PENNSYLVANIA'S AUTISM INSURANCE ACT: A FACT SHEET

Prepared by the Disability Rights Network of Pennsylvania

Prior to the Pennsylvania Autism Insurance Act (sometimes called "Act 62"), 40 P.S. § 764h, almost all Pennsylvania children with autism received coverage for autism services exclusively through Pennsylvania's Medical Assistance program. Private insurers (such as Blue Cross or Aetna) usually did not cover autism services. Act 62 was intended to assure that, at least in some circumstances, private insurance companies provide some coverage for autism services for children. This Fact Sheet will answer some basic questions about Act 62 for families.

What is Act 62?

Act 62 requires private insurance companies to pay up to $36,000 per year for diagnostic assessments and treatment of covered individuals with autism spectrum disorders who are under age 21.

Is my child covered by Act 62?

Your child is covered by Act 62 if: (a) your child has an autism spectrum disorder and is covered by a group health insurance, but only **if** the policy covers 51 or more employees and is not self-funded; or (b) your child has autism and is enrolled in Pennsylvania's CHIP Program.

If your child is not covered by Act 62, her autism assessments and services will continue to be funded solely by Medical Assistance.

When does Act 62 go into effect?

Act 62 goes into effect for covered children when the private health insurance policy is issued or renews. For some children, this date was July 1, 2009, and thus Act 62 is already in effect. For many others, the date will be January 1, 2010. If you are not certain about when your child's private health insurance policy was or will be renewed, you should contact the person who handles health insurance benefits for your employer.

Is my child covered if he has any Autism Spectrum Disorder?

Act 62 covers any of the autism spectrum disorders identified in the most recent edition of the Diagnostic and Statistical Manual. Currently, the autism spectrum disorders are: Autistic Disorder; Rett Syndrome; Pervasive Developmental Disorder NOS (Not Otherwise Specified); Childhood Disintegration Disorder; and Asperger's Disorder.

It is not necessary that your child have a "primary" diagnosis of an autism spectrum disorder to qualify under Act 62.

What services must private insurance companies cover under Act 62?

Act 62 mandates that private insurance companies pay for diagnostic assessment services for covered children. Diagnostic assessment services are medically necessary assessments, evaluations, or tests by a licensed physician, licensed physician's assistant, licensed psychologist, or certified registered nurse practitioner to diagnose whether a youngster has an autism spectrum disorder.

For covered youngsters diagnosed with autism spectrum disorders, Act 62 mandates that private insurance companies pay for the following categories of services:

- Psychiatric care;
- Psychological care;
- Rehabilitative care, including applied behavioral analysis;
- Therapeutic care, including speech therapy, occupational therapy, and physical therapy; and
- Pharmacy care.

While Act 62 primarily uses general categories to identify covered services and explicitly identifies only a few specific types services for autism spectrum disorders (including applied behavioral analysis), it is likely that services such as behavioral specialists, mobile therapy, and therapeutic staff supports also are covered under Act 62.

Are there any limits on the services that private insurance companies must cover under Act 62?

Private insurance companies do not have to provide case management services. Your child can continue to receive these services, if needed, through Medical Assistance.

For autism treatment services to be covered under Act 62, the services must be identified in your child's treatment plan and either prescribed and provided by certain types of licensed professionals or provided by an autism services provider.

In addition, Act 62 only requires coverage of services that are medically necessary.

What if my private insurance company determines that my child's services are not medically necessary?

Although your child's treating professionals may state in the treatment plan that a service is medically necessary, a private insurance company can review that decision and may deny or partially deny services if it determines that those services are not medically necessary. It is important to note that private insurers may adopt standards of medical necessity for autism diagnostic and treatment services that are different from

those used by Medical Assistance. Accordingly, it is possible that your private insurance company may determine that the autism services that your child had been receiving under Medical Assistance are not medically necessary in whole or in part.

If your insurance company denies coverage for all or some of the services you had requested on the basis that the services are not medically necessary, you can (and should) use the grievance process available under Act 62, which is described below, to challenge the decision.

If ultimately your grievance is not successful and the insurance company's decision to deny or partially deny services is not overturned, then Medical Assistance will cover a service if it meets the Medical Assistance standard for medical necessity based on the documentation you have provided.

Can my private insurance company deny coverage for autism services that are not specified in my child's Individualized Education Plan (IEP)?

No. Coverage for autism treatment under Act 62 does not depend on whether the service is required in an IEP nor can a private insurance company make coverage for autism treatment conditional on the family's or guardian's agreement to coordinate the treatment services with services provided through an IEP.

If my child receives autism services from my private insurance company, am I responsible for any co-pays or deductibles that would normally apply?

No. Private insurance companies can impose deductibles or co-payments for autism services provided under Act 62 to the same extent that they impose such deductibles or co-payments for other medical services covered by the policy. However, you cannot be charged the deductible or co-payment if: (a) your child is covered by Medical Assistance, and (b) the autism services provider is enrolled in your Medical Assistance plan (such as the Behavioral Health Managed Care Organizations like CBH or Magellan).

However, you cannot pay the deductible or co-payment and then receive reimbursement from Medical Assistance. The autism services provider must bill Medical Assistance directly for the deductible or co-payment.

Can my private health insurance company limit the number of visits my child receives?

No. Act 62 states that coverage for autism services cannot be subject to limits on the number of visits to an autism services provider.

