State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2700

03/04/2014 Authored by Norton, Liebling, Fritz, Huntley and Abeler
The bill was read for the first time and referred to the Committee on Health and Human Services Policy

A bill for an act

relating to human services; insurance; modifying autism early intensive intervention benefit under medical assistance; modifying insurance coverage for autism spectrum disorder; amending Minnesota Statutes 2012, section 252.27, by adding a subdivision; Minnesota Statutes 2013 Supplement, sections 62A.3094, subdivisions 1, 2; 252.27, subdivision 2a; 256B.0949, subdivisions 2, 3, 4, 7, 9; Laws 2013, chapter 9, section 15; Laws 2013, chapter 108, article 12, section 2.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2013 Supplement, section 62A.3094, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in paragraphs (b) to (d) have the meanings given.

(b) "Autism spectrum ~~disorders~~ disorder" means ~~the conditions~~ a condition as determined by criteria set forth in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

(c) "Medically necessary care" means health care services appropriate, in terms of type, frequency, level, setting, and duration, to the enrollee's condition, and diagnostic testing and preventative services. Medically necessary care must be consistent with generally accepted practice parameters as determined by physicians and licensed psychologists who typically manage patients who have autism spectrum ~~disorders~~ disorder and must meet the requirements in section 62Q.53.

(d) "Mental health professional" means a mental health professional as defined in section 245.4871, subdivision 27, ~~clause (1), (2), (3), (4), or (6),~~ who has training and expertise in autism spectrum ~~disorder and child development~~ disorders.

Sec. 2. Minnesota Statutes 2013 Supplement, section 62A.3094, subdivision 2, is amended to read:

Subd. 2. **Coverage required.** (a) A health plan ~~issued to a large employer~~, as defined in section ~~62Q.18~~ 62Q.01, subdivision ~~1~~ 3, must provide coverage for the diagnosis, evaluation, multidisciplinary assessment, and medically necessary care of ~~children~~ a child under age 18 with an autism spectrum ~~disorders~~ disorder, including but not limited to the following:

(1) early intensive behavioral and developmental therapy based in behavioral and developmental science, including, but not limited to, all types of applied behavior analysis, intensive early intervention behavior therapy, and intensive behavior intervention;

(2) neurodevelopmental and behavioral health treatments and management;

(3) speech therapy;

(4) occupational therapy;

(5) physical therapy; and

(6) medications.

(b) The diagnosis, evaluation, and assessment must include an assessment of the child's developmental skills, functional behavior, needs, and capacities.

(c) The coverage required under this subdivision must include treatment that is in accordance with an individualized treatment plan prescribed by the enrollee's treating physician or mental health professional.

(d) A health carrier may not refuse to renew or reissue, or otherwise terminate or restrict, coverage of an individual solely because the individual is diagnosed with an autism spectrum disorder.

(e) A health carrier may request an updated treatment plan only once every six months, unless the health carrier and the treating physician or mental health professional agree that a more frequent review is necessary due to emerging circumstances.

(f) An independent progress evaluation conducted by a mental health professional with expertise and training in autism spectrum disorder and child development must be completed to determine if progress toward ~~function~~ functional and generalizable gains, as determined in the treatment plan, is being made.

Sec. 3. Minnesota Statutes 2013 Supplement, section 252.27, subdivision 2a, is amended to read:

Subd. 2a. **Contribution amount.** (a) The natural or adoptive parents of a minor child, including a child determined eligible for medical assistance without consideration of parental income, must contribute to the cost of services used by making monthly payments

on a sliding scale based on income, unless the child is married or has been married, parental rights have been terminated, or the child's adoption is subsidized according to chapter 259A or through title IV-E of the Social Security Act. The parental contribution is a partial or full payment for medical services provided for diagnostic, therapeutic, curing, treating, mitigating, rehabilitation, maintenance, and personal care services as defined in United States Code, title 26, section 213, needed by the child with a chronic illness or disability.

