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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 December 31, 2015, shall provide to the policyholder and  
14 individuals under \_\_\_\_\_ years of age covered under the policy,  
15 contract, plan, or agreement, coverage for the screening,  
16 including well-baby and well-child screening, diagnosis, and  
17 evidence-based treatment of autism spectrum disorders.



1           (b) Every insurer shall provide notice to its  
2 policyholders regarding the coverage required by this section.  
3 The notice shall be prominently positioned in any literature or  
4 correspondence sent to policyholders and shall be transmitted to  
5 policyholders within calendar year 2016 when annual information  
6 is made available to members or in any other mailing to members,  
7 but in no case later than December 31, 2016.

8           (c) Individual coverage for behavioral health treatment  
9 provided under this section shall be subject to a maximum  
10 benefit of \$ \_\_\_\_\_ per year and a maximum lifetime benefit of  
11 \$ \_\_\_\_\_, 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 Bureau of Labor Consumer Price  
16 Index for urban Honolulu; provided that the commissioner shall  
17 post notice of and hold a public meeting in the same manner as  
18 required by section 91-3(a) before adjusting the maximum  
19 benefit. The commissioner shall publish the adjusted maximum  
20 benefit annually no later than April 1 of each calendar year,  
21 which 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 copayment,  
9 deductible, and coinsurance provisions for substantially all  
10 other medical services covered by the policy, contract, plan, or  
11 agreement.

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

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

19 (g) Except for inpatient services, if an individual is  
20 receiving treatment for autism spectrum disorders, an insurer  
21 may request a review of that treatment. The cost of obtaining  
22 any review shall be borne by the insurer.



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

5        (i) Nothing in this section shall apply to non-  
6 grandfathered plans in the individual and small group markets  
7 that are required to include essential health benefits under the  
8 Patient Protection and Affordable Care Act, Public Law 111-148,  
9 as amended, or to medicare supplement, accident-only, specified  
10 disease, hospital indemnity, disability income, long-term care,  
11 or other limited benefit hospital insurance policies.

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

15        (k) Insurers shall include board certified behavior  
16 analysts in their provider network.

17        (l) If an individual has been diagnosed as having an  
18 autism spectrum disorder, then that individual shall not be  
19 required to undergo repeat evaluation upon publication of a  
20 subsequent edition of the Diagnostic and Statistical Manual of  
21 Mental Disorders to remain eligible for coverage under this  
22 section.



1        (m) Coverage for applied behavior analysis shall include  
2 the services of the personnel who work under the supervision of  
3 the board certified behavior analyst or the licensed  
4 psychologist overseeing the program.

5        (n) As used in this section, unless the context clearly  
6 requires otherwise:

7        "Applied behavior analysis" means the design,  
8 implementation, and evaluation of environmental modifications,  
9 using behavioral stimuli and consequences, to produce socially  
10 significant improvement in human behavior, including the use of  
11 direct observation, measurement, and functional analysis of the  
12 relationship between environment and behavior. The practice of  
13 applied behavior analysis expressly excludes psychological  
14 testing, diagnosis of a mental or physical disorder,  
15 neuropsychology, psychotherapy, cognitive therapy, sex therapy,  
16 psychoanalysis, hypnotherapy, and long-term counseling as  
17 treatment modalities.

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

20        "Autism spectrum disorders" means any of the pervasive  
21 developmental disorders or autism spectrum disorders as defined



1 by the most recent edition of the Diagnostic and Statistical  
2 Manual of Mental Disorders.

3 "Behavioral health treatment" means evidence-based  
4 counseling and treatment programs, including applied behavior  
5 analysis, that are:

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

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

14 "Board certified behavior analyst" means a behavior analyst  
15 credentialed by the Behavior Analyst Certification Board as a  
16 board certified behavior analyst.

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

20 "Pharmacy care" means medications prescribed by a licensed  
21 physician or nurse practitioner and any health-related services



1 that are deemed medically necessary to determine the need or  
2 effectiveness of the medications.

3 "Psychiatric care" means direct or consultative services  
4 provided by a licensed psychiatrist.

5 "Psychological care" means direct or consultative services  
6 provided by a licensed psychologist.

