

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 169 Health Insurance/Autism  
**SPONSOR(S):** Rich and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 84 (i)

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| REFERENCE                          | ACTION | ANALYST | STAFF DIRECTOR |
|------------------------------------|--------|---------|----------------|
| 1) Health Services (Sub)           |        | Chavis  | Collins        |
| 2) Health Care                     |        |         |                |
| 3) Health Access & Financing (Sub) |        |         |                |
| 4) Insurance                       |        |         |                |
| 5) State Administration            |        |         |                |
| 6) Health Appropriations (Sub)     |        |         |                |
| 7) Appropriations                  |        |         |                |

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### SUMMARY ANALYSIS

State laws that require private health insurance policies and health maintenance organization contracts to include specific coverages for particular treatments, conditions, persons, or providers are referred to as "mandates." Currently, Florida has 51 mandated health benefits. Mandated benefits affect plans covering an estimated 33 percent of all Floridians and 40 percent of insured Floridians.

HB 169 mandates state-regulated health insurers and health maintenance organizations that offer coverage for major medical expenses to include coverage for a broad range of treatments and therapies for autism spectrum disorder, as defined in the bill. Autism Spectrum Disorders (ASD) is a category of developmental disorders.

The act takes effect July 1, 2003.

Currently, some of the treatments and therapies needed by autistic individuals are provided through the Florida Department of Education (DOE) and the Florida Department of Children and Family Services (CFS), however, there is currently a waiting list of over 10,000 individuals for developmental disability services through CFS. Under the federal "Individuals with Disabilities Education Act" (IDEA), each school district is responsible for providing students with autism with a free appropriate public education, including, those services that are needed in order for the student to receive educational benefits. As of December 2, 2002, 6,461 students, between the ages of 3-21, with a primary or secondary eligibility in Autism, are being served through Florida's public school system. Typically, most insurance carriers specifically exclude autism spectrum disorder from being covered for nonmedically related therapy including speech and language therapy and occupational or vocational therapy. Some carriers provide coverage for prescription drugs related to the medical aspects of autism; however, other types of benefits (i.e., physical therapy and behavior therapy) may or may not be covered, contingent upon the medically related symptoms of the patient.

According to the Congressional Budget Office, every one percent increase in private insurance premiums results in 200,000 additional uninsured Americans. The Florida Chamber of Commerce extrapolated that number and has determined that "for every one percent increase in health insurance premiums between 12,000 and 18,000 Floridians lose their health insurance coverage." Due to the need for intensive or lifelong treatment and therapies, the bill is likely to add to the momentum of increasing health care coverage premiums. Most state mandates affect small employers and individual policy holders, usually the self-employed. Larger companies and organizations, like the State of Florida, typically avoid mandates through the Employee Retirement Income Security Act (ERISA) by being self-insured.

***Section 624.215, Florida Statutes, requires any proposal for legislation which mandates a health benefit coverage be submitted with a report to the Agency for Health Care Administration and the legislative committee having jurisdiction which assesses the social and financial impacts of the proposed coverage. No such report has been submitted.***

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0169.hc.doc  
**DATE:** February 18, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### **Florida – Autism and Health Insurers and Health Maintenance Organizations**

Presently, Florida law does not mandate the treatment of autism spectrum disorder by health insurers or health maintenance organizations. HB 169 prohibits health insurers or health maintenance organizations that are regulated by the state from excluding coverage prescribed by the referring physician for the treatment of autism spectrum disorder, including, but not limited to: coverage for therapeutic evaluations and interventions; speech therapy; occupational therapy; physical therapy; intensive early intervention; applied behavioral analysis; and Lovaas behavioral therapy. The required range of services could include therapeutic evaluations and interventions, speech therapy, occupational therapy, physical therapy, intensive early intervention, applied behavior analysis, and behavioral therapy. The bill does not place any limitation on the type and number of services to be covered.

The act takes effect on July 1, 2003.

