

HB0272S02 compared with HB0272S01

~~{deleted text}~~ shows text that was in HB0272S01 but was deleted in HB0272S02.

inserted text shows text that was not in HB0272S01 but was inserted into HB0272S02.

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Representative Ronda Rudd Menlove proposes the following substitute bill:

PILOT PROGRAM FOR AUTISM SPECTRUM

DISORDERS SERVICES

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronda Rudd Menlove

Senate Sponsor: _____

LONG TITLE

General Description:

This bill creates a pilot program for autism spectrum disorders services in the Medicaid program; for the private sector, non-Medicaid population through the Autism Treatment Account; and for certain children of state employees administered by Public Employees' Benefit and Insurance Program Act.

Highlighted Provisions:

This bill:

- ▶ provides a funding mechanism for the autism Medicaid waiver;
- ▶ directs the state Medicaid program to develop a Medicaid waiver to provide proven effective services for children between the ages of two to six with autism spectrum

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disorder;

- ▶ requires the department to convene a public process to develop the Medicaid waiver;
- ▶ requires the department to measure the cost and the effectiveness of the treatments and services for autism spectrum disorder;
- ▶ requires the department to report to the Legislative Health and Human Services Interim Committee by November 30, 2013;
- ▶ amends provisions of the Autism Treatment Account to:
 - update terminology used for autism treatment options;
 - amend the uses of the account to focus on diagnosis and treatment of children between the ages of two to six years old with autism spectrum disorders; and
 - create a mechanism to provide and pay for services for children and to evaluate effectiveness of treatments; and
- ▶ establishes a pilot program for autism services for certain children of state employees administered by the Public Employees' Benefit and Insurance Program.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2011-12:

- ▶ to Department of Health - Medicaid Optional Services
 - from General Fund, One-time \$1,500,000 to fund autism treatment; and
- ▶ to Department of Human Services - Child and Family Services
 - from General Fund, One-time (\$1,500,000) to fund autism treatment.

This bill provides intent language making certain Fiscal Year 2012 appropriations in the Department of Health nonlapsing for purposes of studying children with autism spectrum disorder.

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-18-402, as last amended by Laws of Utah 2010, Chapter 340

26-52-102, as enacted by Laws of Utah 2010, Chapter 69

26-52-201, as enacted by Laws of Utah 2010, Chapter 69

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26-52-202, as last amended by Laws of Utah 2011, Chapter 340

ENACTS:

26-18-407, Utah Code Annotated 1953

26-52-203, Utah Code Annotated 1953

49-20-411, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26-18-402** is amended to read:

26-18-402. Medicaid Restricted Account.

(1) There is created a restricted account in the General Fund known as the Medicaid Restricted Account.

(2) (a) Except as provided in Subsection (3), the following shall be deposited into the Medicaid Restricted Account:

(i) any general funds appropriated to the department for the state plan for medical assistance or for the Division of Health Care Financing that are not expended by the department in the fiscal year for which the general funds were appropriated and which are not otherwise designated as nonlapsing shall lapse into the Medicaid Restricted Account;

(ii) any unused state funds that are associated with the Medicaid program, as defined in Section 26-18-2, from the Department of Workforce Services and the Department of Human Services; and

(iii) any penalties imposed and collected under:

(A) Section 17B-2a-818.5;

(B) Section 19-1-206;

(C) Section 79-2-404;

(D) Section 63A-5-205;

(E) Section 63C-9-403; or

(F) Section 72-6-107.5.

(b) The account shall earn interest and all interest earned shall be deposited into the account.

(c) The Legislature may appropriate money in the restricted account to fund programs that expand medical assistance coverage and private health insurance plans to low income

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persons who have not traditionally been served by Medicaid, including the Utah Children's Health Insurance Program created in Chapter 40.

(3) For fiscal years 2008-09, 2009-10, [~~and~~] 2010-11, 2011-12, and 2012-13 the following funds are nonlapsing:

(a) any general funds appropriated to the department for the state plan for medical assistance, or for the Division of Health Care Financing that are not expended by the department in the fiscal year in which the general funds were appropriated; and

(b) funds described in Subsection (2)(a)(ii).

Section 2. Section **26-18-407** is enacted to read:

26-18-407. Medicaid waiver for autism spectrum disorder.

(1) For purposes of this section "autism spectrum disorder" means a pervasive developmental disorder as defined by the most recent edition of the Diagnostic and Statistical Manual on Mental Disorders, including:

(a) Autistic disorder;

(b) Asperger's disorder; and

(c) pervasive developmental disorder not otherwise specified.

(2) The department shall, by July 1, 2012, apply for a Medicaid waiver with the Centers for Medicare and Medicaid Services within the United States Department of Health and Human Services to implement a autism spectrum disorder program within the state Medicaid program; ~~and the Children's Health Insurance Program in accordance with this section~~.

