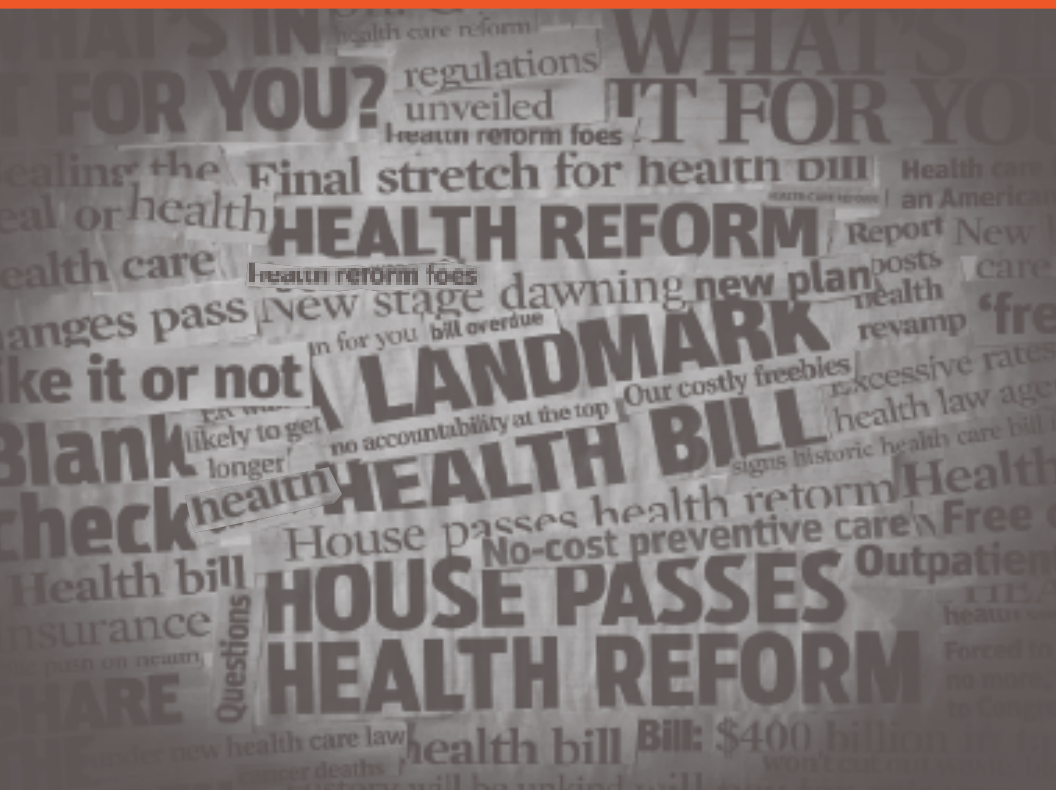
Maximizing Coverage Under the New Jersey Autism & Other Developmental Disabilities Insurance Mandate:

A Guide for Parents and Professionals

SPAN

Autism™ NEW JERSEY



About Autism New Jersey

Autism New Jersey is the state's leading advocacy and information network for parents of individuals with autism spectrum disorders (ASDs) and the professionals who support them.

Autism New Jersey diligently works to help improve the lives of individuals with autism, and provide their families with competent and compassionate support. Autism New Jersey is wholly committed to sharing its expertise in autism-related topics with all state residents. Families of young or adult children affected by autism, the professionals who support them, legislators and government officials, media and concerned state residents turn to Autism New Jersey on a daily basis for information, assistance, support, guidance, and education.

We are GROUNDED *in science,*
STRENGTHENED *by knowledge,*
and DEVOTED *to creating a society*
of compassion and inclusion
for all those touched by autism.

About SPAN

The Statewide Parent Advocacy Network (SPAN) provides information, training, technical assistance, support, advocacy, and leadership development for families of children birth through 26 across systems, to enable families to advocate on behalf of their children and youth. SPAN's motto is Empowered Parents: Educated, Engaged, Effective!