##### **Health Insurance Mandates**

Both state and the federal government have enacted requirements relating to health care plans. Typically, state laws require private health insurance policies and health maintenance organization (HMO) contracts to include specific coverage for particular treatments, conditions, persons, or providers. These are commonly referred to as “mandated [health] benefits.” Such regulations have contributed to the increase of premiums. According to the Health Insurance Association of America, “[n]ot only do these mandates increase the cost of health insurance, they make health insurance disproportionately more expensive for small companies. Employer may then be faced with a decision to shift more of the cost to their employees or drop coverage completely.”<sup>1</sup>

##### Health Insurance in Florida

The Florida Chamber Federation conducts an annual survey on the access, availability, and affordability of health insurance.<sup>2</sup> The most recent survey was conducted in November and December of 2002. Nearly 4,000 Florida employers responded to the survey from geographically diverse areas of the state, representing all sizes of employers. Seventy-eight percent of the survey respondents were small employers with less than 50 employees. Key findings of the survey included the following:

<sup>1</sup> Health Insurance Association of America, “Issue Brief: Why Do Health Insurance Premiums Rise,” September 2002. [<http://www.hiaa.org>]

<sup>2</sup> The Florida Chamber of Commerce, “The State of Health Insurance in Florida,” February 5, 2003. [<http://www.manatee-chamber.com/2003HCSurveyReport.pdf>]

- Seventy-six percent of Florida employers surveyed currently offer health insurance to employees – down from 77 percent in 2001, 86 percent in 2000, and 91 percent in 1999.
- Sixty-two percent of Florida employers pay most or all of their employees' individual health insurance premiums; and, nearly half also pay a portion of their employee's family premiums.
- Thirty-five percent of the respondents had their coverage dropped or experienced premium increases they could not afford.
- Fifty-five percent of employers who are unable to offer health insurance cite high costs or limited access to group health insurance as the reason.
- In the last 12 months, 86 percent of employers experienced an increase in premiums; with 47 percent of those experiencing more than a 20 percent increase in premiums.
- Forty-two percent of Florida employers have indicated they will be forced to consider eliminating health insurance benefits if they experience additional increases in premiums.

### Florida Health Insurance Mandates

Florida law mandates health insurance for a variety of conditions and services, such as diabetes (s. 627.6408, F.S.), osteoporosis (s. 627.6409, F.S.), mastectomies (s. 627.6417, F.S.), and mammograms (s. 627.6418, F.S.). These mandated benefits affect plans covering an estimated 33 percent of all Floridians and 40 percent of insured Floridians. Self-funded plans provided by employers are not affected by these mandated benefit requirements because the federal Employee Retirement Income Security Act of 1974 (ERISA) generally preempts state regulation of these plans.

On January 28, 2000, the House Committee on Insurance published its interim project entitled "Managing Mandated Health Benefits: Policy Options for Consideration." Key findings of the report included the following:

- Florida has more mandated benefits than nearly every other state;
- An estimated 33 percent of all Floridians are covered under health plans subject to mandated benefits;
- It is not always apparent in statute which health plans are subject to which state-mandated health benefits;
- The costs of mandated benefits in Florida have not been calculated; and
- The statutorily-prescribed provisions for managing mandated benefits legislation have not been followed.

By most measures, Florida has more mandated benefits than nearly every other state. The Committee identified 51 mandated health benefits applicable to either private insurer or health maintenance plans. In a separate count, BlueCross BlueShield Association placed the number of mandates in Florida Statutes at 44—the second highest in the nation, compared to an average of 25 among all states. [Source: BlueCross BlueShield Association, State Legislative Health Care and Insurance Issues.]

### Required Legislative Review for Proposed Health Benefit Coverage Mandates

Section 624.215(2), F.S., requires any proposal for legislation which mandates health benefit coverage be submitted with a report to the Agency for Health Care Administration and the legislative committee having jurisdiction over the proposal. Statutory guidelines for assessing the impact of the mandated coverage include:

- To what extent is the treatment or service generally used by a significant portion of the population;
- To what extent is the insurance coverage generally available;
- If the insurance coverage is not generally available, to what extent does the lack of coverage result in persons avoiding necessary health care treatment;

- If the coverage is not generally available, to what extent does the lack of coverage result in unreasonable financial hardship
- The level of public demand for the treatment or service;
- The level of public demand for insurance coverage of the treatment or service;
- The level of interest of collective bargaining agents in negotiating for the inclusion of this coverage in group contracts;
- To what extent will the coverage increase or decrease the cost of the treatment or service;
- To what extent will the coverage increase the appropriate uses of the treatment or service;
- To what extent will the mandated treatment or service be a substitute for more expensive treatment or service;
- To what extent will the coverage increase or decrease the administrative expenses of insurance companies and the premium and administrative expenses of policyholders; and
- The impact of this coverage on the total cost of health care.

