# Health Coverage Options

## FOR AUTISM AND OTHER DEVELOPMENTAL DISABILITIES:

A Guide for Parents and Professionals

## ABOUT AUTISM NEW JERSEY

Autism New Jersey is a nonprofit agency committed to ensuring safe and fulfilling lives for individuals with autism.

Through awareness, credible information, education, and public policy initiatives, Autism New Jersey leads the way to lifelong individualized services provided with skill and compassion. We recognize the autism community's many contributions to society and work to enhance their resilience, abilities and quality of life.

Autism New Jersey serves as a collective and influential voice for the community and systematically and compassionately improves the lives of individuals with autism every day through our four core service pillars:

**Information Services · Education and Training · Public Policy · Awareness**

We're proud to have been serving the autism community in New Jersey since 1965.

## ABOUT SPAN

Funding for the printing of this guide is provided by The Statewide Parent Advocacy Network (SPAN). Funding for the initial development of this guide was provided by the U.S.Department of Health and Human Services Maternal and Child Health Bureau.

SPAN provides information, training, technical assistance, support, advocacy, and leadership development for families of children birth through 26 across systems, to enable families to advocate on behalf of their children and youth. SPAN is New Jersey's federally-designated Parent Training and Information Center and Family to Family Health Information Center.

**SPAN's motto is Empowered Parents: Educated, Engaged, Effective!**

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# Introduction

*When a child is diagnosed with autism or another developmental disability, families may look to their health plan to find out if treatment is covered.*

This guide was created for parents and professionals who need to understand health coverage options for the treatment of autism and other developmental disabilities. It describes different types of health coverage plans, what federal and state laws apply to these types of plans, how those laws affect what benefits are covered, and it provides tips on accessing benefits.

Ensuring that children receive the full range of intervention available through their health coverage is a collaborative effort between parents and professionals. Understanding the type of coverage a family has and what is required under federal and state laws can help parents and professionals confidently navigate the process.

## Types of Health Plans

### and How They Affect Coverage

When describing health coverage plans, it is common to use the term *insurance* to describe how medical expenses are paid. However, being *covered* is not necessarily the same as being *insured* and it can mean the difference as to whether or not the plan must cover the expense.

Various state and federal laws are in place to protect individuals and ensure that they receive the health care they need. Some laws were broadly designed to protect consumers from being excluded from coverage due to circumstances such as a pre-existing medical condition; others were designed to protect individuals with specific health care needs, such as those needing treatment for mental illness.

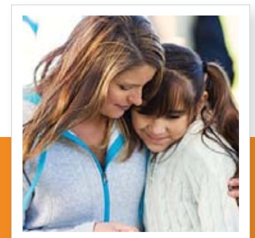
Whether or not a plan must comply with an insurance law depends on the type of plan, and whether the law was enacted on the state or federal level.

This guide explores important laws that protect individuals with autism or other developmental disabilities (DD), and explains why federal and state insurance laws apply to some plans but not others. **Let's get started.**

**What this guide will do**

Understanding the Most Common Types of

# Health Coverage



## Public Health Plans

**A public health plan is one run by the state to cover individuals with low income and/or disabilities, or the elderly.**

### MEDICAID/NEW JERSEY FAMILYCARE

Medicaid is a state- and federally-funded public health insurance program that provides medical and health services to individuals with low income and/or disabilities. In New Jersey, Medicaid is known as NJ FamilyCare, and is administered by The Division of Medical Assistance and Health Services (DMAHS). NJ FamilyCare includes people enrolled in the Children's Health Insurance Program (CHIP), Medicaid and Medicaid expansion. Children in Medicaid benefit from the EPSDT (Early Periodic Screening Diagnostic & Treatment) provision. According to a guidance memo issued by the Federal Center for Medicaid & CHIP Services, "the EPSDT benefit is more robust than the Medicaid benefit package required for adults and is designed to assure that children receive early detection and preventive care, in addition to medically necessary treatment services, so that health problems are averted or diagnosed and treated as early as possible." Although NJ FamilyCare is not currently required by law to cover therapy such as Applied Behavior Analysis (ABA), it can provide some coverage of autism services through EPSDT, such as developmental screenings. The memo is available at ✔ **https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/CIB-07-07-14.pdf**

### MEDICARE

Medicare is a federal health insurance program that pays for hospital and medical care for people age 65 and older and some individuals with disabilities under age 65.

