HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 107 Autism
SPONSOR(S): Coley
TIED BILLS: **IDEN./SIM. BILLS:** SB 214

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Regulation Policy Committee		Guy	Calamas
2)	Insurance, Business & Financial Affairs Policy Committee			
3)	Government Operations Appropriations Committee			
4)	General Government Policy Council			
5)				

SUMMARY ANALYSIS

House Bill 107 requires a physician to refer a minor patient to an appropriate specialist for screening for autism spectrum disorder (ASD), if the parent or legal guardian believes the minor exhibits symptoms of ASD, and reports the observation to the physician. The bill defines "appropriate specialist" and provides a list of professionals who meet the definition. The bill provides an exemption for physicians providing emergency services and care under s. 395.1041, F.S.

The bill creates an insurance coverage mandate for insurers and health plans. The bill amends s. 627.6686, F.S., and s. 641.31098, F.S., to require insurers and plans to cover "direct patient access" to an appropriate specialist for a minimum of three visits per policy year for screening, evaluation or diagnosis of ASD. The bill defines "direct patient access" as the ability of a subscriber or the insured to obtain services from an in-network provider without getting a referral or other authorization prior to receiving services.

The bill is anticipated to have an indeterminate fiscal impact to state government and the private sector. (See Fiscal Comments.)

House Bill 107 provides an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background on Autism Spectrum Disorder

Autism spectrum disorder (ASD) is the term for a number of pervasive developmental disorders including autistic disorder, Asperger's Syndrome, and Rhett's syndrome.[1] Autism spectrum disorders range from a severe form, called autistic disorder, to a milder form, Asperger syndrome. If a child has symptoms of either of these disorders, but does not meet the specific criteria for either, the diagnosis is called pervasive developmental disorder not otherwise specified (PDD-NOS).[2] ASD is generally detected by age three, and the United States Centers for Disease Control and Prevention (CDC) estimates that ASD affects between two and six of every 1,000 children.[3]

Common characteristics shared by children with ASD are varying degrees of deficits in social interaction, verbal and nonverbal communication, and repetitive behaviors or interest. In addition, many children with ASD have some degree of mental impairment. According to the National Institute of Mental Health, the rate of autism diagnosis is increasing - possibly due a change in the criteria to diagnose and "increased recognition of the disorder by professionals and the public."[4] Currently, there is no determinative cause of autism.

Screening and Referrals

The earlier a child is diagnosed with ASD, the more likely early intervention and treatment can assist the child with developmental gains and improved outcomes.[5] In evaluating a child, clinicians rely on behavioral characteristics to make a diagnosis. The diagnosis usually requires a two-stage process. The first phase is a screening which is used to determine if further evaluation is needed.[6] The second phase is a diagnostic evaluation which may be done by a multidisciplinary team that may include a

[1] National Institute of Mental Health, U.S. Department of Health and Human Services, *Autism Spectrum Disorders: Pervasive Developmental Disorders*, see http://www.nimh.nih.gov/health/publications/autism/index.shtml (last visited March 20, 2010).
[2] *Id*.
[3] *Id*.
[4] *Id*.
[5] *Id*.
[6] There are several screening instruments for ASD which may be used including but not limited to the Checklist of Autism in Toddlers (CHAT), the modified Checklist for Autism in Toddlers (M-CHAT), the Screening Tool for Autism in Two-Year-Olds (STAT), and the Social Communication Questionnaire (SCQ) for children 4 years of age and older.

psychologist, neurologist, psychiatrist, speech therapist, or other professionals who diagnose children with ASD.[7]

The American Academy of Pediatrics (Academy) has issued guidelines for the identification and evaluation of children with ASD. These guidelines also include resource materials and screening algorithms for pediatricians to use. In summary, the Academy encourages pediatricians to:[8]

- Conduct surveillance at every well-child visit. Be a good listener and recognize the early subtle red flags that indicate the possibility of an ASD. Be especially vigilant for younger siblings of a child who has already been diagnosed with an ASD.

- Screen at 18, and 24 months and any other time when parents raise a concern about a possible ASD. Although no screening tool is perfect, choose and become comfortable with at least 1 tool for each age group and use it consistently. Before 18 months of age, screening tools that target social and communication skills may be helpful in systematically looking for early signs of ASDs.