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Introduction

This booklet was created to guide parents and professionals who need information about accessing benefits under the recently-enacted P.L. 2009 c. 115 Health Benefits Coverage for Autism and Other Developmental Disabilities (DD), or the "autism and other DD insurance mandate," in the state of New Jersey. It includes information about the law and what types of plans are subject to the mandate. Knowing how the mandate affects delivery of services and ensuring that children receive the full range of intervention they need is a collaborative effort between parents and professionals. This guide will explain what the law now requires of insurance providers and how parents and professionals can effectively navigate the process of obtaining coverage.

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About the Autism Insurance Mandate

On August 13, 2009, New Jersey became the 15th state to pass a law mandating autism insurance coverage and the first to expand its protections to children with other developmental disabilities. P.L. 2009 c. 115 Health Benefits Coverage for Autism and Other Developmental Disabilities requires insurers subject to the mandate to cover:

- Expenses for screening and diagnosis of an autism spectrum disorder (ASD) or other developmental disability (DD)
- Medically necessary physical therapy, occupational therapy and speech therapy
- Medically necessary behavioral intervention based on the principles of applied behavior analysis (ABA) for individuals with an ASD to age 21
- Certain family cost share expenses incurred through New Jersey Early Intervention

The law was effective for plans issued or renewed on or after February 9, 2010.

The New Jersey Department of Banking and Insurance (DOBI) issued an advisory bulletin on January 14, 2010 to all New Jersey health benefit plan providers regarding the implementation of P.L. 2009. The full text of the bulletin is available at www.state.nj.us/dobi/bulletins/blt10_02.pdf

Does the Law Apply to all Health Plans?

Not all health plans are required to comply with the "autism and other DD" insurance law. Only "fully-insured" plans written in the state of New Jersey, NJ State Health Benefits program and the School Employees' Health Benefits program are subject to the requirements of P.L. 2009 c. 115. Other plans are not subject to the law. The full text of the mandate, with statutory codifications for each plan type is available at www.njleg.state.nj.us/2008/Bills/PL09/115_.htm

Self-Funded vs. Fully-Insured Plans

Whether or not a plan is subject to the law depends on whether it is a "self-funded" or "fully-insured" plan.

Definition of Self-Funded

Under a federal law called the Employee Retirement Income Security Act (ERISA) of 1974, employers can create "self-funded" health benefits plans. This means that rather than buying insurance, an employer or union will take financial responsibility for employee health benefits. They fund the cost of treatment and services, and assume the risk of covering the individuals under the plan. Many self-funded plans are administered by a third party (such as an insurance company) to process claims and other tasks.

Many New Jersey employees receive benefits through self-funded plans. Because the federal ERISA law supersedes state law, these health plans are exempt from state insurance regulations, and are therefore exempt from P.L. 2009, c. 115. Insurance covering federal government employees is also exempt; however the military offers coverage, including ABA benefits, through its health insurance plan, TriCare.

In addition, some companies with self-funded plans voluntarily provide coverage for autism therapies. Consumers with self-funded insurance plans can ask their plan administrator if they cover services.

Definition of Fully Insured

A "fully-insured" plan is one in which an individual or employer pays an insurance company that assumes the risk and pays claims for covered treatment and services. When individuals are covered by a "fully-insured" plan AND the contract state is New Jersey, they are eligible for benefits under the autism insurance law.

P.L. 2009 does not apply to New Jersey residents whose fully-insured plans are written in another state. However, if the state where the plan is written has an autism coverage mandate, then those individuals can obtain coverage under the requirements for that particular state. For example, someone whose fully-insured plan is written in the state of Pennsylvania can seek coverage for therapies under Pennsylvania's autism insurance mandate for a child with autism. However, most other state mandates do not cover children with developmental disabilities other than autism.

Determining the Type of Plan

It might be difficult to determine if a plan is fully-insured or self-funded, particularly when a self-funded plan is administered by a major insurance company.

In 2010, DOBI amended an existing regulation (11:22-8.1-6) to require additional information on health insurance ID cards, which includes information on whether a plan is fully-insured or self-funded.

If you are not sure about the type of plan you have, you can also contact your benefits administrator.

