

INSURING A FUTURE: MANDATING MEDICAL INSURANCE COVERAGE OF AUTISM RELATED TREATMENTS IN NEBRASKA

I. INTRODUCTION

Autism Spectrum Disorder (“ASD”) is a growing problem in the United States.¹ Today, it is estimated that one out of every 142 individuals suffers from ASD.² However, in the younger generations, up to one percent of individuals develop ASD.³ Individuals with ASD suffer from difficulties in three developmental areas: social communication, social reciprocity, and restrictive and repetitive interests and behaviors.⁴ However, studies have shown that a substantial number of children with ASD who participate in early intensive behavioral interventions achieve near-normal or normal functioning.⁵ Parents can spend upward of \$50,000 a year on ASD therapies.⁶ The cost of ASD treatments limits the availability of ASD treatments solely to those individuals who can afford it.⁷

Currently, Nebraska has no legislation in place that requires insurance companies to cover ASD treatments or services.⁸ Nebraska relies heavily on the school system to treat ASD.⁹ Nebraska created an ASD Network within the Department of Education, which provides consultation to schools regarding working with individuals with ASD.¹⁰ However, Nebraska’s reliance on the education system to han-

1. RICHARD LATHE, *AUTISM, BRAIN, AND ENVIRONMENT* 50 (2006).

2. *Id.* at 58-59.

3. *Id.*

4. *Id.* at 23.

5. John W. Jacobson et al., *Cost-Benefit Estimates for Early Intensive Behavioral Intervention for Young Children with Autism: General Model and Single Case Study*, 13 *BEHAV. INTERVENTIONS* 201, 202 (1998).

6. *AUTISM SPEAKS, ARGUMENTS IN SUPPORT OF PRIVATE INSURANCE COVERAGE OF AUTISM RELATED SERVICES* 8 (2007), http://www.autismvotes.org/atf/cf/%7B2A179B73-96E2-44C3-8816-1B1C0BE5334B%7D/arguments_for_private_insurance_coverage.pdf.

7. *See id.* (stating individuals who cannot afford treatments go without).

8. *EASTER SEALS DISABILITY SERVICES, 2008 STATE AUTISM PROFILES: NEBRASKA* 1 (2008), http://www.easterseals.com/autism/Autism_Nebraska_v1.pdf.

9. *See THE NEBRASKA SPECIAL EDUCATION ADVISORY COUNCIL, AD HOC COMMITTEE ON AUTISM, AUTISM SPECTRUM DISORDERS (ASD): NEBRASKA STATE PLAN*, 9 (2001), <http://www.nde.state.ne.us/autism/documents/autsp.pdf> (requiring teachers to train in autism in order to provide services to ASD children).

10. *Id.* at 4.

dle individuals diagnosed with ASD places an unmanageable burden on schools' finances.¹¹

Because ASD is a growing problem that Nebraska is not effectively addressing, Nebraska should implement legislation mandating insurance companies cover the treatment of ASD.¹² This Note will address what ASD is and the problems associated with ASD.¹³ This Note will then discuss the benefits and costs that individuals with ASD experience if they participate in early intensive behavioral therapies.¹⁴ This Note will then discuss Nebraska's current plan for treating ASD and the shortfalls of the Nebraska system.¹⁵ This Note will go on to discuss the options for legislation in Nebraska based on other states' models.¹⁶ Finally, this Note will advocate legislation based on Indiana's statute for Autism coverage in Nebraska.¹⁷

II. BACKGROUND

A. WHAT IS AUTISM SPECTRUM DISORDER?

Autism is part of a group of pervasive developmental disorders, more commonly referred to as Autism Spectrum Disorders ("ASD").¹⁸ ASD is a neuropsychiatric disorder that is related phenomenologically.¹⁹ ASD is diagnosed based on difficulties in three developmental areas: social communication, social reciprocity, and restrictive and repetitive interests and behaviors.²⁰ Typically, onset of developmental difficulties appears within the first few months of an individual's life.²¹ Additionally, diagnosis of autism, the most well understood form of ASD, requires an individual's symptoms to present prior to the age of three years old.²²

11. See *infra* notes 197-209 and accompanying text.

12. See *infra* notes 197-209 and accompanying text.

13. See *infra* notes 18-64 and accompanying text.

14. See *infra* notes 65-103 and accompanying text.

15. See *infra* notes 169-94 and accompanying text.

16. See *infra* notes 288-328 and accompanying text.

17. See *infra* notes 329-56 and accompanying text.

18. Fred R. Volkmar & Catherine Lord, *Diagnosis and Definition of Autism and Other Pervasive Developmental Disorders*, in *AUTISM AND PERVASIVE DEVELOPMENT DISORDERS* 1, 1 (Fred R. Volkmar ed., 2d ed. 2007); see RICHARD LATHE, *AUTISM, BRAIN AND ENVIRONMENT* 22 (2006) (stating ASD and PDD are synonymous in autism literature).

19. Volkmar & Lord, *supra* note 18, at 1.

20. LATHE, *supra* note 18, at 23.

21. Volkmar & Lord, *supra* note 18, at 1.

22. Juan Martos Pérez et al., *Early Manifestations of Autistic Spectrum Disorder During the First Two Years of Life*, in *NEW DEVELOPMENTS IN AUTISM: THE FUTURE IS TODAY* 33, 33 (Juan Martos Pérez ed., 2006); see Catherine Lord, *Early Assessment of Autistic Spectrum Disorders*, in *NEW DEVELOPMENTS IN AUTISM: THE FUTURE IS TODAY* 58, 58 (Juan Martos Pérez ed., 2006) (stating autism is the most well understood and researched spectrum disorder).

1. *ASD Affects As Many As One Percent of Children From All Walks of Life*

Studies of ASDs have been conducted in several countries.²³ Currently, the total prevalence of ASDs is between 0.6-0.7%.²⁴ Among younger age groups, the total prevalence of ASDs is as high as one percent.²⁵ The current figures indicate an increase in ASD from the 1980s through the 2000s that cannot be explained by broadening diagnostic criteria, as the majority of the increases occurred after the time of the change in the diagnostic criteria.²⁶ These figures indicate a higher prevalence of autism in children than cystic fibrosis, Down syndrome, and several other grave conditions that affect children.²⁷ Further, over the last thirty years, the typical age in which an individual is referred to a treatment center has gone down from age five to age two.²⁸

ASD is more common in males than females; however, there is speculation that females present the disorder differently than males.²⁹ There is no proven correlation between ASD and race or social class.³⁰

For years, ASD was stereotyped as primarily affecting children born to educated, professional, middle-class families.³¹ It is now becoming clear that many children previously considered maladjusted or products of uneducated, dysfunctional, or impoverished conditions are just as likely to have ASD; however, professionals are less likely to treat or diagnose these children early in their development.³² In reality, ASD has always existed in urban and rural areas, among both the poor and rich, and across all races.³³

23. Eric Fombonne, *Epidemiology of Pervasive Developmental Disorders*, in *NEW DEVELOPMENTS IN AUTISM: THE FUTURE IS TODAY* 14, 14 (Juan Martos Pérez ed., 2006).

24. *See id.* at 26 (estimating the rate of combined pervasive developmental disorders to be 60 in 10,000); *see* LATHE, *supra* note 18, at 58 (estimating the overall prevalence is one in 142).

25. LATHE, *supra* note 18, at 59.

26. *Id.* at 58. Four main reasons exist for the increase: 1) an over representation of younger patients with ASD, 2) reduction in the percent of Asperger's from total ASDs, 3) increased concordance in dizygotic concordance, and 4) the decline in the Fragile X chromosome among individuals with ASD. *Id.*

27. Fombonne, *supra* note 23, at 29.

28. Lord, *supra* note 22, at 61.

29. LATHE, *supra* note 18, at 22.

30. *See* Fombonne, *supra* note 23, at 28 (noting hypothesis of correlation between race and autism rates largely unsupported by empirical data).

31. DONNA WILLIAMS, *THE JUMBLED JIGSAW: AN INSIDER'S APPROACH TO THE TREATMENT OF AUTISM SPECTRUM "FRUIT SALADS"* 14 (2005).

32. *Id.*

33. *See id.* (classifying children as demented, psychotic, insane, retarded or disturbed catalogued in institutional records as long as records have been kept).

2. Types of ASD

Three main classifications of ASD exist along with two less common classifications.³⁴ ASD classification requirements are provided by the World Health Organization's International Classification of Diseases (currently ICD-10) and the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (currently DSM-IV).³⁵ The three most prevalent forms of ASD are autism, pervasive developmental disorder not otherwise specified ("PDD-NOS"), and to a lesser extent, Asperger's syndrome.³⁶ While an individual may only diagnosed with one form of ASD, it is critical to note that each individual has a different set of characteristics and needs.³⁷ The boundaries between different classifications of ASDs are often blurred and frequently involve other disorders.³⁸ Therefore, ASD is best treated with individualized care.³⁹

Many one size fits all approaches to treating ASD result from big money businesses gaining popularity from one individual's miracle story.⁴⁰ The most successful approaches are individualized and are arrived at through open-mindedness, intuition, and adaptation.⁴¹

a. Autism

Autism is the most common form of ASD.⁴² Autism has three main elements: impaired social interaction, impaired communication, and repetitive, stereotyped activities.⁴³ Both the DSM-IV and the ICD-10 restrict diagnosis of autism to cases where the onset of autism related symptoms occurs before two to three years of age.⁴⁴ Individuals with autism frequently suffer from eating and sleeping disturbances, phobias, self-directed aggression, and tantrums.⁴⁵

While onset must occur before the age of three, there are several signs that surface much earlier.⁴⁶ The earliest clues that an individ-

34. See LATHE, *supra* note 18, at 21 (showing three main forms, autism, PDD-NOS, and Asperger's, and two less common forms, Rett's and CDD in table).

35. *Id.* at 22.

36. See *id.* at 21 (showing autism and PDD-NOS the most common, Asperger's a small fraction, Rett's and CDD rare).

37. WILLIAMS, *supra* note 31, at 29.

38. See *id.* at 342 (stating the division between autistic children and Asperger's children "is not as clear cut as it has been made out to be").

39. *Id.* at 29.

40. *Id.* at 357.

41. *Id.* at 358.

42. See LATHE, *supra* note 18, at 21 (representing percentages of ASD, shows autism with the greatest percent in the table).

43. *Id.* at 23.

44. *Id.* at 32.

45. *Id.* at 24.

46. LATHE, *supra* note 18, at 33.

ual is developing autism include lack of babble, gestures such as pointing, or spontaneous sharing or showing of toys with others.⁴⁷ It has been recommended that if a child fails to meet a developmental milestone, such as gesturing or babbling at twelve months, speaking words at sixteen months, articulating two-word phrases at two years, or losing language or social skills at any age, the child be intensely evaluated.⁴⁸

b. Asperger's Syndrome

Asperger's is less debilitating than autism, and has occasional manifestations of superior abilities.⁴⁹ A debate persists as to whether Asperger's syndrome is an ASD that is wholly different from autism or whether individuals with Asperger's are truly autistic.⁵⁰ Individuals with Asperger's suffer from the same impairment in social interaction and focus on repetitive, restricted activities.⁵¹ However, Asperger's differs from autism in that individuals with Asperger's experience no language delay, no delay in cognitive development, and may be clumsy.⁵²

c. PDD-NOS

Pervasive developmental disorder not otherwise specified ("PDD-NOS"), also known as atypical autism under ICD-10, involves any of the typical triad of impairments in social interaction, communication, or stereotyped activities.⁵³ The difference between PDD-NOS and autism is that some criteria of typical autism may be lacking, such as late onset or failure to meet all of the three indications of autism.⁵⁴ Frequently, individuals diagnosed with PDD-NOS also suffer from severe language impairment or retardation.⁵⁵

3. *Associated Disorders*

ASD is commonly associated with other disorders.⁵⁶ Approximately fifty percent of individuals with ASD have IQ ratings under seventy, resulting in marked intellectual impairment.⁵⁷ Other common disturbances include anxiety, depression, and sensory distur-

47. *Id.*

48. *Id.*

49. *Id.* at 22.

50. *Id.*

51. *Id.* at 24, 25.

52. *Id.* at 25.

53. *Id.* at 24.

54. *Id.*

55. *Id.*

56. *Id.* at 32.

57. Lord, *supra* note 22, at 61; LATHE, *supra* note 18, at 32.

bances.⁵⁸ Additionally, epilepsy affects one quarter to one third of individuals with ASD.⁵⁹

4. *Development*

In most cases of ASD, children develop normally for the first twelve to eighteen months of life.⁶⁰ The initial signs indicating that a child has ASD typically become apparent during the development of language.⁶¹ Children with ASD typically lack intentional speech between the ages of nine and seventeen months.⁶² There is no clear correlation between the age of onset and either symptom severity or the education of the parents.⁶³ Rather, there may be a correlation between the age of onset and the subtype of ASD.⁶⁴

5. *ASD Can Be Treated, but Treatment Must Be Individualized*

ASD is best treated based on the individual's specific needs.⁶⁵ Treatment involves developing social interaction, communication, and working on repetitive, stereotyped actions.⁶⁶ One important tool in developing personalized programs for individuals with ASD is applied behavior analysis.⁶⁷ Applied behavior analysis is a science that begins with systematic observation of an individual.⁶⁸ Once data is collected, the data is used to provide a picture of the individual's current behavior and to predict the individual's behavior if nothing is done to correct it.⁶⁹ From this point, the prediction is used to develop a curriculum based on the individual's current behavior.⁷⁰

The curriculum's goal is to increase the probability that an individual will behave in a particular way in a particular situation.⁷¹ This curriculum gives the individual the skills and confidence to live in a

58. LATHE, *supra* note 18, at 32.

59. *Id.*

60. Pérez et al., *supra* note 22, at 41.

61. *Id.*

62. *Id.*

63. *Id.* at 40.

64. *Id.*

65. Mickey Keenan, *Empowering Parents with Science, in APPLIED BEHAVIOR ANALYSIS AND AUTISM: BUILDING A FUTURE TOGETHER* 76 (M. Keenan ed., 2006).

66. See Sandra L. Harris, *Behavioral and Educational Approaches to the Pervasive Developmental Disorders, in AUTISM AND PERVASIVE DEVELOPMENTAL DISORDERS* 255, 255-57 (Fred. R. Volkmar ed., 2d ed. 2007) (focusing on developing skill deficits).

