

JAN 15 2014

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# A BILL FOR AN ACT

RELATING TO HEALTH.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. The purpose of this Act is to ensure the  
2 provision of quality health care for all Hawaii residents by  
3 requiring coverage of treatment for autism spectrum disorders.

4 SECTION 2. This Act shall be known and may be cited as  
5 "Luke's Law".

6 SECTION 3. Chapter 431, Hawaii Revised Statutes, is  
7 amended by adding a new section to article 10A to be  
8 appropriately designated and to read as follows:

9 **"§431:10A- Autism spectrum disorders benefits and**  
10 **coverage; notice; definitions.** (a) Each individual or group  
11 accident and health or sickness insurance policy, contract,  
12 plan, or agreement issued or renewed in this State after  
13 January 1, , shall provide to the policyholder and  
14 individuals under twenty-one years of age covered under the  
15 policy, contract, plan, or agreement, coverage for the  
16 screening, including well-baby and well-child screening,  
17 diagnosis, and evidence-based treatment of autism spectrum  
18 disorders.



1        (b) Every insurer shall provide written notice to its  
2 policyholders regarding the coverage required by this section.  
3 The notice shall be in writing and prominently positioned in any  
4 literature or correspondence sent to policyholders and shall be  
5 transmitted to policyholders within calendar year 2015 when  
6 annual information is made available to members or in any other  
7 mailing to members, but in no case later than December 31, 2015.

8        (c) Individual coverage for behavioral health treatment  
9 provided under this section shall be subject to a maximum  
10 benefit of \$50,000 per year and a maximum lifetime benefit of  
11 \$300,000, but shall not be subject to any limits on the number  
12 of visits to an autism service provider. After December 31,  
13 2016, the insurance commissioner, on an annual basis, shall  
14 adjust the maximum benefit for inflation using the medical care  
15 component of the United States Department of Labor Consumer  
16 Price Index for all urban consumers; provided that the  
17 commissioner may post notice of and hold a public meeting  
18 pursuant to chapter 92 before adjusting the maximum benefit.  
19 The commissioner shall publish the adjusted maximum benefit  
20 annually no later than April 1 of each calendar year, which  
21 shall apply during the following calendar year to health  
22 insurance policies subject to this section. Payments made by an



1 insurer on behalf of a covered individual for any care,  
2 treatment, intervention, or service other than behavioral health  
3 treatment shall not be applied toward any maximum benefit  
4 established under this subsection.

5 (d) Coverage under this section may be subject to  
6 copayment, deductible, and coinsurance provisions of an accident  
7 and health or sickness insurance policy, contract, plan, or  
8 agreement that are no less favorable than the co-payment,  
9 deductible, and coinsurance provisions for other medical  
10 services covered by the policy, contract, plan, or agreement.

11 (e) This section shall not be construed as limiting  
12 benefits that are otherwise available to an individual under an  
13 accident and health or sickness insurance policy, contract,  
14 plan, or agreement.

15 (f) Coverage for treatment under this section shall not be  
16 denied on the basis that the treatment is habilitative or non-  
17 restorative in nature.

18 (g) Except for inpatient services, if an individual is  
19 receiving treatment for autism spectrum disorders, an insurer  
20 may request a review of that treatment not more than once every  
21 twelve months unless the insurer and licensed physician,  
22 psychiatrist, psychologist, clinical social worker, or



1 registered nurse practitioner agree that a more frequent review  
2 is necessary. The cost of obtaining any review shall be borne  
3 by the insurer.

4 (h) This section shall not be construed as reducing any  
5 obligation to provide services to an individual under an  
6 individualized family service plan, an individualized education  
7 program, or an individualized service plan.

8 (i) As of January 1, 2014, to the extent that this section  
9 requires benefits that exceed the essential health benefits  
10 specified under section 1302(b) of the Patient Protection and  
11 Affordable Care Act of 2010 (P.L. 111-148), the specific  
12 benefits that exceed the specified essential health benefits  
13 shall not be required of a qualified health plan when the plan  
14 is offered in this State through the Hawaii health insurance  
15 exchange by a health carrier. Nothing in this subsection shall  
16 nullify the application of this section to plans offered outside  
17 the Hawaii health insurance exchange.

