

Representative Ronda Rudd Menlove proposes the following substitute bill:

1 **PILOT PROGRAM FOR AUTISM SPECTRUM**

2 **DISORDERS SERVICES**

3 2012 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Ronda Rudd Menlove**

6 Senate Sponsor: _____

8 **LONG TITLE**

9 **General Description:**

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

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ provides a funding mechanism for the autism Medicaid waiver;
- 17 ▶ directs the state Medicaid program to develop a Medicaid waiver to provide proven
18 effective services for children between the ages of two to six with autism spectrum
19 disorder;
- 20 ▶ requires the department to convene a public process to develop the Medicaid
21 waiver;
- 22 ▶ requires the department to measure the cost and the effectiveness of the treatments
23 and services for autism spectrum disorder;
- 24 ▶ requires the department to report to the Legislative Health and Human Services
25 Interim Committee by November 30, 2013;



- 26 ▶ amends provisions of the Autism Treatment Account to:
- 27 • update terminology used for autism treatment options;
- 28 • amend the uses of the account to focus on diagnosis and treatment of children
- 29 between the ages of two to six years old with autism spectrum disorders; and
- 30 • create a mechanism to provide and pay for services for children and to evaluate
- 31 effectiveness of treatments; and
- 32 ▶ establishes a pilot program for autism services for certain children of state
- 33 employees administered by the Public Employees' Benefit and Insurance Program.

34 **Money Appropriated in this Bill:**

35 This bill appropriates in fiscal year 2011-12:

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

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

43 **Other Special Clauses:**

44 None

45 **Utah Code Sections Affected:**

46 AMENDS:

- 47 **26-18-402**, as last amended by Laws of Utah 2010, Chapter 340
- 48 **26-52-102**, as enacted by Laws of Utah 2010, Chapter 69
- 49 **26-52-201**, as enacted by Laws of Utah 2010, Chapter 69
- 50 **26-52-202**, as last amended by Laws of Utah 2011, Chapter 340

51 ENACTS:

- 52 **26-18-407**, Utah Code Annotated 1953
- 53 **26-52-203**, Utah Code Annotated 1953
- 54 **49-20-411**, Utah Code Annotated 1953



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

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

58 **26-18-402. Medicaid Restricted Account.**

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

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

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

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

70 (iii) any penalties imposed and collected under:

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

72 (B) Section 19-1-206;

73 (C) Section 79-2-404;

74 (D) Section 63A-5-205;

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

76 (F) Section 72-6-107.5.

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

79 (c) The Legislature may appropriate money in the restricted account to fund programs
80 that expand medical assistance coverage and private health insurance plans to low income
81 persons who have not traditionally been served by Medicaid, including the Utah Children's
82 Health Insurance Program created in Chapter 40.

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

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

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

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

90 **26-18-407. Medicaid waiver for autism spectrum disorder.**

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

94 (a) Autistic disorder;

95 (b) Asperger's disorder; and

96 (c) pervasive developmental disorder not otherwise specified.

97 (2) The department shall, by July 1, 2012, apply for a Medicaid waiver with the
98 Centers for Medicare and Medicaid Services within the United States Department of Health
99 and Human Services to implement a autism spectrum disorder program within the state
100 Medicaid program.

101 (3) The autism spectrum disorders waiver program shall:

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

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

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

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

110 (e) include a mechanism to evaluate the cost, effectiveness, and outcomes of the
111 different services provided as part of the autism waiver program.

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

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

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

118 (c) the cost of the autism waiver program; and

119 (d) the outcomes and effectiveness of the services offered by the autism waiver
120 program.

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

122 **26-52-102. Definitions.**

123 As used in this chapter:

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

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

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

132 (b) provided or supervised by a:

133 (i) board certified behavior analyst; or

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

136 ~~[(2)]~~ (3) "Autism spectrum disorder" means a pervasive developmental disorder as
137 defined by the most recent edition of the Diagnostic and Statistical Manual on Mental
138 Disorders, including:

139 (a) Autistic disorder;

140 (b) Asperger's disorder; and

141 (c) pervasive developmental disorder not otherwise specified.

142 ~~[(3)]~~ (4) "Committee" means the Autism Treatment Account Advisory Committee
143 created under Section 26-52-202.

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

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

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

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

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

150 **26-52-201. Autism Treatment Account.**

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

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

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

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

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

159 (b) (i) For purposes of this subsection, the Affordable Care Act is as defined in Section
160 31A-2-212.

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

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

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

169 (i) prioritizing and allocating uses for account money, as permitted under Subsection
170 (4);

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

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

176 (4) Account money may be used to:

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

179 (b) provide ~~[persons]~~ a child between the age of two years and six years with an autism
180 spectrum disorder with treatments that utilize ~~[early intensive behavior therapy; and]~~ applied

181 behavior analysis and other proven effective treatments included under Subsection
182 26-52-202(4)(b)(ii).