67. See AUTISM SPEAKS, ARGUMENTS IN SUPPORT OF PRIVATE INSURANCE COVERAGE OF AUTISM RELATED SERVICES 9 (2007), http://www.autismvotes.org/atf/cf/%7B2A179B73-96E2-44C3-8816-1B1C0BE5334B%7D/arguments_for_private_insurance_coverage.pdf (noting applied behavioral analysis as a proven tool in working with ASD).

68. Keenan, *supra* note 65, at 22.

69. *Id.* at 23.

70. *Id.* at 23-24.

71. *Id.* at 24.

world with a wide range of demands.⁷² Once a curriculum is in place, behavioral analysts look for correlations between changes in the individual's behavior and other reactions to behavior.⁷³ The result is a highly individualized, flexible program.⁷⁴

Beyond the basic three needs, many individuals with ASD are also epileptic and require medical treatment.⁷⁵ Other common difficulties that also require medical treatment include depression; anxiety; attention deficit disorders; bone, joint, or muscle problems; hearing and vision difficulties; and psychological disorders.⁷⁶

6. *Early, Individualized Treatment Improves Functioning of Individuals with ASD*

The earlier a treatment plan is initiated for an individual diagnosed with ASD, the better the results of the treatment.⁷⁷ It is undisputed that the earlier the diagnosis of ASD, the sooner a treatment plan can be developed to meet the individual's needs.⁷⁸

Studies have shown that a substantial number of individuals with ASD who receive intensive behavioral interventions early in their lives achieve near-normal or normal functioning.⁷⁹ One study established that forty to fifty percent of children with ASD who had the benefit of early intensive behavioral intervention achieved normal functioning.⁸⁰ Doctors and clinicians do not question whether individuals with ASD can substantially benefit from early intensive behavioral intervention, but rather what practices obtain the best results for the individuals.⁸¹

Programs utilizing early interventions rely on the cerebral plasticity of young children.⁸² Critical periods exist during early development.⁸³ During an individual's early development, if connections in the synapses are not made, it is unlikely such connections will be made later in life.⁸⁴

72. *Id.*

73. *Id.* at 24-25.

74. *Id.* at 33.

75. LATHE, *supra* note 18, at 32.

76. AUTISM SPEAKS, *supra* note 67, at 6.

77. Pérez, *supra* note 22, at 33.

78. *Id.*

79. John W. Jacobson et al., *Cost-Benefit Estimates for Early Intensive Behavioral Intervention for Young Children with Autism: General Model and Single Case Study*, 13 BEHAV. INTERVENTIONS 201, 202 (1998).

80. *Id.* at 212.

81. *Id.* at 203.

82. Pérez, *supra* note 22, at 34.

83. *Id.*

84. *Id.*

When treating individuals with ASD, early interventions can yield significant benefits in both economic and human terms.⁸⁵ Early intervention in ASD cases can markedly alter developmental trajectory.⁸⁶ By the age of nine, eighty-five percent of children with ASD speak in some way, and forty percent speak fluently.⁸⁷ However, those with communication difficulties can be trained to express themselves in alternate ways.⁸⁸ Further, the earlier a specialized treatment plan is developed for the individual, the less funding may ultimately be needed to support the individual through special education, behavior management programs, and medication.⁸⁹

7. *The Costs of Treating ASD Are High*

Parents can spend upwards of \$50,000 a year on ASD therapies.⁹⁰ Individuals whose families cannot afford ASD treatments and cannot receive insurance aid simply go without the benefit of treatment.⁹¹ While Medicaid provides seventy-five percent of the funding for services for the developmentally disabled, Medicaid is an inadequate method for funding ASD treatment due to poor rates of physician reimbursement and due to Medicaid's structure as a short-term provider.⁹² Success in treating ASD with behavioral analysis depends on the time the individual has with the therapy provider, and Medicaid's emphasis on short term makes it difficult for treatment to continue for the length of time beneficial to the individual receiving the treatment.⁹³

Further, private insurance companies resist funding ASD treatments.⁹⁴ A 2002 study revealed that all of 128 behavioral health plans had some limitations on benefits for behavioral therapies.⁹⁵ Specifically, half of the behavioral health plans had caps on the number of outpatient visits and sixty-five percent of the behavioral health

85. Harris, *supra* note 66, at 264-65.

86. *Id.* at 260.

87. Lord, *supra* note 22, at 61.

88. WILLIAMS, *supra* note 31, at 343.

89. *See id.* at 361 (questioning the fiscal savings to appropriate diagnosis and treatment of individuals with ASD rather than nonspecific programs often used); *see also* Jacobson et al., *see supra* note 79, at 213-214 (describing cost-saving benefits of treatment).

90. AUTISM SPEAKS, *supra* note 67, at 8.

91. *Id.*

92. *See id.* (stating low reimbursement rates make finding service providers difficult).

93. *Id.*

94. Pamela B. Peele et al., *Exclusions and Limitations, in Children's Behavioral Health Care Coverage*, 53 PSYCHIATRIC SERVS. 591, 591-94 (2002); AUTISM SPEAKS, *supra* note 67, at 8.

95. Peele et al., *supra* note 94, at 591-94.

plans had restrictions on the number of in-patient visits.⁹⁶ Without the negotiating power of insurance companies behind them, families dealing with ASD often pay high out-of-pocket costs.⁹⁷

By providing early intensive behavioral therapy, a 1998 study determined that the total cost benefit savings in the child's lifetime was between \$1,686,061 and \$2,816,535 per child.⁹⁸ The annual savings per child comes from a savings in social aid, Medicaid, supported community services, and intensive special education services while in school and thereafter.⁹⁹ These savings results from three degrees of benefit from behavioral therapies: (i) those individuals who eventually achieve normal functioning and can function with little to no support; (ii) individuals who are able to participate in less intensive special education programs; and (iii) individuals who receive meaningful benefits but who will still need intensive, specialized adult services and educational services.¹⁰⁰ Saving an average of over two-million dollars per individual and creating improvements in the lives of children and adults with ASD provide incentives to require private insurance companies to fund ASD treatments.¹⁰¹

B. ASD LEGISLATION ACROSS THE STATES

To this date, only nine states have passed legislation to mandate insurance coverage of Autism Spectrum Disorder ("ASD") related therapies.¹⁰² The nine states are Arizona, Florida, Illinois, Indiana, Louisiana, New Mexico, Pennsylvania, South Carolina, and Texas.¹⁰³

1. Texas

Of the states that have adopted legislation relating to mandatory insurance coverage of ASD therapies, the Texas statute has the most

96. *Id.* at 592.

97. AUTISM SPEAKS, *supra* note 67, at 8.

98. See Jacobson et al., *supra* note 79, at 213-14 (estimating savings of \$1,686,061 to \$2,816,535 between the ages of three to fifty-five based on the cost of Pennsylvania program factoring with inflation).

99. *Id.* at 207-10.

100. *Id.* at 205.

101. AUTISM SPEAKS, *supra* note 67, at 8; Jacobson et al., *supra* note 79, at 207-10, 213-14.

102. Autism Speaks, *Autism Speaks State Initiatives Map: Endorsements of State Insurance Reform Legislation*, Oct. 22, 2008, available at http://www.autismvotes.org/site/c.frKNI3PCImE/b.3909861/k.B9DF/State_Initiatives.htm (last visited Mar. 25, 2008).

103. AZ. REV. STAT. ANN. § 20-826.04 (2008); FLA. STAT. § 627.6686. (2007); 215 ILL. COMP. STAT. 5/356Z.14 (2008); IND. CODE § 27-8-14.2 (2009); LA. REV. STAT. ANN. § 22:1050 (2009); S.B. 39, 49th Leg., First Sess. 2009 (N.M. 2009); 40 PA. CONS. STAT. § 764h (2008); S.C. CODE ANN. § 38-71-280 (2008); TEX. INS. CODE ANN. § 1355.015(a) (2008).

limited mandated coverage for private insurers.¹⁰⁴ Texas's statute¹⁰⁵ limits ASD to autism, Asperger's syndrome, and pervasive developmental disorder not otherwise specified ("PDD-NOS"), excluding both Rett's and childhood disintegrative disorder ("CDD").¹⁰⁶ Eligibility is

104. Compare AZ. REV. STAT. ANN. § 20-826.04 (defining ASD as autistic disorder, Asperger's Syndrome, and PDD-NOS and covering behavioral therapy up to 16 years, including maximum benefit allowances by age group), and FLA. STAT. § 627.6686 (defining ASD as autism, Asperger's, or PDD-NOS, covering individuals up to 18 years old, and limiting coverage to \$36,000 annually and \$200,000 in total lifetime benefits), and IND. CODE § 27-8-14.2 (defining ASD as specified in the most recent DSM and providing coverage for all doctor proscribed therapies with no dollar limits), and LA. REV. STAT. ANN. § 22:1050 (defining ASD as specified in the most recent DSM, limiting treatment to individuals less than seventeen, and limiting coverage to \$36,000 per year with a maximum benefit of \$144,000 for life), and S.B. 39, 49th Leg., First Sess. 2009 (N.M. 2009) (limiting coverage to \$36,000 per year with a lifetime cap of \$200,000), and 40 PA. CONS. STAT. § 764h (defining ASD in accord with the most recent DSM, limiting coverage to individuals up to 21 years of age, capping maximum coverage of \$36,000 per year with no lifetime max), and S.C. CODE ANN. § 38-71-280 (defining ASD as autism, Asperger's, or PDD-NOS, covering less than 16 years or age, and limiting coverage to \$50,000 for behavioral therapies), with TEX. INS. CODE ANN. § 1355.001 (limiting coverage to individuals between the ages of 2-6 and limiting coverage to \$50,000 per year for therapies).

105. TEX. INS. CODE ANN. § 1355.001(3) ("Autism spectrum disorder' means a neurobiological disorder that includes autism, Asperger's syndrome, or Pervasive Developmental Disorder—Not Otherwise Specified."). The Texas statute provides:

Required Coverage for Certain Children

(a) At a minimum, a health benefit plan must provide coverage as provided by this section to an enrollee older than two years of age and younger than six years of age who is diagnosed with autism spectrum disorder. If an enrollee who is being treated for autism spectrum disorder becomes six years of age or older and continues to need treatment, this subsection does not preclude coverage of treatment and services described by Subsection (b).

(b) The health benefit plan must provide coverage under this section to the enrollee 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. An individual providing treatment prescribed under this subsection must be a health care practitioner:

- (1) who is licensed, certified, or registered by an appropriate agency of this state;
- (2) whose professional credential is recognized and accepted by an appropriate agency of the United States; or
- (3) who is certified as a provider under the TRICARE military health system.

(c) For purposes of Subsection (b), "generally recognized services" may include services such as:

- (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.

§ 1355.015.

106. TEX. INS. CODE ANN. § 1355.001(3) (defining ASD as autism, Asperger's, and PDD-NOS).

limited to individuals between the ages of two and six.¹⁰⁷ After the age of six, the statute's language specifies that the statute does not preclude insurers from continuing to cover medical expenses.¹⁰⁸ After the age of six, most individuals only obtain treatment through Individual Education Plans in their schools.¹⁰⁹

2. Louisiana

Louisiana's statute¹¹⁰ mandating private insurance coverage of

107. § 1355.015(a).

108. *Id.*

109. 19 TEX. ADMIN. CODE § 89.1040 (2008).

110. LA. REV. STAT. ANN. § 22:1050 (2009). The Louisiana statute provides:
Requirement for Coverage of Diagnosis and Treatment of Autism Spectrum Disorders in Individuals Less Than Seventeen Years of Age.

A.(1) Except as otherwise provided in Subsection H of this Section, any health coverage plan specified in Paragraph (G)(6) of this Section which is issued for delivery, delivered, renewed, or otherwise contracted for in this state on or after January 1, 2009, shall provide coverage for the diagnosis and treatment of autism spectrum disorders in individuals less than seventeen years of age.

(2) No insurer or other issuer of a health coverage plan may terminate coverage or refuse to deliver, execute, issue, amend, adjust, or renew coverage to an individual solely because the individual is diagnosed with one of the autism spectrum disorders or has received treatment for an autism spectrum disorder.

B. Coverage under this Section shall not be subject to any limits on the number of visits an individual may make to an autism services provider.

C. Coverage under this Section may be subject to copayment, deductible, and coinsurance provisions of a health coverage plan to the extent that other medical services covered by the plan are subject to these provisions.

D. (1) Coverage under this Section shall be subject to a maximum benefit of thirty-six thousand dollars per year and a lifetime maximum benefit of one hundred forty-four thousand dollars.

(2) Payments made by an insurer or issuer of a health coverage plan on behalf of a covered individual for any care, treatment, intervention, service, or item unrelated to autism spectrum disorders shall not be applied towards the maximum established under this Subsection.

E. This Section shall not be construed as limiting benefits not related to the treatment of autism spectrum disorders that are otherwise available to an individual under a health coverage plan.

F. A health coverage plan may review proposed treatment of autism spectrum disorders according to medical necessity criteria that may be based in part on evidence of continued improvement as a result of the treatment. Medical necessity determinations shall be subject to appeal rights as described in R.S. 22:1121 et seq.

G. As used in this Section:

(1) "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.

ASD provides greater benefits than Texas's legislation.¹¹¹ The conditions that qualify as ASDs in Louisiana are determined by the most

(2) "Autism services provider" means any person, entity, or group which provides treatment of autism spectrum disorders. When the treatment provided by the autism services provider is applied behavior analysis as defined in this Subsection, such provider shall be certified as a behavior analyst by the Behavior Analyst Certification Board or shall provide, if requested, documented evidence of equivalent education, professional training, and supervised experience in applied behavior analysis.

(3) "Autism spectrum disorders" means any of the pervasive developmental disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), including Autistic Disorder, Asperger's Disorder, and Pervasive Developmental Disorder Not Otherwise Specified.

(4) "Diagnosis of autism spectrum disorders" means medically necessary assessment, evaluations, or tests to diagnose whether an individual has one of the autism spectrum disorders.

(5) "Habilitative or rehabilitative care" means professional, counseling, and guidance services and treatment programs, including applied behavior analysis, that are necessary to develop, maintain, and restore, to the maximum extent practicable, the functioning of an individual.

(6) "Health coverage plan" means any hospital, health, or medical expense insurance policy, hospital or medical service contract, employee welfare benefit plan, contract or agreement with a health maintenance organization or a preferred provider organization, health and accident insurance policy, or any other insurance contract of this type, including a group insurance plan and the Office of Group Benefits programs.

(7) "Pharmacy care" means medications prescribed by a licensed physician.

(8) "Psychiatric care" means direct or consultative services provided by a psychiatrist licensed in this state.

(9) "Psychological care" means direct or consultative services provided by a psychologist licensed in this state.