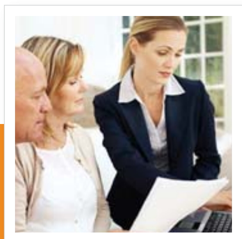
Medicare is not mandated to cover specific therapy for autism or other developmental disabilities.

Understanding the Most Common Types of

# Health Coverage

## Employer-Sponsored and Individual Plans

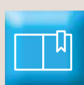
**In New Jersey, many individuals have health coverage for themselves and their families through plans sponsored by private-sector employers. Employees may contribute to a monthly amount for coverage, and depending on the employer, the plan is either a self-funded/self-insured or fully-insured plan. In some cases, individuals have private plans that they purchase from an insurance company, either directly or through the health insurance marketplace.**



### FULLY-INSURED PLANS

A fully-insured plan is one in which an employer or an individual purchases a plan from an insurance company to cover the cost of health care. Under these plans, the insurance company directly assumes the risk and pays claims for covered treatment and services.

Individuals can purchase fully-insured individual plans for themselves and their families. They can obtain the plan directly from an insurance company or if they can benefit from a premium subsidy, through the health insurance marketplace.

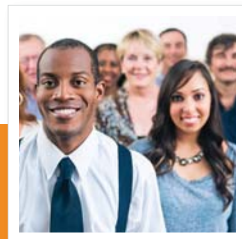


Fully-insured plans are subject to the insurance laws of the state in which the policy is issued.

### SELF-FUNDED PLANS

Under a federal law called the Employee Retirement Income Security Act (ERISA) of 1974, employers can create self-funded health benefit plans. This means that rather than buying insurance from an insurance company, an employer or union will create a fund to cover the cost of employees' or members' health care. The cost of treatment and services is paid for out of the fund, and the employer assumes the risk of covering the individuals under the plan. Many self-funded plans are administered by a third party (such as an insurance company), which at the direction of the employer, negotiates costs, processes claims, and performs other administrative tasks, such as customer service. These plans are common among large employers, although some small employers may also self-fund.

Self-funded plans are only subject to federal laws and are exempt from state insurance mandates, including the autism and other DD insurance mandate.



### STATE EMPLOYEE HEALTH PLANS

The New Jersey State Health Benefits Program and the School Employees Health Benefits Program cover state employees. Although these are technically self-funded plans, they must comply with some state health insurance mandates.

Most Common Types of Health Coverage in New Jersey

Medicaid/ NJ FamilyCare

Medicare

Fully-Insured Plans

Self-Funded Plans

State Employee Health Plans

# Health Coverage Laws

## that Protect People with Autism and Other Developmental Disabilities

### BIOLOGICALLY BASED MENTAL ILLNESS (BBMI) MANDATE

In 1999, New Jersey enacted a law that required all health insurers in the state to cover treatment of biologically-based mental illness, which is defined to include pervasive developmental disorder or autism, according to the same conditions for other illnesses and diseases. Treatments such as speech, occupational and physical therapy for autism had to be provided without regard to whether or not the treatment was restorative. It also ensured that copayments, deductibles, and benefit limits for biologically-based mental illness could not be higher or more restrictive than those for medical and surgical benefits.

This law helped people with autism access some treatment, but it did not include coverage for Applied Behavior Analysis (ABA) for autism. As a state mandate, it only applies to group and individual plans issued in New Jersey.

✔ **See http://www.njleg.state.nj.us/9899/Bills/PL99/106_.PDF**

### MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT (MHPAEA)

The Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008 is a federal law and the successor of the Mental Health Parity Act (MHPA) of 1996. MHPAEA requires group health plans to provide mental health care coverage according to the same terms that they provide medical and surgical benefits. MHPAEA went into effect on October 3, 2009.

