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COMMITTEE REPORT

February 20, 2020

**H. 4214**

Introduced by Reps. Rose, B. Cox, Ballentine and Erickson

S. Printed 2/20/20--H.

Read the first time March 7, 2019.

**THE COMMITTEE ON MEDICAL,**

**MILITARY, PUBLIC AND MUNICIPAL AFFAIRS**

To whom was referred a Bill (H. 4214) to amend the Code of Laws of South Carolina, 1976, so as to enact the “Medical Care for Children with Autism Act”; to amend Section, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

LEON HOWARD for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Updated for Additional Agency Response on April 16, 2019**

**Introduced on March 7, 2019**

**State Expenditure**

This bill adds a uniform definition for autism spectrum disorder (ASD) in the South Carolina Intellectual Disability, Related Disabilities, Head Injuries, and Spinal Cord Injuries Act §44-20-10 et seq. and the Accident and Health Insurance §38-71-10 et seq.

Current law defines autism or ASD in a slightly different manner under each of these code sections. The modified definition reflects the current medically accepted definition of ASD and does not alter the function of §§44-20-10 et seq. and 38-71-10 et seq. It does not fiscally or operationally impact the Department of Disabilities and Special Needs or the Department of Insurance. Therefore, the updated definition would not have an expenditure impact for these agencies.

Additionally, this amended bill would expand the required insurance coverage by deleting existing age limits. Furthermore, the bill expands the definition of insurer to include admitted and non-admitted insurers and expands the definition of the health insurance plan to include all health insurance policies and health benefit plans for the purposes of ASD coverage. Further, this bill removes the age limits for diagnoses to be eligible for coverage and the age limit for coverage. Additionally, behavioral therapy is no longer subject to a maximum spending limit. This bill takes effect upon the signing of the Governor.

Current law excludes Individual and Small Group health insurance markets from the definition of insurer and health care plan. Additionally, a person must be diagnosed by the age of 8 to be eligible to receive coverage and insurers must cover a person until he is 18. Also, under current law behavioral therapy is covered only up to $50,000 plus inflation.

Under the Affordable Care Act (ACA), the State may be required to pay the cost of the additional coverage for qualified health care plans. This determination rests on whether the services required by the bill are considered a new additional benefit that is not considered an essential health benefit or an extension of current benefits. At this time, the answer to these legal questions is unclear. There is no history of a state triggering the reimbursements or precedent for state payments for expanded coverage requirements, and the responsibilities of a state with regard to this component of the ACA have not been established. If State liability is established, then the estimated costs are described below. If litigation is required to resolve this issue, then additional expenses may be incurred.

**Department of Insurance (DOI).** The bill will expand the coverage requirements for ASD, beginning in July 2019. Pursuant to §2-7-73, DOI provided an actuarial report performed by Lewis and Ellis, Inc. analyzing the impact of this bill. The actuarial analysis is attached to this fiscal impact. Because insurance coverage runs on a calendar basis, the actuarial report assumes that new coverage will begin in January 1, 2020. According to the actuarial report the total expenditure increase to qualified health plans (QHP) from January 1, 2020, to December 31, 2020, will be approximately $1,166,000.

The analysis specifies that due to the inherent variability in the underlying assumptions of the analysis, the increase of $1,166,000 to QHPs is an estimate. Taking into consideration all of the variability, with a 95 percent statistical confidence, the range of the fiscal impact for one full year is between $644,000 and $3,960,000.

Because the cost of ASD treatment varies greatly for children and adults, the actuarial analysis considered the increase in costs for coverage of children under the age of 18 and for adults between the ages of 18 and 64. The analysis determined the estimated number of individuals in each age group within QHPs, the percentage of individuals who utilize ASD services, and the average annual cost of treatment. The table below displays the estimated variables used by the actuarial analysis.