- If an ASD-specific screening result is negative but either the parents or the pediatrician remain somewhat concerned, then the pediatrician should schedule the child for an early, targeted clinic visit to address these persistent concerns.

- Act on a positive screening result or when a child demonstrates 2 or more risk factors. Do not take a "wait-and-see" approach. Depending on the age of the child, simultaneously refer for all 3: comprehensive ASD evaluation; early intervention/early childhood education services; and an audiologic evaluation. Do not wait for a definitive diagnosis of an ASD to refer for developmental services; early intervention can be beneficial even if it targets the child's unique deficits. The intervention strategy can be modified if needed when the child is determined to have an ASD.

The American Academy of Pediatrics recommends that initial screening be done by the pediatrician in the child's medical home.[9] The National Institute of Mental Health suggests the diagnostic valuation may be done by a multidisciplinary team that includes a psychologist, a neurologist, a psychiatrist, a speech therapist, or other professionals who diagnose children with ASD.[10]

Currently, physicians in Florida are not statutorily required to refer a minor patient to a specialist for ASD screening.

Treatment

Treatment for autism uses applied behavior analysis to reduce inappropriate behavior and increase communication, learning, and appropriate social behavior.[11] Treatment for young children focuses on early communication and building social interaction skills. Some children may take medication in addition to social training.

Physician Licensure and Discipline

Physicians are licensed by the Department of Health (DOH) and are regulated by either the Florida Board of Medicine (Board), for allopathic physicians licensed under Chapter 458, F.S., or the Florida Board of Osteopathic Medicine (Board), for osteopathic physicians licensed under Chapter 459, F.S.

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[7] National Institute of Mental Health, *supra* note 1.
[8] Chris Plauche Johnson, *Identification and Evaluation of Children with Autism Spectrum Disorders*, Pediatrics 120:5 1183-1215 (November 2007).
[9] American Academy of Pediatricians, The Medical Home and Early Intervention Programs, see http://www.medicalhomeinfo.org/health/Downloads/EIBrochureF.pdf (last visited March 20, 2010).
[10] National Institute of Mental Health, "The Diagnosis of Autism Spectrum Disorders," see http://www.nimh.nih.gov/health/publications/autism/the-diagnosis-of-autism-spectrum-disorders.shtml (last visited March 20, 2010).
[11] National Institute of Mental Health, "Treatment Options," see http://www.nimh.nih.gov/health/publications/autism/treatment-options.shtml (last visited March 20, 2010).

There are currently 41,951 active, allopathic physicians and 3,886 active, osteopathic physicians licensed in Florida.[12]

Section 456.072, F.S., authorizes health care practitioner boards organized within the Florida Department of Health to regulate and discipline practitioners who do not comply with prevailing standards of care, state and federal law. Disciplinary measures for allopathic and osteopathic physicians include, but are not limited to: application denial; fines; compelled community service; practice restriction; temporary and emergency suspension; and licensure revocation.[13]

Health Insurance Mandates and Mandated Offerings

A health insurance mandate is a legal requirement that an insurance company or health plan cover services by particular health care providers, specific benefits, or specific patient groups. Mandated offerings do not mandate that certain benefits be provided. Rather, a mandated offering law can require that insurers offer an option for coverage for a particular benefit or specific patient groups, which may require a higher premium and which the insured is free to accept or reject.

Florida currently has at least 52 mandates.[14] The Council for Affordable Health Insurance estimates that mandated benefits currently increase the cost of basic health coverage from a little less than 20 percent to perhaps 50 percent, depending on the number of mandates, the benefit design and the cost of the initial premium.[15] Each mandate adds to the cost of a plan's premiums, in a range of less than 1 percent to 10 percent, depending on the mandate.[16] Higher costs resulting from mandates are most likely to be experienced in the small group market since these are the plans that are subject to state regulations. The national average cost of insurance for a family is $13,375.[17]

Health Insurance Mandate Report

Section 624.215, F.S., requires that a report assessing the social and financial impact of any proposal for legislation that mandates health benefit coverage or mandates offering requirements must be submitted to AHCA and the legislative committee having jurisdictions. The report shall include:[18]

