



GOV. MSG. NO. 1344

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 13, 2015

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 13, 2015, the following bill was signed into law:

SB791 SD1 HD2 CD1

RELATING TO AUTISM SPECTRUM DISORDERS
ACT 235 (15)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor

on JUL 13 2015
THE SENATE
TWENTY-EIGHTH LEGISLATURE, 2015
STATE OF HAWAII

ACT 235
S.B. NO. 791
S.D. 1
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO AUTISM SPECTRUM DISORDERS.

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 by requiring insurance coverage
3 for the diagnosis and treatment of autism.

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 benefits and coverage; notice;
10 definitions. (a) Each individual or group accident and health
11 or sickness insurance policy issued or renewed in this State
12 after January 1, 2016, shall provide to the policyholder and
13 individuals under fourteen years of age covered under the policy
14 coverage for the diagnosis and treatment of autism.

15 (b) This section shall not apply to disability, accident-
16 only, medicare, medicare supplement, student accident and health
17 or sickness insurance, dental-only, and vision-only policies or
18 policies or renewals of six months or less.



1 (c) 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 2016 when
6 annual information is made available to policyholders or in any
7 other mailing to policyholders, but in no case later than
8 December 31, 2016.

9 (d) Coverage for applied behavioral analysis provided
10 under this section shall be subject to a maximum benefit of
11 \$25,000 per year for services for children ages thirteen and
12 under. This section shall not be construed as limiting benefits
13 that are otherwise available to an individual under an accident
14 and health or sickness insurance policy. Payments made by an
15 insurer on behalf of a covered individual for any care,
16 treatment, intervention, or service other than applied
17 behavioral analysis shall not be applied toward the maximum
18 benefit established under this subsection.

19 (e) Coverage under this section may be subject to
20 copayment, deductible, and coinsurance provisions of an accident
21 and health or sickness insurance policy that are no less



1 favorable than the copayment, deductible, and coinsurance
2 provisions for substantially all medical services covered by the
3 policy.

4 (f) Treatment for autism requests shall include a
5 treatment plan. Except for inpatient services, if an individual
6 is receiving treatment for autism, an insurer may request a
7 review of the treatment plan for continued authorization of
8 coverage for treatment for autism at the insurer's discretion.

9 (g) The medical necessity of treatment covered by this
10 section shall be determined pursuant to the policy and shall be
11 defined in the policy in a manner that is consistent with other
12 services covered under the policy. Except for inpatient
13 services, if an individual is receiving treatment for autism, an
14 insurer may request a review of the medical necessity of that
15 treatment at the insurer's discretion.

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



1 (i) Coverage under this section shall exclude coverage
2 for:

3 (1) Care that is custodial in nature;

4 (2) Services and supplies that are not clinically
5 appropriate;

6 (3) Services provided by family or household members;

7 (4) Treatments considered experimental; and

8 (5) Services provided outside of the State.

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

13 (k) If an individual has been diagnosed as having autism
14 meeting the diagnostic criteria described in the Diagnostic and
15 Statistical Manual of Mental Disorders available at the time of
16 diagnosis, upon publication of a more recent edition of the
17 Diagnostic and Statistical Manual of Mental Disorders, that
18 individual may be required to undergo repeat evaluation to
19 remain eligible for coverage under this section.

20 (l) Treatment for autism shall not be covered pursuant to
21 this section unless provided by an autism service provider that



1 is licensed by a state licensure board. If a state licensure
2 board that licenses providers to provide autism services is
3 unavailable, the autism service provider shall:

4 (1) Be certified by the Behavior Analyst Certification
5 Board, Inc.; provided that certification by the
6 Behavior Analyst Certification Board, Inc., shall be
7 valid for purposes of this subsection for no more than
8 one year; or

9 (2) Meet any existing credentialing requirements
10 determined by the insurer.

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

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

19 "Autism" means autism spectrum disorder as defined by the
20 most recent edition of the Diagnostic and Statistical Manual of
21 Mental Disorders.



1 "Autism service provider" means any person, entity, or
2 group that provides treatment for autism and meets the minimum
3 requirements pursuant to subsection (1).

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

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

10 (2) Provided or supervised by an autism service provider.

11 "Diagnosis of autism" means medically necessary
12 assessments, evaluations, or tests conducted to diagnose whether
13 an individual has autism.

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

18 "Psychiatric care" means direct or consultative services
19 provided by a licensed psychiatrist.

20 "Psychological care" means direct or consultative services
21 provided by a licensed psychologist.



1 "Therapeutic care" means services provided by licensed
2 speech pathologists, registered occupational therapists,
3 licensed social workers, licensed clinical social workers, or
4 licensed physical therapists.

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

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

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

18 "**§432:1- Autism benefits and coverage; notice;**
19 **definitions.** (a) Each hospital and medical service plan
20 contract issued or renewed in this State after January 1, 2016,
21 shall provide to the member and individuals under fourteen years

1 of age covered under the plan contract coverage for the
2 diagnosis and treatment of autism.

3 (b) This section shall not apply to disability, accident-
4 only, medicare, medicare supplement, student accident and health
5 or sickness insurance, dental-only, and vision-only policies or
6 policies or renewals of six months or less.