(3) The autism spectrum disorders waiver program shall:

(a) provide services to children between the ages of two years and six years old with autism spectrum disorders;

(b) accept application for the program during periods of open enrollment;

(c) initially provide services for ~~up to~~ 500 children, as funding permits;

(d) convene a public process with the Department of Human Services to develop the benefits and services to include in the autism waiver program, which services should include demonstrated effective treatments ~~and methods to engage family members in the treatment process~~; and

(e) include a mechanism to evaluate the cost, effectiveness, and outcomes of the

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different services provided as part of the autism waiver program.

(4) The department shall report to the Legislature's Health and Human Services Interim Committee by November 30, 2013, and prior to each November 30 thereafter while the waiver is in effect regarding:

(a) the number of children diagnosed with autism spectrum disorder and the number of children served under the waiver;

(b) success involving families in supporting treatment plans for autistic children;

(~~f~~~~b~~~~c~~) the cost of the autism waiver program; and

(~~f~~~~c~~~~d~~) the outcomes and effectiveness of the services offered by the autism waiver program.

Section 3. Section **26-52-102** is amended to read:

26-52-102. Definitions.

As used in this chapter:

(1) "Account" means the Autism Treatment Account created in Section 26-52-201.

(2) "Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior that are:

(a) necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual; and

(b) provided or supervised by a:

(i) board certified behavior analyst; or

(ii) a licensed psychologist with equivalent university training and supervised experience who is working toward board certification in applied behavior analysis.

[~~2~~] (3) "Autism spectrum disorder" means a pervasive developmental disorder as defined by the most recent edition of the Diagnostic and Statistical Manual on Mental Disorders, including:

(a) Autistic disorder;

(b) Asperger's disorder; and

(c) pervasive developmental disorder not otherwise specified.

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~~[(3)]~~ (4) "Committee" means the Autism Treatment Account Advisory Committee created under Section 26-52-202.

~~[(4) "Early intensive behavior therapy" means therapy that:]~~

~~[(a) involves intensive behavioral intervention over an extended period of time;]~~

~~[(b) is evidence-based; and]~~

~~[(c) is generally accepted by the medical community or the American Academy of Pediatrics as an effective treatment for young children with an autism spectrum disorder.]~~

Section 4. Section **26-52-201** is amended to read:

26-52-201. Autism Treatment Account.

(1) There is created within the General Fund a restricted account known as the Autism Treatment Account.

(2) (a) The account shall consist of:

~~[(a)]~~ (i) gifts, grants, devises, donations, and bequests of real property, personal property, or services, from any source, or any other conveyance that may be made to the account from private sources;

~~[(b)]~~ (ii) interest and other earnings derived from the account money; and

~~[(c)]~~ (iii) any additional amounts as appropriated by the Legislature.

(b) (i) For purposes of this subsection, the Affordable Care Act is as defined in Section 31A-2-212.

(ii) If an insurer contributes to the Autism Treatment Account, for purposes of calculating an insurer's medical loss ratio under the Affordable Care Act, the insurance commissioner shall consider the contribution to the Autism Treatment Account as a claims payment by the insurer.

(3) (a) Except as provided under Subsection (3)(b), the executive director of the department shall be responsible for administering the account.

(b) The committee shall be responsible for the following actions in relation to the account, consistent with the requirements of this title:

(i) prioritizing and allocating uses for account money, as permitted under Subsection (4);

(ii) determining what providers [or organizations] of services for the treatment of autism spectrum disorder qualify for disbursements from the account for services rendered; and

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(iii) authorization of all other distributions from the account, except that disbursements for expenses authorized under Subsection (6) shall also require the approval of the executive director.

(4) Account money may be used to:

(a) assist with the cost of diagnosing, evaluating, and treating [persons] a child between the age of two years and six years with an autism spectrum disorder; and

(b) provide [persons] a child between the age of two years and six years with an autism spectrum disorder with treatments that utilize [~~early intensive behavior therapy; and~~] applied behavior analysis and other proven effective treatments included under Subsection 26-52-202(4)(b)(~~iii~~ii).

~~[(c) provide grants to persons or organizations for providing the services described in Subsection (4)(a) or (b):]~~

(5) An individual who receives services that are paid for from the account [~~or who receives services through an organization or provider that receives payment from the account~~] shall:

(a) be a resident of Utah;

(b) have been diagnosed by a qualified professional as having an autism spectrum disorder;

(c) be [~~younger than eight~~] between the age of two years and six years of age; and

(d) have a need that can be met within the requirements of this [~~title~~] chapter.

(6) All actual and necessary operating expenses for the committee and staff shall be paid by the account.

(7) [~~Account~~] No more than 9% of the account money may [~~not~~] be used for administrative or other expenses of the Department of Health [~~that are not normally provided for by legislative appropriation~~].