- Extent to which the treatment or service generally used by a significant portion of the population.
- Extent to which the insurance coverage generally available.
- If the insurance coverage is not generally available, extent to which the lack of coverage result in persons avoiding necessary health care treatment.
- If the coverage is not generally available, extent to which the lack of coverage result in unreasonable financial hardship.
- Level of public demand for the treatment or service.
- Level of public demand for insurance coverage of the treatment or service.
- Level of interest of collective bargaining agents in negotiating for the inclusion of this coverage in group contracts.
- Extent to which the coverage increase or decrease the cost of the treatment or service.
- Extent to which the coverage increase the appropriate uses of the treatment or service.
- Extent to which the mandated treatment or service be a substitute for a more expensive treatment or service.

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[12] Florida Department of Health, *Division of Medical Quality Assurance Annual Report July 1, 2008 – June 30, 2009*.
[13] Rule 64B8-8.001, F.A.C., and 64B15-19.002, F.A.C.
[14] Office of Insurance Regulation list of state health insurance mandates (on file with Health Care Regulation Policy Committee); and Council for Affordable Health Insurance, *Health Insurance Mandates in the States 2009*, see http://www.cahi.org/cahi_contents/resources/pdf/HealthInsuranceMandates2009.pdf. (last viewed March 20, 2010).
[15] Council for Affordable Health Insurance, *Health Insurance Mandates in the States 2009*, see http://www.cahi.org/cahi_contents/resources/pdf/HealthInsuranceMandates2009.pdf. (last viewed March 20, 2010).
[16] *Id*.
[17] Kaiser Family Foundation, *Employer Health Benefits 2009 Annual Survey*, see http://ehbs.kff.org/?CFID=20695941&CFTOKEN=84763322&jsessionid=6030bac21268c605c7863526585a397e6175 (last viewed March 20, 2010).
[18] s. 624.215(2), F.S.

- Extent to which the coverage increase or decrease the administrative expenses of insurance companies and the premium and administrative expenses of policyholders.
- Impact of this coverage on the total cost of health care.

Health Insurance Coverage for ASD

Currently, Florida law mandates certain health insurance coverage for ASD.

Chapter 627, F.S., relates to insurers and Chapter 641, F.S., relates to health maintenance organizations. Sections 627.6686 and 641.31098, F.S., define "autism spectrum disorder" to mean autistic disorder, Asperger's Syndrome, and a PDD-NOS, as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association. These sections mandate health insurance coverage for autism spectrum disorder treatment for plans issued or renewed as of April 1, 2009.[19] An "eligible individual" is a person under 18 years old or an individual at least 18 years who is in high school and was diagnosed as having a developmental disability before reaching 9 years of age.[20] Section 627.6686(4)(b), F.S., and s. 641.31098(4)(b), F.S., provide a coverage cap of $36,000 annually and $200,000 in total lifetime benefits.

Together the aforementioned sections of Florida law are known as the "Steven A. Geller Autism Coverage Act." Passed during the 2008 Legislative Session, the bill also included the Window of Opportunity Act which required the Florida Office of Insurance Regulation to convene a workgroup of stakeholders by August 31, 2008, to negotiate a compact for a binding agreement among the participants relating to insurance coverage and access to services for persons with developmental disabilities.[21] The law required the compact to include: coverage for specific therapies; policy-holder notification standards; and penalties for claims denial under specified circumstances.[22]

A compact was developed by the workgroup and adopted on December 17, 2008. The compact requires insurers and HMOs that sign onto the compact agreement must provide coverage for developmental disabilities as specified in the compact for all plans issued or renewed after January 1, 2010. As of February 15, 2010, the only compact signatory is Total Health Choices, Inc.[23]

All insurers and HMOs that did not sign the compact by April 1, 2009, are subject to the requirements of the Steven A. Gellar Autism Act.[24]

Effect of Proposed Changes

House Bill 107 creates s. 381.986, F.S., requiring physicians to immediately refer a minor patient who is an "eligible individual" as defined in s. 627.6686, F.S., or s. 641.31098, F.S., to an "appropriate specialist" for screening for ASD. The requirement is triggered if the minor patient's parent or legal guardian believes the minor exhibits symptoms of ASD, and they report their observations to the physician. In effect, the bill requires referral even if, in the physician's professional judgment, the referral is not medically necessary.