Covered Treatments

Under the mandate, individuals with an ASD under the age of 21 may now be covered for Applied Behavior Analysis (ABA) and related structured behavior programs, as long as they meet the carrier's criteria for "medical necessity." While ABA is widely considered to be an effective, evidence-based treatment for autism spectrum disorders, ABA was historically excluded as a mental health benefit, as it was classified as an "educational intervention" or as an "investigational" treatment.

Treatment for speech, occupational and physical therapy is also eligible for coverage, if the individual's need is determined to be medically necessary by the plan carrier. Initial treatment cannot automatically be denied on the basis that it is non-restorative. (For example, someone with autism who has never spoken may be eligible to begin speech therapy services in the same way that someone who lost speech due to injury would be eligible.) Ongoing coverage would be subject to a review of whether the individual is making progress.

Carriers can place limits on the number of visits allowed for treatment of ASDs and other developmental disabilities, but the benefit would be distinct from allowances for an unrelated condition. (For example, if an individual received 30 physical therapy sessions for a broken leg, it would not exhaust that person's benefits for medically necessary physical therapy for an autism-related condition.)

Early Intervention Cost Share

Under P.L 2009 c. 115, certain expenses for the family cost share incurred through the New Jersey Early Intervention System (NJEIS) are reimbursable. If the cost share is associated with speech therapy, occupational therapy, physical therapy or ABA, families can pay their cost share directly to NJEIS and then submit a claim to their plan carrier for reimbursement.

Additional Laws Affecting Coverage of Services for Autism

The new mandate currently sets the maximum benefit amount at $36,000 per year for coverage of ABA services for ASDs. Two other laws (one state and one federal) that were enacted prior to the "autism and other DD" mandate affect the delivery of mental health services. These laws were enacted to protect consumers in need of mental health services, and require insurers who extend mental health benefits to provide them under the same provisions allowed for other health conditions.

P.L. 1999, c. 106: Biologically Based Mental Illness (BBMI) Mandate
In 1999, New Jersey enacted a law that required all health insurers in the state to cover treatment of "biologically-based mental illness," including pervasive developmental disorder or autism, according to the same conditions for other illnesses and diseases. This meant that copayments, deductibles, and benefit limits for behavioral health services would be the same as for medical and surgical benefits.

Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008
The Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008 is a federal law and the successor of the Mental Health Parity Act (MHPA) of 1996. MHPAEA requires group health plans and HMOs to provide mental health care coverage according to the same terms that they provide medical and surgical benefits. MHPAEA went into effect on October 3, 2009.

The law applies to employers with self funded or fully insured plans covering more than 50 employees. Small employers who have fewer than 51 employees can claim exemption from MHPAEA, but they are still subject to state mental health parity laws. Insurance issuers in the individual insurance market are also exempt.

In addition, under MHPAEA, group health plans whose costs increase by 2 percent or more because parity is in place can claim exemption. Plans must comply for one year to become exempt from parity for the following year, but exemption can only be claimed for alternating plan years. More information about MHPAEA is available on the Department of Labor's website at www.dol.gov/ebsa/newsroom/fsmhpaea.html or on the Federal Register website: http://federalregister.gov/a/2010-2167.

"Medically Necessary" Services

The law requires coverage of speech, occupational, and physical therapy, and ABA services for individuals with an ASD under 21. In order to be covered, the proposed treatments must meet the carrier's definition of "medically necessary."

A Treatment Plan

Services are to be delivered in the form of a "treatment plan." While there is no standard format for a treatment plan, certain elements are required under the law. A treatment plan must include:

- Diagnosis
- Proposed treatment by type, frequency and duration
- Anticipated outcomes stated as goals
- Frequency by which the treatment plan will be updated
- Treating physician's signature

After a Treatment Plan is Authorized

Once a treatment plan is in place, the insurer can request an updated plan every six months to review "medical necessity." An exception would be if the insurer and treating physician agree to review the treatment plan more frequently.

