

Developmental Disabilities Compact

as adopted by
The Developmental Disabilities Compact Workgroup
December 17, 2008

The contracting participants solemnly agree that:

Article I. Purpose

The purpose of this Compact is to create a binding agreement among the participants relating to insurance and access to services for persons with developmental disabilities, pursuant to the "Window of Opportunity Act," section 624.916, Florida Statutes.

The participants to this compact find that providing medical coverage and services to persons with developmental disabilities can be improved through cooperative efforts between providers of health care benefits, providers of medical services, government regulators, and affected individuals for the benefit of patients, their families, and society as a whole. It is the purpose of this compact and of the signing parties to initiate or supplement coverage for behavior analysis, speech therapy, physical therapy, and occupational therapy services for persons with developmental disabilities when such services are determined to be medically necessary.

Article II. Definitions

As used in this compact:

- (a) "Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including, but not limited to, the use of direct observation, measurement, and functional analysis of the relations between environment and behavior.
- (b) "Developmental disabilities" includes:
 - 1. The term as defined in s. 393.063;
 - 2. Down syndrome, a genetic disorder caused by the presence of extra chromosomal material on chromosome 21, which may include Trisomy 21, Mosaicism, Robertsonian Translocation, and other duplications of a portion of chromosome 21; and
 - 3. Autism spectrum disorder, as defined in s. 627.6686.
- (c) "Eligible individual" means an individual under 18 years of age or an individual 18 years of age or older who is in high school who has been diagnosed as having a developmental disability at 8 years of age or younger.

- (d) "Health plan" means a group health insurance policy offered by an insurer or health benefit contract offered by a health maintenance organization and includes plans offered by the state group insurance program provided under s. 110.123. The term does not include any health insurance policy or health maintenance organization contract offered in the individual market, any policy or contract that is individually underwritten, or any policy or contract provided to a small employer.
- (e) "Insurer" means an insurer or health maintenance organization providing health insurance coverage or health benefits, which is licensed to engage in the business of insurance in this state and is subject to insurance regulation.
- (f) "Medically necessary" means a covered service that will, or is reasonably expected to accomplish one or more of the following:
 - 1. Arrive at a correct medical diagnosis.
 - 2. Prevent the onset of an illness, condition, injury, or disability.
 - 3. Reduce, correct, or ameliorate the physical, mental, developmental, or behavioral affects of an illness, condition, injury, or disability.
 - 4. Assist in the achievement or maintenance of sufficient functional capacity to perform age-appropriate or developmentally appropriate daily activities.
- (g) "Office" means the Florida Office of Insurance Regulation.

**Article III.
Covered Services**

- (a) Each signatory to this compact agrees to provide coverage for applied behavior analysis, speech therapy, physical therapy, and occupational therapy to persons with developmental disabilities when determined to be medically necessary. Each signatory insurer agrees to provide the level of coverage for behavior analysis and behavior assistant services, speech therapy, physical therapy, and occupational therapy to persons with developmental disabilities when determined to be medically necessary.
- (b) Individuals, enrolled in a health plan as defined herein, under 18 years of age or an individual 18 years of age or older who is in high school who has been diagnosed as having a developmental disability at 8 years of age or younger, are eligible for the coverage contemplated and agreed to by the signatories to this compact.
- (c) Coverage to an eligible individual pursuant to this compact shall include, at a minimum, well-baby and well-child screening for diagnosing the presence of a developmental disability, and the treatment of a developmental disability through speech therapy, occupational therapy, physical therapy, and applied behavior analysis. Applied behavior analysis services shall be provided by an individual certified pursuant to s. 393.17 or an individual licensed under chapter 490 or chapter 491.