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

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

- 17 (1) Behavioral health treatment;
- 18 (2) Pharmacy care;
- 19 (3) Psychiatric care;
- 20 (4) Psychological care; and
- 21 (5) Therapeutic care."



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

4 **"§432:1- Autism spectrum disorders benefits and**  
5 **coverage; notice; definitions.** (a) Each individual or group  
6 hospital or medical service plan, policy, contract, or agreement  
7 issued or renewed in this State after December 31, 2015, shall  
8 provide to the member and individuals under \_\_\_\_\_ years of age  
9 covered under the service plan, policy, contract, or agreement,  
10 coverage for the screening, including well-baby and well-child  
11 screening, diagnosis, and evidence-based treatment of autism  
12 spectrum disorders.

13 (b) Every mutual benefit society shall provide written  
14 notice to its members regarding the coverage required by this  
15 section. The notice shall be prominently positioned in any  
16 literature or correspondence sent to members and shall be  
17 transmitted to members within calendar year 2016 when annual  
18 information is made available to members or in any other mailing  
19 to members, but in no case later than December 31, 2016.

20 (c) Individual coverage for behavioral health treatment  
21 provided under this section shall be subject to a maximum  
22 benefit of \$ \_\_\_\_\_ per year and a maximum lifetime benefit of





1 \$ \_\_\_\_\_, but shall not be subject to any limits on the number  
2 of visits to an autism service provider. After December 31,  
3 2016, the insurance commissioner, on an annual basis, shall  
4 adjust the maximum benefit for inflation, using the medical care  
5 component of the United States Bureau of Labor Consumer Price  
6 Index for urban Honolulu. The commissioner shall publish the  
7 adjusted maximum benefit annually no later than April 1 of each  
8 calendar year, which shall apply during the following calendar  
9 year to health insurance policies subject to this section;  
10 provided that the commissioner shall post notice of and hold a  
11 public meeting in the same manner as required by section 91-3(a)  
12 before adjusting the maximum benefit. Payments made by a mutual  
13 benefit society on behalf of a covered individual for any care,  
14 treatment, intervention, or service other than behavioral health  
15 treatment, shall not be applied toward any maximum benefit  
16 established under this subsection.

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



1 substantially all other medical services covered by the service  
2 plan, policy, contract, or agreement.

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

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

10 (g) Except for inpatient services, if an individual is  
11 receiving treatment for autism spectrum disorders, an insurer  
12 may request a review of that treatment. The cost of obtaining  
13 any review shall be borne by the insurer.

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

18 (i) Nothing in this section shall apply to non-  
19 grandfathered plans in the individual and small group markets  
20 that are required to include essential health benefits under the  
21 Patient Protection and Affordable Care Act, Public Law 111-148,  
22 as amended, or to medicare supplement, accident-only, specified



1 disease, hospital indemnity, disability income, long-term care,  
2 or other limited benefit hospital insurance policies.

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

6 (k) Insurers shall include board certified behavior  
7 analysts in their provider network.

8 (l) If an individual has been diagnosed as having an  
9 autism spectrum disorder, then that individual shall not be  
10 required to undergo repeat evaluation upon publication of a  
11 subsequent edition of the Diagnostic and Statistical Manual of  
12 Mental Disorders to remain eligible for coverage under this  
13 section.

14 (m) Coverage for applied behavior analysis shall include  
15 the services of the personnel who work under the supervision of  
16 the board certified behavior analyst or the licensed  
17 psychologist overseeing the program.

18 (n) As used in this section, unless the context clearly  
19 requires otherwise:

20 "Applied behavior analysis" means the design,  
21 implementation, and evaluation of environmental modifications,  
22 using behavioral stimuli and consequences, to produce socially



1 significant improvement in human behavior, including the use of  
2 direct observation, measurement, and functional analysis of the  
3 relationship between environment and behavior. The practice of  
4 applied behavior analysis expressly excludes psychological  
5 testing, diagnosis of a mental or physical disorder,  
6 neuropsychology, psychotherapy, cognitive therapy, sex therapy,  
7 psychoanalysis, hypnotherapy, and long-term counseling as  
8 treatment modalities.