(8) All interest and other earnings derived from the account money shall be deposited into the account.

(9) The state treasurer shall invest the money in the account under Title 51, Chapter 7, State Money Management Act.

Section 5. Section **26-52-202** is amended to read:

26-52-202. Autism Treatment Account Advisory Committee -- Membership --

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Time limit.

(1) (a) There is created an Autism Treatment Account Advisory Committee consisting of [~~five~~] six members appointed by the governor to two-year terms of office as follows:

(i) one person holding a doctorate degree who has experience in treating persons with an autism spectrum disorder;

(ii) one person who is a Board Certified Behavior Analyst - Doctoral Level;

~~[(ii)]~~ (iii) one person who is a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, who has completed a residency program in pediatrics;

~~[(iii)]~~ (iv) one person who is employed in the Department of Health; and

~~[(iv)]~~ (v) two persons from the community who are familiar with autism spectrum disorders and their effects, diagnosis, treatment, rehabilitation, and support needs, including:

(A) family members of a person with an autism spectrum disorder;

(B) representatives of an association which advocates for persons with an autism spectrum disorder; and

(C) specialists or professionals who work with persons with autism spectrum disorders.

(b) Notwithstanding the requirements of Subsection (1)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every year.

(c) If a vacancy occurs in the committee membership for any reason, a replacement may be appointed for the unexpired term.

(2) The department shall provide staff support to the committee.

(3) (a) The committee shall elect a chair from the membership on an annual basis.

(b) A majority of the committee constitutes a quorum at any meeting, and, if a quorum exists, the action of the majority of members present shall be the action of the committee.

(c) The executive director may remove a committee member:

(i) if the member is unable or unwilling to carry out the member's assigned responsibilities; or

(ii) for good cause.

(4) The committee may, in accordance with Title 63G, Chapter 3, Utah Administrative

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Rulemaking Act, make rules governing the committee's activities, which rules shall:

(a) comply with the requirements of this title; and

(b) include:

(i) qualification criteria and procedures for selecting ~~[service and treatment providers that receive disbursements from the account, which criteria shall give additional consideration to providers that are willing to use low interest loans when providing services to individuals; and]~~ individuals who may qualify for assistance from the account;

(ii) qualifications, criteria, and procedures for evaluating ~~which~~ the services and providers ~~will be included~~ to include in the program, which shall include at least:

(A) applied behavior analysis provided by or supervised by a Board Certified Behavior Analyst; ~~and~~

(B) collaboration with existing tele-health networks to reach rural and under-served areas of the state to assist with diagnosis of children; and

(C) methods to engage family members in the treatment process; and

~~[(ii)]~~ (iii) provisions to address and avoid conflicts of interest that may arise in relation to[:] the committee's work.

~~[(A) the committee's selection of providers and persons that receive referrals, disbursements, or assistance from the account; and]~~

~~[(B) other matters that may constitute a conflict of interest.]~~

(5) The committee shall meet as necessary to carry out its duties and shall meet upon a call of the committee chair or a call of a majority of the committee members~~[- but no more than four times per year].~~

(6) The committee shall comply with the procedures and requirements of:

(a) Title 52, Chapter 4, Open and Public Meetings Act; and

(b) Title 63G, Chapter 2, Government Records Access and Management Act.

(7) Committee members shall receive no compensation or per diem allowance for their services.

(8) (a) Not later than November 30 of each year, the committee shall provide a written report summarizing the activities of the committee to:

~~[(a)]~~ (i) the executive director of the department;

~~[(b)]~~ (ii) the Legislature's Health and Human Services Interim Committee; and

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~~[(e)]~~ (iii) the Legislature's Health and Human Services Appropriations Subcommittee.

(b) The report under Subsection (8)(a) shall include:

(i) the number of children diagnosed with autism spectrum disorder who are receiving services under this chapter;

(ii) the types of services provided to children under this chapter; and

(iii) results of any evaluations on the effectiveness of treatments and services provided under this chapter.

Section 6. Section **26-52-203** is enacted to read:

26-52-203. Administration of services for eligible individuals.

(1) The department shall establish a mechanism to review and pay for services provided to individuals under this chapter. The department may contract with another state agency or a private entity to assist with the mechanism to provide for and pay for services.

(2) The department, or the entity selected to assist the department under Subsection (1) may negotiate with providers of the services that are eligible under this chapter to maximize efficiencies and quality of services to individuals.

Section 7. Section **49-20-411** is enacted to read:

49-20-411. Autism Pilot Program.

(1) As used in this section:

(a) "Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior that are:

(i) necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual; and

(ii) provided or supervised by a board certified behavior analyst or a licensed psychologist with equivalent university training and supervised experience.