18 (j) Insurers shall include in their network of approved  
19 autism service providers only those providers who have cleared  
20 criminal background checks as determined by the insurer.

21 (k) Insurers shall include at least as many board-  
22 certified behavior analysts in their provider network as there



1 are qualified licensed psychologists in their network of  
2 approved providers of applied behavior analysis.

3 (l) If an individual has been diagnosed as having a  
4 pervasive developmental disorder or autism spectrum disorder  
5 meeting the diagnostic criteria described in the most recent  
6 edition of the Diagnostic and Statistical Manual of Mental  
7 Disorders available at the time of diagnosis, then that  
8 individual shall not be required to undergo repeat evaluation  
9 upon publication of a subsequent edition of the Diagnostic and  
10 Statistical Manual of Mental Disorders to remain eligible for  
11 coverage under this section.

12 (m) As used in this section, unless the context clearly  
13 requires otherwise:

14 "Applied behavior analysis" means the design,  
15 implementation, and evaluation of environmental modifications,  
16 using behavioral stimuli and consequences, to produce socially  
17 significant improvement in human behavior, including the use of  
18 direct observation, measurement, and functional analysis of the  
19 relations between environment and behavior.

20 "Autism service provider" means any person, entity, or  
21 group that provides treatment for autism spectrum disorders.



1       "Autism spectrum disorders" means any of the pervasive  
2 developmental disorders or autism spectrum disorders as defined  
3 by the most recent edition of the Diagnostic and Statistical  
4 Manual of Mental Disorders.

5       "Behavioral health treatment" means evidence based  
6 counseling and treatment programs, including applied behavior  
7 analysis, that are:

8       (1) Necessary to develop, maintain, or restore, to the  
9 maximum extent practicable, the functioning of an  
10 individual; and

11       (2) Provided or supervised by a board-certified behavior  
12 analyst or by a licensed psychologist so long as the  
13 services performed are commensurate with the  
14 psychologist's formal university training and  
15 supervised experience.

16       "Diagnosis of autism spectrum disorders" means medically  
17 necessary assessments, evaluations, or tests conducted to  
18 diagnose whether an individual has an autism spectrum disorder.

19       "Pharmacy care" means medications prescribed by a licensed  
20 physician or registered nurse practitioner and any health-  
21 related services that are deemed medically necessary to  
22 determine the need or effectiveness of the medications.



1       "Psychiatric care" means direct or consultative services  
2 provided by a licensed psychiatrist.

3       "Psychological care" means direct or consultative services  
4 provided by a licensed psychologist.

5       "Therapeutic care" means services provided by licensed  
6 speech pathologists, registered occupational therapists,  
7 licensed social workers, licensed clinical social workers, or  
8 licensed physical therapists.

9       "Treatment for autism spectrum disorders" includes the  
10 following care prescribed or ordered for an individual diagnosed  
11 with an autism spectrum disorder by a licensed physician,  
12 psychiatrist, psychologist, licensed clinical social worker, or  
13 registered nurse practitioner if the care is determined to be  
14 medically necessary:

15       (1) Behavioral health treatment;

16       (2) Pharmacy care;

17       (3) Psychiatric care;

18       (4) Psychological care; and

19       (5) Therapeutic care."

20       SECTION 4. Chapter 432, Hawaii Revised Statutes, is  
21 amended by adding a new section to article 1 to be appropriately  
22 designated and to read as follows:



1           "§432:1- Autism spectrum disorders benefits and  
2 coverage; notice; definitions. (a) Each individual or group  
3 hospital or medical service plan, policy, contract, or agreement  
4 issued or renewed in this State after January 1, , shall  
5 provide to the member and individuals under twenty-one years of  
6 age covered under the service plan, policy, contract, or  
7 agreement, coverage for the screening, including well-baby and  
8 well-child screening, diagnosis, and evidence-based treatment of  
9 autism spectrum disorders.