(10) "Therapeutic care" means services provided by licensed or certified speech therapists, occupational therapists, or physical therapists licensed or certified in this state.

(11) "Treatment of autism spectrum disorders" shall include the following care prescribed, provided, or ordered for an individual diagnosed with one of the autism spectrum disorders by a physician or psychologist who shall be licensed in this state and who shall supervise provision of such care:

- (a) Habilitative or rehabilitative care.
- (b) Pharmacy care.
- (c) Psychiatric care.
- (d) Psychological care.
- (e) Therapeutic care.

H. The provisions of this Section shall not apply to:

- (1) Any health coverage plan issued to an employer with fifty or fewer employees.
- (2) Individually underwritten, guaranteed renewable health insurance policies.

LA. REV. STAT. ANN. § 22:1050.

111. Compare LA. REV. STAT. ANN. § 22:1050 (defining ASD as specified in the most recent DSM, limiting treatment to individuals less than seventeen, and limiting coverage to \$36,000 per year with a maximum benefit of \$144,000 for life), with TEX. INS.

recent edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders ("DSM").¹¹² Louisiana requires that group insurance plans and health coverage plans cover treatment and diagnosis of ASD.¹¹³ Insurance coverage of ASD treatments is available for children under the age of seventeen.¹¹⁴ There are no limits on the number of visits an individual can make to an ASD service provider.¹¹⁵ Insurance coverage is limited to \$36,000 per year and \$144,000 over the lifetime of the child.¹¹⁶ However, insurance providers may appeal the medical necessity of an individual's ASD treatments.¹¹⁷ Additionally, companies with fewer than fifty employees are exempted from the statute mandated coverage as well as individual insurance policies.¹¹⁸

3. Florida

Florida has passed the Steven A. Geller Autism Coverage Act (the "Geller Act").¹¹⁹ Under the Geller Act, insurance coverage of ASD is

CODE ANN. § 1355.001 (limiting coverage to individuals between the ages of 2-6 and limiting coverage to \$50,000 per year for therapies).

112. LA. REV. STAT. ANN. § 22:1050(G)(3).

113. §§ 22:1050(A)(1), (G)(6).

114. § 22:1050(A)(1).

115. § 22:1050(B).

116. § 22:1050(D)(1).

117. § 22:1050(F).

118. § 22:1050(H).

119. FLA. STAT. § 627.6686. The Florida statute provides:

Coverage for Individuals with Autism Spectrum Disorder Required;
Exception

(1) This section and [section] 641.31098, may be cited as the "Steven A. Geller Autism Coverage Act."

(2) As used in this section, the term:

(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, but not limited to, the use of direct observation, measurement, and functional analysis of the relations between environment and behavior.

(b) "Autism spectrum disorder" means any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association:

1. Autistic disorder.
2. Asperger's syndrome.
3. Pervasive developmental disorder not otherwise specified.

(c) "Eligible individual" means an individual under 18 years of age or an individual 18 years of age or older who is in high school who has been diagnosed as having a developmental disability at 8 years of age or younger.

(d) "Health insurance plan" means a group health insurance policy or group health benefit plan offered by an insurer which includes the state group insurance program provided under s. 110.123. The term does not

include any health insurance plan offered in the individual market, any health insurance plan that is individually underwritten, or any health insurance plan provided to a small employer.

(e) "Insurer" means an insurer providing health insurance coverage, which is licensed to engage in the business of insurance in this state and is subject to insurance regulation.

(3) A health insurance plan issued or renewed on or after April 1, 2009, shall provide coverage to an eligible individual for:

(a) Well-baby and well-child screening for diagnosing the presence of autism spectrum disorder.

(b) Treatment of autism spectrum disorder through speech therapy, occupational therapy, physical therapy, and applied behavior analysis. Applied behavior analysis services shall be provided by an individual certified pursuant to s. 393.17 or an individual licensed under chapter 490 or chapter 491.

(4) The coverage required pursuant to subsection (3) is subject to the following requirements:

(a) Coverage shall be limited to treatment that is prescribed by the insured's treating physician in accordance with a treatment plan.

(b) Coverage for the services described in subsection (3) shall be limited to \$ 36,000 annually and may not exceed \$ 200,000 in total lifetime benefits.

(c) Coverage may not be denied on the basis that provided services are habilitative in nature.

(d) Coverage may be subject to other general exclusions and limitations of the insurer's policy or plan, including, but not limited to, coordination of benefits, participating provider requirements, restrictions on services provided by family or household members, and utilization review of health care services, including the review of medical necessity, case management, and other managed care provisions.

(5) The coverage required pursuant to subsection (3) may not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to physical illnesses that are generally covered under the health insurance plan, except as otherwise provided in subsection (4).

(6) An insurer may not deny or refuse to issue coverage for medically necessary services, refuse to contract with, or refuse to renew or reissue or otherwise terminate or restrict coverage for an individual because the individual is diagnosed as having a developmental disability.

(7) The treatment plan required pursuant to subsection (4) shall include all elements necessary for the health insurance plan to appropriately pay claims. These elements include, but are not limited to, a diagnosis, the proposed treatment by type, the frequency and duration of treatment, the anticipated outcomes stated as goals, the frequency with which the treatment plan will be updated, and the signature of the treating physician.

(8) Beginning January 1, 2011, the maximum benefit under paragraph (4)(b) shall be adjusted annually on January 1 of each calendar year to reflect any change from the previous year in the medical component of the then current Consumer Price Index for all urban consumers, published by the Bureau of Labor Statistics of the United States Department of Labor.

(9) This section may not be construed as limiting benefits and coverage otherwise available to an insured under a health insurance plan.

limited to autism, Asperger's syndrome, and PDD-NOS.¹²⁰ However, eligibility under the Geller Act is limited to individuals who have been diagnosed with ASD prior to age eight and are currently under the age of eighteen.¹²¹ Specifically, health insurance plans are required to provide applied behavioral analysis, speech therapy, physical therapy, and occupational therapy to eligible individuals pursuant to the Geller Act.¹²² However, insurance coverage is limited to treatments prescribed by a treating physician and cannot exceed \$36,000 per year or \$200,000 over the individual's lifetime.¹²³

4. *New Mexico*

New Mexico's legislation to reform insurance coverage of ASD therapies is very similar to Florida's legislation.¹²⁴ New Mexico's statute¹²⁵ provides that insurance policies and health plans must pro-

120. § 627.6686(2)(b)

121. §§ 627.6686(2)(c), (3)(c).

122. § 627.6686(3)(b).

123. §§ 627.6686(4)(b), (c).

124. Compare FLA. STAT. § 627.6686. (limiting coverage to \$36,000 per year with a lifetime cap of \$200,000), with S.B. 39, 49th Leg., First Sess. 2009 (N.M. 2009) (limiting coverage to \$36,000 per year with a lifetime cap of \$200,000).

125. New Mexico's statute provides:

A. An individual or group health insurance policy, health care plan or certificate of health insurance delivered or issued for delivery in this state shall provide coverage to an eligible individual who is twenty-two years of age or younger and is enrolled in high school, for:

...

(2) treatment of autism spectrum disorder through speech therapy, occupational therapy, physical therapy and applied behavioral analysis.

B. Coverage required pursuant to Subsection A of this section:

(1) shall be limited to treatment that is prescribed by the insured's treating physician in accordance with a treatment plan;

(2) shall be limited to thirty-six thousand dollars (\$36,000) annually and shall not exceed two hundred thousand dollars (\$200,000) in total lifetime benefits. Beginning January 1, 2011, the maximum benefit shall be adjusted annually on January 1 to reflect any change from the previous year in the medical component of the then-current consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor;

(3) shall not be denied on the basis that the services are habilitative or rehabilitative in nature;

(4) may be subject to other general exclusions and limitations of the insurer's policy or plan, including, but not limited to, coordination of benefits, participating provider requirements, restrictions on services provided by family or household members and utilization review of health care services, including the review of medical necessity, case management and other managed care provisions; and

(5) may be limited to exclude coverage for services received under the federal Individuals with Disabilities Education Improvement Act of 2004 and related state laws that place responsibility on state and local school boards for provid-

vide for treatment of ASD.¹²⁶ The statute includes all ASDs as listed in the DSM-IV-TR.¹²⁷ New Mexico's statute is the only enacted piece of ASD insurance reform legislation that specifically includes Rett's and childhood disintegrative disorder ("CDD") as ASDs.¹²⁸ However, mandatory insurance coverage of ASD in New Mexico is limited to individuals who are twenty-two years of age and younger who are enrolled in high school, or nineteen years of age and younger if not enrolled in high school.¹²⁹ Additionally, insurance coverage for prescribed ASD treatments is limited to \$36,000 annually with a lifetime benefit of \$200,000.¹³⁰ The statutorily covered treatments include

ing specialized education and related services to children three to twenty-two years of age who have autism spectrum disorder.

C. The coverage required pursuant to Subsection A of this section shall not be subject to dollar limits, deductibles or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles or coinsurance provisions that apply to physical illnesses that are generally covered under the individual or group health maintenance contract, except as otherwise provided in Subsection B of this section.

D. An insurer shall not deny or refuse to issue health insurance coverage for medically necessary services or refuse to contract with, renew, reissue or otherwise terminate or restrict health insurance coverage for an individual because the individual is diagnosed as having autism spectrum disorder.

E. The treatment plan required pursuant to Subsection B of this section shall include all elements necessary for the health insurance plan to pay claims appropriately. These elements include, but are not limited to:

- (1) the diagnosis;
- (2) the proposed treatment by types;
- (3) the frequency and duration of treatment;
- (4) the anticipated outcomes stated as goals;
- (5) the frequency with which the treatment plan will be updated; and
- (6) the signature of the treating physician.

F. This section shall not be construed as limiting benefits and coverage otherwise available to an insured under a health insurance plan.

...

H. As used in this section:

(1) "autism spectrum disorder" means a condition that meets the diagnostic criteria for the pervasive developmental disorders published in the Diagnostic and Statistical Manual of Mental Disorders, fourth edition, text revision, also known as DSM-IV-TR, published by the American Psychiatric Association, including autistic disorder; Asperger's disorder; pervasive development disorder not otherwise specified; Rett's disorder; and childhood disintegrative disorder.

S.B. 39, 49th Leg., First Sess. 2009 (N.M. 2009)

126. S.B. 39 § (A)(1), 49th Leg., First Sess. 2009 (N.M. 2009).

127. S.B. 39 § (H)(1).

128. S.B. 39 § (H)(1).

129. S.B. 39 § (A).

130. S.B. 39 § (B)(2).

speech therapy, physical therapy, occupational therapy, and applied behavioral analysis.¹³¹

5. Pennsylvania

Pennsylvania's statute¹³² provides for broader coverage of ASD

131. S.B. 39 § (A)(2).

132. 40 PA. CONS. STAT. § 764h. The Pennsylvania statute provides:
Autism Spectrum Disorders Coverage

(a) A health insurance policy or government program covered under this section shall provide to covered individuals or recipients under twenty-one (21) years of age coverage for the diagnostic assessment of autism spectrum disorders and for the treatment of autism spectrum disorders.

(b) Coverage provided under this section by an insurer shall be subject to a maximum benefit of thirty-six thousand dollars (\$ 36,000) per year but shall not be subject to any limits on the number of visits to an autism service provider for treatment of autism spectrum disorders. After December 30, 2011, the Insurance Commissioner shall, on or before April 1 of each calendar year, publish in the Pennsylvania Bulletin an adjustment to the maximum benefit equal to the change in the United States Department of Labor Consumer Price Index for All Urban Consumers (CPI-U) in the preceding year, and the published adjusted maximum benefit shall be applicable to the following calendar years to health insurance policies issued or renewed in those calendar years. Payments made by an insurer on behalf of a covered individual for treatment of a health condition unrelated to or distinguishable from the individual's autism spectrum disorder shall not be applied toward any maximum benefit established under this subsection.

(c) Coverage under this section shall be subject to copayment, deductible and coinsurance provisions and any other general exclusions or limitations of a health insurance policy or government program to the same extent as other medical services covered by the policy or program are subject to these provisions.

(d) This section shall not be construed as limiting benefits which are otherwise available to an individual under a health insurance policy or government program.

(d.1) This section shall not be construed as requiring coverage by insurers of any service based solely on its inclusion in an individualized education program. Consistent with Federal or State law and upon consent of the parent or guardian of the covered individual, the treatment of autism spectrum disorders may be coordinated with any service included in an individualized education program. Coverage for the treatment of autism spectrum disorders shall not be contingent upon a coordination of services with an individualized education program.

(e)(1) This section shall apply to any health insurance policy offered, issued or renewed on or after July 1, 2009, in this Commonwealth to groups of fifty-one (51) or more employees. . .

(2) This section shall apply to any contract executed on or after July 1, 2009, by the adult basic coverage insurance program established under Chapter 13 of the act of June 26, 2001 (P.L. 755, No. 77), known as the "Tobacco Settlement Act," or by the Children's Health Care Program established under this act, or by any successor program of either of them.

(f) As used in this section:

(1) "Applied behavioral analysis" means the design, implementation and evaluation of environmental modifications, using behavioral stimuli and con-

treatments than either Texas or Louisiana's legislation.¹³³ Pennsylvania's insurance reform statute requires insurers to provide ASD treatments to individuals under twenty-one years of age.¹³⁴ However, insurance coverage is limited to \$36,000 per year with no lifetime limitation.¹³⁵ If a claim is denied by an insurer, the individual seeking the claim is entitled to an expedited review.¹³⁶ Companies with fewer than fifty employees are excluded from the statute mandated coverage of ASD treatments.¹³⁷

6. Illinois

The Illinois statute¹³⁸ that provides for mandatory insurance cov-

sequences, to produce socially significant improvement in human behavior or to prevent loss of attained skill or function, including the use of direct observation, measurement and functional analysis of the relations between environment and behavior.

...

(3) "Autism spectrum disorders" means any of the pervasive developmental disorders defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), or its successor, including autistic disorder, Asperger's disorder and pervasive developmental disorder not otherwise specified.

40 PA. CONS. STAT. § 764h.

133. Compare LA. REV. STAT. ANN. § 22:1050 (defining ASD as specified in the most recent DSM, limiting treatment to individuals less than seventeen, and limiting coverage to \$36,000 per year with a maximum benefit of \$144,000 for life), and TEX. INS. CODE ANN. § 1355.001 (limiting coverage to individuals between the ages of 2-6; coverage limited to \$50,000 per year for therapies), with 40 PA. CONS. STAT. § 764h (defining ASD in accord with the most recent DSM, limiting coverage to individuals up to 21 years of age, and limiting maximum coverage of \$36,000 per year with no lifetime max).