Maximizing Benefits through Parent and Provider Collaboration

Treatment providers can play an important part in ensuring that families receive coverage for needed services by being knowledgeable about insurers' "medical necessity" criteria for the screening and treatment of ASD and other DD. With this knowledge, the provider can better determine if their proposed treatment plan will be authorized. All insurers make this information available on their website, or parents and providers can contact the insurer for a copy of the policy.

Any time a determination of benefits is made, parents or professionals should request that the information be put in writing. A phone inquiry alone should not be considered confirmation that services will be covered.

It is also helpful to take notes whenever you speak to a customer service representative, and to obtain the name of any representative you speak with about benefits. Parents may also be able to ask for a "case manager" at the insurance company to be assigned to them so that they and the treatment providers can communicate with the same person regarding coverage questions.

Just as parents keep an "educational" file for their child, it is equally important to keep an "insurance" file. Keep all documents chronologically arranged, starting with the most recent. Important documents include copies of treatment plans, written determinations of benefits from the insurance provider, copies of receipts for any out-of-pocket expenses, explanation of benefits (EOB) forms from the insurer, as well as all written notes from conversations with insurance representatives and treatment providers. Having these records readily accessible is necessary in the event of a disagreement or when filing an appeal.

Most major insurers also provide member services and provider services online, including access to claim payment information, explanation of benefits, and other information.

More on ABA Providers and Credentialing

Although New Jersey does not currently require a specific certification to practice applied behavior analysis (ABA), some practitioners complete a voluntary certification program through the Behavior Analyst Certification Board®, Inc. (BACB®), which "adheres to the national standards for boards that grant professional credentials." The BACB defines its mission as "to develop, promote, and implement an international certification program for behavior analyst practitioners. The BACB has established uniform content, standards, and criteria for the credentialing process that are designed to meet:

1. The legal standards established through state, federal and case law;
2. The accepted standards for national certification programs; and
3. The "best practice" and ethical standards of the behavior analysis profession."

Professional certifications offered by the BACB are: BCBA-D (Board Certified Behavior Analyst - Doctoral), BCBA (Board Certified Behavior Analyst) and BCaBA (Board Certified Assistant Behavior Analyst). For more information about the BACB and its requirements for each certification, please visit www.bacb.com.

In its bulletin to insurers, DOBI advises carriers to consider ABA services as eligible for benefits if the services were "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)." This means some aspects of an ABA treatment plan may be provided by a staff member without these credentials, as long as the overall program is developed and supervised by a credentialed individual.

If you have additional questions related to your eligibility or specific services under the mandate, you can contact Autism New Jersey's toll free information and advocacy line, 800.4.AUTISM. Our specially trained staff can advise you on your rights and assist you in accessing available services within the following New Jersey systems: Early Intervention, special education, adult services, health insurance, and the Division of Developmental Disabilities. Our staff also has a wealth of information on autism treatments and resources.

For information and assistance on education, health/mental health, human services, and other supports for children and families, contact the Statewide Parent Advocacy Network at 800.654.SPAN.

Additionally, you can refer to the following resources:

The Insurance Provider
Contact insurers directly regarding medical policies related to the evaluation and management of ASD and other DD, including "medical necessity" criteria and your specific benefits. These are available online or you can contact your insurer to request a copy. You can also refer to your member handbook, which will include information on coverage for ASD and other DD.

Family-to-Family Health Information Center @ SPAN
SPAN's Family to Family Health Information Center has resources to help you file appeals of denials of insurance coverage for needed services at 800.654.SPAN (7726) or on the web at http://www.spannj.org/Family2Family/new_in_healthcare.htm. You can access a fact sheet on filing appeals of denials of coverage under the Affordable Care Act at http://www.spannj.org/healthcarematerials/Your-Right-to-Appeal.pdf.

The New Jersey Department of Banking and Insurance (DOBI)
DOBI provides information on its website to assist consumers in insurance-related matters. For New Jersey insurance plans, DOBI reviews benefit disputes where the dispute concerns whether or how the policy covers a service or supply as well as medical necessity disputes. The following website offers information on how to contact the Department: http://www.state.nj.us/dobi/consumer.htm.

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