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# A BILL FOR AN ACT

RELATING TO HEALTH.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. The purpose of this Act is to ensure the  
2 provision of quality health care for all Hawaii residents by  
3 requiring coverage of treatment for autism spectrum disorders.

4 SECTION 2. This Act shall be known and may be cited as  
5 "Luke's Law".

6 SECTION 3. Chapter 431, Hawaii Revised Statutes, is  
7 amended by adding a new section to article 10A to be  
8 appropriately designated and to read as follows:

9 **"§431:10A- Autism spectrum disorders benefits and**  
10 **coverage; notice; definitions.** (a) Each individual or group  
11 accident and health or sickness insurance policy, contract,  
12 plan, or agreement issued or renewed in this State after  
13 December 31, 2015, shall provide to the policyholder and  
14 individuals under nine years of age covered under the policy,  
15 contract, plan, or agreement, coverage for the screening,  
16 including well-baby and well-child screening, diagnosis, and  
17 evidence-based treatment of autism spectrum disorders.



1 Nothing in this section shall be construed to require the  
2 coverage in a medicaid plan.

3 (b) Every insurer shall provide notice to its  
4 policyholders regarding the coverage required by this section.  
5 The notice shall be prominently positioned in any literature or  
6 correspondence sent to policyholders and shall be transmitted to  
7 policyholders within calendar year 2014 when annual information  
8 is made available to members or in any other mailing to members,  
9 but in no case later than December 31, 2014.

10 (c) Individual coverage for behavioral health treatment  
11 provided under this section shall be subject to a maximum  
12 benefit of \$50,000 per year and a maximum lifetime benefit of  
13 \$300,000, but shall not be subject to any limits on the number  
14 of visits to an autism service provider. After December 31,  
15 2015, the insurance commissioner, on an annual basis, shall  
16 adjust the maximum benefit for inflation using the medical care  
17 component of the United States Bureau of Labor Consumer Price  
18 Index for urban Honolulu; provided that the commissioner shall  
19 post notice of and hold a public meeting in the same manner as  
20 required by section 91-3(a) before adjusting the maximum  
21 benefit. The commissioner shall publish the adjusted maximum  
22 benefit annually no later than April 1 of each calendar year,



1 which shall apply during the following calendar year to health  
2 insurance policies subject to this section. Payments made by an  
3 insurer on behalf of a covered individual for any care,  
4 treatment, intervention, or service other than behavioral health  
5 treatment shall not be applied toward any maximum benefit  
6 established under this subsection.

7 (d) Coverage under this section may be subject to  
8 copayment, deductible, and coinsurance provisions of an accident  
9 and health or sickness insurance policy, contract, plan, or  
10 agreement that are no less favorable than the co-payment,  
11 deductible, and coinsurance provisions for substantially all  
12 other medical services covered by the policy, contract, plan, or  
13 agreement.

14 (e) This section shall not be construed as limiting  
15 benefits that are otherwise available to an individual under an  
16 accident and health or sickness insurance policy, contract,  
17 plan, or agreement.

18 (f) Coverage for treatment under this section shall not be  
19 denied on the basis that the treatment is habilitative or non-  
20 restorative in nature.

21 (g) Except for inpatient services, if an individual is  
22 receiving treatment for autism spectrum disorders, an insurer



1 may request a review of that treatment. The cost of obtaining  
2 any review shall be borne by the insurer.

3 (h) This section shall not be construed as reducing any  
4 obligation to provide services to an individual under an  
5 individualized family service plan, an individualized education  
6 program, or an individualized service plan.

7 (i) Nothing in this section shall apply to non-  
8 grandfathered plans in the individual and small group markets  
9 that are required to include essential health benefits under the  
10 Patient Protection and Affordable Care Act, Public Law 111-148,  
11 as amended, or to Medicare supplement, accident-only, specified  
12 disease, hospital indemnity, disability income, long-term care,  
13 or other limited benefit hospital insurance policies.

14 (j) Insurers shall include in their network of approved  
15 autism service providers only those providers who have cleared  
16 criminal background checks as determined by the insurer.

17 (k) Insurers shall include board certified behavior  
18 analysts in their provider network.

19 (l) If an individual has been diagnosed as having an  
20 autism spectrum disorder, then that individual shall not be  
21 required to undergo repeat evaluation upon publication of a  
22 subsequent edition of the Diagnostic and Statistical Manual of



1 Mental Disorders to remain eligible for coverage under this  
2 section.

3 (m) Coverage for applied behavior analysis shall include  
4 the services of the personnel who work under the supervision of  
5 the board certified behavior analyst or the licensed  
6 psychologist overseeing the program.