134. 40 PA. STAT. § 764h (2008).

135. *Id.*

136. *Id.*

137. See *id.* (defining health insurance policy as "any group health, sickness or accident policy or subscriber contract or certificate offered to groups of fifty-one (51) or more employees issued by an entity. . .").

138. 215 ILL. COMP. STAT. § 5/356z.14. The Illinois statute provides:
Autism Spectrum Disorders.

(a) A group or individual policy of accident and health insurance or managed care plan amended, delivered, issued, or renewed after the effective date of this amendatory Act of the 95th General Assembly [P.A. 95-1005] must provide individuals under 21 years of age coverage for the diagnosis of autism spectrum disorders and for the treatment of autism spectrum disorders to the extent that the diagnosis and treatment of autism spectrum disorders are not already covered by the policy of accident and health insurance or managed care plan.

(b) Coverage provided under this Section shall be subject to a maximum benefit of \$ 36,000 per year, but shall not be subject to any limits on the number of visits to a service provider. After December 30, 2009, the Director of the Division of Insurance shall, on an annual basis, adjust the maximum benefit for inflation using the Medical Care Component of the United States Department of Labor Consumer Price Index for All Urban Consumers. Payments made by an insurer on behalf of a covered individual for any care, treatment,

erage of ASD is similar to Pennsylvania's statute.¹³⁹ The Illinois statute defines ASD to include any of the pervasive developmental disorders defined in the most recent DSM.¹⁴⁰ Under the provisions of the statute, insurance policies must provide coverage for diagnosis

intervention, service, or item, the provision of which was for the treatment of a health condition not diagnosed as an autism spectrum disorder, shall not be applied toward any maximum benefit established under this subsection.

(c) Coverage under this Section shall be subject to copayment, deductible, and coinsurance provisions of a policy of accident and health insurance or managed care plan to the extent that other medical services covered by the policy of accident and health insurance or managed care plan are subject to these provisions.

(d) This Section shall not be construed as limiting benefits that are otherwise available to an individual under a policy of accident and health insurance or managed care plan and benefits provided under this Section may not be subject to dollar limits, deductibles, copayments, or coinsurance provisions that are less favorable to the insured than the dollar limits, deductibles, or coinsurance provisions that apply to physical illness generally.

(e) An insurer may not deny or refuse to provide otherwise covered services, or refuse to renew, refuse to reissue, or otherwise terminate or restrict coverage under an individual contract to provide services to an individual because the individual or their dependent is diagnosed with an autism spectrum disorder or due to the individual utilizing benefits in this Section.

(f) Upon request of the reimbursing insurer, a provider of treatment for autism spectrum disorders shall furnish medical records, clinical notes, or other necessary data that substantiate that initial or continued medical treatment is medically necessary and is resulting in improved clinical status. When treatment is anticipated to require continued services to achieve demonstrable progress, the insurer may request a treatment plan consisting of diagnosis, proposed treatment by type, frequency, anticipated duration of treatment, the anticipated outcomes stated as goals, and the frequency by which the treatment plan will be updated.

(g) When making a determination of medical necessity for a treatment modality for autism spectrum disorders, an insurer must make the determination in a manner that is consistent with the manner used to make that determination with respect to other diseases or illnesses covered under the policy, including an appeals process. During the appeals process, any challenge to medical necessity must be viewed as reasonable only if the review includes a physician with expertise in the most current and effective treatment modalities for autism spectrum disorders.

(h) Coverage for medically necessary early intervention services must be delivered by certified early intervention specialists, as defined in 89 Ill. Admin. Code 500 and any subsequent amendments thereto.

(i) As used in this Section:

"Autism spectrum disorders" means pervasive developmental disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including autism, Asperger's disorder, and pervasive developmental disorder not otherwise specified.

215 ILL. COMP. STAT. § 5/356z.14.

139. Compare 215 ILL. COMP. STAT. § 5/356z.14 (limiting coverage to \$36,000 per year with no lifetime limit), with 40 PA. STAT. § 764h (limiting coverage to \$36,000 per year with no lifetime limit).

140. 215 ILL. COMP. STAT. § 5/356z.14(i).

and treatment of ASD to individuals under the age of twenty-one.¹⁴¹ In Illinois, coverage is limited to \$36,000 annually with no cap on lifetime benefits.¹⁴² Furthermore, the ASD treatments covered by the statute include psychiatric care, psychological care, rehabilitative care, and therapeutic care.¹⁴³ Therapeutic care includes treatment in self-care and feeding, language, cognitive functioning, motor planning, sensory processing, and applied behavioral analysis.¹⁴⁴

7. Arizona

Arizona requires private insurance companies to cover ASD related therapies under Steven's Law.¹⁴⁵ Steven's Law¹⁴⁶ provides that hospitals and medical service corporations cannot exclude or deny coverage for individuals diagnosed with ASD.¹⁴⁷ Further, these hospitals and medical service corporations cannot deny coverage for behavioral

141. § 5/356z.14(a).

142. § 5/356z.14(b).

143. § 5/356z.14(i).

144. § 5/356z.14(i)(4).

145. Az. REV. STAT. § 20-826.04, editor's note.

146. § 20-826.04. The Arizona statute provides:

Subscription Contracts; Autism Spectrum Disorder; Coverage; Exceptions; Definitions

- A. A hospital service corporation or medical service corporation shall not:
1. Exclude or deny coverage for a treatment or impose dollar limits, deductibles and coinsurance provisions based solely on the diagnosis of autism spectrum disorder. For the purposes of this paragraph, "treatment" includes diagnosis, assessment and services.
 2. Exclude or deny coverage for medically necessary behavioral therapy services. To be eligible for coverage, behavioral therapy services shall be provided or supervised by a licensed or certified provider.
- B. This section does not:
1. Apply to a subscription contract that is issued to an individual or a small employer.
 2. Apply to limited benefit coverage as defined in section 20-1137.
 3. Require coverage for services provided outside of this state.
- C. The coverage required by this section is subject to all the terms and conditions of the subscription contract. Nothing in this section prevents a corporation from imposing deductibles, coinsurance or other cost sharing in relation to the coverage required by this section.
- D. Coverage for behavioral therapy is subject to:
1. A fifty thousand dollar maximum benefit per year for an eligible person up to the age of nine.
 2. A twenty-five thousand dollar maximum benefit per year for an eligible person who is between the ages of nine and sixteen.
- E. For the purposes of this section:
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:
 - (a) Autistic disorder.
 - (b) Asperger's syndrome.
 - (c) Pervasive developmental disorder—not otherwise specified.

Az. REV. STAT. § 20-826.04.

147. § 20-826.04(A)(1).

therapies that are medically necessary for an individual with ASD.¹⁴⁸ Under Steven's Law, coverage is limited to \$50,000 per year for individuals up to age nine.¹⁴⁹ Coverage is limited to \$25,000 per year for individuals between the ages of nine and eighteen.¹⁵⁰ Steven's Law defines ASD as autism, Asperger's syndrome, and PDD-NOS.¹⁵¹ However, Steven's Law does not require insurance contracts issued by small employers or individuals to provide coverage of ASD therapies.¹⁵² Further, the statute does not require insurance coverage for ASD related services provided outside Arizona.¹⁵³

8. South Carolina

South Carolina's autism legislation is commonly known as Ryan's Law.¹⁵⁴ Under Ryan's Law,¹⁵⁵ insurance companies are required to

148. § 20-826.04(A)(2).

149. § 20-826.04(D)(1).

150. § 20-826.04(D)(2).

151. § 20-826.04(E)(1).

152. § 20-826.04(B)(1).

153. § 20-826.04(B)(3).

154. Justine Redman, *Mom Wins Fight For Autism Insurance*, CNN, Apr. 1, 2008, <http://www.cnn.com/2008/HEALTH/conditions/04/01/autism.insurance/index.html>.

155. S.C. CODE ANN. § 38-71-280. The South Carolina statute provides:

Autism Spectrum Disorder; Coverage; Eligibility for Benefits.

(A) As used in this section:

- (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:
 - (a) Autistic Disorder;
 - (b) Asperger's Syndrome;
 - (c) Pervasive Developmental Disorder—Not Otherwise Specified.
 - (2) "Insurer" means an insurance company, a health maintenance organization, and any other entity providing health insurance coverage, as defined in Section 38-71-670(6), which is licensed to engage in the business of insurance in this State and which is subject to state insurance regulation.
 - (3) "Health maintenance organization" means an organization as defined in Section 38-33-20(8).
 - (4) "Health insurance plan" means a group health insurance policy or group health benefit plan offered by an insurer. It includes the State Health Plan, but does not otherwise include any health insurance plan offered in the individual market as defined in Section 38-71-670(11), any health insurance plan that is individually underwritten, or any health insurance plan provided to a small employer, as defined by Section 38-71-1330(17) of the 1976 Code.
 - (5) "State Health Plan" means the employee and retiree insurance program provided for in Article 5, Chapter 11, Title 1.
- (B) A health insurance plan as defined in this section must provide coverage for 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. 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 individ-

provide coverage to individuals for the treatment of ASD.¹⁵⁶ However, Ryan's Law exclusively defines ASD to include autism, Asperger's, and PDD-NOS.¹⁵⁷ Furthermore, individuals seeking treatments relating to ASD will only be covered by the private insurance policy if the treatment was done in accordance with a prescribed treatment plan created by a medical doctor.¹⁵⁸ In order for an individual to be eligible for insurance coverage, the individual must have been diagnosed with ASD under the age of eight.¹⁵⁹ If an individual was diagnosed with ASD before the individual turned eight years old, that individual will be covered by a private insurance policy that covers ASD treatments until the individual turns sixteen years old.¹⁶⁰ However, coverage for behavioral therapies is limited to \$50,000 annually.¹⁶¹

ual solely because the individual is diagnosed with autism spectrum disorder.

- (C) The coverage required pursuant to subsection (B) must not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to physical illness generally under the health insurance plan, except as otherwise provided for in subsection (E). However, the coverage required pursuant to subsection (B) may be subject to other general exclusions and limitations of the health insurance plan, including, but not limited to, coordination of benefits, participating provider requirements, restrictions on services provided by family or household members, utilization review of health care services including review of medical necessity, case management, and other managed care provisions.
- (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. 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.
- (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 subject to a fifty thousand dollar maximum benefit per year. 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.

S.C. CODE ANN. § 38-71-280.

156. S.C. CODE ANN. § 38-71-280.

157. § 38-71-280(A)(1).

158. § 38-71-280(B).

159. § 38-71-280(E).

160. § 38-71-280(E).

161. § 38-71-280(E).

9. Indiana

Indiana's statute, which requires private insurance companies to cover ASD, creates the most required benefits for individuals with ASD.¹⁶² Indiana's statute¹⁶³ does not restrict coverage of ASD treat-

162. Compare AZ. REV. STAT. ANN. § 20-826.04 (defining ASD as autistic disorder, Asperger's Syndrome, and PDD-NOS, covering behavioral therapy up to 16 years, and including maximum benefit allowances by age group), and FLA. STAT. § 627.6686 (defining ASD as autism, Asperger's, or PDD-NOS, covering individuals up to 18 years old, limiting coverage to \$36,000 annually and \$200,000 in total lifetime benefits), and LA. REV. STAT. § 22:1050 (defining ASD as specified in the most recent DSM, limiting treatment to individuals less than seventeen, and limiting coverage to \$36,000 per year with a maximum benefit of \$144,000 for life), and 40 PA. STAT. § 764h (defining ASD in accord with the most recent DSM, limiting coverage to individuals up to 21 years of age, and limiting maximum coverage of \$36,000 per year no lifetime max), and S.C. CODE ANN. § 38-71-280 (defining ASD as autism, Asperger's, or PDD-NOS, covering less than 16 years or age, and limiting \$50,000 for behavioral therapies), and TEX. INS. CODE ANN. § 1355.001 (limiting coverage to individuals between the ages of 2-6 and limiting coverage to \$50,000 per year for therapies), with IND. CODE § 27-8-14.2 (defining ASD as specified in the most recent DSM and providing coverage for all doctor proscribed therapies with no dollar limits and no age limit).

163. IND. CODE § 27-8-14.2-3. The Indiana statute provides:

"Pervasive Developmental Disorder" Defined.

As used in this chapter, "pervasive developmental disorder" means a neurological condition, including Asperger's syndrome and autism, as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

§ 27-8-14.2-3.

Group Policies — Coverage for Pervasive Developmental Disorder Required.

(a) An accident and sickness insurance policy that is issued on a group basis must provide coverage for the treatment of a pervasive developmental disorder of an insured. Coverage provided under this section is limited to treatment that is prescribed by the insured's treating physician in accordance with a treatment plan. An insurer may not deny or refuse to issue coverage on, refuse to contract with, or refuse to renew, refuse to reissue, or otherwise terminate or restrict coverage on an individual under an insurance policy solely because the individual is diagnosed with a pervasive developmental disorder.

(b) The coverage required under this section may not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to physical illness generally under the accident and sickness insurance policy.

§ 27-8-14.2-4.

Individual Policies — Offer to Provide Coverage for Pervasive Developmental Disorder Required.

(a) An insurer that issues an accident and sickness insurance policy on an individual basis must offer to provide coverage for the treatment of a pervasive developmental disorder of an insured. Coverage provided under this section is limited to treatment that is prescribed by the insured's treating physician in accordance with a treatment plan. An insurer may not deny or refuse to issue coverage on, refuse to contract with, or refuse to renew, refuse to reissue, or otherwise terminate or restrict coverage on an individual under an insurance policy solely because the individual is diagnosed with a pervasive developmental disorder.

(b) The coverage that must be offered under this section may not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to

ment to individuals of any age group.¹⁶⁴ Instead, Indiana requires private insurance companies to provide coverage for all individuals with pervasive developmental disorders as defined by the DSM.¹⁶⁵ Additionally, the Indiana statute does not provide any dollar limitations on ASD treatments.¹⁶⁶ Rather, coverage extends to all treatments prescribed by the treating physician in accordance with the individual's ASD treatment plan.¹⁶⁷ Indiana estimated the additional cost for insurance premiums would range between \$0.44 and \$1.67 per month per contract for the broad reaching plan.¹⁶⁸ Wisconsin attempted to implement a similar plan and estimated that the total cost would be an increase of \$3.45 to \$4.10 per member per month.¹⁶⁹

C. NEBRASKA'S CURRENT SYSTEM FOR ASD

In Nebraska, Autism Spectrum Disorder ("ASD") is a growing problem.¹⁷⁰ In 2000, 374 individuals between the ages of three and twenty-two were diagnosed with autism in Nebraska.¹⁷¹ In 2007, 1,444 individuals between three and twenty-two years of age were diagnosed with autism in Nebraska.¹⁷² The cumulative growth rate between 1992 and 2007 for individuals diagnosed with autism was 3,262%.¹⁷³ In 2007, the annual growth rate for individuals diagnosed with autism between the ages of six and twenty-two in Nebraska was twenty-two percent.¹⁷⁴ Further, the average family in Nebraska has a median household income of \$47,072.¹⁷⁵

an insured than the dollar limits, deductibles, or coinsurance provisions that apply to physical illness generally under the accident and sickness insurance policy.