10           (b) Every mutual benefit society shall provide written  
11 notice to its members regarding the coverage required by this  
12 section. The notice shall be in writing and prominently  
13 positioned in any literature or correspondence sent to members  
14 and shall be transmitted to members within calendar year 2015  
15 when annual information is made available to members or in any  
16 other mailing to members, but in no case later than December 31,  
17 2015.

18           (c) Individual coverage for behavioral health treatment  
19 provided under this section shall be subject to a maximum  
20 benefit of \$50,000 per year and a maximum lifetime benefit of  
21 \$300,000, but shall not be subject to any limits on the number  
22 of visits to an autism service provider. After December 31,





1 2016, the insurance commissioner, on an annual basis, shall  
2 adjust the maximum benefit for inflation, using the medical care  
3 component of the United States Department of Labor Consumer  
4 Price Index for all urban consumers. The commissioner shall  
5 publish the adjusted maximum benefit annually no later than  
6 April 1 of each calendar year, which shall apply during the  
7 following calendar year to health insurance policies subject to  
8 this section; provided that the commissioner may post notice of  
9 and hold a public meeting pursuant to chapter 92 before  
10 adjusting the maximum benefit. Payments made by a mutual  
11 benefit society on behalf of a covered individual for any care,  
12 treatment, intervention, or service other than behavioral health  
13 treatment, shall not be applied toward any maximum benefit  
14 established under this subsection.

15 (d) Coverage under this section may be subject to  
16 copayment, deductible, and coinsurance provisions of an  
17 individual or group hospital or medical service plan, policy,  
18 contract, or agreement that are no less favorable than the co-  
19 payment, deductible, and coinsurance provisions for other  
20 medical services covered by the plan, policy, contract, or  
21 agreement.



1       (e) This section shall not be construed as limiting  
2 benefits that are otherwise available to an individual under an  
3 individual or group hospital or medical service plan, policy,  
4 contract, or agreement.

5       (f) Coverage for treatment under this section shall not be  
6 denied on the basis that the treatment is habilitative or non-  
7 restorative in nature.

8       (g) Except for inpatient services, if an individual is  
9 receiving treatment for autism spectrum disorders, an insurer  
10 may request a review of that treatment not more than once every  
11 twelve months unless the insurer and licensed physician,  
12 psychiatrist, psychologist, clinical social worker, or  
13 registered nurse practitioner agree that a more frequent review  
14 is necessary. The cost of obtaining any review shall be borne  
15 by the insurer.

16       (h) This section shall not be construed to reduce any  
17 obligation to provide services to an individual under an  
18 individualized family service plan, an individualized education  
19 program, or an individualized service plan.

20       (i) As of January 1, 2014, to the extent that this section  
21 requires benefits that exceed the essential health benefits  
22 specified under section 1302(b) of the Patient Protection and



1 Affordable Care Act of 2010 (P.L. 111-148), the specific  
2 benefits that exceed the specified essential health benefits  
3 shall not be required of a qualified health plan when the plan  
4 is offered in this State through the Hawaii health insurance  
5 exchange by a health carrier. Nothing in this subsection shall  
6 nullify the application of this section to plans offered outside  
7 the Hawaii health insurance exchange.

8 (j) Insurers shall include in their network of approved  
9 autism service providers only those providers who have cleared  
10 criminal background checks as determined by the insurer.

11 (k) Insurers shall include at least as many board-  
12 certified behavior analysts in their provider network as there  
13 are qualified licensed psychologists in their network of  
14 approved providers of applied behavior analysis.

15 (l) If an individual has been diagnosed as having a  
16 pervasive developmental disorder or autism spectrum disorder  
17 meeting the diagnostic criteria described in the most recent  
18 edition of the Diagnostic and Statistical Manual of Mental  
19 Disorders available at the time of diagnosis, then that  
20 individual shall not be required to undergo a repeat evaluation  
21 upon publication of a subsequent edition of the Diagnostic and



1 Statistical Manual of Mental Disorders to remain eligible for  
2 coverage under this section.

3 (m) As used in this section, unless the context clearly  
4 requires otherwise:

5 "Applied behavior analysis" means the design,  
6 implementation, and evaluation of environmental modifications,  
7 using behavioral stimuli and consequences, to produce socially  
8 significant improvement in human behavior, including the use of  
9 direct observation, measurement, and functional analysis of the  
10 relations between environment and behavior.