(b) "Autism spectrum disorder" means a pervasive developmental disorder, as defined by the most recent edition of the Diagnostic and Statistical Manual on Mental Disorders, including:

(i) autistic disorder;

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(ii) asperger's disorder; and

(iii) pervasive developmental disorder not otherwise specified.

(c) "Treatment of autism spectrum disorders" means any treatment generally accepted by the medical community or the American Academy of Pediatrics as an effective treatment for an individual with an autism spectrum disorder, including applied behavior analysis.

(5) (a) Beginning July 1, 2012 and ending July 1, 2014, the state employee risk pool described in Section 49-20-202(1)(a) shall provide to state employees, treatment for the coverage of autism spectrum disorders in accordance with Subsection (5)(b) for up to 50 children:

(i) who, by July 1, 2012, are between the age of two to six years old; and

(ii) who are enrolled in the pilot program on or before July 1, 2012.

(b) The autism services provided in this pilot program shall include:

(i) diagnosis of autism spectrum disorder by a physician or qualified mental health professional, and the development of a treatment plan;

(ii) applied behavior analysis provided by a certified behavior analyst or someone with equivalent training for a child with an autism spectrum disorder;

(c) an annual maximum benefit of \$30,000 for autism spectrum disorder treatments;†

~~(d) a \$250 annual deductible that is separate from the annual medical deductible;~~

~~(e) co-insurance of 80/20;†~~ with co-insurance:

(i) of 80/20; and

(ii) which does not apply towards the out of pocket maximum for medical insurance;†
and†

~~(ff) d) a \$250 annual deductible that is separate from the annual medical deductible;~~

(e) a \$150 per day maximum for treatment of autism spectrum disorder under Subsection (1)(c).

~~(6) The Public Employees' Benefit and Insurance plan is instructed to pay for the cost of services required by this section from the surplus in the state risk pool contingency reserve.~~

† Section 8. **Appropriation.**

Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the following sums of money are appropriated from resources not otherwise appropriated, or reduced from amounts previously appropriated, out of the funds or accounts indicated for the

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fiscal year beginning July 1, 2011 and ending June 30, 2012. These are additions to any amounts previously appropriated for fiscal year 2012.

To Department of Human Services - Child and Family Services

From General Fund, One-time (\$1,500,000)

Schedule of Programs:

Service Delivery (\$1,500,000)

To Department of Health - Medicaid Optional Services

From General Fund, One-time \$1,~~1225~~500,000

Schedule of Programs:

Other Optional Services \$1,~~1225~~500,000

~~-----~~ To Department of Health - Children's Health Insurance Program

From General Fund, One-time \$275,000

~~-----~~ Schedule of Programs:

~~-----~~ Children's Health Insurance Program ~~-----~~ \$275,000

~~†~~ The Legislature intends that the Department of Health use the appropriation of \$1,500,000 to provide services and treatment for children with autism spectrum disorder between the age of two to six years within Medicaid, ~~†~~ and the Children's Health Insurance Program.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$3,000,000 of appropriations provided for the Department of Health - Medicaid Mandatory Services line item not lapse at the close of Fiscal Year 2012. The use of any nonlapsing funds is limited to a pilot project to provide services and treatment for children with autism spectrum disorder between the age of two to six years.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$6,000,000 of appropriations provided for the Department of Health - Medicaid Optional Services line item not lapse at the close of Fiscal Year 2012. The use of any nonlapsing funds is limited to a pilot project to provide services and treatment for children with autism spectrum disorder between the age of two to six years.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$3,000,000 of appropriations provided for the Department of Health - Medicaid Mandatory Services line item not lapse at the close of Fiscal Year 2013. The use of any nonlapsing funds

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is limited to a pilot project to provide services and treatment for children with autism spectrum disorder between the age of two to six years.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$3,000,000 of appropriations provided for the Department of Health - Medicaid Optional Services line item not lapse at the close of Fiscal Year 2013. The use of any nonlapsing funds is limited to a pilot project to provide services and treatment for children with autism spectrum disorder between the age of two to six years.

The Legislature intends that the Department of Health provide services and treatment for children with autism spectrum disorder between the age of two to six years within Medicaid ~~and the Children's Health Insurance Program~~ from nonlapsing funds provided for this purpose up to a maximum of \$3,000,000 in state funds. The department shall inform the Legislature if expenditures by line item for these services require a subsequent transfer of nonlapsing funds.

~~The~~ Under Section 63J-1-603 of the Utah Code, the Legislature intends that the ~~Department of Health provide services and treatment for children with autism spectrum disorder between the age of two to six years within the Children's Health Insurance Program from nonlapsing funds provided for this purpose up to a maximum of \$275,000 state funds. The Department shall inform the Legislature if expenditures by line item for these services require a subsequent transfer of nonlapsing funds.~~ cost of services for the autism treatment pilot program in Section 49-20-411 shall be paid for from the surplus in the Public Employees' State risk pool contingency reserve.