- (d) Determinations of covered services required shall be made on the basis of health information provided by the individual and individual's family, the primary care physician, consultants with appropriate specialty training, as well as other providers that may have evaluated the individual's condition. Such determinations must consider:
 - 1. The functional capacity of the person and capacities appropriate for persons of the same age or developmental level.
 - 2. Available research findings, health care practice guidelines, and standards issued by professionally recognized organizations or government agencies.
- (e) Services must be delivered in a setting appropriate to the specific health needs of the individual.
- (f) Coverage shall be limited to treatment that is prescribed by the insured's treating physician in accordance with a treatment plan. Coverage for the services described in section (a) above shall be limited to \$36,000 annually and may not exceed \$200,000 in total lifetime benefits.
- (g) A signatory insurer agrees not to deny coverage on the basis that provided services are habilitative in nature.
- (h) Coverage pursuant to this compact may be subject to other general exclusions and limitations of the insurer's policy or contract, including, but not limited to, coordination of benefits, participating provider requirements, restrictions on services provided by family or household members, and utilization review of health care services, including the review of medical necessity, case management, and other managed care provisions.
- (i) The coverage offered pursuant to this compact may not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to physical illnesses that are generally covered under the health plan, except as otherwise provided in section (f) above.
- (j) A signatory insurer may not deny or refuse to issue coverage for medically necessary services, refuse to contract with, or refuse to renew or reissue or otherwise terminate or restrict coverage for an individual because the individual is diagnosed as having a developmental disability.
- (k) The treatment plan required pursuant to section (f) above shall include all elements necessary for the health plan to appropriately pay claims. These elements include, but are not limited to, a diagnosis, the proposed treatment by type, the frequency and duration of treatment, the anticipated outcomes stated as goals, the frequency with which the treatment plan will be updated, and the signature of the treating physician.
- (l) Beginning January 1, 2011, the maximum benefit under paragraph (f) above shall be adjusted annually on January 1 of each calendar year to reflect any change from the previous year in the medical component of the then current Consumer Price Index for all urban consumers, published by the Bureau of Labor Statistics of the United States Department of Labor.
- (m) Nothing in this compact may be construed as limiting benefits and coverage otherwise available to an insured under a health policy or contract.

**Article IV.
Notice to Policyholders**

Within 15 days of execution of this compact by a signatory representing an insurer, such insurer agrees to provide written notice to its policyholders identifying the amount, scope, and conditions under which coverage is provided for behavior analysis and behavior assistant services as defined in section 409.815(2)(g) Florida Statutes, and speech therapy, physical therapy, and occupational therapy when medically necessary due to the presence of a developmental disability. A copy of such notice to policyholders shall be filed with the Office for informational purposes only.

**Article V.
Penalties**

- (a) Penalties for documented cases of denial of claims for medically necessary services due to the presence of a developmental disability shall be considered willful violations of the Florida Insurance Code, punishable by fine which may not exceed \$40,000 for each such violation. In no event shall such fine exceed an aggregate amount of \$200,000, arising out of the same action. Other fines and penalties, including suspension or revocation of an insurer's certificate of authority, may apply as allowed by the Florida Insurance Code and applicable rules.

- (b) In addition, as often as it deems necessary, pursuant to section 624.3161, Florida Statutes, the Office shall examine an insurer for the purpose of ascertaining compliance with the applicable provisions of chapters 440, 624, 626, 627, and 635. Further, in accordance with section 624.3161, Florida Statutes, findings of a market conduct examination that an insurer has exhibited a pattern or practice of willful violations related to claims-handling which caused harm to policyholders, as prohibited by section 626.9541(1)(i), Florida Statutes is deemed an unfair trade practice and the Office may order an insurer pursuant to chapter 120 to file its claims-handling practices and procedures related to that line of insurance with the Office for review and inspection, to be held by the Office for the following 36-month period. Such claims-handling practices and procedures are public records and are not trade secrets or otherwise exempt from the provisions of section 119.07(1), Florida Statutes.

**Article VI.
Compact Administrator**

Each signatory shall appoint a "compact administrator" who, on behalf of the signatory, shall act as general coordinator of activities under the compact and who shall receive copies of all reports, correspondence and other documents relating to the compact. The compact administrator or his duly designated representative shall be the official with whom other signatories shall deal in any matter relating to the compact. The compact administrator shall submit to the Office no later than December 31, a detailed description of the coverage and services provided pursuant to this compact; the treated prevalence rates occurring pursuant to this compact; and a report of all claims denied with regard to services for developmental disabilities along with the basis for such denial.

Article VII.
Effective Date and Amendment

This compact shall be binding upon any signatory and shall enter into full force and effect as to any signatory upon execution by the signing party. The terms and conditions of the compact may be amended by operation of law or by consent of the majority of signatories existing at the time of the proposed amendment and by Office.

Article VIII.
Withdrawal

A signatory insurer may withdraw from this compact by providing notice in writing to the Office and to all other signatories to the compact. Such withdrawal shall take effect for policies issued or renewed one year after notice thereof has been communicated officially to the Office. The signatory insurer agrees to provide written notice of withdrawal from this compact to all of its policyholders within 30 days of providing notice of its planned withdrawal to the Office. A signatory insurer that withdraws from this compact is subject to the terms of the “Steven A. Geller Autism Coverage Act.”

Article IX.
Severability and Construction

The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable. This compact shall be liberally construed so as to effectuate the purposes thereof.

Article X.

Nothing in this compact shall be construed to abridge, diminish or in any way impair the rights, duties and responsibilities of any individual enrolled in a health plan or HMO. Nothing in this compact shall be construed as providing an individual with an entitlement to health care services.