QHP Enrollees under 18 21,900

Percentage Utilizing ASD

Services 0.1838%

Average Annual Cost $20,000

Total Cost for Enrollees under 18 804,635

QHP Enrollees ages 18 to 64 197,000

Percentage Utilized ASD Services 0.0300%

Average Annual Cost $4,000

Total Cost of Enrollees

ages 18 to 64 $236,637

Total Annual Cost of ASD services $1,041,271

Additionally, there will be an increase in administrative costs due to the increased coverage. Administrative costs are approximately 12 percent of the new coverage cost, which is approximately $125,000, resulting in total annual cost increase of $1,166,000.

As discussed above, the impact of this bill depends upon whether the State is subject to defrayment under the ACA. The issue of defrayment will determine who will pay the increased cost of insurance coverage for ASD. If the State is subject to defrayment, this bill will result in an increase in general funds expenditures to offset the increase in expenses of the QHPs. Because insurance contracts run on a calendar basis the general fund expenditure impact will be one half, $583,000, in FY 2019-20. In FY 2020-21, the general fund expenditure impact will increase by another $583,000 for a total recurring impact of $1,166,000, beginning in FY 2020-21. If the State is not subject to defrayment, Revenue and Fiscal Affairs (RFA) assumes the increase in annual cost of coverage will result in a matching increase in premiums. Therefore, the annual increase in premiums due to the new mandated coverage under this bill will total $1,166,000. This will result in no expenditure impact to the State.

In addition to the QHPs, there are non-qualifying health plans that may be mandated to cover ASD due to the broadened definition of insurer and health plan and the removal of the age limitations for diagnoses as well as insurance coverage for ASD. The analysis does not consider the fiscal impact to non-qualifying health plans. Non-qualified health plans do not recover increased mandated coverage through defrayment under the ACA. Therefore, any increased expenses for non-qualified health plans will result in an increase in premiums. RFA does not have sufficient data to estimate the potential increase in expenditures for non-qualified health plans. Therefore, the potential increase in expenditures, and the matching increase in premiums, if any, for non-qualifying health plans is unknown, but will have no expenditure impact to the general fund, other funds, or federal funds .

**Public Employee Benefit Authority (PEBA).** This bill will expand the coverage required for ASD beginning in July 2019. PEBA indicates there will be no expenditure impact because all age limits and spending caps were removed from the State Health Plan in 2015. Therefore, no expenditure impact is expected for PEBA.

**State Revenue**

The increase in insurance premium tax revenue totals 1.25 percent of any increase in insurance premiums. Insurance premium taxes are allocated 97.75 percent to the general fund and 2.25 percent to Other Funds. The full increase in premium taxes for a calendar year, due to an increase in premiums, is collected in March of the year following. Therefore, the full increase in premium taxes will be collected in March 2021, resulting in an increase in general fund and other funds insurance premium taxes beginning in FY 2020-21.

As discussed above, the increase in expenditures for non-qualified health plans are not subject to defrayment and therefore will result in an increase in premiums. This increase in premiums will also increase general fund and other funds insurance premium taxes. However, as the increase in expenditures for non-qualified health plans is unknown, the increase in premiums and general fund and other funds insurance premium taxes is undetermined.

The impact on insurance premium tax revenue for QHPs depends upon the legal conclusion of whether the State has to defray costs of coverage. If the State defrays the cost, then premiums for QHPs will not increase and the insurance premium tax will only increase by 1.25 percent of the increase in premiums for non-qualified health plans.

If the mandated coverage for QHP is not defrayed by the State, the increase in premiums due to the increased expenditures for QHPs will result in an increase in insurance premium tax revenue. As discussed above, the estimated annual increase in premiums is $1,166,000. Therefore, the total increase in premium insurance tax revenue for QHP’s is $14,575. Insurance premium taxes are allocated 97.75 percent to the general fund and 2.25 percent to other funds and will be collected in March of 2021. Therefore, in addition to any increase in revenues because of non-qualified health plans premiums, this bill may increase general fund and other funds premium tax revenue by $14,247 and $328 respectively, beginning in FY 2020-21, dependent upon whether the State defrays the increased cost of coverage for QHPs.