The law applies to employers with more than 50 employees with self-funded or fully-insured plans. Small employers who have fewer than 51 employees are exempt, but they are still subject to state mental health parity laws. Insurance plans in the individual insurance market are also exempt.

In addition, under MHPAEA, group health plans whose costs increase by 2% or more because parity is in place can claim exemption.

Plans must comply for one year to become exempt from parity for the following year, but exemption can only be claimed for alternating plan years. More information about MHPAEA is available on the Department of Labor's website at ✔ **www.dol.gov/ebsa/newsroom/fsmhpaea.html** or on the Federal Register website: ✔ **http://federalregister.gov/a/2010-2167**

### HEALTH BENEFITS COVERAGE FOR AUTISM AND OTHER DEVELOPMENTAL DISABILITIES

On August 13, 2009, New Jersey became the 15th state to pass a law mandating autism insurance coverage and the first to expand its protections to children with other developmental disabilities. It is important to note that NJ was the only state to expand this beyond autism to include other developmental disabilities. P.L. 2009 c. 115 Health Benefits Coverage for Autism and Other Developmental Disabilities requires insurers subject to the mandate to cover:

- Expenses for screening and diagnosis of autism spectrum disorders (ASD) or other developmental disability (DD).
- Medically necessary physical therapy, occupational therapy and speech therapy.
- Medically necessary behavioral intervention based on the principles of applied behavior analysis (ABA) for the treatment of autism.
- Certain family cost share expenses incurred through the New Jersey Early Intervention System.

The full text of the mandate, with statutory codifications for each plan type, is available at ✔ **www.njleg.state.nj.us/2008/Bills/PL09/115_.htm**

The New Jersey Department of Banking and Insurance (DOBI) issued an advisory bulletin on January 14, 2010 to all New Jersey health benefit plan providers regarding the implementation of the mandate. The full text of the bulletin is available at

✔ **www.state.nj.us/dobi/bulletins/blt10_02.pdf**

When it was implemented, the law specified that ABA for people with autism was for individuals under 21, and it set a cap of $36,000 per year for ABA. Due to the federal Patient Protection and Affordable Care Act (ACA), the dollar amount cap no longer applies.

In addition, the implementing regulations under MHPAEA preclude use of the age limit of 21 years for applied behavior analysis, as well as visit limits for speech, occupational and physical therapy.

Therefore, in 2014 DOBI adopted amendments to small employer and individual plans to comply with federal regulations. Autism New Jersey provided clinical expertise and technical assistance in support of the amendments, which are summarized on the DOBI website:

✔ **http://www.state.nj.us/dobi/division_insurance/ihcseh/rules/seh1014/adopt/summary.pdf**

✔ **http://www.state.nj.us/dobi/division_insurance/ihcseh/rules/ihcprn1014/proposalsummary.pdf**

# Health Coverage Laws

## that Protect People with Autism and Other Developmental Disabilities

### PATIENT PROTECTION AND AFFORDABLE CARE ACT (PPACA)

The Patient Protection and Affordable Care Act (PPACA) was enacted in 2010. It includes 10 Essential Health Benefits, including “mental health and substance use disorder services including behavioral health treatment.” It is important to note that advocates are seeking clarification of “behavioral health treatment” as it relates to autism and other developmental disabilities for coverage of interventions such as Applied Behavior Analysis.

**Other important essential health benefits include** rehabilitative and habilitative services and devices (services and devices to help people with injuries, disabilities, or chronic conditions gain or recover mental and physical skills) and preventive health services. **For children, preventive services include:** autism screening for children at 18 and 24 months; behavioral assessments for children ages: 0 to 11 months, 1 to 4 years, 5 to 10 years, 11 to 14 years and 15 to 17 years; and developmental screening for children under age 3.

# Limited Applicability

## of State Insurance Mandates

Not all health plans are required to comply with New Jersey insurance mandates. Because the autism and other DD mandate was passed in New Jersey, only fully-insured plans issued in New Jersey, the NJ State Health Benefits program and the School Employees' Health Benefits program are subject to the requirements. No other private or public health plans are subject to it.

