

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1291 Autism Spectrum Disorder
SPONSOR(S): Porth and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2654

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Health Innovation</u>	<u>4 Y, 3 N</u>	<u>Quinn-Gato</u>	<u>Calamas</u>
2) <u>Healthcare Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

House Bill 1291 shall be cited as the "Window of Opportunity Act." The bill amends s. 402.305, F.S., relating to child care personnel in child care facilities, by requiring that the 40-hour introductory course required for all child care personnel include information regarding autism spectrum disorder, including recognition and care of infants and toddlers who have autism spectrum disorder. The bill creates s. 627.6686, F.S., which mandates coverage for autism spectrum disorder by certain specified health insurance plans, and provides definitions applicable to the new section of law, eligibility requirements for coverage, and an annual maximum benefit for behavioral analysis that may be adjusted annually. The bill requires health insurance plans to provide specified coverage for well-baby and well-child screening for diagnosing the presence of autism spectrum disorder and for the intervention and treatment of autism spectrum. The bill limits coverage to treatment prescribed by the insured's treating physician in accordance with a treatment plan. The bill provides provisions or restrictions for denial of coverage or number of visits, dollar limitations and cost-sharing, and allows certain exclusions or restrictions in plans. Additionally, the bill specifies elements that must be included in treatment plans in order for health insurance plans to appropriately pay claims, and provides limitations to health insurance plan requests for updated treatment plans from physicians. The bill provides that other benefits and coverage provided under a health plan may not be limited.

Subject to appropriation, the bill creates a process for creating new requirements for public institutions of higher education offering coursework for educator certification to include in existing course curricula recommendations concerning instruction in autism spectrum disorder and other developmental disabilities awareness. The bill includes similar requirements for teacher and paraprofessional in-service instruction, and requires the recommendations to be submitted to the State Board of Education (State Board) and the Board of Governors of the State University System (BOG). These recommendations are to be generated by the Commissioner of Education in coordination with other designated individuals and entities, and the BOG and the State Board must adopt rules based upon the Commissioner's recommendations.

Finally, the bill requires the DOH, DOE, DCF, AHCA and APD to establish a statewide system of early intervention services for eligible infants and toddlers two and under who have physical, cognitive, communication, social or emotional, and adaptive developmental delays or disabilities. The bill requires the program to address the specific needs of children with autism spectrum and designates specific activities that must be addressed, including evaluation guidelines for health care professionals, referrals of children with autism spectrum disorder to schools or agencies best able to handle their needs, collecting data, disseminating information on screening, diagnosis, intervention, treatment, and medical care. The bill requires DOH to maintain a website and the State Surgeon General to adopt rules to administer the section.

The bill appears to have a significant, negative indeterminate fiscal impact to the state. (See Fiscal Analysis).

The effective date of the bill is January 1, 2009 and the bill applies to all policies issued, renewed, entered into, or delivered on or after that date.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1291a.HI.doc
DATE: 3/19/2008

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited government - The bill increases government's role in private sector health insurance by imposing a mandated benefit.

Empower families-The bill defines health insurance plan coverage of screening for, and the intervention and treatment of, autism spectrum disorder. Individuals and families will have increased access to such coverage, and individuals, families and employers may see increased costs for health insurance, due to the mandated benefit.

B. EFFECT OF PROPOSED CHANGES:

Background of Autism Spectrum Disorders

Autism Spectrum Disorder¹

Autism spectrum disorder is the name commonly used for pervasive developmental disorders, which include autistic disorder Asperger's Syndrome, Rett's Syndrome,² and childhood disintegrative disorder.³ A child that exhibits symptoms of Asperger syndrome or autistic disorder, but does not meet the criteria for either, will be diagnosed as having a pervasive developmental disorder not otherwise specified (PDD-NOS).

Autism spectrum disorders are generally detected by the age of three and effect from two to six per 1,000 children. The earlier a child is diagnosed with an autism spectrum disorder, the more opportunity a child will have to learn new skills and be fully integrated into the community.

Common characteristics shared by children with autism spectrum disorders are varying degrees of deficits in social interaction, verbal and nonverbal communication, and repetitive behaviors or interest, and many children with autism spectrum disorders have some degree of mental impairment.