**Introduced on March 7, 2019**

**State Expenditure**

This bill adds a uniform definition for autism spectrum disorder (ASD) in the South Carolina Intellectual Disability, Related Disabilities, Head Injuries, and Spinal Cord Injuries Act §44-20-10 et seq. and the Accident and Health Insurance §38-71-10 et seq. Additionally, this amended bill would expand the required insurance coverage by deleting existing age limits. Furthermore, the bill expands the definition of insurer to include admitted and non-admitted insurers and expands the definition of the health insurance plan to include all health insurance policies and health benefit plans for the purposes of ASD coverage. This bill takes effect upon signing of the Governor.

Current law defines autism or ASD in a slightly different manner under each of these code sections. The modified definition reflects the current medically accepted definition of ASD and does not alter the function of §§44-20-10 et seq. and 38-71-10 et seq. It does not fiscally or operationally impact the Department of Disabilities and Special Needs or the Department of Insurance. Therefore, the updated definition would not have an expenditure impact for these agencies.

This bill also broadens ASD insurance coverage by broadening the definition of insurer and health insurance plan. Further, this bill removes the age limits for diagnoses to be eligible for coverage and the age limit for coverage. Additionally, behavioral therapy is no longer subject to a maximum spending limit.

Current law includes a narrower definition of insurer and health care plan. Additionally, a person must be diagnosed by the age of eight to be eligible to receive coverage and insurers must cover a person until he is eighteen. Also, under current law behavioral therapy is covered only up to $50,000 plus inflation.

Under the Affordable Care Act (ACA), the State may be required to pay the cost of the additional coverage for qualified health care plans. This determination rests on whether the services required by the bill are considered a new additional benefit or an extension of current benefits. At this time, the answer to these legal questions is unclear. There is no history of a state triggering the reimbursements or precedent for state payments for expanded coverage requirements, and the responsibilities of a state with regard to this component of the ACA have not been established. If State liability is established, then the estimated costs are described below. If litigation is required to resolve this issue, then additional expenses may be incurred.

**Department of Insurance (DOI).** The bill will expand the coverage requirements for ASD beginning in July 2019. DOI is working to provide an actuarial analysis, as required by §2-7-73 for bills mandating health insurance coverage. Therefore, the expenditure impact of this bill is pending, contingent upon a response from DOI.

**Public Employee Benefit Authority (PEBA).** This bill will expand the coverage required for ASD beginning in July 2019. PEBA indicates there will be no expenditure impact because all age limits and spending caps were removed from the State Health Plan in 2015. Therefore, no expenditure impact is expected for PEBA.

**State Revenue**

The impact on insurance premium tax revenue will depend upon the legal conclusion of whether the newly mandated benefit is considered an essential benefit under the ACA. If the coverage is determined to be a mandated new benefit, and the State defrays the cost, then the premiums will not increase. Insurance premium tax revenue will not increase if the premiums do not increase and there will be no increase in general fund revenue or other funds revenue.

If the mandated coverage is not defrayed by the state, any increase in premiums for private insurers as a result of this bill would increase insurance premiums. An increase in premiums would increase premium tax. The premium tax is 1.25 percent. Premium taxes are paid quarterly and is allocated as follows: 1 percent to the South Carolina Forestry Commission, 1 percent to the aid to fire district account within the State Treasury, 0.25 percent to the aid to emergency medical services regional councils within the Department of Health and Environmental Control (DHEC), and the remaining 97.75 percent to the general fund.

DOI is working to provide an actuarial analysis, as required by §2-7-73 for bills mandating health insurance coverage which should include an estimate for the increase in premiums. Therefore, the revenue impact of this bill is pending, contingent upon a response from DOI.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “MEDICAL CARE FOR CHILDREN WITH AUTISM ACT”; TO AMEND SECTION 44‑20‑30, RELATING TO TERMS DEFINED IN THE “SOUTH CAROLINA INTELLECTUAL DISABILITY, RELATED DISABILITIES, HEAD INJURIES, AND SPINAL CORD INJURIES ACT”, SO AS TO DEFINE “AUTISM SPECTRUM DISORDER”; AND TO AMEND SECTION 38‑71‑280, RELATING TO HEALTH INSURANCE COVERAGE FOR AUTISM SPECTRUM DISORDER, SO AS TO MAKE CONFORMING CHANGES AND REMOVE THE AGE REQUIREMENT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act must be known and may be cited as the “Medical Care for Children with Autism Act”.