7 (n) As used in this section, unless the context clearly  
8 requires otherwise:

9 "Applied behavior analysis" means the design,  
10 implementation, and evaluation of environmental modifications,  
11 using behavioral stimuli and consequences, to produce socially  
12 significant improvement in human behavior, including the use of  
13 direct observation, measurement, and functional analysis of the  
14 relationship between environment and behavior. The practice of  
15 applied behavior analysis expressly excludes psychological  
16 testing, diagnosis of a mental or physical disorder,  
17 neuropsychology, psychotherapy, cognitive therapy, sex therapy,  
18 psychoanalysis, hypnotherapy, and long-term counseling as  
19 treatment modalities.

20 "Autism service provider" means any person, entity, or  
21 group that provides treatment for autism spectrum disorders.



1       "Autism spectrum disorders" means any of the pervasive  
2 developmental disorders or autism spectrum disorders as defined  
3 by the most recent edition of the Diagnostic and Statistical  
4 Manual of Mental Disorders.

5       "Behavioral health treatment" means evidence-based  
6 counseling and treatment programs, including applied behavior  
7 analysis, that are:

- 8       (1) Necessary to develop, maintain, or restore, to the  
9       maximum extent practicable, the functioning of an  
10       individual; and
- 11       (2) Provided or supervised by a board certified behavior  
12       analyst or by a licensed psychologist so long as the  
13       services performed are commensurate with the  
14       psychologist's formal university training and  
15       supervised experience.

16       "Board certified behavior analyst" means a behavior analyst  
17 credentialed by the Behavior Analyst Certification Board as a  
18 board certified analyst.

19       "Diagnosis of autism spectrum disorders" means medically  
20 necessary assessments, evaluations, or tests conducted to  
21 diagnose whether an individual has an autism spectrum disorder.



1       "Pharmacy care" means medications prescribed by a licensed  
2 physician or nurse practitioner and any health-related services  
3 that are deemed medically necessary to determine the need or  
4 effectiveness of the medications.

5       "Psychiatric care" means direct or consultative services  
6 provided by a licensed psychiatrist.

7       "Psychological care" means direct or consultative services  
8 provided by a licensed psychologist.

9       "Therapeutic care" means services provided by licensed  
10 speech pathologists, registered occupational therapists,  
11 licensed social workers, licensed clinical social workers, or  
12 licensed physical therapists.

13       "Treatment for autism spectrum disorders" includes the  
14 following care prescribed or ordered for an individual with an  
15 autism spectrum disorder by a licensed physician, psychiatrist,  
16 psychologist, licensed clinical social worker, or nurse  
17 practitioner if the care is determined to be medically  
18 necessary:

- 19       (1) Behavioral health treatment;
- 20       (2) Pharmacy care;
- 21       (3) Psychiatric care;
- 22       (4) Psychological care; and



1       (5) Therapeutic care."

2       SECTION 4. Chapter 432, Hawaii Revised Statutes, is  
3 amended by adding a new section to article 1 to be appropriately  
4 designated and to read as follows:

5       "§432:1- Autism spectrum disorders benefits and  
6 coverage; notice; definitions. (a) Each individual or group  
7 hospital or medical service plan, policy, contract, or agreement  
8 issued or renewed in this State after December 31, 2015, shall  
9 provide to the member and individuals under nine years of age  
10 covered under the service plan, policy, contract, or agreement,  
11 coverage for the screening, including well-baby and well-child  
12 screening, diagnosis, and evidence-based treatment of autism  
13 spectrum disorders.

14       Nothing in this section shall be construed to require the  
15 coverage in a medicaid plan.

16       (b) Every mutual benefit society shall provide written  
17 notice to its members regarding the coverage required by this  
18 section. The notice shall be prominently positioned in any  
19 literature or correspondence sent to members and shall be  
20 transmitted to members within calendar year 2014 when annual  
21 information is made available to members or in any other mailing  
22 to members, but in no case later than December 31, 2014.