Can my private insurance company refuse to provide my child with services because he is not making progress?

No. Act 62 defines "rehabilitative care" -- which must be covered by private insurance companies -- to include care that is designed either to produce improvements or to prevent the loss of attained skills or function.

How frequently can my private insurance company require reviews of the need for services?

A private insurance company may review a treatment plan once every six (6) months under Act 62. However, the insurance company may agree with the licensed physician or psychologist who develops the treatment plan to conduct reviews more or less frequently.

Can my private insurance company require that my autism services provider meet certain licensing standards?

Act 62 requires private insurance companies to pay for autism services by specified qualified professionals -- licensed physicians, licensed physician assistants, licensed psychologists, licensed clinical social workers, certified registered nurse practitioners, and those who work under such professionals' direction.

In addition, Act 62 permits unlicensed autism services providers which were enrolled in Pennsylvania's Medical Assistance program when the Act went into effect in July 2008 to continue to provide autism treatment services under Act 62. This "grandfathering provision" enables these unlicensed professionals who had been providing autism services to continue to do so to assure continuity of care.

In addition, Act 62 recognizes that there currently are no licensure standards or requirements for behavior specialists. Accordingly, Act 62 permits unlicensed behavior specialists to continue to provide autism treatment services pending their licensure under standards that the Act requires to be developed.

What should I do if my child's autism services provider is not in my private insurance company's network?

Act 62 requires a private insurance company to accept any autism services provider that was enrolled in the Medical Assistance program as a provider as of July 1, 2008 as long as the provider agrees to accept the company's payment levels, terms, and conditions. An autism services provider, however, is not required to enroll in each private insurance company's network.

If your child is covered by Act 62, check with your child's provider to see if it is in the private insurance company's network. If it is not in that insurance company's network, ask whether it intends to join that network.

If your autism services provider refuses to enroll in your child's private insurance company's network, you will have to change providers. You should contact your private insurance company to determine which autism services providers are enrolled in its network. If you choose to continue with an autism services provider that is not enrolled in your private insurance company's network, Medical Assistance will not pay any portion of that cost.

My autism services provider does not want to enroll in my private insurance company's network because it says that the rates are too low. What can I do?

If your child is covered by Medical Assistance and the provider is enrolled in your Medical Assistance plan, then Medical Assistance will pay the difference between the private insurance company's rate and the Medical Assistance rate for services that are considered to be medically necessary under the Medical Assistance standard. Accordingly, your autism services provider will continue to be paid, at minimum, the maximum allowed by Medical Assistance.

What happens if my child's services exceed the $36,000 annual cap?

The Medical Assistance program will pay for autism tests and services that exceed the $36,000 cap. However, your autism services provider must be enrolled in your Medical Assistance plan to be covered by Medical Assistance. To assure continuity of care when your child is likely to need more than $36,000 worth of autism services annually, it is important that you make certain that the autism services provider you choose is enrolled both in your private insurance company's network and in your Medical Assistance plan.

You should also be aware that the $36,000 annual cap can be adjusted for inflation beginning April 1, 2012 and then annually after that date.

What should I do if my private insurance company denied autism services for my child?

Act 62 requires private insurance companies to use expedited internal and external review processes to review grievances for a child who was denied or partially denied autism treatment services. Under this process, the company must issue a decision on the grievance within 48 hours of the receipt of a request for expedited internal review. You should make certain that the company has all of the information it needs from your child's treating professionals to support your service request.

Within two business days of an unfavorable ruling on the internal review, you can request an expedited external review. Within 24 hours after receipt of the request for expedited external review, the insurance company will submit the request to the Pennsylvania Insurance Department. The Insurance Department will assign a Certified Utilization Review Entity (CRE) to review the decision within two business days of receiving the request for external review. The CRE will have two business days to issue a decision after it receives the assignment.

If the CRE overturns a denial or partial denial of services, the private insurance company can file an appeal in state court. The company, however, must pay for the services that have been authorized or ordered pending a ruling by the court.

If the CRE review refuses to overturn the denial or partial denial, you should seek the services through your Medical Assistance agency.

Who should I contact for help?

If you need more information or help, please contact the intake unit of the Disability Rights Network of Pennsylvania (DRN) at 800-692-7443 (voice) or 877-375-7139 (TDD) or intake@drnpa.org. You can also contact the Pennsylvania Health Law Project Help Line for more information about or assistance with Act 62 at 800-274-3258 or 866-236-6310 (TTY) or by e-mailing staff@phlp.org. Additional information about Act 62 can also be found at www.PAAutismInsurance.org.

* * * * * * * * *

DRN's mission is to advance, protect, and advocate for the human, civil, and legal rights of Pennsylvanians with disabilities. Due to our limited resources, DRN cannot provide individual services to every person with advocacy and legal issues. DRN prioritizes cases that have the potential to result in widespread, systemic changes to benefit persons with disabilities. While we cannot provide assistance to everyone, we do seek to provide every individual with information and referral options.

> **IMPORTANT: This publication is for general information only. This publication is not intended, nor should be construed, to create an attorney-client relationship between the Disability Rights Network of Pennsylvania and any person. Nothing in this publication should be considered to be legal advice.**
>
> **PLEASE NOTE: For information in alternative formats or a language other than English, contact the Disability Rights Network of Pennsylvania at 800-692-7443 ext. 400 (voice) or 877-375-7139 (TDD), or drnpa-hbg@drnpa.org.**