*As of the date of the publication of this analysis, no such report has been submitted to the Health Services Subcommittee.*

### **Other States – Health Insurance Mandates - Autism**

Currently, eight states require insurers to either offer coverage or provide coverage for autism: California, Louisiana, Maine, Montana, New Hampshire, New Jersey, South Carolina, and Virginia. Typically, autism is included as part of a “mental health parity” mandate. In addition, Georgia prohibits insurers from denying health insurance benefits because of a diagnosis of autism.

### **Autism**

Autism Spectrum Disorders (ASD) is a category of developmental disorders characterized by three features: 1) impairments of social interaction; 2) impairment in verbal and nonverbal communication; and 3) a restricted repertoire of activities and interests described as an “insistence on sameness.” Autism is now understood to be of neurogenic origin meaning that it is due to abnormal brain function. ASD is also referred to as Pervasive Developmental Disorders (PDD) and includes five subcategories: Autistic Disorder; Rett’s Disorder; Childhood Disintegrative Disorder; Asperger’s Disorder; and PDD-Not Otherwise Specified (PDD NOS). The prevalence of ASD is now estimated at 3 to 7 per 1,000. The population is very heterogeneous in regard to functioning level and educational needs, which makes it particularly challenging to prepare educators to adequately address the learning needs. Some children with ASD can be educated in a regular classroom but others need a special education classroom. Some children with ASD can learn to read and write, others are nonverbal and some have very significant learning and behavior problems.

### Lovaas Behavioral Therapy

According to Ivar Lovaas, Ph.D., Professor of Psychology, Director, Clinic for the Behavioral Treatment of Children, Lovaas Behavior Therapy, what constitutes an appropriate therapeutic intervention, in part, for a child diagnosed as autistic is the following:

- A behavioral emphasis: This involves not only imposing structure and rewarding appropriate behaviors when they occur, but also applying some more technical.
- Family participation: Parents and other family members should participate actively in teaching their child.
- One-to-one instruction: For approximately the first six months of treatment, instruction should be one-to-one rather than in a group because autistic children at this stage learn only in one-to-one.
- Integration: When a child is ready to enter a group situation, the group should be as “normal” or “average” as possible.

- **Comprehensiveness:** Autistic children initially need to be taught virtually everything. They have few appropriate behaviors, and new behaviors have to be taught one by one.
- **Intensity:** As a corollary for the need for comprehensiveness, an intervention requires a very large number of hours, about 40 hours a week, at least during the first six months of the intervention, should consist of remediating speech and language deficits. Later, this time may be divided between promoting peer integration and continuing to remediate speech and language deficits.

The costs of Lovaas therapy range enormously depending on whether parents pay for all therapy themselves, or whether some therapy is subsidized (i.e., through various governmental programs) or provided by volunteers. Parents and therapists should receive at least some training from a workshop or consultant, and the costs of this range enormously (from about \$80 to over \$3000). A study of US parents providing Lovaas type therapy found that the average cost was \$1237 per month for approximately 30 hours per week of therapy (1997). [<http://aca.ninemsn.com.au/factsheets/51.asp>]

## **State-funded Coverage for the Treatment of Autism**

### Medicaid

Physical therapy, speech-language therapy, and occupational therapy are available, subject to certain eligibility requirements and coverage limits, under Florida's Medicaid State Plan. These services are not specifically provided for the treatment of people with autism, but for people with indicators for the particular service.

The Medicaid therapy program provides therapy services to Medicaid recipients under the age of 21 when the service is determined to be *medically necessary*. The behavioral health program provides services to individuals diagnosed with a *mental illness*. Autism and other *developmental disabilities* (i.e., mental retardation) are *not included* in the list of diagnoses covered by the Community Mental Health Program. However, if an individual is diagnosed with both a mental illness and autism, the individual is eligible for behavioral interventions.

### Developmental Disability

"Developmental Disability" is a broad term that refers to a variety of conditions that interfere with a person's ability to function in everyday activities. Chapter 393, Florida Statutes, defines developmental disabilities as spina bifida, **autism**, cerebral palsy, Prader-Willis syndrome and mental retardation. This chapter charges the Department of Children and Families (DCF) with providing services, particularly community-based services, to ensure the well being and improve the quality of life of individuals with developmental disabilities. Section 393.066, Florida Statutes, specifically directs DCF to purchase these services through contracts with private businesses, not-for-profit corporations, units of local government and other organizations capable of providing the services in a cost-efficient manner.