(b) For households with adjusted gross income equal to or greater than 275 percent of federal poverty guidelines, the parental contribution shall be computed by applying the following schedule of rates to the adjusted gross income of the natural or adoptive parents:

(1) if the adjusted gross income is equal to or greater than 275 percent of federal poverty guidelines and less than or equal to 545 percent of federal poverty guidelines, the parental contribution shall be determined using a sliding fee scale established by the commissioner of human services which begins at ~~2.76~~ one percent of adjusted gross income at 275 percent of federal poverty guidelines and increases to ~~7.5~~ two percent of adjusted gross income for those with adjusted gross income up to 545 percent of federal poverty guidelines;

(2) if the adjusted gross income is greater than 545 percent of federal poverty guidelines and less than 675 percent of federal poverty guidelines, the parental contribution shall be ~~7.5~~ determined using a sliding fee scale which begins at two percent of adjusted gross income at 545 percent of the federal poverty guidelines and increases to three percent of adjusted gross income for those with adjusted gross income up to 675 percent of the federal poverty guidelines;

(3) if the adjusted gross income is equal to or greater than 675 percent of federal poverty guidelines and less than 975 percent of federal poverty guidelines, the parental contribution shall be determined using a sliding fee scale established by the commissioner of human services which begins at ~~7.5~~ four percent of adjusted gross income at 675 percent of federal poverty guidelines and increases to ~~ten~~ five percent of adjusted gross income for those with adjusted gross income up to 975 percent of federal poverty guidelines; and

(4) if the adjusted gross income is equal to or greater than 975 percent of federal poverty guidelines, the parental contribution shall be ~~12.5~~ six percent of adjusted gross income.

If the child lives with the parent, the annual adjusted gross income is reduced by $2,400 prior to calculating the parental contribution. If the child resides in an institution specified in section 256B.35, the parent is responsible for the personal needs allowance specified under that section in addition to the parental contribution determined under this

section. The parental contribution is reduced by any amount required to be paid directly to the child pursuant to a court order, but only if actually paid.

(c) The household size to be used in determining the amount of contribution under paragraph (b) includes natural and adoptive parents and their dependents, including the child receiving services. Adjustments in the contribution amount due to annual changes in the federal poverty guidelines shall be implemented on the first day of July following publication of the changes.

(d) For purposes of paragraph (b), "income" means the adjusted gross income of the natural or adoptive parents determined according to the previous year's federal tax form, except, effective retroactive to July 1, 2003, taxable capital gains to the extent the funds have been used to purchase a home shall not be counted as income.

(e) The contribution shall be explained in writing to the parents at the time eligibility for services is being determined. The contribution shall be made on a monthly basis effective with the first month in which the child receives services. Annually upon redetermination or at termination of eligibility, if the contribution exceeded the cost of services provided, the local agency or the state shall reimburse that excess amount to the parents, either by direct reimbursement if the parent is no longer required to pay a contribution, or by a reduction in or waiver of parental fees until the excess amount is exhausted. All reimbursements must include a notice that the amount reimbursed may be taxable income if the parent paid for the parent's fees through an employer's health care flexible spending account under the Internal Revenue Code, section 125, and that the parent is responsible for paying the taxes owed on the amount reimbursed.

(f) The monthly contribution amount must be reviewed ~~at least every 12 months;~~ annually, when there is a change in household size~~;~~, and ~~when there is a loss of or gain in income from one month to another in excess of ten percent~~ when a parent requests a review due to a substantial decrease in income or an extreme hardship. The local agency shall mail a written notice 30 days in advance of the effective date of a change in the contribution amount. A decrease in the contribution amount is effective in the month that the parent verifies a reduction in income or change in household size.

(g) Parents of a minor child who do not live with each other shall each pay the contribution required under paragraph (a). An amount equal to the annual court-ordered child support payment actually paid on behalf of the child receiving services shall be deducted from the adjusted gross income of the parent making the payment prior to calculating the parental contribution under paragraph (b).

(h) The contribution under paragraph (b) shall be increased by an additional five percent if the local agency determines that insurance coverage is available but not obtained

for the child. For purposes of this section, "available" means the insurance is a benefit of employment for a family member at an annual cost of no more than five percent of the ~~family's~~ parent's annual income. For purposes of this section, "insurance" means health and accident insurance coverage, enrollment in a nonprofit health service plan, health maintenance organization, self-insured plan, or preferred provider organization.

Parents who have more than one child receiving services shall not be required to pay more than the amount for the child with the highest expenditures. There shall be no resource contribution from the parents. The parent shall not be required to pay a contribution in excess of the cost of the services provided to the child, not counting payments made to school districts for education-related services. Notice of an increase in fee payment must be given at least 30 days before the increased fee is due.