7 (c) Every mutual benefit society shall provide written
8 notice to its members regarding the coverage required by this
9 section. The notice shall be in writing and prominently
10 positioned in any literature or correspondence sent to members
11 and shall be transmitted to members within calendar year 2016
12 when annual information is made available to members or in any
13 other mailing to members, but in no case later than December 31,
14 2016.

15 (d) Coverage for applied behavioral analysis provided
16 under this section shall be subject to a maximum benefit of
17 \$25,000 per year for services for children ages thirteen and
18 under. This section shall not be construed as limiting benefits
19 that are otherwise available to a member under a hospital and
20 medical service plan contract. Payments made on behalf of a
21 member for any care, treatment, intervention, or service other



1 than applied behavioral analysis shall not be applied toward the
2 maximum benefit established under this subsection.

3 (e) Coverage under this section may be subject to
4 copayment, deductible, and coinsurance provisions of a policy
5 that are no less favorable than the copayment, deductible, and
6 coinsurance provisions for substantially all medical services
7 covered by the plan contract.

8 (f) Treatment for autism requests shall include a
9 treatment plan. Except for inpatient services, if an individual
10 is receiving treatment for autism, a mutual benefit society may
11 request a review of the treatment plan for continued
12 authorization of coverage for treatment for autism at the mutual
13 benefit society's discretion.

14 (g) The medical necessity of treatment covered by this
15 section shall be determined pursuant to the plan contract and
16 shall be defined in the plan contract in a manner that is
17 consistent with other services covered under the plan contract.
18 Except for inpatient services, if an individual is receiving
19 treatment for autism, a mutual benefit society may request a
20 review of the medical necessity of that treatment at the
21 society's discretion.



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

6 (i) Coverage under this section shall exclude coverage
7 for:

8 (1) Care that is custodial in nature;

9 (2) Services and supplies that are not clinically
10 appropriate;

11 (3) Services provided by family or household members;

12 (4) Treatments considered experimental; and

13 (5) Services provided outside of the State.

14 (j) Mutual benefit societies shall include in their
15 network of approved autism service providers only those
16 providers who have cleared state and federal criminal background
17 checks as determined by the society.

18 (k) If an individual has been diagnosed as having autism
19 meeting the diagnostic criteria described in the Diagnostic and
20 Statistical Manual of Mental Disorders available at the time of
21 diagnosis, upon publication of a more recent edition of the



1 Diagnostic and Statistical Manual of Mental Disorders, that
2 individual may be required to undergo repeat evaluation to
3 remain eligible for coverage under this section.

4 (1) Treatment for autism shall not be covered pursuant to
5 this section unless provided by an autism service provider that
6 is licensed by a state licensure board. If a state licensure
7 board that licenses providers to provide autism services is
8 unavailable, the autism service provider shall:

9 (1) Be certified by the Behavior Analyst Certification
10 Board, Inc.; provided that certification by the
11 Behavior Analyst Certification Board, Inc., shall be
12 valid for purposes of this subsection for no more than
13 one year; or

14 (2) Meet any existing credentialing requirements
15 determined by the mutual benefit society.

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

18 "Applied behavior analysis" means the design,
19 implementation, and evaluation of environmental modifications,
20 using behavioral stimuli and consequences, to produce socially
21 significant improvement in human behavior, including the use of



1 direct observation, measurement, and functional analysis of the
2 relations between environment and behavior.

3 "Autism" means autism spectrum disorder as defined by the
4 most recent edition of the Diagnostic and Statistical Manual of
5 Mental Disorders.

6 "Autism service provider" means any person, entity, or
7 group that provides treatment for autism and meets the minimum
8 requirements pursuant to subsection (1).

9 "Behavioral health treatment" means evidence based
10 counseling and treatment programs, including applied behavior
11 analysis, that are:

12 (1) Necessary to develop, maintain, or restore, to the
13 maximum extent practicable, the functioning of an
14 individual; and

15 (2) Provided or supervised by an autism service provider.

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

19 "Pharmacy care" means medications prescribed by a licensed
20 physician or registered nurse practitioner and any health-



1 related services that are deemed medically necessary to
2 determine the need or 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" includes the following care
12 prescribed or ordered for an individual diagnosed with autism by
13 a licensed physician, psychiatrist, psychologist, licensed
14 clinical social worker, or registered nurse practitioner if the
15 care is determined to be medically necessary:

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



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

3 **"§432D-23 Required provisions and benefits.**

4 Notwithstanding any provision of law to the contrary, each
5 policy, contract, plan, or agreement issued in the State after
6 January 1, 1995, by health maintenance organizations pursuant to
7 this chapter, shall include benefits provided in sections
8 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-
9 116.2, 431:10A-116.5, 431:10A-116.6, 431:10A-119, 431:10A-120,
10 431:10A-121, 431:10A-122, 431:10A-125, 431:10A-126, [~~431:10A-~~
11 ~~122, and 431:10A-116.2,~~] and 431:10A- , and chapter 431M."

12 SECTION 6. Notwithstanding section 432D-23, Hawaii Revised
13 Statutes, the coverage and benefit for autism to be provided by
14 a health maintenance organization under section 4 of this Act
15 shall apply to all policies, contracts, plans, or agreements
16 issued or renewed in this State by a health maintenance
17 organization after January 1, 2016.

18 SECTION 7. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.



1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect on July 1, 2015.

4

APPROVED this 13 day of JUL, 2015



GOVERNOR OF THE STATE OF HAWAII