Because the federal ERISA law supersedes state law, self-funded health plans are exempt from state insurance regulations. Plans covering federal government employees are also exempt; however, the military offers coverage, including ABA benefits, through its health insurance plan, TriCare.

In addition, the U.S. Office of Personnel Management (OPM), which is responsible for providing health insurance benefits to Federal employees, has determined that all plan carriers must offer medically necessary applied behavior analysis for children with autism starting in 2017.

Some companies with self-funded plans voluntarily provide coverage for autism therapies. Consumers with self-funded insurance plans can ask their plan administrator or employer benefits department if they cover services.

When individuals are covered by a fully-insured plan AND the contract state is New Jersey, they are eligible for benefits under the autism and other DD mandate.

The autism and other DD mandate does not apply to New Jersey residents whose fully-insured plans are written in another state. However, more and more states have adopted mandates for the coverage of autism treatment. In those cases individuals can obtain coverage under the requirements for that particular state. For example, someone whose fully-insured plan is written in the state of Pennsylvania can seek coverage for therapies under Pennsylvania's autism insurance mandate for a child with autism. However, most other state mandates do not include developmental disabilities other than autism.

### Reference Chart of Insurance Laws and Applicability to Plans

| | BBMI | MHPAEA* | Autism & Other DD | PPACA |
|---|---|---|---|---|
| **NJ Fully-Insured** | yes | yes (for some group health plans) | yes | yes |
| **Medicaid/Medicare** | no | must comply with some requirements | no | yes |
| **Self-Funded** | no | yes (for some plans) | no | yes (for non-grandfathered plans) |
| **SHP and SEHB** | no | yes | yes | yes |

* For a detailed description of MHPAEA requirements and exceptions see ✔ **https://www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/mhpaea_factsheet.html**

# Treatments Covered

## Under the Autism and Other Developmental Disabilities Mandate

### ABA:

Under the mandate, individuals with autism spectrum disorder (ASD) can be covered for Applied Behavior Analysis (ABA) and related structured behavior programs, as long as they meet the carrier's criteria for medical necessity. While ABA is widely considered to be an effective, evidence-based treatment for autism spectrum disorders, ABA was excluded as a mental health benefit, as it was classified as an "educational intervention" or as an "investigational" treatment.

### SPEECH/OT/PT:

Treatment for speech, occupational and physical therapy is also eligible for coverage, if the individual's need is determined to be medically necessary by the plan carrier. Initial treatment cannot automatically be denied on the basis that it is non-restorative. (For example, someone with autism who has never spoken may be eligible to begin speech therapy services in the same way that someone who lost speech due to injury would be eligible.) Ongoing coverage would be subject to a review of whether treatment continues to be medically necessary.

### NJEIS COST SHARE:

In addition, certain expenses for the family cost share incurred through the New Jersey Early Intervention System (NJEIS) are reimbursable under the mandate. If the cost share is associated with speech therapy, occupational therapy, physical therapy or ABA, families can pay their cost share directly to NJEIS and then submit a claim to their plan carrier forreimbursement. This is a separate benefit from coverage of therapies, and does not reduce the services that the individual can receive privately.

**INDIVIDUALS WITH AUTISM SPECTRUM DISORDER (ASD) CAN BE COVERED FOR:**

- ✔ Applied Behavior Analysis
- ✔ Speech Therapy
- ✔ Occupational Therapy
- ✔ Physical Therapy

# Steps to Accessing Benefits

*The Autism and Other DD Mandate requires coverage of speech, occupational, and physical therapy and coverage of Applied Behavior Analysis (ABA) for individuals with autism. In order to be covered, the proposed treatments must meet the carrier's definition of medically necessary.*

### DEVELOPING A TREATMENT PLAN

Services are to be delivered in the form of a treatment plan. While there is no standard format for a treatment plan, certain elements are required under the law.