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

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

188 (a) be a resident of Utah;

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

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

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

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

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

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

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

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

203 **26-52-202. Autism Treatment Account Advisory Committee -- Membership --**
204 **Time limit.**

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

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

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

210 ~~[(ii)]~~ (iii) one person who is a physician licensed under Title 58, Chapter 67, Utah

211 Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, who has

212 completed a residency program in pediatrics;

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

214 ~~[(iv)]~~ (v) two persons from the community who are familiar with autism spectrum

215 disorders and their effects, diagnosis, treatment, rehabilitation, and support needs, including:

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

217 (B) representatives of an association which advocates for persons with an autism

218 spectrum disorder; and

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

220 (b) Notwithstanding the requirements of Subsection (1)(a), the governor shall, at the

221 time of appointment or reappointment, adjust the length of terms to ensure that the terms of

222 committee members are staggered so that approximately half of the committee is appointed

223 every year.

224 (c) If a vacancy occurs in the committee membership for any reason, a replacement

225 may be appointed for the unexpired term.

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

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

228 (b) A majority of the committee constitutes a quorum at any meeting, and, if a quorum

229 exists, the action of the majority of members present shall be the action of the committee.

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

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

232 responsibilities; or

233 (ii) for good cause.

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

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

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

237 (b) include:

238 (i) qualification criteria and procedures for selecting ~~[service and treatment providers~~

239 ~~that receive disbursements from the account, which criteria shall give additional consideration~~

240 ~~to providers that are willing to use low interest loans when providing services to individuals;~~

241 ~~and] individuals who may qualify for assistance from the account;~~

242 (ii) qualifications, criteria, and procedures for evaluating the services and providers to

243 include in the program, which shall include at least:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

274 **26-52-203. Administration of services for eligible individuals.**

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

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

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

282 **49-20-411. Autism Pilot Program.**

283 (1) As used in this section:

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

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

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

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

296 (i) autistic disorder;

297 (ii) asperger's disorder; and

298 (iii) pervasive developmental disorder not otherwise specified.

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

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

305 children:

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

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

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

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

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

313 (c) an annual maximum benefit of \$30,000 for autism spectrum disorder treatments
314 with co-insurance:

315 (i) of 80/20; and

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

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

318 (e) a \$150 per day maximum for treatment of autism spectrum disorder under

319 Subsection (1)(c).

320 **Section 8. Appropriation.**

321 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the
322 following sums of money are appropriated from resources not otherwise appropriated, or
323 reduced from amounts previously appropriated, out of the funds or accounts indicated for the
324 fiscal year beginning July 1, 2011 and ending June 30, 2012. These are additions to any
325 amounts previously appropriated for fiscal year 2012.

326 To Department of Human Services - Child and Family Services

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

328 Schedule of Programs:

329 Service Delivery (\$1,500,000)

330 To Department of Health - Medicaid Optional Services

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

332 Schedule of Programs:

333 Other Optional Services \$1,500,000

334 The Legislature intends that the Department of Health use the appropriation of
335 \$1,500,000 to provide services and treatment for children with autism spectrum disorder

336 between the age of two to six years within Medicaid.

337 Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to
338 \$3,000,000 of appropriations provided for the Department of Health - Medicaid Mandatory
339 Services line item not lapse at the close of Fiscal Year 2012. The use of any nonlapsing funds
340 is limited to a pilot project to provide services and treatment for children with autism spectrum
341 disorder between the age of two to six years.

342 Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to
343 \$6,000,000 of appropriations provided for the Department of Health - Medicaid Optional
344 Services line item not lapse at the close of Fiscal Year 2012. The use of any nonlapsing funds
345 is limited to a pilot project to provide services and treatment for children with autism spectrum
346 disorder between the age of two to six years.

347 Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to
348 \$3,000,000 of appropriations provided for the Department of Health - Medicaid Mandatory
349 Services line item not lapse at the close of Fiscal Year 2013. The use of any nonlapsing funds
350 is limited to a pilot project to provide services and treatment for children with autism spectrum
351 disorder between the age of two to six years.

352 Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to
353 \$3,000,000 of appropriations provided for the Department of Health - Medicaid Optional
354 Services line item not lapse at the close of Fiscal Year 2013. The use of any nonlapsing funds
355 is limited to a pilot project to provide services and treatment for children with autism spectrum
356 disorder between the age of two to six years.

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

362 Under Section 63J-1-603 of the Utah Code, the Legislature intends that the cost of
363 services for the autism treatment pilot program in Section 49-20-411 shall be paid for from the
364 surplus in the Public Employees' State risk pool contingency reserve.