11 "Autism service provider" means any person, entity, or  
12 group that provides treatment for autism spectrum disorders.

13 "Autism spectrum disorders" means any of the pervasive  
14 developmental disorders or autism spectrum disorders as defined  
15 by the most recent edition of the Diagnostic and Statistical  
16 Manual of Mental Disorders.

17 "Behavioral health treatment" means evidence-based  
18 counseling and treatment programs, including applied behavior  
19 analysis, that are:

20 (1) Necessary to develop, maintain, or restore, to the  
21 maximum extent practicable, the functioning of an  
22 individual; and



1        (2) Provided or supervised by a board-certified behavior  
2        analyst or by a licensed psychologist so long as the  
3        services performed are commensurate with the  
4        psychologist's formal university training and  
5        supervised experience.

6        "Diagnosis of autism spectrum disorders" means medically  
7        necessary assessments, evaluations, or tests conducted to  
8        diagnose whether an individual has an autism spectrum disorder.

9        "Pharmacy care" means medications prescribed by a licensed  
10       physician or registered nurse practitioner and any health-  
11       related services that are deemed medically necessary to  
12       determine the need or effectiveness of the medications.

13       "Psychiatric care" means direct or consultative services  
14       provided by a licensed psychiatrist.

15       "Psychological care" means direct or consultative services  
16       provided by a licensed psychologist.

17       "Therapeutic care" means services provided by licensed  
18       speech pathologists, registered occupational therapists,  
19       licensed social workers, licensed clinical social workers, or  
20       licensed physical therapists.

21       "Treatment for autism spectrum disorders" includes the  
22       following care prescribed or ordered for an individual diagnosed



1 with an autism spectrum disorder by a licensed physician,  
2 psychiatrist, psychologist, licensed clinical social worker, or  
3 registered nurse practitioner if the care is determined to be  
4 medically necessary:

- 5       (1) Behavioral health treatment;
- 6       (2) Pharmacy care;
- 7       (3) Psychiatric care;
- 8       (4) Psychological care; and
- 9       (5) Therapeutic care."

10       SECTION 5. Section 432D-23, Hawaii Revised Statutes, is  
11 amended to read as follows:

12       **"§432D-23 Required provisions and benefits.**

13 Notwithstanding any provision of law to the contrary, each  
14 policy, contract, plan, or agreement issued in the State after  
15 January 1, 1995, by health maintenance organizations pursuant to  
16 this chapter, shall include benefits provided in sections  
17 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116,  
18 431:10A-116.5, 431:10A-116.6, 431:10A-119, 431:10A-120,  
19 431:10A-121, 431:10A-125, 431:10A-126, 431:10A-122, [and]  
20 431:10A-116.2, and 431:10A-\_\_\_\_\_, and chapter 431M."

21       SECTION 6. Notwithstanding section 432D-23, Hawaii Revised  
22 Statutes, the coverage and benefit for autism spectrum disorders

1 to be provided by a health maintenance organization under  
 2 section 5 of this Act shall apply to all policies, contracts,  
 3 plans, or agreements issued or renewed in this State by a health  
 4 maintenance organization after January 1, .

5 SECTION 7. Statutory material to be repealed is bracketed  
 6 and stricken. New statutory material is underscored.

7 SECTION 8. This Act shall take effect upon its approval.  
 8

INTRODUCED BY: John Green MD  
Erzanne Chun Oakland  
Arnold Puder



# S.B. NO. 2054

**Report Title:**

Health; Insurance; Mandatory Health Coverage; Autism Spectrum Disorders

**Description:**

Requires health insurers, mutual benefit societies, and health maintenance organizations to provide coverage for autism spectrum disorder treatments.

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