The bill defines "appropriate specialist" as a qualified professional who is experienced in the evaluation of ASD and who has training in validated diagnostic tools, including a Florida-licensed:

- Psychologist;
- Psychiatrist;
- Neurologist;
- Developmental or behavioral pediatrician who specializes in child neurology; or

[19] s. 627.6686(3), F.S., and s. 641.31098(3), F.S.
[20] s. 627.6686(2)(c), F.S., and s. 641.31098(2)(c), F.S.
[21] s. 624.916, F.S.
[22] s. 624.916(4), F.S.
[23] Office of Insurance Regulation, *2010 Developmental Disabilities Compact Annual Report* (February 15, 2010).
[24] s. 627.6686(10), F.S., and s. 641.31098(9), F.S.

- Professional whose licensure is deemed appropriate by the Children's Medical Services Early Steps Program within the Department of Health.[25]

The bill provides an exemption from this requirement for physicians providing emergency services in care under s. 395.1041, F.S.[26]

The bill amends s. 627.6686, F.S., and s. 641.31098, F.S., to require "direct patient access" to an appropriate specialist for a minimum of three visits per policy year for screening, evaluation or diagnosis of ASD. The bill defines "direct patient access" to mean the ability of a subscriber or the insured to obtain services from an in-network provider without getting a referral or other authorization prior to receiving services.

Health Insurance Mandate Report

The health insurance mandate report required by s. 624.215, F.S., was submitted by Zepp Strategic Partners.[27]

Extent to which the treatment or service generally used by a significant portion of the population.[28]

Proponents cite to the screening guidelines of the American Academy of Pediatrics which recommends autism screening at 18 months and 24 months of age. However, proponents did not provide any documentation or statistics concerning the number of children in Florida who undergo screening or treatment.

Extent to which the insurance coverage is generally available.[29]

Proponents suggest that less than 50 percent of children in Florida have insurance coverage. Proponents assert that a "significant number" of children are Medicaid recipients or have Healthy Kids coverage. According to the proponents, neither system covers autism screening. Proponents did not provide documentation for these assertions.

However, according to data provided by the University of Florida, only about 12 percent of Florida's children are uninsured. In addition, about 75 percent of Florida's uninsured children are currently eligible for government program-based coverage.[30] Of the insured children, about 58 percent are covered by private individual or employer-based coverage, and about 37 percent are covered by government programs.[31]

According to the Agency for Health Care Administration, the Medicaid Child Health Check-up program does not currently reimburse for a specific procedure code for screening for Autism or ASD. However, Medicaid's Early Intervention Services program (EIS) provides for the early identification of developmental delays or conditions. EIS reimburses for screenings, evaluations, and early intervention sessions for eligible children identified with a delay or suspected delay.[32]

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[25] The Florida Department of Health administers the Early Steps program under Children's Medical Services. "Early Steps is an early intervention system that offers services to infants and toddlers (birth to thirty-six months) with significant delays or a condition likely to result in a developmental delay." See http://www.doh.state.fl.us/AlternateSites/CMS-Kids/families/early_steps/early_steps.html (last visited March 20, 2010).

[26] This section requires hospitals with emergency departments to provide emergency services and care for persons with emergency medical conditions, regardless of ability to pay, and prohibits hospitals from transferring emergency patients except under certain, limited, conditions.

[27] The health insurance mandate report is on file with the Health Care Regulation Policy Committee.

[28] s. 624.215(2)(a), F.S.

[29] s. 624.215(2)(b), F.S.

[30] "Health Insurance Coverage Among Children in Florida," Florida Health Insurance Study, Florida Center for Medicaid and the Uninsured, University of Florida (2005).

[31] *Id.*

[32] Agency for Health Care Administration 2010 Bill Analysis & Economic Impact Report, House Bill 107, on file with the House Health Regulation Policy Committee.