1       (c) Individual coverage for behavioral health treatment  
2 provided under this section shall be subject to a maximum  
3 benefit of \$50,000 per year and a maximum lifetime benefit of  
4 \$300,000, but shall not be subject to any limits on the number  
5 of visits to an autism service provider. After December 31,  
6 2015, the insurance commissioner, on an annual basis, shall  
7 adjust the maximum benefit for inflation, using the medical care  
8 component of the United States Bureau of Labor Consumer Price  
9 Index for urban Honolulu. The commissioner shall publish the  
10 adjusted maximum benefit annually no later than April 1 of each  
11 calendar year, which shall apply during the following calendar  
12 year to health insurance policies subject to this section;  
13 provided that the commissioner shall post notice of and hold a  
14 public meeting in the same manner as required by section 91-3(a)  
15 before adjusting the maximum benefit. Payments made by a mutual  
16 benefit society on behalf of a covered individual for any care,  
17 treatment, intervention, or service other than behavioral health  
18 treatment, shall not be applied toward any maximum benefit  
19 established under this subsection.

20       (d) Coverage under this section may be subject to  
21 copayment, deductible, and coinsurance provisions of an  
22 individual or group hospital or medical service plan, policy,



1 contract, or agreement that are no less favorable than the co-  
2 payment, deductible, and coinsurance provisions for  
3 substantially all other medical services covered by the plan,  
4 policy, contract, or agreement.

5 (e) This section shall not be construed as limiting  
6 benefits that are otherwise available to an individual under an  
7 individual or group hospital or medical service plan, policy,  
8 contract, or agreement.

9 (f) Coverage for treatment under this section shall not be  
10 denied on the basis that the treatment is habilitative or non-  
11 restorative in nature.

12 (g) Except for inpatient services, if an individual is  
13 receiving treatment for autism spectrum disorders, an insurer  
14 may request a review of that treatment. The cost of obtaining  
15 any review shall be borne by the insurer.

16 (h) This section shall not be construed to reduce any  
17 obligation to provide services to an individual under an  
18 individualized family service plan, an individualized education  
19 program, or an individualized service plan.

20 (i) Nothing in this section shall apply to non-  
21 grandfathered plans in the individual and small group markets  
22 that are required to include essential health benefits under the



1 Patient Protection and Affordable Care Act, Public Law 111-148,  
2 as amended, or to Medicare supplement, accident-only, specified  
3 disease, hospital indemnity, disability income, long-term care,  
4 or other limited benefit hospital insurance policies.

5 (j) Insurers shall include in their network of approved  
6 autism service providers only those providers who have cleared  
7 criminal background checks as determined by the insurer.

8 (k) Insurers shall include board certified behavior  
9 analysts in their provider network.

10 (l) If an individual has been diagnosed as having an  
11 autism spectrum disorder, then that individual shall not be  
12 required to undergo repeat evaluation upon publication of a  
13 subsequent edition of the Diagnostic and Statistical Manual of  
14 Mental Disorders to remain eligible for coverage under this  
15 section.

16 (m) Coverage for applied behavior analysis shall include  
17 the services of the personnel who work under the supervision of  
18 the board certified behavior analyst or the licensed  
19 psychologist overseeing the program.

20 (n) As used in this section, unless the context clearly  
21 requires otherwise:



1       "Applied behavior analysis" means the design,  
2 implementation, and evaluation of environmental modifications,  
3 using behavioral stimuli and consequences, to produce socially  
4 significant improvement in human behavior, including the use of  
5 direct observation, measurement, and functional analysis of the  
6 relationship between environment and behavior. The practice of  
7 applied behavior analysis expressly excludes psychological  
8 testing, diagnosis of a mental or physical disorder,  
9 neuropsychology, psychotherapy, cognitive therapy, sex therapy,  
10 psychoanalysis, hypnotherapy, and long-term counseling as  
11 treatment modalities.

12       "Autism service provider" means any person, entity, or  
13 group that provides treatment for autism spectrum disorders.

14       "Autism spectrum disorders" means any of the pervasive  
15 developmental disorders or autism spectrum disorders as defined  
16 by the most recent edition of the Diagnostic and Statistical  
17 Manual of Mental Disorders.

18       "Behavioral health treatment" means evidence-based  
19 counseling and treatment programs, including applied behavior  
20 analysis, that are:



1       (1) Necessary to develop, maintain, or restore, to the  
2            maximum extent practicable, the functioning of an  
3            individual; and

4       (2) Provided or supervised by a board certified behavior  
5            analyst or by a licensed psychologist so long as the  
6            services performed are commensurate with the  
7            psychologist's formal university training and  
8            supervised experience.

9       "Board certified behavior analyst" means a behavior analyst  
10       credentialed by the Behavior Analyst Certification Board as a  
11       board certified analyst.

