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FISCAL IMPACT REPORT

ORIGINAL DATE 03/11/09

SPONSOR HHGAC LAST UPDATED _____ HB 751/HHGACS

SHORT TITLE Insurance Coverage for Some Health Conditions SB _____

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
General Services Department		\$6,000.0	\$6,000.0	\$12,000.0	Recurring	GSD Health Benefits Fund and General Fund
Public School Insurance Authority		\$2,900.0*	\$3,100.0*	\$6,000.0*	Recurring	PSIA Health Benefits Fund and General Fund
Retiree Health Care Authority		\$432.0*	\$432.0*	\$864.0*	Recurring	RHCA Health Benefits Fund
Albuquerque Public Schools		\$1,368.0*	\$1,368.0*	\$2,736.0*	Recurring	APS Health Benefits Fund
Total		\$10,700.0	\$10,900.0	\$21,600.0	Recurring	

*(estimate only includes Autism Spectrum Disorder)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Health Policy Commission (HPC)
 Human Services Department (HSD)
 Department of Health (DOH)
 General Services Department (GSD)
 Public Regulation Commission (PRC)
 Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Health and Government of Affairs Committee (HHGAC) substitute for House Bill 751 proposes to enact a new section to the Health Care Purchasing Act to require certain benefits and behavioral health parity for health insurance providers in New Mexico under New Mexico's health insurance laws for children and youth under age nineteen who have a diagnosis of developmental disability, autism spectrum disorder, or behavioral health condition.

Coverage is also required under the following sections of the Insurance Code:

- Chapter 59A, Article 22 NMSA 1978 relating to individual health insurance policies;
- Chapter 59A, Article 23 NMSA 1978 relating to group and blanket health insurance policies;
- Chapter 59A, Article 46 NMSA 1978, the Health Maintenance Organization Law; and
- Chapter 59A, Article 47 NMSA 1978, the Nonprofit Health Care Plan Law.

Coverage shall, on or after the open enrollment period for the 2010 plan, provide employees and their covered dependents less than nineteen years of age:

- Well baby and well child screening and diagnosis for the presence of developmental disability (DD) or autism spectrum disorder (ASD); and
- Treatment of DD or ASD through speech therapy, occupational therapy, physical therapy and applied behavioral analysis;

The required coverage is limited to \$50,000 annually – to be adjusted in future years consistent with the medical component of the current consumer price index published by the US Department of Labor. Coverage could not be denied on the basis that the services are habilitative or rehabilitative in nature and may be subject to other general exclusions and limitations of group health care coverage, including 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.

The coverage may be limited to exclude coverage for services required under the federal Individuals with Disabilities Education Act (IDEA) of 2004 and related state laws that place responsibility on state and local school boards for providing specialized education and related services to children three to twenty-two years of age who have developmental disabilities or autism spectrum disorder.

The coverage shall not impose treatment limitations or financial requirements if such limitations or requirements are not imposed on benefits for other conditions.

An insurer shall not deny or refuse to issue coverage for medically necessary services, shall not require pre-admission screening prior to authorization of inpatient or outpatient benefits or apply limitations that restrict mental health benefits to those that are “medically necessary”. Coverage shall not limit benefits otherwise available to an insured.

The provisions of the bill do not apply to individual policies intended to supplement major medical group-type coverage such as Medicare supplement, long-term care, disability income, specified disease, accident only, hospital indemnity or other limited-benefit health insurance policies.

The bill defines “autism spectrum disorder”, “developmental disability”, and “services that are habilitative or rehabilitative.” HHGAC substitute clarifies (from previous versions of the bill) the definition of “developmental disability” throughout the bill.

The bill also proposes to define and expand the coverage for behavioral health condition diagnosis and treatment for covered persons in the same insured products, including employees and their covered dependents (not limited by age) to include parity with other conditions, including no requirement for a pre-admission screening prior to authorization of the benefits, whether inpatient or outpatient, and no limitations that restrict mental health benefits to those that are medically necessary.

FISCAL IMPLICATIONS

According to the General Services Department (GSD), the Risk Management Division (RMD) estimates an additional \$6 million fiscal impact, as described below:

Autism statistics 1:150 (.006) births are diagnosed with autism. Based on the dependent population covered by the State of New Mexico benefit package and the \$50,000 maximum per year as defined in this bill it could cost the State an additional \$6 million per year.

