

MAR 04 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 July 1,  
13 2014, shall provide to the policyholder and individuals under  
14 twenty-one years of age covered under the policy, contract,  
15 plan, or agreement, coverage for the screening, including well-  
16 baby and well-child screening, diagnosis, and evidence-based  
17 treatment of autism spectrum disorders.



1 Nothing in this section shall be construed to require the  
2 coverage in a medicaid plan.

3 (b) Every insurer shall provide notice to its  
4 policyholders regarding the coverage required by this section.  
5 The notice shall be prominently positioned in any literature or  
6 correspondence sent to policyholders and shall be transmitted to  
7 policyholders within calendar year 2014 when annual information  
8 is made available to members or in any other mailing to members,  
9 but in no case later than December 31, 2014.

10 (c) Individual coverage for behavioral health treatment  
11 provided under this section shall be subject to a maximum  
12 benefit of \$50,000 per year and a maximum lifetime benefit of  
13 \$300,000, but shall not be subject to any limits on the number  
14 of visits to an autism service provider. After December 31,  
15 2015, the insurance commissioner, on an annual basis, shall  
16 adjust the maximum benefit for inflation using the medical care  
17 component of the United States Bureau of Labor Consumer Price  
18 Index for urban Honolulu; provided that the commissioner shall  
19 post notice of and hold a public meeting in the same manner as  
20 required by section 91-3(a) before adjusting the maximum  
21 benefit. The commissioner shall publish the adjusted maximum  
22 benefit annually no later than April 1 of each calendar year,



1 which shall apply during the following calendar year to health  
2 insurance policies subject to this section. Payments made by an  
3 insurer on behalf of a covered individual for any care,  
4 treatment, intervention, or service other than behavioral health  
5 treatment shall not be applied toward any maximum benefit  
6 established under this subsection.

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

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

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

21 (g) Except for inpatient services, if an individual is  
22 receiving treatment for autism spectrum disorders, an insurer



1 may request a review of that treatment. The cost of obtaining  
2 any review shall be borne by the insurer.

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

7 (i) Nothing in this section shall apply to accident-only,  
8 specified disease, hospital indemnity, qualified health plans as  
9 defined in section 1301 of the Patient Protection and Affordable  
10 Care Act, Public law 111-148, as amended, medicare supplement,  
11 disability income, long-term care, or other limited benefit  
12 hospital insurance policies.

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

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

18 (l) If an individual has been diagnosed as having an  
19 autism spectrum disorder, then that individual shall not be  
20 required to undergo repeat evaluation upon publication of a  
21 subsequent edition of the Diagnostic and Statistical Manual of



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

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

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

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

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 "Board certified behavior analyst" means a behavior analyst  
17 credentialed by the Behavior Analyst Certification Board as a  
18 board certified analyst.

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



1       "Pharmacy care" means medications prescribed by a licensed  
2 physician or nurse practitioner and any health-related services  
3 that are deemed medically necessary to determine the need or  
4 effectiveness of the medications.

5       "Psychiatric care" means direct or consultative services  
6 provided by a licensed psychiatrist.

7       "Psychological care" means direct or consultative services  
8 provided by a licensed psychologist.

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

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

19       (1) Behavioral health treatment;

20       (2) Pharmacy care;

21       (3) Psychiatric care;

22       (4) Psychological care; and



1       (5) Therapeutic care."

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

5       "§432:1- Autism spectrum disorders benefits and  
6 coverage; notice; definitions. (a) Each individual or group  
7 hospital or medical service plan, policy, contract, or agreement  
8 issued or renewed in this State after July 1, 2014, shall  
9 provide to the member and individuals under twenty-one years of  
10 age covered under the service plan, policy, contract, or  
11 agreement, coverage for the screening, including well-baby and  
12 well-child screening, diagnosis, and evidence-based treatment of  
13 autism spectrum disorders.

14       Nothing in this section shall be construed to require the  
15 coverage in a medicaid plan.

16       (b) Every mutual benefit society shall provide written  
17 notice to its members regarding the coverage required by this  
18 section. The notice shall be prominently positioned in any  
19 literature or correspondence sent to members and shall be  
20 transmitted to members within calendar year 2014 when annual  
21 information is made available to members or in any other mailing  
22 to members, but in no case later than December 31, 2014.





1       (c) Individual coverage for behavioral health treatment  
2 provided under this section shall be subject to a maximum  
3 benefit of \$50,000 per year and a maximum lifetime benefit of  
4 \$300,000, but shall not be subject to any limits on the number  
5 of visits to an autism service provider. After December 31,  
6 2015, the insurance commissioner, on an annual basis, shall  
7 adjust the maximum benefit for inflation, using the medical care  
8 component of the United States Bureau of Labor Consumer Price  
9 Index for urban Honolulu. The commissioner shall publish the  
10 adjusted maximum benefit annually no later than April 1 of each  
11 calendar year, which shall apply during the following calendar  
12 year to health insurance policies subject to this section;  
13 provided that the commissioner shall post notice of and hold a  
14 public meeting in the same manner as required by section 91-3(a)  
15 before adjusting the maximum benefit. Payments made by a mutual  
16 benefit society on behalf of a covered individual for any care,  
17 treatment, intervention, or service other than behavioral health  
18 treatment, shall not be applied toward any maximum benefit  
19 established under this subsection.

20       (d) Coverage under this section may be subject to  
21 copayment, deductible, and coinsurance provisions of an  
22 individual or group hospital or medical service plan, policy,



1 contract, or agreement that are no less favorable than the co-  
2 payment, deductible, and coinsurance provisions for  
3 substantially all other medical services covered by the plan,  
4 policy, contract, or agreement.

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

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

12 (g) Except for inpatient services, if an individual is  
13 receiving treatment for autism spectrum disorders, an insurer  
14 may request a review of that treatment. The cost of obtaining  
15 any review shall be borne 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) Nothing in this section shall apply to accident-only,  
21 specified disease, hospital indemnity, qualified health plans as  
22 defined in section 1301 of the Patient Protection and Affordable



1 Care Act, Public law 111-148, as amended, medicare supplement,  
2 disability income, long-term care, or other limited benefit  
3 hospital insurance policies.

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

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

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

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

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

21 "Applied behavior analysis" means the design,  
22 implementation, and evaluation of environmental modifications,



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

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

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

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

19 (1) Necessary to develop, maintain, or restore, to the  
20 maximum extent practicable, the functioning of an  
21 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        "Board certified behavior analyst" means a behavior analyst  
7        credentialed by the Behavior Analyst Certification Board as a  
8        board certified analyst.

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

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

16       "Psychiatric care" means direct or consultative services  
17       provided by a licensed psychiatrist.

18       "Psychological care" means direct or consultative services  
19       provided by a licensed psychologist.

20       "Therapeutic care" means services provided by licensed  
21       speech pathologists, registered occupational therapists,



1 licensed social workers, licensed clinical social workers, or  
2 licensed physical therapists.

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

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

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

16 **"§432D-23 Required provisions and benefits.**

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



1 431:10A-121, 431:10A-122, 431:10A-125, 431:10A-126, [~~431:10A-~~  
2 ~~122, and 431:10A-116.2]~~ and 431:10A- , and chapter 431M."

3 SECTION 6. The coverage and benefit for autism spectrum  
4 disorders to be provided by a health maintenance organization  
5 under section 5 of this Act shall apply to all policies,  
6 contracts, plans, or agreements issued or renewed in this State  
7 by a health maintenance organization on or after July 1, 2014.

8 SECTION 7. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 8. 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. Effective 7/1/2050. (SD3)

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