Diagnosis and Treatment of Children with Autism Spectrum Disorders⁴

A number of developmental screening tests have been developed in order for pediatricians to screen children during "well child" check-ups to analyze a child's social and communicative development. Available screenings include the "Checklist for Autism in Toddlers, the modified Checklist for Autism in Toddlers, the Screening tool for Autism in Toddlers and the Social Communication Questionnaire that is used on children 4 years of age and older. For milder forms of autism spectrum disorders, such as Asperger's Syndrome, an Autism Spectrum Screening Questionnaire, the Australian Scale for Asperger's Syndrome, or a Childhood Asperger Syndrome Test may be given.

If indicators are present after any of these screenings are administered, a referral for possible diagnosis can be obtained, which includes comprehensive diagnostic testing by multidisciplinary teams that

¹ All information for this section was obtained from the National Institute of Mental Health brochure on "Autism Spectrum Disorders, Pervasive Developmental Disorders" with addendum January 2007 (citations omitted); located at <http://www.nimh.nih.gov/health/publications/autism/nimhautismspectrum.pdf>.

² Rett syndrome is linked almost exclusively to females, affecting one out of 10,000 to 15,000 females. It is typically diagnosed at some time between a 6 and 18 months when autism-like symptoms begin to develop.

³ Childhood degenerative disorder is a very rare autism spectrum disorder with a strong male preponderance. Symptoms typically onset between the ages of three and four years, and may result in the loss of motor, language and social skills, as well as bladder and bowel control.

⁴ All information for this section was obtained from the National Institute of Mental Health brochure on "Autism Spectrum Disorders, Pervasive Developmental Disorders" with addendum January 2007 (citations omitted); located at <http://www.nimh.nih.gov/health/publications/autism/nimhautismspectrum.pdf>.

include a psychologist, neurologist, psychiatrist, speech therapist, or other necessary professionals that may make diagnoses. Diagnostic testing typically includes neurologic and genetic assessment, in-depth cognitive and language testing, as well as other tests that evaluate a child's communication and social skills, movements and ability to adapt to change, and hearing.

Treatment for Autism Spectrum Disorders varies from child to child, but typically includes language, imitation, attention, motivation, compliance and initiative of interaction, including behavioral methods, communication, occupational and physical therapy, and social play interventions.

Insurance Coverage for Autism Spectrum Disorders

Coverage for autism is not currently mandated in Florida.⁵ Thus, if health insurers or HMOs provide coverage for autism, they do so on a voluntary basis.

State Employees Group Health Insurance Coverage⁶

According to the Department of Management Services, the State Employees' PPO and HMO plans include coverage for the diagnosis and limited medical treatment, including prescription drugs, of autism, Asperger's syndrome, and other pervasive developmental disorders. Some types of therapy under the PPO Plan and HMO plans that would be used for the treatment of autism spectrum disorder are either limited or excluded.

Under the HMO plans all covered types of therapy must be accompanied by a written treatment plan and the covered person's condition is expected to improve significantly within 60 days. The PPO Plan and the HMO plans exclude coverage for experimental or investigational treatment, custodial care, non-prescription drugs, and training and educational services (except for diabetes self-management training and educational services pursuant to section 627.6408, Florida Statutes). The State Employees' PPO plan has a limited pre-existing condition provision that excludes coverage for pre-existing conditions for the first twelve months of coverage even though those conditions would otherwise be considered a covered service.

Moreover, both the PPO and HMO plans have certain limitations applicable to treatments for mental and nervous disorders, which are set forth below. For the State Employees' PPO Plan, treatments for mental and nervous disorders are covered benefits, subject to limitations. Additionally, under the State Employees' PPO Plan, physical therapy coverage is limited to 4 treatments per treatment day and 21 treatment days during any six-month period. For the State-contracted HMOs, rehabilitative services, including physical and speech therapies, are covered with limitations. The primary care physician or Health Plan must specifically approve a written plan of treatment and agree that the condition should improve significantly within 60 days from the date therapy begins. Coverage includes services for the purpose of aiding in the restoration of normal physical function. Rehabilitative services provided while the covered person is confined to a hospital are covered for the duration of the hospital confinement. Outpatient rehabilitative services are limited to 60 visits per injury (emphasis added, exact policy language).

For state-contracted HMOs, rehabilitative services do not include:

1. Services or supplies provided to a covered person as an inpatient in a hospital or other facility, where the admission is primarily to provide rehabilitative services;
2. Services or supplies that maintain rather than improves a level of physical function, or where it has been determined that the services shall not result in significant improvement in the covered person's condition within a 60 day period; or

⁵ Only 11 states currently mandate coverage for Autism. See "Health Insurance Mandates in the States 2008," Council for Affordable Health Insurance; located on March 2, 2008 at http://www.cahi.org/cahi_contents/resources/pdf/HealthInsuranceMandates2008.pdf.