The RMD provides insurance coverage for public employees and is self-funded through premiums paid by state agencies and employees. As such, the costs associated with implementing this bill are not included in the budget for 2010.

Treatment of ASD is not currently part of the benefit plan offerings provided by PED and GSD and may not be offered by Retiree Health Care Authority (RHCA) and Albuquerque Public Schools. Passage of this bill will likely result in the need to increase premiums or reduce benefits provided for other covered treatments. Increased premiums would result in an additional funding from general fund revenues.

According to PED there may be a fiscal impact related to Public School Insurance Authority (PSIA) health insurance if contracted health insurance providers do not already provide the services as outlined in HB 751. Since the PED is a member of the State’s insurance program, the anticipated costs to the PED and PSIA employees is dependent upon the current services provided through the existing contract health insurance providers and the language stated in their summary of plan benefits.

According to the Public Education Department (PED) there may be an impact to private health insurance companies listed in the bill (not to PED). This calculation only includes the students enrolled in the public schools, who have ASD, who are under the age of 19 and who may have the type of insurances listed in the bill. It is important to note that there are individuals under the age of 19 and over the age of 19 that may require the services being provided for in the bill. In addition, the calculation does not include students who are considered to have a developmental disability.

The benefit limits for both categories (yearly and lifetime) as outlined in House Bill 751:

Yearly Benefit Limit	× # of existing students serviced for ASD, during 2007 – 2008	= Total Yearly Cost
\$50,000.00	763	\$38,150,000.00

SIGNIFICANT ISSUES

The bill provides clarity that insurers may exclude from autism and developmental disability coverage those services that are actually “received” through a state or local school board pursuant to federal and related state special education laws, instead of the services that might be “required” under those laws. Not all students are required to receive related services under the IDEA.

If enacted, HB751 would add new sections to the Health Care Purchasing Act; and to several types of insurance in the New Mexico Insurance Code (Chapter 59A, Articles 22, 23, 46 and 47 NMSA 1978) requiring these health plans to provide coverage for autism spectrum disorders (ASD), developmental disabilities (DD), and behavioral health disorders. The bill (1) describes conditions of coverage, (2) the allowed exclusions from coverage, (3) specifies that services to be covered by the schools are excluded from insurance coverage, and allows a limit of \$50,000 per year per recipient for ASD coverage and DD coverage. Limits for behavioral health services can not be stricter than what is allowed for non-behavioral health services.

Currently, children with DD and ASD have reduced access to services for their disorder in rural areas. Boys experience ASD at a higher rate than girls.

According to the Public Regulation Commission (PRC):

This bill proposes a significant shift from the managed care environment regarding behavioral health benefits, as it would require coverage absent authorization or medical necessity. This, in effect, would negate all managed health care plan provisions that are currently overseen by the Superintendent of Insurance, placing behavioral health benefits in a category that is not managed, since the criteria for covered benefits pursuant to the state’s managed health care rules is “medical necessity.”

Increased health care costs due to increased premiums: Removing medical necessity from the equation will likely increase premiums for persons enrolled in plans governed by this proposed law. Requiring guaranteed issue in the individual market for persons with autism spectrum disorder or a developmental disability will result in higher premium costs for the individual market.

The Human Services Department (HSD) notes;

The ASD workgroup created by the 2007 Legislative Session (SB197) determined that this type of mandate would not have a far-reaching impact vis-à-vis providing services for individuals with ASD, behavioral health conditions and developmental disabilities. The workgroup determined that the insurance groups impacted by this mandate would possibly limit other types of coverage to offset the costly nature of ASD services and the increasing number of individuals on an annual basis that are receiving a diagnosis of ASD. SB197 required HSD to collaborate with private insurance companies and consumers. A committee was put together to complete the study. The committee included members from: Early Childhood Programs, Presbyterian Health Plan, Molina Health Care, Lovelace, University of New Mexico Children’s Psychiatric Center, ARC of NM, NM Medical Insurance Pool, CYFD, UNM Center for Development and Disability, DOH, Value Options, state agencies, and consumers. A report was completed in December 2007 entitled, *A Study of Autism Spectrum Disorders Services, Systems and Financing*. The report provided recommendations to the Health Care Authority.

Parity for mental health services currently exists in New Mexico statute. Chapter 59A, Section 23E-18 NMSA 1978 requires a group health plan for an employer beginning or renewed on or after October 1, 2000, or group health insurance offered in connection with that plan, shall provide both medical and surgical benefits and mental health benefits. These plans shall not impose treatment limitations or financial requirements on the provision of mental health benefits if identical limitations or requirements are not imposed on coverage of benefits for other conditions.