§ 27-8-14.2-5.

164. See IND. CODE § 27-8-14.2-3,4 (including no age limit).

165. §§ 27-8-14.2-3, 27-8-14.2-4.

166. See § 27-8-14.2 (including no dollar limits).

167. §§ 27-8-14.2-4, 27-8-14.2-5 (2007).

168. LEGISLATIVE SERVICES AGENCY, FISCAL IMPACT STATEMENT FOR HB 1122 at 2 (2001), <http://www.in.gov/legislative/bills/2001/PDF/FISCAL/HB1122.006.pdf>.

169. WISCONSIN DEPARTMENT OF ADMINISTRATION, FISCAL ESTIMATE FOR ASSEMBLY BILL 417 (2007).

170. Fighting Autism, Autism- Statistics, Incidence, Prevalance, Rates (Nebraska), <http://www.fightingautism.org/idea/autism.php?s=NE&z=L> (last visited May 22, 2009); U.S. CENSUS BUREAU, NEBRASKA QUICKFACTS FROM THE U.S. CENSUS BUREAU (2009), <http://quickfacts.census.gov/qfd/states/31000.html>.

171. See Fighting Autism, *supra* note 170 (showing 2007 statistic for number of children diagnosed with Autism to be 374 in the table titled "Number of Cases").

172. See *id.* (showing 2007 statistic for number of children diagnosed with Autism to be 1442 in the table titled "Number of Cases").

173. See *id.* (showing cumulative growth rate of autism for children ages 6-22 from 1992-2007 was 3,262% in the table titled "Number of Cases Cumulative Growth").

174. See *id.* (showing annual growth rate of autism for 2007 to be 22% in the table titled "Number of Cases Annual Growth").

175. U.S. CENSUS BUREAU, *supra* note 170.

Currently, Nebraska legislation does not require health insurance companies to cover ASD treatments or services.¹⁷⁶ Limited coverage for ASD treatment may be available through Nebraska's mental health parity law.¹⁷⁷ Nebraska's mental health parity law provides that if an individual's insurance plan covers mental health conditions, mental health conditions must be covered the same as the plan would cover other medical conditions.¹⁷⁸ Nebraska's mental health parity law provides insufficient aid to individuals with ASD because insurers can avoid paying for ASD treatments by refusing to cover mental health conditions.¹⁷⁹ Additionally, under Nebraska's mental health parity law, health insurance plans that require different terms, rates, and conditions to cover developmental, educational, or experimental services, and plans that entirely exclude developmental, educational, or experimental services from coverage, do not violate the law.¹⁸⁰ Therefore, this enables allows insurers to refuse coverage for behavioral therapies either on the grounds that the therapies have not been sufficiently tested, or that the therapies are developmental or educational services.¹⁸¹ For the above stated reasons, Nebraska's mental health parity law provides inadequate coverage of behavioral therapies, which are essential in treating individuals with ASD.¹⁸²

Nebraska relies heavily on the school system to treat ASD.¹⁸³ To implement its plan for treating ASD, Nebraska created an ASD Network which is within the Department of Education and provides consultation to schools concerning how to treat ASD.¹⁸⁴ The Nebraska plan for treating ASD provides access to treatments through local school districts, neighboring school districts, or regional services.¹⁸⁵

Nebraska's reliance on the education system to deal with ASD places an unmanageable burden on schools' finances.¹⁸⁶ Nebraska's

176. EASTER SEALS DISABILITY SERVICES, 2008 STATE AUTISM PROFILES: NEBRASKA 1 (2008), http://www.easterseals.com/autism/Autism_Nebraska_v1.pdf.

177. *Id.*; NEB. REV. STAT. § 44-792 (2007).

178. NEB. REV. STAT. § 44-793(1) (2007).

179. *See* § 44-793(1)(b) (providing if a plan clearly states there is no coverage of mental health treatments, the plan is not required to treat mental health conditions as medical conditions).

180. § 44-794(2).

181. *Id.*

182. *See supra* note 76-88, 176-81 and accompanying text.

183. *See* NEBRASKA SPECIAL EDUCATION ADVISORY COUNCIL, AD HOC COMMITTEE ON AUTISM, AUTISM SPECTRUM DISORDERS (ASD): NEBRASKA STATE PLAN 9, 13 (2001), <http://www.nde.state.ne.us/autism/documents/autsp.pdf> (focusing on requiring teachers to train in autism in order to provide services to ASD children).

184. *Id.* at 4.

185. *Id.* at 2.

186. 20 U.S.C. § 1411(e)(3)(d)(iii) (2006); NEBRASKA SPECIAL EDUCATION ADVISORY COUNCIL, *supra* note 183, at 14; IDEA FUNDING COALITION, IDEA FUNDING: TIME FOR CONGRESS TO LIVE UP TO THE COMMITMENT, MANDATORY FUNDING PROPOSAL 2, 7, app. I

ASD Network is funded by the Individuals with Disabilities Education Act ("IDEA").¹⁸⁷ Further, the recommended individualized education plans for each child with ASD are funded by IDEA.¹⁸⁸ IDEA provides that, at a maximum, each state will receive forty percent of the cost of executing individualized education plans from the federal government.¹⁸⁹ Historically, the percentage the federal government has contributed to the cost of executing individualized education plans has always fallen substantially short of the forty percent maximum.¹⁹⁰ As a result of minimal federal funding, American schools have absorbed \$381.8 billion in special education costs that should have been covered by the federal government under IDEA.¹⁹¹ As a result, local schools have historically struggled with meeting the minimum educational requirements of a growing population of individuals with disabilities, including ASD.¹⁹²

The only legislation that helps with early treatment of ASD in Nebraska is the Autism Treatment Program, which is administered by the University of Nebraska Medical Center and the Center for Autism Spectrum Disorders.¹⁹³ The program has the goal of coordinating early intervention services for children diagnosed with autism.¹⁹⁴ However, the Autism Treatment Program is ineffective because the fund relies on private funding received from gifts, donations, grants, bequests, and other private sources.¹⁹⁵ Also, the program only states that treatments are for individuals with autism, failing to account for other forms of ASD, such as Asperger's, PDD-NOS, CDD, or Rett's.¹⁹⁶

III. ARGUMENT

Today, Autism Spectrum Disorder ("ASD") affects as much as one percent of the younger population.¹⁹⁷ ASD is diagnosed based on difficulties in three developmental areas: (i) social communication; (ii) social reciprocity; and (iii) restrictive and repetitive interests and

(2006), <https://www.aasa.org/files/Word/PublicPolicy/Mandatory%202004%20Proposal%20-%20Draft.doc>.

187. See NEBRASKA SPECIAL EDUCATION ADVISORY COUNCIL, *supra* note 183, at 14 (stating funded by Nebraska Department of Education under IDEA part B funds).

188. 20 U.S.C. § 1411(e)(3)(d)(iii).

189. § 1411(a)(2)(B)(ii).

190. IDEA FUNDING COALITION, *supra* note 186, at 2, 7, app. I (showing the history of funding averaging approximately 13.5% from 1993 to 2006).

191. *Id.* at 3.

192. *Id.* at 4.

193. NEB. REV. STAT. § 85-1,140.

194. *Id.*

195. NEB. REV. STAT. §§ 85-1,140, -1,141.

196. NEB. REV. STAT. §§ 85-1,140, -1,141.

197. See RICHARD LATHE, AUTISM, BRAIN, AND ENVIRONMENT 58, 59 (2006) (estimating the overall prevalence is one in 142, up to one percent in younger age groups).

behaviors.¹⁹⁸ Individuals with ASD can be treated.¹⁹⁹ The earlier a treatment plan is initiated for an individual with ASD, the greater the likelihood of success of the treatment.²⁰⁰ The parents of children with ASD can spend upwards of \$50,000 a year on ASD treatments and therapies.²⁰¹ In Nebraska, the median household income is \$47,072.²⁰² Children whose families cannot afford these treatments and therapies and who do not receive insurance aid simply go without the same interventions.²⁰³

Currently, Nebraska has no legislation that requires health insurers to cover ASD treatments or services.²⁰⁴ Nebraska relies heavily upon the Nebraska school systems to treat ASD.²⁰⁵ Nebraska's plan created an ASD Network within the Department of Education, which provides consultation to schools on how to treat individuals with ASD.²⁰⁶ The ASD Network relies on funding from the Individuals with Disabilities Education Act ("IDEA").²⁰⁷ However, IDEA has historically failed to provide the maximum funding provided for by the statute to states, which would reimburse the schools for forty percent of the cost of providing special education services.²⁰⁸ The shortfall in IDEA's funding has caused public schools across the nation to absorb

198. Catherine Lord, *Early Assessment of Autistic Spectrum Disorders*, in *NEW DEVELOPMENTS IN AUTISM: THE FUTURE IS TODAY* 58, 58 (Juan Martos Pérez ed., 2006).

199. See John W. Jacobson et al., *Cost-Benefit Estimates for Early Intensive Behavioral Intervention for Young Children with Autism: General Model and Single Case Study*, 13 *BEHAV. INTERVENTIONS* 201, 202 (1998) (describing studies showing a substantial number of children with ASD who receive early intensive behavioral interventions achieve near-normal or normal functioning).

200. Juan Martos Pérez et al., *Early Manifestations of Autistic Spectrum Disorder During the First Two Years of Life*, in *NEW DEVELOPMENTS IN AUTISM: THE FUTURE IS TODAY* 33, 33 (Juan Martos Pérez ed., 2006).

201. *AUTISM SPEAKS, ARGUMENTS IN SUPPORT OF PRIVATE INSURANCE COVERAGE OF AUTISM RELATED SERVICES* 8 (2007), http://www.autismvotes.org/atf/cf/%7B2A179B73-96E2-44C3-8816-1B1C0BE5334B%7D/arguments_for_private_insurance_coverage.pdf.

202. U.S. CENSUS BUREAU, *NEBRASKA QUICKFACTS FROM THE U.S. CENSUS BUREAU* (2009), <http://quickfacts.census.gov/qfd/states/31000.html>.

203. *Id.*

204. *EASTER SEALS DISABILITY SERVICES, 2008 STATE AUTISM PROFILES: NEBRASKA 1* (2008), http://www.easterseals.com/autism/Autism_Nebraska_v1.pdf.

205. See *NEBRASKA SPECIAL EDUCATION ADVISORY COUNCIL, AD HOC COMMITTEE ON AUTISM, AUTISM SPECTRUM DISORDERS (ASD): NEBRASKA STATE PLAN* 9, 13 (2001), <http://www.nde.state.ne.us/autism/documents/autsp.pdf> (focusing on requiring teachers to train in autism in order to provide services to ASD children).

206. *Id.* at 4.

207. See *id.* at 14 (stating funded by Nebraska Department of Education under IDEA part B funds).

208. IDEA FUNDING COALITION, *IDEA FUNDING: TIME FOR CONGRESS TO LIVE UP TO THE COMMITMENT, MANDATORY FUNDING PROPOSAL* 2, 7, app. I (2006), <https://www.aasa.org/files/Word/PublicPolicy/Mandatory%202004%20Proposal%20-%20Draft.doc> (showing the history of funding averaging approximately 13.5% from 1993 to 2006).

\$381.8 billion in special education costs left unfunded by the federal government.²⁰⁹

Nebraska's reliance on the education system to treat individuals with ASD places an unmanageable burden on schools' finances.²¹⁰ Because states do not receive the full forty percent of federal funding to treat ASD, delegating the duty to treat individuals with ASD to the public schools adds additional financial obligations to the already struggling local educational agencies.²¹¹

This Argument will discuss why insurance companies are best suited to cover the cost of treating the growing population of individuals with ASD in Nebraska.²¹² The Argument will start by explaining the myriad of difficulties that individuals with ASD face.²¹³ The Argument will go on to discuss the benefits to individuals and society of treating ASD and will further explain why insurance is best suited to deal with the costs of treatment.²¹⁴ This Argument will then compare and contrast statutes of the nine states which have mandated that private insurance companies cover the costs of treating ASD individuals.²¹⁵ Finally, this Argument will advocate that Nebraska would be best served by implementing a statute similar to Indiana's statute, which mandates medical insurance coverage of all doctor prescribed ASD treatments.²¹⁶

A. NEBRASKA SHOULD PASS LEGISLATION THAT REQUIRES INSURANCE COMPANIES TO COVER ASD RELATED EXPENSES

Nebraska should implement legislation requiring insurance coverage of Autism Spectrum Disorder ("ASD") related therapies.²¹⁷ Currently, individuals in Nebraska who need ASD therapies must either personally pay the substantial cost of these therapies or go without treatment.²¹⁸ In Nebraska, the median household income is

209. *Id.* at 3.

210. *See infra* note 211 and accompanying text.

211. IDEA Funding Coalition, *supra* note 208, at 4.

212. *See infra* notes 213-16 and accompanying text.

213. *See infra* notes 227-37 and accompanying text.

214. *See infra* notes 238-87 and accompanying text.

215. *See infra* notes 288-328 and accompanying text.

216. *See infra* notes 329-56 and accompanying text.

217. *See infra* notes 218-26 and accompanying text.

218. EASTER SEALS DISABILITY SERVICES, 2008 STATE AUTISM PROFILES: NEBRASKA 1 (2008), http://www.easterseals.com/autism/Autism_Nebraska_v1.pdf; *see* AUTISM SPEAKS, ARGUMENTS IN SUPPORT OF PRIVATE INSURANCE COVERAGE OF AUTISM RELATED SERVICES 8 (2007), http://www.autismvotes.org/atf/cf/%7B2A179B73-96E2-44C3-8816-1B1C0BE5334B%7D/arguments_for_private_insurance_coverage.pdf (children whose families could not afford treatments go without).