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

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

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

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

21 (2) Provided or supervised by a board certified behavior  
22 analyst or by a licensed psychologist so long as the



1 services performed are commensurate with the  
2 psychologist's formal university training and  
3 supervised experience.

4 "Board certified behavior analyst" means a behavior analyst  
5 credentialed by the Behavior Analyst Certification Board as a  
6 board certified behavior analyst.

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

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

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

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

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



1       "Treatment for autism spectrum disorders" includes the  
2 following care prescribed or ordered for an individual with an  
3 autism spectrum disorder by a licensed physician, psychiatrist,  
4 psychologist, licensed clinical social worker, or nurse  
5 practitioner if the care is determined to be medically  
6 necessary:

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

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

14       "**§432D-23 Required provisions and benefits.**

15 Notwithstanding any provision of law to the contrary, each  
16 policy, contract, plan, or agreement issued in the State after  
17 January 1, 1995, by health maintenance organizations pursuant to  
18 this chapter, shall include benefits provided in sections  
19 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-  
20 116.2, 431:10A-116.5, 431:10A-116.6, 431:10A-119, 431:10A-120,  
21 431:10A-121, 431:10A-122, 431:10A-125, 431:10A-126, [~~431:10A-~~  
22 ~~122, and 431:10A-116.2,~~] and 431:10A- , and chapter 431M."



1 SECTION 6. (a) The University of Hawaii economic research  
2 organization shall contract for the performance of an actuarial  
3 analysis by a licensed actuary who is a member in good standing  
4 with the American Academy of Actuaries of the projected costs of  
5 providing insurance coverage for screening, diagnosis, and  
6 treatment of autism spectrum disorders as required by this Act.

7 (b) The actuarial analysis shall:

8 (1) Include a statement by the actuary certifying that the  
9 techniques and methods used are generally accepted  
10 within the actuarial profession and that the  
11 assumptions and cost estimates used are reasonable;

12 (2) Provide a financial analysis of the cost of providing  
13 insurance coverage for screening, diagnosis, and  
14 treatment of autism spectrum disorders as required by  
15 this Act, including an estimate of the cost benefits  
16 provided by this Act and the cost impact of this Act's  
17 application to the Hawaii medicaid market; and

18 (3) Specifically consider the following factors and their  
19 impact on the cost of providing insurance coverage or  
20 medicaid coverage:



- 1 (A) The prevalence of autism spectrum disorders  
2 compared to the prevalence of treated autism  
3 spectrum disorders;
- 4 (B) The intensity and frequency of treatment provided  
5 depending on the severity of the diagnosis of  
6 autism spectrum disorders; and
- 7 (C) The tiered service delivery model of applied  
8 behavior analysis as a treatment for autism  
9 spectrum disorders.
- 10 (c) The actuarial analysis shall be completed and  
11 submitted to the University of Hawaii economic research  
12 organization in sufficient time for the University of Hawaii  
13 economic research organization to submit a report to the  
14 legislature, including findings, recommendations, and proposed  
15 legislation, if any, based on the results of the actuarial  
16 analysis no later than twenty days prior to the convening of the  
17 regular session of 2015.
- 18 (d) For the purpose of contracting for the actuarial  
19 analysis, the University of Hawaii economic research  
20 organization shall be exempt from compliance with chapter 103D,  
21 Hawaii Revised Statutes.





1 SECTION 7. There is appropriated out of the general  
2 revenues of the State of Hawaii the sum of \$ or so much  
3 thereof as may be necessary for fiscal year 2014-2015 to  
4 contract for the performance of the actuarial analysis required  
5 under this Act.

6 The sum appropriated shall be expended by the University of  
7 Hawaii for the purposes of this Act.

8 SECTION 8. Notwithstanding the amendments made to section  
9 432D-23, Hawaii Revised Statutes, in section 5 of this Act, the  
10 coverage and benefits for autism spectrum disorders to be  
11 provided by a health maintenance organization under section 5 of  
12 this Act shall apply to all policies, contracts, plans, or  
13 agreements issued or renewed in this State by a health  
14 maintenance organization after December 31, 2015.

15 SECTION 9. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 10. This Act shall take effect on July 1, 2050.



**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. Requires an actuarial analysis to estimate the cost impact of providing autism spectrum disorder benefits. (SB2054 HD3)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