Children and adults with ASD have the following options for services in the state of Florida:

- Children birth to three years of age can receive services including speech therapy, occupational therapy, physical therapy, early intervention, and therapeutic equipment through Part C of the Individuals with Disabilities Education Act (IDEA), if they have a documented developmental delay, which is provided by Children's Home Society in the panhandle of Florida. These therapies usually amount to 1 to 4 hours per week, total.
- Children three to 21 years of age can qualify for Developmental Services offered by the Department of Children and Families. Children who have a diagnosis of autism are eligible for developmental services, leading to the Medwaiver program, which currently has approximately 10,000 individuals on a waiting list. Medwaiver is funded through Medicaid dollars and state and federal funds. If served by this program, individuals can receive speech therapy,

occupational therapy, physical therapy, behavior therapy, respite, equipment, and group home placement. However, many children are on the waiting list and, therefore, do not receive services. Children also may receive health services from Children's Medical Services in the Department of Children and Families if they have a diagnosis of autism and are eligible for Medicaid.

- Children three to 21 years of age can also qualify for special education in the public schools within Part B and A of the IDEA. The Florida Department of Education (DOE) eligibility for children with ASD is complicated because the IDEA recognizes Autistic Disorder or autism but not the other subcategories of ASD. DOE is currently working on drafting revisions of the eligibility criteria for children with autism. So children with Asperger's Disorder or PDD-NOS may only qualify if the school districts are flexible or if they have significant developmental delays that meet eligibility in other categories. Children are provided with special educational placements if needed, and speech therapy, occupational therapy, physical therapy or behavior services if it is determined that these needs are educationally relevant. The amount of therapies received in the schools is typically 30 to 60 minutes per week in some cases so the quality of the educational program is the critical component affecting children's outcomes.

Adults with ASD are eligible for vocational rehabilitation and the Center for Independent Living. Behavior therapies are not provided by the State. Children and adults of any age can become clients of the state-funded Center for Autism and Related Disabilities (CARD). There are six centers in the state and they provide training and technical support for teachers or other individuals and families of individuals with ASD. While CARD does not provide therapies it can train the therapists or teachers how to work with individuals with ASD effectively.

### Exceptional Education

Since 1975, the Individuals With Disabilities Education Act (P.L. 101-476), has required states to provide all children with disabilities, ages three through twenty-one, with the right to a free appropriate public education in the "least restrictive environment." Serving children in the "least restrictive environment" means that where appropriate, students with disabilities are educated in the regular education setting with supports and services. IDEA assists states in meeting these requirements by providing for the funding of each state based on the number of identified disabled children residing within its borders (20 U.S.C. 1400-1485). The IDEA defines children with disabilities as:

- Children with mental retardation;
- Hearing impairments (including deafness);
- Speech or language impairments;
- Visual impairments (including blindness);
- Serious emotional disturbance;
- Orthopedic impairments;
- *Autism*;
- Traumatic brain injury;
- Other health impairments; or
- Specific learning disabilities.

In accordance with the IDEA, each school district is responsible for providing students with autism with a free appropriate public education. These students, regardless of severity of impairments and the presence of coexisting conditions, share some common characteristics including requiring supports in the areas of communication, social skills, behavior and responses to sensory stimuli. The student's individual educational plan (IEP) should address the student's need for specially designed instruction, behavioral supports, communication, and social skills. Speech-language therapy, occupational therapy, and physical therapy may be helpful in improving the student's ability to function in the school setting. Early intervention is especially important for children diagnosed with autism. Interventions

implemented during this critical period have shown to significantly increase a child's skills and capacities for life-long learning.

School districts are required to provide those services that are needed in order for the student to receive educational benefit. Additional speech therapy, occupational therapy, physical therapy, and behavioral intervention services may be recommended, or even required, if the student's progress is to be maximized but these services would not have to be provided by the school district.

As of December 2, 2002, the total number of students, ages 3-21, with a primary or secondary eligibility in Autism, that are served through Florida's public school system is 6,461. The total number of students with Autism Spectrum Disorders is likely to be much larger but there is no way for the Department of Education to accurately identify those students.