⁶ All information provided in this section was pulled directly from the Department of Management Services' 2008 Bill Analysis.

3. Other therapies including recreational, educational, marital or sleep therapy.

Health Insurance Mandates

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. Florida currently has at least⁷ 48 mandates, ranking 13th highest in the nation for the number of mandates.⁸ Those 48 mandates could add as much as 48 percent to the cost of health insurance in Florida.⁹

Florida enacted section 624.215, F.S., in order to take into account the impact of insurance mandates and mandated offerings on premiums when making policy decisions. That section requires that any proposal for legislation that mandates health benefit coverage must be submitted with a report to AHCA and the legislative committee having jurisdiction. The report must assess the social and financial impact of the proposed coverage, including, to the extent information is available, the following:

- (a) To what extent is the treatment or service generally used by a significant portion of the population.
- (b) To what extent is the insurance coverage generally available.
- (c) If the insurance coverage is not generally available, to what extent does the lack of coverage result in persons avoiding necessary health care treatment.
- (d) If the coverage is not generally available, to what extent does the lack of coverage result in unreasonable financial hardship.
- (e) The level of public demand for the treatment or service.
- (f) The level of public demand for insurance coverage of the treatment or service.
- (g) The level of interest of collective bargaining agents in negotiating for the inclusion of this coverage in group contracts.
- (h) To what extent will the coverage increase or decrease the cost of the treatment or service.
- (i) To what extent will the coverage increase the appropriate uses of the treatment or service.
- (j) To what extent will the mandated treatment or service be a substitute for a more expensive treatment or service.
- (k) To what extent will the coverage increase or decrease the administrative expenses of insurance companies and the premium and administrative expenses of policyholders.
- (l) The impact of this coverage on the total cost of health care.

On March 17, 2008, committee staff received a report pursuant to s. 624.215, F.S., from the proponents of the bill. Committee staff had insufficient time to study the report and include it in the analysis prior to publication on March 17, 2008.

State Services for Children with Autism Spectrum Disorders

Children with autism spectrum disorder may be enrolled in the Early Steps program, which is administered by the CMS Network and Related Programs in Children's Medical Services at the Department of Health. The Early Steps Program is a statewide network of early intervention services for children from birth to 3 years old who have physical, sensory, cognitive, social or emotional, and adaptive developmental delays or disabilities. Currently, the DOH Early Steps Program collects basic

⁷ Depending on how liberally the term is defined, an alternate count indicates that there are 51 health insurance mandates in Florida. "Expanding Opportunities for Health Insurance Coverage in Florida" 11, Michael Bond, Ph.D., James Madison Institute; located on March 2, 2008 at <http://www.jamesmadison.org/pdf/materials/548.pdf>.

⁸ "Health Insurance Mandates in the States 2008," Council for Affordable Health Insurance; located on March 2, 2008 at http://www.cahi.org/cahi_contents/resources/pdf/HealthInsuranceMandates2008.pdf.

⁹ *Id.*

service data on children with autism spectrum disorders and receives referrals of children with such disorders from a variety of sources.¹⁰

At age three, a child with developmental disabilities may be eligible for services through the Agency for Persons with Disabilities.

Moreover, section 1004.55 F.S., created the Centers for Autism and Related Disabilities (CARD). CARD is comprised of 7 regional autism centers located at various universities in Florida. These centers provide nonresidential resource and training services for persons of all ages and of all levels of intellectual functioning who have autism, who have a pervasive developmental disorder that is not otherwise specified; who have an autistic-like disability; who have a dual sensory impairment; or who have a sensory impairment with other handicapping conditions. Each center is operationally and fiscally independent and provides services within its geographical region of the state. Service delivery is consistent for all centers and each center coordinates services within and between state and local agencies and school districts but may not duplicate services provided by those agencies or school districts.

Autism Spectrum Disorder Task Force

In March 2008, Governor Charlie Crist created the Task Force on Autism Spectrum Disorders.¹¹ The Task Force, which is administratively housed at the Department of Health, is comprised of 21 members who are charged with exploring options for health coverage of autism treatments and assessing the economic impact of autism on families and the State of Florida. In addition, the Task Force will work to coordinate and review the efforts of state agencies and organizations, encourage public-private partnerships, develop a comprehensive Florida autism website, and develop a strategy for early diagnosis and intervention. The Task Force will present a report to the Governor on March 20, 2009.