\$47,072.²¹⁹ However, the cost of treating an individual affected by ASD with therapy can approach \$50,000 per year.²²⁰ Thus, the yearly cost of treating an individual with ASD through therapy is more than the median household income in Nebraska.²²¹

Nebraska relies upon the financially overburdened public school system to work with and treat children with ASD.²²² Nebraska legislation requiring medical insurance coverage of ASD treatments for individuals affected by ASD is critical for three reasons.²²³ First, the problems associated with treating individuals affected by ASD are too numerous to be dealt with through the public school system alone, and individuals with ASD can be effectively treated.²²⁴ Second, ASD is a growing problem for all segments of the population.²²⁵ Third, while the treatments for individuals with ASD are effective, the cost of the treatments is high, and, therefore insurance companies are reluctant to cover these costs.²²⁶

1. *Legislatively Mandated Insurance Coverage of ASD Therapies Is Necessary Because Problems Associated With Treating ASD Are Too Numerous and Drastic to Be Dealt with Solely Through Public Schools*

ASD includes neuropsychiatric disorders that are phenomenologically related.²²⁷ Physicians identify individuals with ASD by the individual's problems with social communication, social reciprocity, and restrictive and repetitive interests and behaviors.²²⁸ Individuals with ASD have developmental difficulties in social communication, social reciprocity, and imaginative or symbolic play.²²⁹ While all types of

219. U.S. CENSUS BUREAU, NEBRASKA QUICKFACTS FROM THE U.S. CENSUS BUREAU (2009), <http://quickfacts.census.gov/qfd/states/31000.html>.

220. AUTISM SPEAKS, *supra* note 218, at 8.

221. Compare U.S. CENSUS BUREAU, *supra* note 219 (stating the median household income in Nebraska is \$47,072), with AUTISM SPEAKS, *supra* note 218, at 8 (showing the cost of ASD therapies is as much as \$50,000 per year).

222. See NEBRASKA SPECIAL EDUCATION ADVISORY COUNCIL, AD HOC COMMITTEE ON AUTISM, AUTISM SPECTRUM DISORDERS (ASD): NEBRASKA STATE PLAN 9, 12 (2001), <http://www.nde.state.ne.us/autism/documents/autsp.pdf> (relying on public schools); see AUTISM SPEAKS, *supra* note 218, at 4 (stating local educational agencies have traditionally struggled meeting minimal needs of growing population disabled children).

223. See *infra* notes 223-26 and accompanying text.

224. See *infra* notes 227-37 and accompanying text.

225. See *infra* notes 262-70 and accompanying text.

226. See *infra* notes 271-87 and accompanying text.

227. Fred R. Volkmar & Catherine Lord, *Diagnosis and Definition of Autism and Other Pervasive Developmental Disorders*, in AUTISM AND PERVASIVE DEVELOPMENT DISORDERS 1, 1 (Fred. R. Volkmar ed., 2d ed. 2007).

228. Catherine Lord, *Early Assessment of Autistic Spectrum Disorders*, in NEW DEVELOPMENTS IN AUTISM: THE FUTURE IS TODAY 58, 58 (Juan Martos Pérez ed., 2006).

229. *Id.*

ASD share these three developmental difficulties, each individual has a unique manifestation of difficulties that must be dealt with on an individual basis.²³⁰ Additionally, these three developmental difficulties are often accompanied by other problems in individuals with ASD.²³¹

Individuals with ASD frequently have additional difficulties beyond the three indicating characteristics in social communication, social reciprocity, and restrictive and repetitive interests and behaviors.²³² Approximately fifty percent of individuals with ASD have IQ ratings under seventy, resulting in marked intellectual impairment.²³³ Other common problems among individuals with ASD include anxiety, depression, and sensory disturbances.²³⁴ Epilepsy affects one quarter to one third of individuals with ASD.²³⁵ Other common difficulties that require medical treatment include attention deficit disorder; bone, joint, or muscle problems; hearing and vision difficulties; and schizophrenia.²³⁶ Due to the wide range of additional medical problems associated with ASD, medical care is important in supporting individuals who are diagnosed.²³⁷

However, ASD can be treated, resulting in major benefits in both economic and human terms.²³⁸ Treatment should be based on the specific needs of the individual.²³⁹ The earlier a treatment plan is initiated for an individual diagnosed with ASD, the greater the likelihood for successful treatment.²⁴⁰ It is undisputed that the earlier the diagnosis of ASD, the sooner a treatment plan can be developed to deal with the individual's needs.²⁴¹ The average age of diagnosis for ASD has declined from five years of age to two years of age.²⁴²

Early intervention programs for treating ASD rely on the cerebral plasticity of young children.²⁴³ Critical periods exist during a child's

230. Mickey Keenan, *Empowering Parents with Science*, in *APPLIED BEHAVIOR ANALYSIS AND AUTISM: BUILDING A FUTURE TOGETHER* 76 (M. Keenan ed., 2006).

231. See *infra* notes 232-37 and accompanying text.

232. See *infra* notes 233-37 and accompanying text.

233. RICHARD LATHE, *AUTISM, BRAIN, AND ENVIRONMENT* 32 (2006); Lord, *supra* note 228, at 61.

234. LATHE, *supra* note 233, at 32.

235. *Id.*

236. LATHE, *supra* note 233, at 18; *AUTISM SPEAKS*, *supra* note 218, at 6.

237. See *supra* notes 231-36 and accompanying text.

238. See *infra* notes 239-61 and accompanying text.

239. Juan Martos Pérez et al., *Early Manifestations of Autistic Spectrum Disorder During the First Two Years of Life*, in *NEW DEVELOPMENTS IN AUTISM: THE FUTURE IS TODAY* 33, 33 (Juan Martos Pérez ed., 2006).

240. *Id.* at 33.

241. *Id.*

242. See Lord, *supra* note 228, at 61 (describing the average age of referral from treatment center reducing from age five years old to two years old).

243. Pérez, *supra* note 239, at 34.

neurological development.²⁴⁴ If connections in the synapses are not made during early development, it is unlikely the child will make connections later in life.²⁴⁵ Early intervention in ASD cases can markedly alter developmental trajectory.²⁴⁶ Early interventions through treatment of ASD can yield significant benefits in both economic and human terms.²⁴⁷

By the age of nine, eighty-five percent of children with ASD speak in some form, and forty percent speak fluently.²⁴⁸ However, those with communication difficulties can be trained to express themselves in alternative forms of communication.²⁴⁹

Further, where an individual with ASD is provided early intensive behavioral therapy, less funding is required later in life to support the individual through special education, behavior management programs, and medication.²⁵⁰ By implementing early intensive behavioral therapy, the total cost benefit savings in the individual's lifetime is between \$1,686,061 and \$2,816,535.²⁵¹ The savings per child is derived from public services, Medicaid, supported community services, and intensive special education services in public schools.²⁵²

Nebraska can benefit economically from requiring insurance coverage for ASD therapies.²⁵³ In 2007, there were 1,444 individuals between the ages of three and twenty-two diagnosed with ASD in Nebraska.²⁵⁴ For those individuals alone, had Nebraska required insurance coverage for early intensive behavioral therapies, using the conservative estimate of \$1,686,061 in total cost benefit savings over

244. *Id.*

245. *See id.* (stating development is a dynamic process, incorporating diverse functional systems in psychological functions, and these physiological functions are lost if over time when incorporation is impossible).

246. Sandra L. Harris, *Behavioral and Educational Approaches to the Pervasive Developmental Disorders*, in *AUTISM AND PERVASIVE DEVELOPMENTAL DISORDERS* 255, 260 (Fred. R. Volkmar ed., 2d ed. 2007).

247. *Id.* at 264-65.

248. Lord, *supra* note 228, at 61.

249. DONNA WILLIAMS, *THE JUMBLED JIGSAW: AN INSIDER'S APPROACH TO THE TREATMENT OF AUTISM SPECTRUM "FRUIT SALADS"* 343 (2005).

250. John W. Jacobson et al., *Cost-Benefit Estimates for Early Intensive Behavioral Intervention for Young Children with Autism: General Model and Single Case Study*, 13 *BEHAV. INTERVENTIONS* 201, 213-14 (1998); *see WILLIAMS, supra* note 249, at 361 (questioning the fiscal savings to appropriate diagnosis and treatment of individuals with ASD rather than nonspecific programs often used); .

251. *See* Jacobson et al., *supra* note 250, at 213-14 (estimating savings of \$1,686,061 to \$2,816,535 between the ages of three to fifty-five based on the cost of Pennsylvania program factoring for inflation).

252. *Id.* at 207-10.

253. *See infra* notes 254-59 and accompanying text.

254. *See* Fighting Autism, *Autism- Statistics, Incidence, Prevalence, Rates* (Nebraska), <http://www.fightingautism.org/idea/autism.php?s=NE&z=L> (last visited May 22, 2009) (showing 2007 statistic for number of children diagnosed with Autism to be 1442 in the table titled "Number of Cases").

an individual's lifetime, Nebraska's total cost savings would have been nearly 2.5 billion dollars.²⁵⁵ Further, the number of individuals diagnosed with ASD in Nebraska continues to increase.²⁵⁶ In 2007 alone, the number of individuals between six years of age and twenty-two years of age diagnosed with ASD grew at a rate of twenty-two percent.²⁵⁷ As the number of individuals diagnosed with ASD in Nebraska continues to grow, the costs of providing treatment for those individuals continues to increase.²⁵⁸ Therefore, Nebraska could save great amounts of money by mandating insurance coverage of early intensive behavioral interventions.²⁵⁹

Early treatment results in major benefits to individuals with ASD by improving their quality of life and to the government through long-term savings.²⁶⁰ However, because successful treatment of individuals with ASD depends on early intervention and early intervention can lead to drastic long-term improvements in individuals with ASD, early intervention is necessary to obtain these long-term benefits.²⁶¹

2. *Insurance Companies Should Be Required to Cover ASD Related Expenses Because ASD Is a Growing Problem for Everyone*

ASD is a growing problem across all segments of society.²⁶² While ASD has been stereotyped as an illness affecting children of educated, professional, middle class families, it is becoming clear that many individuals previously considered maladjusted or the products of uneducated, dysfunctional, or impoverished conditions are just as likely to have ASD.²⁶³ However, children in these less privileged con-

255. Multiplying the total number of ASD cases between the ages of 6 and 22 from 2007 by the estimate of \$1,686,061 in cost savings over a lifetime results in a total cost savings of \$2,431,299,962 for Nebraska alone. *See id.* (showing 2007 statistic for number of children diagnosed with Autism to be 1442 in the table titled "Number of Cases"); Jacobson et al., *supra* note 250, at 213-14 (estimating savings of \$1,686,061 to \$2,816,535 between the ages of three to fifty-five based on the cost of Pennsylvania program factoring for inflation).

256. *See Fighting Autism, supra* note 254 (showing cumulative growth rate of autism between 1992-2007 to be 3,262% and indicating a climbing trend in diagnosis).

257. *See id.* (showing annual growth rate of autism for 2007 to be 22% in the table titled "Number of Cases Annual Growth").

258. *See Jacobson et al., supra* note 250, at 207-10 (showing that governmental costs providing for individuals with ASD stem from public services, Medicaid, supported community services, and intensive special education services in public schools).

259. *See supra* notes 253-58 and accompanying text.

260. *See supra* notes 238-49 and accompanying text.

261. *See supra* notes 243-49 and accompanying text.

262. *See infra* notes 263-64 and accompanying text.

263. WILLIAMS, *supra* note 249, at 14.

ditions are less likely than affluent individuals to be treated or diagnosed early by medical professionals.²⁶⁴

Today, ASD affects between 0.6 and 0.7 percent of the total population.²⁶⁵ However, ASD may affect up to one percent of the younger generation.²⁶⁶ The prevalence of ASD has drastically increased from the 1980s.²⁶⁷ The increased prevalence of ASD is not due to broader criteria for diagnosing ASD, however, as most of the increase in the occurrence of ASD happened after the criteria for diagnosing ASD was broadened.²⁶⁸ Today, ASD is more prevalent than cystic fibrosis or Down syndrome.²⁶⁹ Because of the increase in the prevalence of ASD across all segments of society and the wide range of difficulties individuals with ASD face, it is necessary for the Nebraska legislature to require insurance coverage of ASD treatments so that treatment and success for individuals with ASD does not depend on economic class distinctions.²⁷⁰

3. *Insurance Coverage Is Necessary Because the Cost of Treating ASD Is High*

The cost of treating ASD places a heavy burden on individuals with ASD and their families.²⁷¹ Families affected by ASD can spend upwards of \$50,000 each year on ASD therapies.²⁷² Individuals whose families cannot afford these treatments and who cannot obtain insurance aid simply go without treatment.²⁷³

It is important to note that limited insurance coverage for ASD treatments may be available through Nebraska's mental health parity law.²⁷⁴ Nebraska's mental health parity law provides that if an insurance plan covers mental health conditions, mental health conditions must be covered the same as the plan would cover other medical con-

264. *Id.*

265. See Eric Fombonne, *Epidemiology of Pervasive Developmental Disorders*, in *NEW DEVELOPMENTS IN AUTISM: THE FUTURE IS TODAY* 14, 26 (Juan Martos Pérez ed., 2006) (estimating the rate of combined pervasive developmental disorders to be 60 in 10,000).

266. See LATHE, *supra* note 233, at 58, 59 (stating the prevalence of autism may be as high as one percent in the younger generations).

267. *Id.* at 58.

268. *Id.* Four main reasons exist for the increase: 1) an over representation of younger patients with ASD, 2) reduction in the percent of Asperger's from total ASD, 3) increased dizygotic concordance, and 4) the decline in the Fragile X chromosome among individuals with ASD. *Id.*

269. Fombonne, *supra* note 265, at 29.

270. See *supra* notes 265-69 and accompanying text.

271. See *infra* notes 272-73 and accompanying text.

272. *AUTISM SPEAKS*, *supra* note 218, at 8.