The Public Education Department (PED) provides:

The IDEA at 34 CFR §300.324 requires that an Individualized Education Program (IEP) be customized based on the student’s individual needs. Not all students who have ASD or a developmental disability will require all of the treatments and therapies outlined in HB 751, as part of their IEP. It is important to note that related services are a part of the IEP and support the student’s educational program. Under 34 CFR § 300.34, the term related services refers to supportive services that are required to assist a child with a disability to benefit from special education. Under the IDEA, speech therapy, occupational therapy, and physical therapy are considered related services. Applied Behavior Analysis is not considered a related service under the IDEA.

34 CFR § 300.305 (B)(iv) requires that an evaluation be completed to determine if any additional supports, services, and/or modifications are needed as deemed appropriate. If a student is identified with ASD or developmental disability, he/she may need additional related services to address his/her individual needs, as deemed appropriate by the IEP team. The reevaluation will determine the range of services and the duration of services deemed necessary to their academic and social development.

ADMINISTRATIVE IMPLICATIONS

The PRC notes that if the bill were to become law, managed health care rules and grievance procedures rules would need to be amended to conform to the new standard regarding behavioral health care benefits.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Partially duplicates and partially conflicts with the committee substitute for HB155 “Insurance Coverage for Autism Treatment” and with committee substitute SB39 “Insurance Coverage for Autism Treatment”

TECHNICAL ISSUES

PED suggests that:

The bill specifies that coverage will be provided to an eligible individual (employees and their covered dependents) who is 19 years or younger. Under 34 CFR § 300.101 of the IDEA, students between the ages of 3 - 21 who qualify for special education services are eligible for a Free Appropriate Public Education (FAPE), until they graduate or age out. Under the bill, only those who are 19 or younger will be deemed eligible for health care coverage. This may conflict with the IDEA and state statute because students who have a disability are eligible to receive services until age 22, if they turn 22 after the school year begins. Some students between the ages of 19 – 22 are still dependents because they have not had the parental rights transferred to them at the age of majority in accordance with 34 CFR § 300.520.

There may be some conflicting or confusing language in the bill regarding the age of the individuals. Page one, lines 23 – 25, discusses the provision of coverage for employees and their dependents under 19 years of age. On page three, lines 3 – 9 discuss the exclusion of services required under the IDEA that are the responsibility of the state and school districts.

Some clarifying language may be helpful regarding those individuals age 19 – 22 who are dependents who have not graduated from high school and have not aged out.

The use of the definition developmental disability throughout the bill, for example on page 5, lines 4 – 11, states “... and impaired adaptive skills that occurs prior to age eighteen ...” may conflict with the age requirements (age 19) of the insurance coverage for employees and their covered dependents and the IDEA, which entitles students to services until the age 22 in New Mexico.

OTHER SUBSTANTIVE ISSUES

PED provides the following trend data below shows that the number of students aged 6-21 enrolled in the New Mexico public school system with Autism has increased. This data was extracted from www.ideadata.org. It should be noted that the chart below represents the number of students identified with Autism as their primary disability. Sometimes a student has a secondary disability as well. It is possible for a student to be twice exceptional and have gifted as the primary exceptionality and Autism as a secondary disability. Individuals with ASD could also have a primary disability of developmentally delayed.

Table One

School Year	Student Ages	# of students with Autism	% Disabilities with Autism
2005-2006	6-21	494	1.13%
2006-2007	6-21	612	1.47%
2007-2008	6-21	763	1.9%

The table below shows the number of students identified with autism receiving Special Education and Related Services in the public schools as part of their IEP.

Table Two

Special Education Related Service	# Related Services Provided to Students with ASD: Duplicated Count
Audiologist	25
Interpreter	1
Occupational Therapy	632
Psychological Services	103
Physical Therapy	125
Recreational Therapy	77
Speech Services	870
Social Work Services	355
<i>Total number of related services provided</i>	<i>*974</i>

*In 2007 – 2008, there were 763 students, aged 6 – 21, with Autism receiving services in the public schools. Some students receive multiple related services, therefore increasing the total number of related services provided, also resulting in the duplicated counts.