**A treatment plan must include:**

Diagnosis

Proposed treatment by type, frequency and duration

Anticipated outcomes stated as goals

Frequency by which the treatment plan will be updated

Treating physician's signature

### AFTER A TREATMENT PLAN IS AUTHORIZED

Once a treatment plan is in place, the insurer can request an updated plan every six months to review medical necessity. An exception would be if the insurer and treating physician agree to review the treatment plan more frequently.

**WHAT IS MEDICALLY NECESSARY?**

- ✔ Defined by the health plan
- ✔ Determines whether or not a treatment will be covered

**HOW DO I FIND OUT WHAT IS MEDICALLY NECESSARY?**

- ✔ Insurer's website
- ✔ Parents/providers can contact insurer for a copy of the medical necessity criteria

## Parent and Provider Collaboration

Make sure insurer considers it medically necessary

Get confirmation in writing

Take notes when speaking to a customer service representative

Keep an insurance file of all documents

### MAXIMIZING BENEFITS THROUGH PARENT AND PROVIDER COLLABORATION

Treatment providers can play an important part in ensuring that families receive coverage for needed services by being knowledgeable about insurers' medical necessity criteria for the screening and treatment of ASD and other DD. With this knowledge, the provider can better determine if their proposed treatment plan will be authorized. All insurers make this information available on their website, or parents and providers can contact the insurer for a copy of the criteria.

Any time a determination of benefits is made, parents or professionals should request that the information be put in writing. A phone inquiry alone should not be considered confirmation that services will be covered.

It is also helpful to take notes whenever you speak to a customer service representative and to obtain the name or identification number of any representative you speak with about benefits. Parents may also be able to ask for a case manager at the insurance company to be assigned to them so that they and the treatment providers can communicate with the same person regarding coverage questions.

Just as parents keep an educational file for their child, it is equally important to keep an insurance file. Keep all documents chronologically arranged, starting with the most recent. Important documents include copies of treatment plans, written determinations of benefits from the insurance provider, copies of receipts for any out-of-pocket expenses, explanation of benefits (EOB) forms from the insurer, as well as all written notes from conversations with insurance representatives and treatment providers. Having these records readily accessible is necessary in the event of a disagreement or when filing an appeal.

Most major insurers also provide member services and provider services online, including access to claim payment information, explanation of benefits, and other information.

# More on ABA Providers and Credentialing

Although the State of New Jersey does not currently require a license to practice applied behavior analysis (ABA), some practitioners complete a voluntary certification program through the Behavior Analyst Certification Board®, Inc. (BACB®), which "adheres to the national standards for boards that grant professional credentials." The BACB defines its mission as "to develop, promote, and implement an international certification program for behavior analyst practitioners."

**The BACB has established uniform content, standards, and criteria for the credentialing process that are designed to meet:**

| 1 THE LEGAL STANDARDS | 2 THE ACCEPTED STANDARDS | 3 THE BEST PRACTICE |
|---|---|---|
| established through state, federal and case law | for national certification programs | and ethical standards of the behavior analysis profession |

Professional certifications offered by the BACB are: Board Certified Behavior Analyst – Doctoral (BCBA-D), Board Certified Behavior Analyst (BCBA), Board Certified Assistant Behavior Analyst (BCaBA). The BACB also offers a Registered Behavior Technician (RBT) designation. ✔ **visit www.bacb.com**

In its bulletin to insurers, DOBI advises carriers to consider ABA services as eligible for benefits if the services were "administered directly by or under the direct supervision of an individual who is credentialed by the national Behavior Analyst Certification Board as either: a Board Certified Behavior Analyst - Doctoral (BCBA-D); or a Board Certified Behavior Analyst (BCBA)." This means some aspects of an ABA treatment plan may be provided by a staff member without these credentials, as long as the overall program is developed and supervised by a credentialed individual.

**The BACB defines its mission as "to develop, promote, and implement an international certification program for behavior analyst practitioners."**

# Claim
## Denials and Appeals

Claims for health benefits submitted by individuals or providers can be denied for various reasons. For example, the health plan may have determined that a service was not medically necessary or was excluded from the plan benefits, or they did not receive enough documentation to process the claim.