(i) The contribution under paragraph (b) shall be reduced by $300 per fiscal year if, in the 12 months prior to July 1:

(1) the parent applied for insurance for the child;

(2) the insurer denied insurance;

(3) the parents submitted a complaint or appeal, in writing to the insurer, submitted a complaint or appeal, in writing, to the commissioner of health or the commissioner of commerce, or litigated the complaint or appeal; and

(4) as a result of the dispute, the insurer reversed its decision and granted insurance.

For purposes of this section, "insurance" has the meaning given in paragraph (h).

A parent who has requested a reduction in the contribution amount under this paragraph shall submit proof in the form and manner prescribed by the commissioner or county agency, including, but not limited to, the insurer's denial of insurance, the written letter or complaint of the parents, court documents, and the written response of the insurer approving insurance. The determinations of the commissioner or county agency under this paragraph are not rules subject to chapter 14.

Sec. 4. Minnesota Statutes 2012, section 252.27, is amended by adding a subdivision to read:

Subd. 2d. **Fees limited.** Notwithstanding subdivision 2a, the fee a parent is required to contribute to the cost of services under medical assistance for an individual child shall not exceed the maximum insurance premium charged in Minnesota under the federal Patient Protection and Affordable Care Act, Public Law 111-148, as amended, for a child-only policy for a child with the same amount of income.

Sec. 5. Minnesota Statutes 2013 Supplement, section 256B.0949, subdivision 2, is amended to read:

Subd. 2. **Definitions.** (a) For the purposes of this section, the terms defined in this subdivision have the meanings given.

(b) "Autism spectrum disorder diagnosis" is defined by diagnostic code 299 in the current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(c) "Child" means a person under the age of 18.

(d) "Commissioner" means the commissioner of human services, unless otherwise specified.

(e) "Early intensive intervention benefit" means autism treatment options based in behavioral and developmental science, which may include modalities such as applied behavior analysis, developmental treatment approaches, and naturalistic and parent training models.

(f) "Generalizable goals" means results or gains that are observed during a variety of activities with different people, such as providers, family members, other adults, and children, and in different environments including, but not limited to, clinics, homes, schools, and the community.

(g) "Mental health professional" ~~has the meaning given~~ means a mental health professional as defined in section 245.4871, subdivision 27, ~~clauses (1) to (6)~~ who has training and expertise in autism spectrum disorders.

Sec. 6. Minnesota Statutes 2013 Supplement, section 256B.0949, subdivision 3, is amended to read:

Subd. 3. **Initial eligibility.** This benefit is available to a child enrolled in medical assistance who~~:~~

~~(1)~~ has an autism spectrum disorder diagnosis~~;~~ for services that meet the criteria for medically necessary care under Minnesota Rules, part 9505.0175, subpart 25.

~~(2) has had a diagnostic assessment described in subdivision 5, which recommends early intensive intervention services; and~~

~~(3) meets the criteria for medically necessary autism early intensive intervention services.~~

Sec. 7. Minnesota Statutes 2013 Supplement, section 256B.0949, subdivision 4, is amended to read:

Subd. 4. **Diagnosis.** (a) A diagnosis must:

(1) be based upon current DSM criteria including direct observations of the child and reports from parents or primary caregivers; and

(2) be completed by ~~both~~ either (i) a licensed physician or advanced practice registered nurse ~~and~~ or (ii) a mental health professional.

(b) Additional diagnostic assessment information may be considered including from special education evaluations and licensed school personnel, and from professionals licensed in the fields of medicine, speech and language, psychology, occupational therapy, and physical therapy.

~~(c) If the commissioner determines there are access problems or delays in diagnosis for a geographic area due to the lack of qualified professionals, the commissioner shall waive the requirement in paragraph (a), clause (2), for two professionals and allow a diagnosis to be made by one professional for that geographic area. This exception must be limited to a specific period of time until, with stakeholder input as described in subdivision 8, there is a determination of an adequate number of professionals available to require two professionals for each diagnosis.~~

Sec. 8. Minnesota Statutes 2013 Supplement, section 256B.0949, subdivision 7, is amended to read:

Subd. 7. **Ongoing eligibility.** (a) ~~An independent~~ A progress evaluation conducted by a licensed mental health professional with expertise and training in autism spectrum disorder and child development must be completed after ~~each~~ the first six months of treatment and not more than once every 12 months thereafter, ~~or more frequently as determined by the commissioner~~ unless the treating licensed mental health professional determines more frequent evaluations are necessary, to determine if progress is being made toward achieving generalizable goals and meeting functional goals contained in the treatment plan.