273. *Id.*

274. NEB. REV. STAT. § 44-792 (2007); *EASTER SEALS DISABILITY SERVICES*, *supra* note 218, at 1.

ditions.²⁷⁵ However, Nebraska's mental health parity law is insufficient to aid individuals affected by ASD with the costs of treating ASD because insurance companies can avoid paying for ASD treatments by simply refusing to cover mental health problems.²⁷⁶ Additionally, under Nebraska's mental health parity law, health insurance plans that require different terms, rates, and conditions to cover developmental, educational, or experimental services, and health insurance plans that entirely exclude developmental, educational, or experimental services from their coverage do not violate Nebraska's mental health parity law.²⁷⁷ Therefore, the insurance company of an individual with a plan that covers mental health conditions may refuse coverage for behavioral therapies either on the grounds that the therapies have not been sufficiently tested or that they are developmental or educational services.²⁷⁸ For the above reasons, Nebraska's mental health parity law provides inadequate coverage of behavioral therapies, which are essential in treating individuals with ASD.²⁷⁹

Further, private insurance companies resist paying for ASD treatments.²⁸⁰ A 2002 study revealed that of 128 behavioral health plans, all had some limitations on benefits for behavioral therapies.²⁸¹ Over half of the plans had caps on the number of outpatient visits and sixty-five percent of the plans had restrictions on inpatient visits.²⁸² Without the negotiating power of insurance companies to back them up, families dealing with ASD often pay high out-of-pocket costs.²⁸³ Because insurance companies resist paying the high costs of ASD treatments, the financial burden to treat ASD is placed on individuals with ASD and their families.²⁸⁴

Placing the burden of paying for ASD treatments on families that are affected by ASD creates a distinction between classes for those who can afford medical treatments and those who cannot.²⁸⁵ Because ASD affects individuals across all levels of society and costs of treatment are so high, placing the burden of funding ASD treatments on families affected by ASD results in class distinctions for individuals

275. NEB. REV. STAT. § 44-793(1) (2007).

276. See NEB. REV. STAT. § 44-793(1)(b) (providing if a plan clearly states there is no coverage of mental health treatments, the plan is not required to treat mental health conditions as medical conditions).

277. NEB. REV. STAT. § 44-794(2) (2007).

278. See *supra* note 277 and accompanying text.

279. See *supra* note 274-78 and accompanying text.

280. See *infra* notes 281-83 and accompanying text.

281. Pamela B. Peele et al., *Exclusions and Limitations in Children's Behavioral Health Care Coverage*, 53 PSYCHIATRIC SERVS. 591-94 (2002).

282. *Id.* at 592.

283. AUTISM SPEAKS, *supra* note 218, at 8.

284. See *supra* notes 280-83 and accompanying text.

285. See *infra* notes 286-87 and accompanying text.

born with ASD.²⁸⁶ Because treating ASD early can drastically improve the circumstances of an individual with ASD, requiring families that are affected by ASD to pay for treatment's independently condemns individuals born to lower income families to a life without independence or meaningful communication.²⁸⁷

B. NEBRASKA SHOULD IMPLEMENT LEGISLATION THAT WILL PROVIDE BEHAVIORAL THERAPIES TO INDIVIDUALS WITH ASD

Nebraska's current system for treating individuals with Autism Spectrum Disorder ("ASD") is inadequate because Nebraska's system places the financial burden of treating ASD on families that have individuals affected by ASD.²⁸⁸ Nebraska places the burden of treating individuals with ASD on families and the school system.²⁸⁹ Currently, Nebraska does not require insurance companies to cover any costs of ASD treatments or any other problems associated with ASD.²⁹⁰ Nebraska's system fails to support individuals with ASD and their families, fails to support the school system, and fails to support taxpayers.²⁹¹

Nine states have implemented legislation to help remove the financial burden of treating ASD from families coping with ASD.²⁹² The nine states are Arizona, Florida, Illinois, Indiana, Louisiana, New Mexico, Pennsylvania, South Carolina, and Texas.²⁹³ Of those states, Texas requires the least coverage for ASD treatments from insurance providers.²⁹⁴ Conversely, Indiana's statute provides the broadest re-

286. See *supra* notes 262-64, 271-73 and accompanying text.

287. See *supra* notes 238-49, 262-64 and accompanying text.

288. See *infra* notes 289-91 and accompanying text.

289. See NEBRASKA SPECIAL EDUCATION ADVISORY COUNCIL, AD HOC COMMITTEE ON AUTISM, AUTISM SPECTRUM DISORDERS (ASD): NEBRASKA STATE PLAN 9 (2001), <http://www.nde.state.ne.us/autism/documents/autsp.pdf> (focusing on requiring teachers to train in autism in order to provide services to ASD children).

290. EASTER SEALS DISABILITY SERVICES, 2008 STATE AUTISM PROFILES: NEBRASKA 1 (2008), http://www.easterseals.com/autism/Autism_Nebraska_v1.pdf.

291. See *supra* notes 288-90 and accompanying text.

292. Autism Speaks, *Autism Speaks State Initiatives Map: Endorsements of State Insurance Reform Legislation*, Oct. 22, 2008, available at http://www.autismvotes.org/site/c.frKNI3PCImE/b.3909861/k.B9DF/State_Initiatives.htm (last visited Mar. 25, 2008).

293. AZ. REV. STAT. ANN. § 20-826.04 (2008); FLA. STAT. § 627.6686. (2007); 215 ILL. COMP. STAT. 5/356z.14 (2008); IND. CODE § 27-8-14.2 (2009); LA. REV. STAT. ANN. § 22:1050 (2009); S.B. 39, 49th Leg., First Sess. 2009 (N.M. 2009); 40 PA. CONS. STAT. § 764h (2008); S.C. CODE ANN. § 38-71-280 (2008); TEX. INS. CODE ANN. § 1355.015(a) (2008).

294. Compare AZ. REV. STAT. ANN. § 20-826.04 (defining ASD as autistic disorder, Asperger's Syndrome, and PDD-NOS, covering behavioral therapy up to 16 years, including maximum benefit allowances by age group), and FLA. STAT. § 627.6686. (defining ASD as Autism, Asperger's, or PDD-NOS, covering individuals up to 18 years old, limiting coverage to \$36,000 annually, \$200,000 in total lifetime benefits), and LA. REV.

quired coverage of ASD treatments from insurance providers.²⁹⁵ The most effective legislation for Nebraska to implement would be a statute similar to Indiana's statute, which allows physicians to determine the appropriate treatment of individuals with ASD without being limited by annual or lifetime benefit caps or age restrictions.²⁹⁶

1. *Financial Limitations on the Amount of Annual and Lifetime Benefits Take Control of Treatment out of the Care of Medical Physicians and Place it in the Hands of the Legislature and Insurance Companies*

By allowing dollar limits on lifetime and annual benefits, legislatures take control of medical treatment out of the treating physician's control.²⁹⁷ Other than Indiana and Texas, each state's statute contains fiscal limitations on the amount of benefits allowed.²⁹⁸ Seven states have limits on annual treatment.²⁹⁹ Louisiana, Florida, New Mexico, Illinois, and Pennsylvania each limit the annual amount of insurance coverage to \$36,000.³⁰⁰ Under South Carolina's statute, coverage is limited to \$50,000 per year for individuals under ten years

STAT. ANN. § 22:1050 (defining ASD as specified in the most recent DSM, limiting treatment to individuals less than seventeen, and limiting coverage to \$36,000 per year with a maximum benefit of \$144,000 for life), and 40 PA. CONS. STAT. § 764h (defining ASD in accord with the most recent DSM, limiting coverage to individuals up to 21 years of age, and limiting coverage to a maximum of \$36,000 per year with no lifetime max), and S.C. CODE ANN. § 38-71-280 (defining ASD as autism, Asperger's, or PDD-NOS, covering individuals less than 16 years of age, and limiting \$50,000 for behavioral therapies), and IND. CODE § 27-8-14.2 (defining ASD as specified in the most recent DSM and providing coverage for all doctor proscribed therapies, with no dollar limits or no age limit), with TEX. INS. CODE ANN. § 1355.001 (limiting coverage to individuals between the ages of 2-6 and limiting coverage to \$50,000 per year for therapies).

295. Compare AZ. REV. STAT. ANN. § 20-826.04 (defining ASD as autistic disorder, Asperger's Syndrome, and PDD-NOS, covering behavioral therapy up to 16 years, including maximum benefit allowances by age group), and FLA. STAT. § 627.6686 (defining ASD as Autism, Asperger's, or PDD-NOS, covering individuals up to 18 years old, limiting coverage to \$36,000 annually, \$200,000 in total lifetime benefits), and LA. REV. STAT. ANN. § 22:1050 (defining ASD as specified in the most recent DSM, limiting treatment to individuals less than seventeen, and limiting coverage to \$36,000 per year with a maximum benefit of \$144,000 for life), and 40 PA. CONS. STAT. § 764h (defining ASD in accord with the most recent DSM, limiting coverage to individuals up to 21 years of age, and limiting coverage to a maximum of \$36,000 per year with no lifetime max), and S.C. CODE ANN. § 38-71-280 (defining ASD as autism, Asperger's, or PDD-NOS, covering individuals less than 16 years of age, and limiting \$50,000 for behavioral therapies), and TEX. INS. CODE ANN. § 1355.001 (limiting coverage to individuals between the ages of 2-6 and limiting coverage to \$50,000 per year for therapies), with IND. CODE § 27-8-14.2 (defining ASD as specified in the most recent DSM and covering all doctor proscribed therapies, with no dollar limits or no age limit).

296. See *infra* notes 329-56 and accompanying text.

297. See *infra* notes 303-05 and accompanying text.

298. See *infra* notes 299-302 and accompanying text.

299. See *infra* notes 300-02 and accompanying text.

300. FLA. STAT. § 627.6686; LA. REV. STAT. ANN. § 22:1050; S.B. 39, 49th Leg., First Sess. 2009 (N.M. 2009); 215 ILL. COMP. STAT. § 5/356z.14; 40 PA. STAT. § 764h.

of age, and \$25,000 per year for individuals between the ages of nine and eighteen.³⁰¹ Under Arizona's statute, coverage is limited to an annual benefit of \$50,000.³⁰²

Fiscal limitations on the coverage an insurance company must provide to an individual with ASD may cause the individual's medical needs to go untreated.³⁰³ As behavioral therapies alone can cost upwards of \$50,000 annually, the annual limits in at least six of these states will cause individuals and their families to pay costs out-of-pocket to treat the individual with ASD.³⁰⁴ Aside from these behavioral therapies, individuals with ASD may need additional speech therapy or medical care.³⁰⁵

Further, Louisiana, Florida, and New Mexico's statutes each place limitations on the total lifetime coverage insurance companies must provide to individuals with ASD.³⁰⁶ Louisiana's statute places a cap of \$144,000 on mandated insurance coverage over an individual's lifetime.³⁰⁷ Similarly, Florida and New Mexico's statutes limit required coverage to \$200,000 over an individual's lifetime.³⁰⁸ By limiting the total lifetime benefit, treatments will be shortchanged for the individuals who are most in need of help.³⁰⁹

2. Coverage Limitations Based on Age Ignore the Continuing Challenges for Individuals with ASD

Legislatures that place age limitations on mandated coverage ignore the continuing challenges that individuals with ASD face

301. S.C. CODE ANN. § 38-71-280(D)(1),(2).

302. AZ. REV. STAT. ANN. § 20-826.04.

303. See *infra* notes 304-05 and accompanying text.

304. See AUTISM SPEAKS, ARGUMENTS IN SUPPORT OF PRIVATE INSURANCE COVERAGE OF AUTISM RELATED SERVICES 8 (2007), http://www.autismvotes.org/atf/cf/%7B2A179B73-96E2-44C3-8816-1B1C0BE5334B%7D/arguments_for_private_insurance_coverage.pdf (stating ASD behavioral therapies can cost upwards of \$50,000 annually); see also FLA. STAT. § 627.6686 (limiting benefit to \$36,000 annually); LA. REV. STAT. ANN. § 22:1050 (limiting benefit to \$36,000 annually); S.B. 39, 49th Leg., First Sess. 2009 (N.M. 2009) (limiting benefit to \$36,000 annually); 215 ILL. COMP. STAT. § 5/356z.14 (limiting benefit to \$36,000 annually); 40 PA. CONS. STAT. § 764h (limiting benefit to \$36,000 annually); S.C. CODE ANN. § 38-71-280(D)(1),(2) (limiting coverage to \$25,000 for individuals over eight years).

305. See RICHARD LATHE, AUTISM, BRAIN, AND ENVIRONMENT 32 (2006) (stating anxiety and sensory disturbances common, along with epilepsy); Mickey Keenan, *Empowering Parents with Science*, in APPLIED BEHAVIOR ANALYSIS AND AUTISM: BUILDING A FUTURE TOGETHER 33 (M. Keenan ed., 2006) (stating medical treatment necessary); Juan Martos Pérez et al., *Early Manifestations of Autistic Spectrum Disorder During the First Two Years of Life*, in NEW DEVELOPMENTS IN AUTISM: THE FUTURE IS TODAY 33, 41 (Juan Martos Pérez ed., 2006).

306. See *infra* notes 307-09 and accompanying text.

307. LA. REV. STAT. ANN. § 22:1050.

308. FLA. STAT. § 627.6686; S.B. 39, 49th Leg., First Sess. 2009 (N.M. 2009).

309. See *supra* notes 307-08 and accompanying text.

throughout their lives.³¹⁰ ASD can be treated, but it cannot be cured.³¹¹ ASD is a life-long static developmental disorder.³¹² Limiting mandated coverage of treatment to an individual's childhood ignores the reality that individuals with ASD may need support for their entire lives.³¹³

Texas's statute only requires insurance coverage of ASD treatment when the individual is between ages two and six.³¹⁴ By limiting required medical coverage to individuals between the ages of two and six, the treatment of individuals who are older than six is limited to what their schools provide.³¹⁵ However, because the federal government does not adequately fund special education programs in public schools as promised under the Individuals with Disabilities Education Act (the "IDEA"), state governments are primarily responsible for funding ASD treatments.³¹⁶ However, even Arizona, Florida, Illinois, Louisiana, New Mexico, and South Carolina, which utilize a broader range of ages, cannot meet the continuing need for support that individuals with ASD require over their lifetimes.³¹⁷ Because the age limits do not account for the continuing needs of individuals with ASD, Nebraska should avoid imposing an age limit on mandated coverage.³¹⁸

310. See *infra* notes 311-13 and accompanying text.

311. Manuel F. Casanova, *Cortical Circuit Abnormalities (Minicolumns) in the Brains of Autistic Patients*, in *NEW DEVELOPMENTS IN AUTISM: THE FUTURE IS TODAY* 268, 269 (Juan Martos Pérez ed., 2006).

312. *Id.*

313. See *supra* notes 310-12 and accompanying text.

314. TEX. INS. CODE ANN. § 1355.015(a).

315. See *id.* (limiting coverage to children between two and six years old); 19 TEX. ADMIN. CODE § 89.1040 (2008).

316. Individuals with Disabilities Education Act, 20 U.S.C. § 1400 (2006) (granting federal coverage of 40% of the cost of special education provided by schools); IDEA FUNDING COALITION, IDEA FUNDING: TIME FOR CONGRESS TO LIVE UP TO THE COMMITMENT, MANDATORY FUNDING PROPOSAL 2, 7, app. I (2006), <https://www.aasa.org/files/Word/PublicPolicy/Mandatory%202004%20Proposal%20-%20Draft.doc> (showing the history of funding averaging approximately 13.5% from 1993 to 2006).