Education-Related Issues Concerning Autism Spectrum Disorder

Child Care Facilities

The Department of Children and Families' minimum training for child care personnel includes an overview for children with special needs, but does not include material specific to children with ASD. Training requirements for directors of child care facilities include more training specific to children with disabilities, but not specific to children with ASD. Training modules on ASD have not been created specifically for these applications.

Teacher In-Service and Training Programs

The Department of Education under s. 1004.04, F.S., is authorized to approve programs of teacher preparation delivered by Florida postsecondary institutions and under s. 1012.575, F.S., to approve in-service programs to add certification endorsements that are administered by districts. According to the Department, currently, only the University of Central Florida holds an approved program in Autism Endorsement; only Miami-Dade County holds an approved in-service add-on program in Autism Endorsement. Individual courses offered by institutions and components offered by school districts that are not part of an approved program are not addressed through any monitoring or approval process in statute.

Baccalaureate Teaching Degree Programs at Florida Universities

According to BOG, for existing baccalaureate degree programs in both Education and Communication Disorders, instruction is provided on the nature of autism and severity of communication disorders. Instruction is designed to increase students' understanding of autism and provides evidence-based

¹⁰ s. 391.308, F.S.

¹¹ See Executive Order 08-36.

instruction on teaching students with autism. Evidence of courses associated with autism can be found in many of the following programs.

- Nine universities (UF, FSU, FAU, UWF, UCF, FIU, UNF, and FGCU) in the State University System offer degrees in general Special Education
- One university (USF) offers a degree in Education of the Emotionally Handicapped
- Three universities (FSU, USF, UWF) offer degrees in Education of the Mentally Handicapped, and three (FSU, USF, FAU) offer degrees in Education of the Specific Learning Disabled.
- Six universities (UF, FSU, USF, FAU, UCF, and FIU) offer degrees in Speech Pathology and Audiology, which includes a variety of instruction in communication disorders and rehabilitative solutions to communication problems¹²

The Individuals with Disabilities in Education Act

The Individuals with Disabilities in Education Act (“IDEA”), is a federally mandated program that was created to ensure that children with diagnosed learning deficits receive a free and appropriate public education. Under this program, school districts are required to meet instruction goals, or specific skills, for every child in a special education program, which is known as an Individualized Education Program (“IEP”).

Education Requirements for Children with Autism Spectrum Disorder

In Florida, a child between the ages of three and 21 years who has Autism Spectrum Disorder is deemed an exceptional student and is eligible for exceptional student education (ESE), i.e., an appropriate program of special instruction, facilities, and services, from his or her district school board.¹³ Rule defines “Autism Spectrum Disorder” as:

A range of pervasive developmental disorders that adversely affects a student's functioning and results in the need for specially designed instruction and related services. Autism Spectrum Disorder is characterized by an uneven developmental profile and a pattern of qualitative impairments in social interaction, communication, and the presence of restricted repetitive, and/or stereotyped patterns of behavior, interests, or activities. These characteristics may manifest in a variety of combinations and range from mild to severe. Autism Spectrum Disorder may include Autistic Disorder, Pervasive Developmental Disorder Not Otherwise Specified, Aspergers Syndrome, or other related pervasive developmental disorders.¹⁴

School districts may provide ESE services within the district school system, in cooperation with other district school systems, or through contractual agreements with an approved private school or community facility.¹⁵

Multiple programs exist for the treatment of children with autism. One program, referred to as Early Intensive Behavioral Intervention (EIBI) provides intensive treatment and training at a very young age when the central nervous system is pliable and most easily affected. Differences between a typical child and one who needs treatment for autism are minimal in young children. With an increased capability to respond to treatment and the behavioral gap at a minimum, young children with autism make greater progress than older children and acquire new skills with increasing complexity. Intensive

¹² Board of Governors 2008 Legislative Bill Analysis

¹³ ss. 1003.01(3)(a) and 1003.57(1), F.S.

¹⁴ Rule 6A-6.03023, F.A.C.

¹⁵ s. 1003.57(1)(b), F.S. *See also* ss. 1001.42(4)(1) and 002.42(12), F.S.

intervention at a young age has been proven to be cost effective in comparison with long term treatment and care at a later age.