(b) The progress evaluation must include:

(1) the treating provider's report;

(2) parental or caregiver input;

(3) an ~~independent~~ observation of the child which can be performed by the child's licensed special education staff;

(4) any treatment plan modifications; and

(5) recommendations for continued treatment services.

(c) Progress evaluations must be submitted to the commissioner in a manner determined by the commissioner for this purpose.

(d) A child who continues to achieve generalizable goals and treatment goals as specified in the treatment plan and who is recommended for continued treatment services by the treating mental health professional under paragraph (b), clause (5), is eligible to continue receiving this benefit.

(e) The commissioner may consider an alternative eligibility recommendation to the recommendation of the treating mental health professional under paragraph (b), clause (5), if there is a detailed report provided by a licensed mental health professional with expertise treating children with autism spectrum disorder using the relevant treatment modality showing that progress is not being made in a particular case. In this case, treatment shall not be interrupted and shall continue to be reimbursed until a final determination is made.

(f) A child's treatment shall continue to be reimbursed during the progress evaluation ~~using the~~ process ~~determined under subdivision 8, clause (8)~~ until a final determination is made. Treatment may continue during an appeal pursuant to section 256.045.

Sec. 9. Minnesota Statutes 2013 Supplement, section 256B.0949, subdivision 9, is amended to read:

Subd. 9. **Revision of treatment options.** (a) The commissioner may ~~revise~~ add covered treatment options as needed based on outcome data and other evidence.

(b) Before the changes become effective, the commissioner must provide public notice of the changes, the reasons for the change, and a 30-day public comment period to those who request notice through an electronic list accessible to the public on the department's Web site.

Sec. 10. Laws 2013, chapter 9, section 15, is amended to read:

Sec. 15. **MINNESOTA COMPREHENSIVE HEALTH ASSOCIATION TERMINATION.**

(a) The commissioner of commerce, in consultation with the board of directors of the Minnesota Comprehensive Health Association, has the authority to develop and implement the phase-out and eventual appropriate termination of coverage provided by the Minnesota Comprehensive Health Association under Minnesota Statutes, chapter 62E. The phase-out of coverage shall begin no sooner than January 1, 2014, or upon the effective date of the operation of the Minnesota Insurance Marketplace and the ability to purchase qualified health plans through the Minnesota Insurance Marketplace, whichever is later, and shall, to the extent practicable, ensure the least amount of disruption to the enrollees' health care coverage. The member assessments established under Minnesota Statutes, section 62E.11, shall take into consideration any phase-out of coverage implemented under this section.

(b)(1) Notwithstanding paragraph (a), the Minnesota Comprehensive Health Association shall continue beyond any phaseout or termination specified in paragraph (a) for the purpose of providing coverage for autism spectrum disorder as defined in Minnesota Statutes, section 62A.3094, subdivision 1, paragraph (b), for children under the age 18.

(2) The coverage provided under clause (1) must comply with Minnesota Statutes, section 62A.3094, subdivision 2.

(3) The Minnesota Comprehensive Health Association may charge a premium for the coverage required under this section, not to exceed the average cost of a child-only insurance premium in Minnesota under the federal Patient Protection and Affordable Care Act, Public Law 111-148, as amended. The association may continue to use its current procedures for assessing the association's members for costs the association incurs, or expects to incur, in excess of premiums it receives under this clause.

(4) This paragraph expires if and when coverage of autism spectrum disorder is included in the essential health benefit set required under the federal Patient Protection and Affordable Care Act.

EFFECTIVE DATE. This section is effective if legislation is not enacted by August 1, 2014, to expand the private insurance mandate to cover children under age 18 with an autism spectrum disorder under Minnesota Statutes, section 62A.3094, subdivision 2, and to limit medical assistance fees under Minnesota Statutes, section 252.27, subdivision 2d. The commissioner of human services shall notify the revisor of statutes if this section becomes effective and place a notice in the State Register.

Sec. 11. Laws 2013, chapter 108, article 12, section 2, the effective date, is amended to read:

EFFECTIVE DATE. This section is effective ~~January~~ July 1, ~~2016~~ 2014, or the date a collective bargaining agreement or compensation plan that includes changes to this section is approved under Minnesota Statutes, section 3.855, whichever is earlier.