12       "Diagnosis of autism spectrum disorders" means medically  
13       necessary assessments, evaluations, or tests conducted to  
14       diagnose whether an individual has an autism spectrum disorder.

15       "Pharmacy care" means medications prescribed by a licensed  
16       physician or nurse practitioner and any health-related services  
17       that are deemed medically necessary to determine the need or  
18       effectiveness of the medications.

19       "Psychiatric care" means direct or consultative services  
20       provided by a licensed psychiatrist.

21       "Psychological care" means direct or consultative services  
22       provided by a licensed psychologist.



1       "Therapeutic care" means services provided by licensed  
2 speech pathologists, registered occupational therapists,  
3 licensed social workers, licensed clinical social workers, or  
4 licensed physical therapists.

5       "Treatment for autism spectrum disorders" includes the  
6 following care prescribed or ordered for an individual with an  
7 autism spectrum disorder by a licensed physician, psychiatrist,  
8 psychologist, licensed clinical social worker, or nurse  
9 practitioner if the care is determined to be medically  
10 necessary:

- 11       (1) Behavioral health treatment;  
12       (2) Pharmacy care;  
13       (3) Psychiatric care;  
14       (4) Psychological care; and  
15       (5) Therapeutic care."

16       SECTION 5. Section 432D-23, Hawaii Revised Statutes, is  
17 amended to read as follows:

18       "**§432D-23 Required provisions and benefits.**

19 Notwithstanding any provision of law to the contrary, each  
20 policy, contract, plan, or agreement issued in the State after  
21 January 1, 1995, by health maintenance organizations pursuant to  
22 this chapter, shall include benefits provided in sections



1 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-  
2 116.2, 431:10A-116.5, 431:10A-116.6, 431:10A-119, 431:10A-120,  
3 431:10A-121, 431:10A-122, 431:10A-125, 431:10A-126, [~~431:10A-~~  
4 ~~122,~~ and ~~431:10A-116.2] and 431:10A- , and chapter 431M."~~

5 SECTION 6. (a) The legislative reference bureau shall  
6 contract for the performance of an actuarial analysis by a  
7 licensed actuary who is a member in good standing with the  
8 American Academy of Actuaries of the projected costs of  
9 providing insurance coverage for screening, diagnosis, and  
10 treatment of autism spectrum disorders as required by this Act.

11 (b) The actuarial analysis shall:

12 (1) Include a statement by the actuary certifying that the  
13 techniques and methods used are generally accepted  
14 within the actuarial profession and that the  
15 assumptions and cost estimates used are reasonable;

16 and

17 (2) Provide a financial analysis of the cost of providing  
18 insurance coverage for screening, diagnosis, and  
19 treatment of autism spectrum disorders as required by  
20 this Act, including an estimate of the cost benefits  
21 provided by this Act and the cost impact if this Act  
22 is applied to the Hawaii medicaid market.



1 (c) The actuarial analysis shall be completed and  
2 submitted to the legislative reference bureau in sufficient time  
3 for the legislative reference bureau to submit a report to the  
4 legislature, including findings, recommendations, and proposed  
5 legislation, if any, based on the results of the actuarial  
6 analysis no later than twenty days prior to the convening of the  
7 regular session of 2015.

8 SECTION 7. There is appropriated out of the general  
9 revenues of the State of Hawaii the sum of \$ or so much  
10 thereof as may be necessary for fiscal year 2014-2015 for the  
11 performance of the actuarial analysis required under this Act.

12 The sum appropriated shall be expended by the legislative  
13 reference bureau for the purposes of this Act.

14 SECTION 8. Notwithstanding section 432D-23, Hawaii Revised  
15 Statutes, the coverage and benefits for autism spectrum  
16 disorders to be provided by a health maintenance organization  
17 under section 5 of this Act shall apply to all policies,  
18 contracts, plans, or agreements issued or renewed in this State  
19 by a health maintenance organization after December 31, 2015.





**1** SECTION 9. Statutory material to be repealed is bracketed  
**2** and stricken. New statutory material is underscored.

**3** SECTION 10. This Act shall take effect on July 1, 2050.



**Report Title:**

Health; Insurance; Mandatory Health Coverage; Autism Spectrum Disorders

**Description:**

Requires health insurers, mutual benefit societies, and health maintenance organizations to provide coverage for autism spectrum disorder treatments. Requires an actuarial analysis to estimate the costs of providing autism spectrum disorder benefits. Effective July 1, 2050. (SB2054 HD2 PROPOSED)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