Effect of Proposed Changes

House Bill 1291 requires that child care facilities include autism spectrum disorder as a topic area, including recognition and care of infants and toddlers who have autism spectrum disorder, in mandatory introductory training courses provided to child care personnel.

Additionally, the bill creates in chapter 627 a new section of law relating to the mandated coverage, and exceptions thereto, of autism spectrum disorder by health insurers and HMOs in Florida. The bill creates new definitions applicable to this section, which include the following:

- Applied behavior analysis - the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including, but not limited to, the use of direct observation, measurement, and functional analysis of the relations between environment and behavior.
- Autism spectrum disorder – any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association:
 1. Autistic disorder.
 2. Asperger's syndrome.
 3. Pervasive developmental disorder not otherwise specified.
- Health insurance plan – group health insurance policy or group health benefit plan offered by an insurer which includes the state group insurance program provided under s. 110.123. The term does not include any health insurance plan offered in the individual market, any health insurance plan that is individually underwritten, or any health insurance plan provided to a small employer.
- Insurer - an insurer, health maintenance organization, or any other entity providing health insurance coverage which is licensed to engage in the business of insurance in this state and is subject to insurance regulation.

The bill requires health insurance plans to provide coverage for well-baby and well-child screening for diagnosing the presence of autism spectrum disorder, as well as the intervention and treatment of autism spectrum disorder through speech therapy, occupational therapy, physical therapy, applied behavior analysis, treatment by a psychiatrist or psychologist, and any other necessary medical care. The bill limits coverage under this section to treatment that is prescribed by the insured's treating medical physician in accordance with a treatment plan. Health insurance plans are precluded from denying or refusing to issue coverage for, refusing to contract with, or refusing to renew or reissue or otherwise terminate or restrict coverage for an individual because the individual is diagnosed as having autism spectrum disorder. Under the bill, with certain exceptions, the above coverage may not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to physical illnesses that are generally covered under the health insurance plan, and may not be denied on the basis that provided services are habilitative in nature.

Moreover, the bill provides that coverage may not be subject to any limits on the number of visits an insured may make to a service provider. However, the required coverage may be subject to other general exclusions and limitations of the insurer's policy or plan, including, but not limited to, coordination of benefits, participating provider requirements, restrictions on services provided by family or household members, and utilization review of health care services, including the review of medical necessity, case management, and other managed care provisions.

The bill also provides that the required treatment plan include a diagnosis, the proposed treatment by type, the frequency and duration of treatment, the anticipated outcomes stated as goals, the frequency by which the treatment plan will be updated, and the treating medical doctor's signature so that the health insurance plan can appropriately pay claims. Further, the bill limits the a health insurance plan to requesting an updated treatment plan from the treating physician only once every 6 months unless the health insurance plan and the treating medical doctor agree that a more frequent review is necessary due to emerging clinical circumstances.

Additionally, the bill provides eligibility requirements for coverage, which provide that an individual must be diagnosed as having autism spectrum disorder at 8 years of age or younger, and coverage provided shall be provided to any eligible person younger than 18 years of age or to any eligible person 18 years of age or older who is in high school. The bill limits coverage for applied behavior analysis to a maximum benefit of \$36,000 per year. The bill provides that, beginning January 1, 2010, the maximum benefit shall be adjusted annually on January 1 of each calendar year to reflect any change from the previous year in the medical component of the then current Consumer Price Index, All Urban Consumers, as published by the United States Department of Labor's Bureau of Labor Statistics.

Further, the bill provides that the coverage for autism spectrum disorders may not be construed as limiting benefits and coverage otherwise available to an insured under a health insurance plan.

The bill also creates requirements for educational programs in Florida. These provisions are not included in any statutory section of law, and this Section of the bill indicates that implementation of this section is subject to appropriation by the Legislature. Specifically, the section provides that, beginning with the 2008-2009 school year, each public institution of higher education offering coursework for educator certification required under s. 1012.56, Florida Statutes, must incorporate into existing course curricula the recommendations developed by the Commissioner of Education concerning instruction in autism spectrum disorder and other developmental disabilities awareness and methods of teaching students who have autism spectrum disorder and other developmental disabilities.