Extent to which the lack of insurance coverage results in persons avoiding necessary health care treatment, if insurance coverage is not generally available.[33]

The proponent provided no data to make a determination regarding children avoiding necessary health care treatment due to lack of insurance coverage.

Extent to which insurance coverage is generally not available and results in an unreasonable financial hardship.[34]

According to the proponents, the average cost over a lifetime to treat ASD is $3.2 million.[35] Proponents suggest that early diagnosis and intervention can reduce this cost, but provide no data to support that assertion.

The level of public demand for the treatment or service.[36]

Proponents cite to the Centers for Disease Control and Prevention for the statistic that 1 percent of children in Florida have ASD.[37] However, insufficient documentation was provided to determine the level of public demand.

The level of public demand for insurance coverage of the treatment or service.[38]

The proponents provided no data on the level of public demand for insurance coverage of ASD screening, evaluation and diagnosis.

The level of interest of collective bargaining agents in negotiating for the inclusion of this coverage in group contracts.[39]

Insufficient documentation was provided to determine the level of interest of collective bargaining agents in negotiating for the inclusion of this coverage in group contracts.

Extent to which the coverage would increase or decrease the cost of the treatment or service.[40]

The proponents assert that the cost of ASD screening would be $10-20 per visit, but provide no data to support this assertion. Proponents suggest that 227,000 children may use the screening service for a total cost of $3.3 million, but provide no documentation or data to support this projection. The proponents made no assertions as to the effect of increased coverage on the cost of the treatment or service.

Extent to which the coverage increase the appropriate uses of the treatment or service.[41]

The proponents provided no data from which to make a determination regarding the increase the appropriate uses of the treatment or service.

Extent to which the mandated treatment or service be a substitute for a more expensive treatment or service.[42]

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[33] s. 624.6686(2)(c), F.S.
[34] s. 624.215(2)(d), F.S.
[35] Michael Ganz, *Understanding Autism: From Basic Neuroscience to Treatment*, CRC Press (2006). House Health Care Regulation Policy Committee staff was not provided this source.
[36] s. 624.215(2)(e), F.S.
[37] House Health Care Regulation Policy Committee staff could not verify this statistic.
[38] S. 624.215(2)(f), F.S.
[39] s. 624.215(2)(g), F.S.
[40] s. 624.215(2)(h), F.S.
[41] s. 624.215(2)(i), F.S.
[42] s. 624.215(2)(j), F.S.

The proponents suggest that while ASD screening is not a substitute for a more expensive treatment or service, the use of ASD screening will reduce the use of more expensive treatments over the patient's lifetime.

Extent to which the coverage increases or decreases the administrative expenses of insurance companies and the premium and administrative expenses of policyholders.[43]

Insufficient documentation was provided to determine any increases or decreases in administrative expenses to insurance companies or premium and administrative expenses to policyholders. However, it is reasonable to expect that covering more services will result in higher premiums.

The impact of this coverage on the total cost of health care.[44]

Proponents assert that ASD screening, evaluation and diagnosis coverage would significantly decrease the costs of health care for persons with ASD, but made no statements as to the impact on the total cost of health care.

House Bill 107 provides an effective date of July 1, 2010.

B. SECTION DIRECTORY:

Section 1: Creates s. 381.986, F.S., relating to screening for autism spectrum disorder.
Section 2: Amends s. 627.6686, F.S., relating to coverage for individuals with autism spectrum disorder required; exception.
Section 3: Amends s. 641.31098, F.S., relating to coverage for individuals with developmental disabilities.
Section 4: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The coverage mandated by the bill will likely result in increased premiums for health care coverage, and lower costs for families with children to be covered under the mandate.

D. FISCAL COMMENTS:

[43] s. 624.215(2)(k), F.S.
[44] s. 624.215(2)(l), F.S.

According to the Department of Health, Children's Medical Services and Early Steps programs may see an increase in the number of referrals for screening, which could result in an inability for Early Steps program to meet federally-mandated timelines for evaluation and service provision.[45]

The bill may have a negative fiscal impact on the state employee group plan; however, a specific impact estimate is not available at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

[45] Florida Department of Health, Bill Analysis, Economic Statement and Fiscal Note (September 22, 2009).