The table below shows the number of students with developmental disabilities in the State

of New Mexico. Developmental disability is a term that defines adults and children with mental and/or physical impairments that can affect a person’s language, learning, and living. Although developmental disability is not a recognized disability under the IDEA, the term developmental disability includes some of the disabilities that fall under the IDEA. These disabilities include mental retardation, multiple disabilities, orthopedic impairments, deaf-blindness, and traumatic brain injury. It should be noted that the term developmental disabilities should not be confused with the term developmental delayed, which is one of the disability categories under the IDEA, states are allowed to adopt. In New Mexico, the definition of developmentally delayed can be found at subsection (B)(4) of 6.31.2.7 of NMAC.

The chart includes a three-year comparison of developmental disabilities as described above for the state, but does not include the number of students with a developmental delay.

School Year	# of students in NM with developmental disabilities
2005-2006	3,088
2006-2007	3,081
2007-2008	3,020

According to the New Mexico Department of Health:

Most health insurance policies have limitations on speech, occupational and physical therapy benefits in terms of the number of allowed visits and the circumstances in which those benefits are covered. Often these benefits are authorized only following a stroke, injury or acute neurological insult.

Applied behavioral analysis is rarely, if ever, covered by health insurance policies. Yet these services have been proven to be the most effective in the treatment of Autism Spectrum Disorder (ASD). Most families cannot afford to pay for such services “out of pocket”.

Some researchers believe that the benefit of these services is proven only for young children up to age seven. (*Autism group lobbies for more insurance coverage*, Lapowsky, October 2008, NY Daily News) However, other researchers see significant benefit from these services for all individuals with ASD. (*The Promise of ABA Creating Meaningful Lives Throughout Adolescence and Adulthood*, Gerhardt, Autism Advocate, fourth edition 2008, Volume 53, No 4)

Historically, health insurance providers have limited behavioral health benefits compared to physical health benefits. Behavioral health “parity” requirements were recently passed at the federal level. While HB571 requires parity between behavioral and physical health benefits, prior authorization requirements are prohibited for behavioral health treatments.

Passage of HB751 may result in increased premiums for private health insurance coverage and the possibility, therefore that fewer families will then be able to afford to purchase private health insurance and some businesses may choose to stop offering health insurance to their employees.

According to the Centers for Disease Control and Prevention (CDC), developmental disabilities

are a diverse group of severe chronic conditions that are due to mental and/or physical impairments. People with developmental disabilities have problems with major life activities such as language, mobility, learning, self-help, and independent living. Developmental disabilities begin anytime during development up to 22 years of age and usually last throughout a person's lifetime.

According to the National Institute of Child Health and Human Development (NICHD) autism is a complex developmental disability that causes problems with social interaction and communication. Symptoms usually start before age three and can cause delays or problems in many different skills that develop from infancy to adulthood. Different people with autism can have very different symptoms. Health care providers think of autism as a "spectrum" disorder, a group of disorders with similar features. One person may have mild symptoms, while another may have serious symptoms. But they both have an autism spectrum disorder (ASD).

The CDC reports that it is clear that more children than ever before are being classified as having ASD. CDC's Autism and Developmental Disabilities Monitoring ([ADDM](#)) Network released data in 2007 that found about 1 in 150 8-year-old children in multiple areas of the United States had ASD. There is not a full population count of all individuals with an ASD in the United States. However, the CDC estimates that up to 560,000 individuals between the ages of 0 to 21 have ASD. However, many of these individuals may not be classified as having an ASD until school-age or later.

ASD is a condition which qualifies individuals for the Developmental Disabilities Medicaid Waiver and the Mi Via self-directed Medicaid Waiver. These Medicaid Waivers cover behavioral support consultation, respite, case management and community access services for children. Eligibility for the Medicaid Waiver programs do not include the full spectrum of autism related disorders as defined in the bill. The length of the current waiting list for these Medicaid Waivers will not enable a child age five or under to access these services in time.

AMENDMENTS

Consider amending the language on:

Page 2, Line 6,, page 8, line 3, page 14, line 1, page 19 line 22, and page 25, line 19 replace "...and applied behavioral analysis" with "...physical therapy and other established therapy programs specific for autism, such as Applied Behavioral Analysis (ABS), Picture Exchange Communication System (PECS), and Training and Education of Autistic and Related Communication Handicapped Children (TEAACH)."

On pages 4 , 5 , 10, 11, 16, 17, 22, and 28, delete the phrase "fourth edition, text revision, also known as DSM-IV-TR" and insert "most current edition" prior to "diagnostic and statistical manual of mental disorders"

DL/mc:svb