The bill requires the Commissioner of Education ("Commissioner"), in consultation the State Surgeon General and representatives from entities that promote awareness, and provide programs and services, about autism spectrum disorder and other developmental disabilities, including, but not limited to, regional autism centers, as well as representatives of the education community in Florida, to develop recommendations for instruction in awareness of autism spectrum disorder and other developmental disabilities and methods of teaching students who have autism spectrum disorder and other developmental disabilities for both educator certification and teacher and paraprofessional in-service and other training programs.

The bill requires that the recommendations address characteristics of students who have autism spectrum disorder and other developmental disabilities; curriculum planning, curricular and instructional modifications, adaptations, and specialized strategies and techniques; assistive technology; and inclusive educational practices, including collaborative partnerships. The Commissioner submits the recommendations to the State Board and the BOG, who are given rulemaking authority to implement this section.

Similar to Section 4 of the bill, Section 5 of the bill creates new statutory requirements for a statewide system of early intervention services, which is not place into a statutory section of law. The bill requires the Department of Health, in conjunction with the Department of Education, the Department of Children and Family Services, the Agency for Health Care Administration, and the Agency for Persons with Disabilities, to establish a statewide system of early intervention services for eligible infants and toddlers from birth to age 2 who have physical, cognitive, communication, social or emotional, and adaptive developmental delays or disabilities in accordance with Part H of the Individuals with Disabilities Education Act, 20 U.S.C. ss. 1471 et seq. The correct citation to federal law is Part C, 20 U.S.C. ss. 1431 et al.

Pursuant to the bill, the early intervention program in the must provide for addressing the specific needs of children who have autism spectrum disorders and their families. The bill provides that the following activities will be by the early intervention program used to accomplish this goal:

- Developing, in consultation with autism experts and advocates, guidelines for health care professionals to use in evaluating infants and toddlers living in this state for autism spectrum disorder and to ensure the timely referral by health care professionals of infants and toddlers who are identified as having autism spectrum disorder or suspected of being on the autism spectrum to the early intervention program in order to provide appropriate services to those infants and toddlers as early as possible;
- Referring affected children who are identified as having autism spectrum disorder or suspected of being on the autism spectrum and their families to schools and agencies, including community, consumer, and parent-based agencies, and organizations and other programs mandated by federal law, which offer programs specifically designed to meet the unique needs of children who have autism spectrum disorder;
- Collecting data on statewide autism spectrum disorder screening, diagnosis, and intervention programs and systems that can be used for applied research, program evaluation, and policy development; and
- Disseminating information on the screening, diagnosis, intervention, treatment, and medical care of individuals who have autism spectrum disorder to health care professionals and the public.

The bill requires the Department of Health to establish an Internet website; and provides the State Surgeon General with rulemaking authority to administer this section. Rulemaking authority is generally provided to an agency or entity of the state.

The effective date of the bill is January 1, 2009 and applies to health insurance policies or plans issued, renewed, entered into, or delivered on or after that date.

C. SECTION DIRECTORY:

Section 1. Provides that this act is cited as the “Window of Opportunity Act.”

Section 2. Amends s. 402.305, F.S.; relating to licensing standards for child care facilities.

Section 3. Creates s. 627.6686, F.S.; relating to coverage for autism spectrum disorder and exceptions.

Section 4. Creates provisions relating to education and training requirements related to autism spectrum disorder.

Section 5. Creates provisions relating to creation of a statewide system for early intervention of autism spectrum disorders.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the Board of Governors (BOG), there may be additional revenue generated based on the structure of the curriculum but the amount cannot be determined at this time. Based on the proposed bill, if an average of 6 additional hours is added to each teacher education student's curriculum, the increase for one student using current tuition is \$464.34 (6 X \$77.39). This amount reflects tuition only and doesn't include required fees and assumes that the student is a Florida resident.

2. Expenditures:
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Groups and HMOs that will be required to provide coverage for autism spectrum disorders may incur additional costs to include such coverage through increased claims costs that will be passed through to policyholders in the form of increased premiums.

Further, according to BOG, the bill increases the number of hours needed to obtain a degree in teacher education, which may in turn result in a student staying an extra semester/term. This may impact the private sector because of the additional room and board plus additional textbook and supplies charges.