SECTION 2. Section 44‑20‑30 of the 1976 Code is amended by adding an appropriately numbered item to read:

“( ) ‘Autism spectrum disorder’ means a pervasive developmental disorder as defined by the most recent publication of the Diagnostic and Statistical Manual of Mental Disorders (DSM) or as defined in any previous edition of the DSM.”

SECTION 3. Section 38‑71‑280 of the 1976 Code is amended to read:

“Section 38‑71‑280. (A) As used in this section:

(1) ‘Autism spectrum disorder’ means ~~one of the three following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association:~~

~~(a)~~ ~~Autistic Disorder;~~

~~(b)~~ ~~Asperger’s Syndrome;~~

~~(c)~~ ~~Pervasive Developmental Disorder—Not Otherwise Specified~~ a pervasive developmental disorder as defined by the most recent publication of the Diagnostic and Statistical Manual of Mental Disorders (DSM) or as defined in any previous edition of the DSM.

(2) ‘Insurer’ means an insurance company, a health maintenance organization, and any other entity providing health insurance coverage, as defined in Section 38‑71‑670(6)~~, which is licensed to engage in the business of insurance in this State and which is subject to state insurance regulation~~.

(3) ‘Health maintenance organization’ means an organization as defined in Section 38‑33‑20(8).

(4) ‘Health insurance plan’ means a ~~group~~ health insurance policy or ~~group~~ health benefit plan offered by an insurer. It includes the State Health Plan~~, but does not otherwise include any health insurance plan offered in the individual market as defined in Section 38‑71‑670(11), any health insurance plan that is individually underwritten, or any health insurance plan provided to a small employer, as defined by Section 38‑71‑1330(17)~~.

(5) ‘State Health Plan’ means the employee and retiree insurance program provided for in Article 5, Chapter 11, Title 1.

(B) A health insurance plan as defined in this section must provide coverage for the treatment of autism spectrum disorder. Coverage provided under this section is limited to treatment that is prescribed by the insured’s treating medical doctor in accordance with a treatment plan. With regards to a health insurance plan as defined in this section an insurer may not deny or refuse to issue coverage on, refuse to contract with, or refuse to renew or refuse to reissue or otherwise terminate or restrict coverage on an individual solely because the individual is diagnosed with autism spectrum disorder.

(C) The coverage required pursuant to subsection (B) must 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 illness generally under the health insurance plan~~, except as otherwise provided for in subsection (E)~~. However, the coverage required pursuant to subsection (B) may be subject to other general exclusions and limitations of the health insurance plan, including, but not limited to, coordination of benefits, participating provider requirements, restrictions on services provided by family or household members, utilization review of health care services including review of medical necessity, case management, and other managed care provisions.

(D) The treatment plan required pursuant to subsection (B) must include all elements necessary for the health insurance plan to appropriately pay claims. These elements include, but are not limited to, a diagnosis, proposed treatment by type, 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. The health insurance plan may only request an updated treatment plan once every six months from the treating medical doctor to review medical necessity, unless the health insurance plan and the treating medical doctor agree that a more frequent review is necessary due to emerging clinical circumstances.

~~(E)~~ ~~To be eligible for benefits and coverage under this section, an individual must be diagnosed with autistic spectrum disorder at age eight or younger. The benefits and coverage provided pursuant to this section must be provided to any eligible person under sixteen years of age. Coverage for behavioral therapy is subject to a fifty thousand dollar maximum benefit per year. Beginning one year after the effective date of this act, this maximum benefit shall be adjusted annually on January first of each calendar year to reflect any change from the previous year in the current Consumer Price Index, All Urban Consumers, as published by the United States Department of Labor’s Bureau of Labor Statistics.~~”

SECTION 4. This act takes effect upon approval by the Governor.

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