317. See AZ. REV. STAT ANN. § 20-826.04 (limiting eligibility to individuals under the age of 18); FLA. STAT. § 627.6686(3)(c) (limiting coverage to individuals under the age of 18); LA. REV. STAT. ANN. § 22:1050(a)(1) (limiting eligibility to individuals under 17 years old); 215 ILL. COMP. STAT. § 5/356z.14 (limiting eligibility to individuals under 21); S.B. 39, 49th Leg., First Sess. 2009 (N.M. 2009) (limiting eligibility to individuals twenty-two and younger who are enrolled in high school, or nineteen and younger if not enrolled in high school); H.B. 1150, 2008 Reg. Sess. (Pa. 2009) (limiting eligibility to individuals under the age of 21); S.C. CODE ANN. § 38-71-280(E) (limiting eligibility to individuals under the age of 16).

318. See *supra* notes 310-17 and accompanying text.

3. *Nebraska's Statute Should Define ASD as the Definition of ASD in the Most Recent DSM*

Many state statutes limit their definition of ASD to autism, Asperger's, and pervasive developmental disorder not otherwise specified ("PDD-NOS").³¹⁹ Texas's statute is limited to coverage to only autism, Asperger's Syndrome, and PDD-NOS.³²⁰ Additionally, Arizona, Florida, and South Carolina each limit ASD to include only autism, Asperger's, and PDD-NOS.³²¹ However, this narrow definition of ASD ignores the treatment needs of individuals diagnosed with Rett's and childhood disintegrative disorder ("CDD").³²² Because of the limited definition of ASD under the Texas, Arizona, Florida, and South Carolina statutes, individuals with Rett's and CDD in those states are deprived of mandatory insurance coverage of valuable behavioral therapy treatments.³²³

A more accurate guideline to follow is the definition of ASD as listed in the most recent Diagnostic and Statistical Manual of Mental Disorders ("DSM").³²⁴ The DSM is published by the American Psychiatric Association.³²⁵ The current edition of the DSM is the DSM-IV.³²⁶ By allowing the definition to be provided by the psychiatric community rather than the legislature, all individuals suffering from ASD will be allowed to receive treatment despite evolving categorizations of ASD.³²⁷ For the above stated reasons, the best way to define ASD in Nebraska is through the most recent edition of the DSM.³²⁸

4. *Nebraska's Economy as well as Individuals with ASD Would Be Best Served by a Statute Similar to Indiana's Autism Insurance Reform Statute*

The best option for Nebraska is a statute similar to Indiana's autism insurance reform legislation.³²⁹ Indiana's statute³³⁰ provides

319. See *infra* notes 320-22 and accompanying text.

320. See TEX. INS. CODE ANN. § 1355.001(3) (limiting ASD to include autism, Asperger's, and PDD-NOS).

321. AZ. REV. STAT. ANN. § 20-826.04(E)(1); FLA. STAT. § 627.6686(2)(b); S.C. CODE ANN. § 38-71-280(A)(1).

322. See LATHE, *supra* note 305, at 21 (showing three main forms, autism, PDD-NOS, and Asperger's, and two less common forms, Rett's and CDD in table).

323. Compare LATHE, *supra* note 305, at 21 (showing ASD includes autism, PDD-NOS, Asperger's, Rett's, and CDD), with TEX. INS. CODE ANN. § 1355.001(3) (limiting ASD to include autism, Asperger's, and PDD-NOS).

324. See LATHE, *supra* note 305, at 22 (describing the Diagnostic and Statistical Manual of Mental Disorders as the DSM).

325. *Id.*

326. *Id.*

327. See *supra* notes 319-26 and accompanying text.

328. See *supra* notes 319-27 and accompanying text.

329. See *infra* notes 330-56 and accompanying text.

the broadest coverage of ASD related medical expenses.³³¹ Pursuant to Indiana's statute, coverage is required for all individuals with pervasive developmental disorders as defined by the DSM.³³² Indiana's statute does not restrict coverage of ASD treatment to individuals in a certain age group, but rather applies to all individuals affected with

330. IND. CODE § 27-8-14.2-4. The Indiana statute provides:

Group Policies — Coverage for Pervasive Developmental Disorder Required.

(a) An accident and sickness insurance policy that is issued on a group basis must provide coverage for the treatment of a pervasive developmental disorder of an insured. Coverage provided under this section is limited to treatment that is prescribed by the insured's treating physician in accordance with a treatment plan. An insurer may not deny or refuse to issue coverage on, refuse to contract with, or refuse to renew, refuse to reissue, or otherwise terminate or restrict coverage on an individual under an insurance policy solely because the individual is diagnosed with a pervasive developmental disorder.

(b) The coverage required under this section may not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to physical illness generally under the accident and sickness insurance policy.

Id.

331. Compare Az. REV. STAT. ANN. § 20-826.04 (defining ASD as autistic disorder, Asperger's Syndrome, and PDD-NOS and covering behavioral therapy up to 16 years, including maximum benefit allowances by age group), and FLA. STAT. § 627.6686 (defining ASD as autism, Asperger's, or PDD-NOS, covering individuals up to 18 years old, and limiting coverage to \$36,000 annually and \$200,000 in total lifetime benefits), and LA. REV. STAT. ANN. § 22:1050 (defining ASD as specified in the most recent DSM, limiting treatment to individuals less than seventeen, and limiting coverage to \$36,000 per year with a maximum benefit of \$144,000 for life), and 40 PA. CONS. STAT. § 764h (defining ASD in accord with the most recent DSM, limiting coverage to individuals up to 21 years of age, capping maximum coverage of \$36,000 per year with no lifetime max), and S.C. CODE ANN. § 38-71-280 (defining ASD as autism, Asperger's, or PDD-NOS, covering less than 16 years or age, and limiting coverage to \$50,000 for behavioral therapies), TEX. INS. CODE ANN. § 1355.001 (limiting coverage to individuals between the ages of 2-6 and limiting coverage to \$50,000 per year for therapies), with IND. CODE § 27-8-14.2 (defining ASD as specified in the most recent DSM and providing coverage for all doctor proscribed therapies with no dollar limits). The Indiana statute states:

Group Policies — Coverage for Pervasive Developmental Disorder Required.

(a) An accident and sickness insurance policy that is issued on a group basis must provide coverage for the treatment of a pervasive developmental disorder of an insured. Coverage provided under this section is limited to treatment that is prescribed by the insured's treating physician in accordance with a treatment plan. An insurer may not deny or refuse to issue coverage on, refuse to contract with, or refuse to renew, refuse to reissue, or otherwise terminate or restrict coverage on an individual under an insurance policy solely because the individual is diagnosed with a pervasive developmental disorder.

(b) The coverage required under this section may not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to physical illness generally under the accident and sickness insurance policy.

IND. CODE § 27-8-14.2-4.

332. IND. CODE §§ 27-8-14.2-4, 14.2-3 (2007).

ASD regardless of age.³³³ By requiring coverage for all individuals with ASD regardless of age, treatments for an individual's ASD can be modified as needed to meet the changing needs of individuals who continue to need support.³³⁴

Under the Indiana statute, coverage of ASD treatments is not limited to a maximum lifetime benefit.³³⁵ Rather, mandated coverage is limited to what treating physicians prescribe in accordance with the individual's ASD treatment plan.³³⁶ By allowing doctors rather than insurance companies to determine the treatment of individuals with ASD, doctors may consider the individual needs of each patient, which in turn provides a more effective treatment.³³⁷

The preferable plan for Nebraska would mirror the Indiana statute.³³⁸ The coverage required by Indiana's statute benefits all individuals with ASD regardless of age.³³⁹ Because ASD is not curable, but rather treatable, it is important for treatments to be available to all individuals who have ASD, without ending coverage at any age.³⁴⁰

Mandating medical insurance coverage of ASD treatments will result in numerous benefits.³⁴¹ Researchers and clinicians do not question the effectiveness of early intensive behavioral interventions to treat ASD.³⁴² Rather, the only question is which treatment is most effective.³⁴³ Studies have shown that a substantial number of individuals with ASD who received early intensive behavioral interventions achieved near-normal or normal functioning.³⁴⁴ One study showed that forty to fifty percent of individuals who had the benefit of early intensive behavioral intervention achieved normal functioning.³⁴⁵

While one concern of implementing legislation mandating insurance coverage is the effect of insurance costs, providing mandated coverage for ASD will only minimally affect health insurance premiums.³⁴⁶ The total increase in premiums statewide would be less

333. See generally IND. CODE § 27-8-14.2 (including no age limit).

334. See *supra* notes 333-34 and accompanying text.

335. See generally IND. CODE § 27-8-14.2 (including no dollar limits).

336. IND. CODE §§ 27-8-14.2-4,5.

337. See *supra* note 235-36 and accompanying text.

338. See *infra* notes 239-56 and accompanying text.

339. See IND. CODE § 27-8-14.2 (including no age limits).

340. See AUTISM SPEAKS, *supra* note 304, at 8 (stating success in treatment dependant on time spent); Keenan, *supra* note 305, at 76 (stating autism is not curable as a medical condition, but it is treatable).

341. See *infra* notes 342-45 and accompanying text.

342. John W. Jacobson et al., *Cost-Benefit Estimates for Early Intensive Behavioral Intervention for Young Children with Autism: General Model and Single Case Study*, 13 BEHAV. INTERVENTIONS 201, 203 (1998).

343. *Id.*

344. *Id.* at 202.

345. *Id.* at 212.

346. See *infra* note 347 and accompanying text.

than \$50 per contract annually for the extensive coverage provided by Indiana's statute.³⁴⁷ Because the cost of broad reaching coverage is minimal and the benefits to individuals with ASD are so great, Nebraska would benefit from mandated coverage.³⁴⁸

Further, by providing coverage to individuals with ASD, Nebraska will be able to save on long-term care costs.³⁴⁹ By providing intensive behavioral therapy to ASD individuals early in their lives, a 1998 study determined that the total cost benefit savings in the individual's lifetime was between \$1,686,061 and \$2,816,535.³⁵⁰ The savings for each individual is derived from welfare, Medicaid, supported community services, and intensive special education services for individuals with ASD in public school and thereafter.³⁵¹ Saving an average of over two million dollars per individual provides an incentive to Nebraska to require funding of ASD treatments by private insurance companies.³⁵²

Additionally, by requiring insurance coverage of ASD treatments, the financial burden of educating children with ASD will be taken off of public schools.³⁵³ Currently, the cost of educating a child with ASD is approximately \$18,000 each year.³⁵⁴ Thus, the cost of educating a child suffering from ASD is more than three times the cost of educating a child not receiving special education services.³⁵⁵ By providing legislation mandating medical coverage for ASD treatments, the initial investment will ultimately provide economic and social benefits to the population at large.³⁵⁶

IV. CONCLUSION

Nebraska should implement legislation similar to Indiana's statute mandating medical insurance coverage of prescribed ASD related treatments.³⁵⁷ This Note has discussed ASD and the problems associ-

347. See LEGISLATIVE SERVICES AGENCY, FISCAL IMPACT STATEMENT FOR HB 1122 at 2 (2001), <http://www.in.gov/legislative/bills/2001/PDF/FISCAL/HB1122.006.pdf> (stating a total premium increase of between \$0.44 and \$1.67); WISCONSIN DEPARTMENT OF ADMINISTRATION, FISCAL ESTIMATE FOR ASSEMBLY BILL 417 (2007) (noting total cost would be an increase of \$3.45 to \$4.10 per month).

348. See *supra* note 347 and accompanying text.

349. See *infra* notes 350-55 and accompanying text.

350. See Jacobson et al., *supra* note 342, at 213-14 (estimating savings of \$1,686,061 to \$2,816,535 between the ages of three to fifty-five based on the cost of Pennsylvania program factoring for inflation).

351. *Id.* at 207-10.

352. See *supra* notes 349-51 and accompanying text.

353. See *infra* notes 354-56 and accompanying text.

354. AUTISM SPEAKS, *supra* note 304, at 17.

355. *Id.*

356. *Id.*

357. See *supra* notes 329-56 and accompanying text.

ated with ASD.³⁵⁸ This Note then discussed the costs and benefits of participating in early intensive behavioral therapies, such as applied behavioral analysis.³⁵⁹ This Note then discussed Nebraska's current plan for treating individuals with ASD and the shortfalls of Nebraska's current plan.³⁶⁰ This Note also discussed the options for legislation in Nebraska based on other states' models and advocated that Nebraska should adopt ASD-related legislation that is based upon Indiana's statute for ASD coverage.³⁶¹ Finally, this Note addressed the advantages and drawbacks of implementing a statute based on Indiana's statute for ASD coverage.³⁶²

While health insurance premiums would increase if Nebraska mandated insurance companies to provide insurance coverage of ASD treatments, the increase in premiums is minimal.³⁶³ Additionally, the long-term benefits derived from a statute mandating ASD coverage to society and the economy would outweigh the short-term costs.³⁶⁴ By implementing a statute similar to Indiana's ASD medical coverage statute, Nebraska would allow individuals of all ages and socio-economic classes to benefit from ASD treatments, saving Nebraska an average of two million dollars for each individual with ASD.³⁶⁵ Ultimately, the long-term social and economic benefits of legislation mandating insurance coverage of ASD outweigh the minimal costs of increased premiums.³⁶⁶

By implementing legislation mandating medical coverage of ASD treatments similar to Indiana's statute, Nebraska will enable its citizens to independently cope with the difficulties of raising children with ASD. Families will not have to choose between treating their children and paying their bills. Individuals with ASD will have an opportunity to learn social skills necessary to function on their own. Individuals with ASD will benefit in the long-term from insurance coverage by allowing them to continue treatments as needed, recognizing that ASD is not magically cured at eighteen. Further, by implementing legislation mandating medical insurance coverage of ASD, Nebraska will have an opportunity to reduce its long-term costs by ensuring that individuals with ASD have the tools to help themselves. Therefore, Nebraska should follow Indiana's lead by implementing

358. See *supra* notes 18-64 and accompanying text.

359. See *supra* notes 65-101 and accompanying text.

360. See *supra* notes 170-96, and accompanying text.

361. See *supra* notes 288-328 and accompanying text.

362. See *supra* notes 329-56 and accompanying text.

363. See *supra* notes 346-48 and accompanying text.

364. See *supra* notes 341-52 and accompanying text.

365. See *supra* notes 349-42 and accompanying text.

366. See *supra* notes 341-56 and accompanying text.

legislation mandating full medical insurance coverage of all doctor recommended ASD related treatments.

Katherine Kimball — '09