D. FISCAL COMMENTS:

The fiscal impact is indeterminate for the following reasons:

- It is difficult to assess the impact to insurance companies for the expansion of coverage. According to the Department of Management Services, a standard treatment plan from which to determine utilization or to price services has not been identified. In 2005 the department estimated that the fiscal impact of similar legislation was between \$294,000 and \$1,164,000. However, since 2005 the incidence of autism has increased from 1:250 births to 1:150 births.
- Medicaid currently provides State Plan and waiver services for individuals eligible for Medicaid that are diagnosed with autism spectrum disorder. The Agency for Health Care Administration has noted that the bill doesn't amend chapter 409, Florida Statutes, relating to Medicaid and therefore has determined that there is no impact on Medicaid coverage or eligibility. However, the agency's role in the establishment of a statewide system of early intervention is not clear.
- According to the BOG, there may be increased expenditures because additional faculty, with expertise in this area, may have to be hired. It depends on the implementation of this section - whether it will increase the number of hours needed for graduation. The approximate cost to add one additional faculty is \$79,838 of which \$4,388 is nonrecurring.
- According to the Department of Health there will be costs for administration associated with the establishment of a statewide system of early intervention services for eligible infants and toddlers up to age 2; internet website; dissemination information to health care professionals and the public; and rule promulgation.
- Because of time constraints, the Department of Education was not able to submit a fiscal analysis for inclusion in this analysis.

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:

The State Surgeon General, Board of Governors and Department of Education are all provided with rulemaking authority to implement specific sections of the bill. Rulemaking authority is generally granted to agencies of the State, not the agency head. Thus, the rulemaking requirement made to the State Surgeon General may have to be interpreted to apply to the Department of Health as drafted.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Department of Management Services, mandating coverage for services related to autism spectrum disorders will cause the possible expansion of coverage for one condition and/or disease state over others. Moreover, by excluding autism spectrum disorder from any pre-existing condition limitation, coverage in the State Employees' PPO Plan would be expanded.

Additionally, the DMS indicated that, under the bill, treatment for autism spectrum disorder would be subject to the same limitations as for other physical illnesses except that a specific annual maximum benefit of \$36,000 will be applied to behavioral therapy. Since autistic children often require intensive treatment and therapy, current generally applicable limitations for therapies such as speech and occupational therapy and mental health (under which behavioral therapy is included) could be exhausted within the first few months of treatment.¹⁶

The bill defines insurers to include HMOs. HMOs are regulated pursuant to different provisions and in a separate chapter of law, chapter 641, from health insurers. There is no cross reference to chapter 641 included in the bill.

Sections 4 and 5 of the bill include new requirements in law, but are not included in a statutory section of law.

The bill at lines 307-308 cites to Part H of the Individuals with Disabilities Education Act, 20 U.S.C. ss. 1471 et seq. The correct citation to federal law is Part C, 20 U.S.C. ss. 1431 et al.

The bill at lines 343-345 provides the State Surgeon General, in lieu of the Department of Health, with rulemaking authority to administer Section 5 of the bill.

According to the Board of Governors, if this bill is enacted, the addition of content specifically related to autism spectrum disorder into all teacher preparation programs:

- May require changes to the overall curriculum and structure of programs offered in each College of Education;
- May require a period of time to make modifications to the curriculum involving faculty input, notice to students, revision of degree program requirements, and publication of changes; and
- May require changes to current enrolled students' program of study, which may delay graduation.

Additionally, the BOG has indicated that concern may be raised regarding the required articulation of the 40-hour clock course required for child care personnel that must articulate into community college credit. If these courses are to transfer into a state approved teacher preparation degree program at a

¹⁶ Department of Management Services 2008 Bill Analysis.

four-year university, it will need to be determined that the content and course objectives are equivalent to an existing course already required for such programs in the SUS Colleges of Education.

The BOG has requested Feedback on the proposed bill has been requested from the SUS Colleges of Education Deans and faculty on the specific impact to their teacher education programs. That feedback will be provided to the Committee once BOG receives and compiles the information.¹⁷

According to the Department of Education, The timeline of “beginning with the 2008-09 school year” for implementation of the Commissioner's recommendations by public institutions of higher education would not allow any time to develop those recommendations nor adopt the rules that are referenced. Additionally, there appears to be misalignment with the effective date which is stated as January 2009.¹⁸

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 18, 2008, the Health Innovation Committee passed one amendment to the bill. This amendment changes the location of the regional autism center serving Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington Counties from the Department of Communication Disorders at Florida State University to the College of Medicine at Florida State University.

The bill was reported favorably with one amendment.

¹⁷ Board of Governors 2008 Bill Analysis.

¹⁸ Department of Education 2008 Draft Bill Analysis (Without fiscal impact statement).