Regardless of the type of plan, consumers have the right to appeal a denial or other adverse decision. While the specifics of the appeals process depend on the plan (fully-insured, self-funded, etc.), there are generally three stages: two internal appeals, and if both appeals are unsuccessful, a third external appeal that is submitted to a neutral party. Individual plans have one internal appeal and then go to external appeal.

**THERE ARE GENERALLY 3 STAGES OF THE APPEALS PROCESS:**

1. Internal appeal
2. Internal appeal
3. External appeal that is submitted to a neutral party

In all cases, there are time frames that must be followed for each stage of appeal – for both the consumer filing the appeal as well as for the plan to review and make a determination.

Persons covered by fully-insured plans in New Jersey can direct their stage three appeals to the New Jersey Department of Banking and Insurance. A detailed guide to the process is available on their website:

✔ **http://www.state.nj.us/dobi/division_consumers/insurance/appealcomplaintguide.pdf**

A guide to filing claims and appeals for employees covered by self-funded plans is available on the Employee Benefits Security Administration website:

✔ **http://www.state.nj.us/dobi/division_consumers/insurance/appealcomplaintguide.pdf**

Community Catalyst has a consumer complaints toolkit found at

✔ **http://www.communitycatalyst.org/resources/tools/consumer-complaints-toolkit**

# Resources
## for Additional Help or Information

### AUTISM NEW JERSEY

If you have additional questions related to your eligibility or specific services under the autism insurance mandate, contact Autism New Jersey, the state's most valued and reliable resource for referrals, services and the latest information about autism.

Our 800.4.AUTISM Helpline provides families and professionals with specific and important information about autism treatment and services available in New Jersey. The Helpline is a valuable and reliable resource for up-to-date information about autism and often acts as the first line of support for parents as well as a starting point for navigating services in the state of New Jersey.

Because many families continue to face barriers to coverage, Autism New Jersey has made health insurance advocacy a priority. Our Helpline staff provides guidance to parents and providers about healthcare coverage options and how to maximize benefits. A section of our website is dedicated to health coverage and autism and includes carrier-specific contact information for parent and provider inquiries:

✔ **http://www.autismnj.org/insurance**

Our public policy team, informed by input from families and providers, leads a workgroup of providers and insurance carriers to resolve systemic issues.

✔ **http://www.autismnj.org/public-policy/health_insurance**

### STATEWIDE PARENT ADVOCACY NETWORK - SPAN

For information and assistance on education, health/mental health, human services, and other supports for children and families, contact the Statewide Parent Advocacy Network at 800.654.SPAN.

# Additionally,
## you can refer to the following resources:

### THE INSURANCE PROVIDER

Contact insurers directly regarding medical policies related to the evaluation and management of ASD and other DD, including medical necessity criteria and your specific benefits. These are available online or you can contact your insurer to request a copy. You can also refer to your member handbook, which will include information on coverage for ASD and other DD.

### FAMILY TO FAMILY HEALTH INFORMATION CENTER @ FAMILY VOICES-NJ

SPAN is the Family Voices State Affiliate Organization for National Family Voices. The Family to Family Health Information Center works to enhance access to quality healthcare and other services for children, youth and young adults with special healthcare needs and their families, and to support families in their parenting and advocacy to promote positive health and wellness for their children. Family Voices-NJ, affiliated with National Family Voices, works to "keep families at the center of children's healthcare."

✔ **http://www.spanadvocacy.org/content/family-family-health-information-center-family-voices-nj**

### THE NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE (DOBI)

DOBI provides information on its website to assist consumers in insurance-related matters, including an Appeal and Complaint Guide

✔ **http://www.state.nj.us/dobi/division_consumers/insurance/appealcomplaintguide.pdf**

For New Jersey insurance plans, DOBI reviews benefit disputes where the dispute concerns whether or how the policy covers a service or supply as well as medical necessity disputes.

✔ **http://www.state.nj.us/dobi/consumer.htm**



# Notes:

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