### **Governor's proposed FY 2003-2004 Budget relating to "Developmental Disabilities"**

The Governor's proposed FY 2003-2004 Budget is requesting a \$162.6 million for services for persons with developmental disabilities. The recommendation includes an additional \$90 million in general revenue and \$72 million in federal funds to ensure the continued expansion of services for persons with developmental disabilities. These new funds will be used to serve the new wait list that has accumulated since 1999, provide personal needs and respite care, help redesign and update current program methodologies, and to cover funding shortfalls. In total, the Governor's budget recommends \$1.01 billion for developmental services, a 14.6 percent increase over the current year funding and a 101 percent increase over the last four years. It is anticipated that by June 2003, more than 39,000 developmentally disabled Floridians will have access to the full range of needed services and supports. [<http://www.myflorida.com>]

### **Private Sector Coverage**

Currently, many health insurers and health maintenance organizations (HMOs) either do not provide coverage for treatment of autism and related disorders or provide limited coverage of autism and related disorders related to necessary medical treatment. However, health insurers and HMOs typically exclude nonmedically related therapies such as speech-language therapy,<sup>3</sup> occupational therapy,<sup>4</sup> and physical therapy.<sup>5</sup> The typical rationale posited for excluding the nonmedically related therapies is that those therapies are related to the *developmental disorder* aspect of autism which should be treated as an *educational issue* and not related to a *medical disorder* which is eligible to be treated under *health insurance*.

#### **C. SECTION DIRECTORY:**

**Section 1.** Creates new section "Health Insurance coverage for autism spectrum disorder"; provides a definition; prohibits health insurers and health maintenance organizations from excluding coverage of physician-ordered treatment for autism spectrum disorder; specifies coverage is subject to same terms and conditions as applies to other disorders; authorizes confirmation of a diagnosis or review of appropriateness of a treatment plan; limits such confirmation to diagnostic and treatment services; excludes affect of section on scope of licensure of any health care professional; and excludes affect of section to impair any right to reimbursement which is otherwise guaranteed to a health care provider.

**Section 2.** Provides legislative finding of important state interest.

**Section 3.** Provides the act takes effect July 1, 2003.

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<sup>3</sup> Speech-language Therapy: People with autism usually have delays in communication. Speech therapists look for a system of communication that will work for an individual with autism and may consider alternatives to the spoken word such as signing, typing, or a picture board with words.

<sup>4</sup> Occupational Therapy: Commonly this therapy focuses on improving the fine motor skills, such as brushing teeth, feeding, and writing, or sensory motor skills that include balance, awareness of body position, and touch.

<sup>5</sup> Physical Therapy: This therapy specializes developing strength, coordination, and movement.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill requires health insurers and health maintenance organizations regulated by the state to provide treatment coverage to individuals diagnosed with autism spectrum disorder. Currently, many of these treatments, therapies, interventions, and behavioral therapies are provided by the state in a limited fashion. However, there is currently a waiting list of over 10,000 for these state-provided services. To the extent that these individuals have state regulated health insurance or health maintenance organization coverage, these services would be paid for by the insurers or HMOs instead of the state. However, since there are approximately 10,000 people on the waiting list for developmental disability services, any reduction of costs related to services individuals covered by this bill would likely be offset by individuals on the waiting list.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

While the bill has not direct impact on local government, it will, to the extent that local governments participate in funding health insurance for its employees, likely increase the cost for such health insurance.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Congressional Budget Office, every one percent increase in private insurance premiums results in 200,000 additional uninsured Americans. The Florida Chamber of Commerce extrapolated that number and has determined that "for every one percent increase in health insurance premiums between 12,000 and 18,000 Floridians lose their health insurance coverage.

The bill will benefit individuals diagnosed with autism spectrum disorder by requiring the policies and contracts to provide coverage for the various nonmedically related treatments and therapies for the treatment of autism.

### D. FISCAL COMMENTS:

According to the Florida Chamber Federation, affordable quality health coverage for Florida's citizens is key to maintaining the state's economic health. Florida employers are not required by law to provide health benefits to their employees, but according to the most recent Florida Chamber survey, 76% do. However, this number has dropped from 77% in 2001, 86 % in 2000, and 91% in 1999. According to the Chamber Federation, they expect this trend will continue, unless solutions are developed to keep costs down.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

Section 624.215, Florida Statutes., requires any proposal for legislation which mandates a health benefit coverage be submitted with a report to the Agency for Health Care Administration and the legislative committee having jurisdiction which assesses the social and financial impacts of the proposed coverage. No such report has been submitted.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**