

Special Education

Administrative Advisory SPED 2012-1

The Autism Insurance Law

To: Superintendents, Charter School Leaders, Principals, Directors of Approved Special Education Private Schools, Directors of Educational Collaboratives, Administrators of Special Education, and Other Interested Parties

From: Marcia Mittnacht, State Director of Special Education

Date: August 22, 2011

I. Introduction

In July 2010, the Massachusetts legislature approved Chapter 207 of the Acts of 2010, An Act Relative to Insurance Coverage for Autism (ARICA)¹. The law became effective on January 1, 2011. An intent of the law is to enable families to obtain additional services, from designated private health insurance providers, for children with autism spectrum disorders (ASD).

The Massachusetts Department of Elementary and Secondary Education (the Department) is issuing this advisory to provide background on ARICA and guidance on how ARICA affects students with ASD. As explained in Section V, below, ARICA does not change school districts' obligations under the federal Individuals with Disabilities Education Act (IDEA) and G.L. c. 71B to provide a free appropriate public education (FAPE) in the least restrictive environment to students with ASD. Nevertheless, understanding ARICA may assist school districts in working with families of students with ASD.

II. Background on ARICA

Massachusetts was the 23rd state to enact legislation expanding health insurance coverage to include certain services for children and adults with ASD, including diagnoses across the spectrum. The law requires designated private health insurance plans/policies to cover medically necessary treatments for individuals with ASD, many of whom were previously excluded or denied coverage based on decades-old policies, developed when much less was known about autism and when effective treatment techniques had not yet been established.

III. Health Insurance Plans Covered By ARICA²

ARICA dramatically improves access to medical care for individuals with ASD by requiring that designated private health insurance plans/policies cover a wider variety of medical treatments and extend this coverage to a broader array of children with ASD. Be advised, however, that ARICA affects only Massachusetts residents with ASD who are enrolled in private health insurance plans to which ARICA applies.

- **ARICA applies to:** most *private* health insurance policies³, Group Insurance Commission health benefits (State employees and retirees)⁴, Hospital Service Plans⁵, and Health Maintenance Organizations (HMOs)⁶.
- **ARICA does not apply to:**
 - Self-funded employer plans⁷ which tend to be those offered by large employers or companies that do business in multiple states. These plans are regulated by ERISA, a federal law with which Massachusetts state law cannot be in conflict.
 - MassHealth/CommonHealth Plans - ARICA does not apply, however:
 - MassHealth will cover co-pays and deductibles for ARICA mandated treatment covered by private insurance.⁸
 - MassHealth policyholders with children under nine-years-old may apply for Massachusetts Children's Autism Medicaid Waiver program through the Massachusetts Department of Developmental Services⁹ (limited funding for program).¹⁰
 - People with autism are able to access some treatment services through the Early Prevention, Screening, Diagnosis, and Treatment program (EPSDT).¹¹

IV. Services Covered by ARICA

As enacted, ARICA requires designated private health insurers to cover "medically necessary" § 12 diagnostic evaluations, treatments, and care to patients with ASD. Under ARICA, treatment options include: habilitative or rehabilitative care; pharmacy care; psychiatric care; psychological care; and therapeutic care provided by licensed or certified speech therapists, occupational therapists, and physical therapists.¹³

The law defines habilitative /rehabilitative care to include Applied Behavior Analysis¹⁴ ("ABA") supervised by a board certified behavior analyst. It further states that ABA is a recommended treatment method for ASD that "uses positive reinforcement to develop and improve communication, play, social, academic, self-care, work, and community living skills and to reduce problem behaviors in children and adults with autism."

V. Impact of ARICA on Provision and Payment for Special Education Services

While ARICA makes a broader array of services available to students with ASD who are covered by designated private health insurance plans/policies, it has **no effect** on districts' legal obligations under federal and state special education laws to provide such students FAPE in the least restrictive environment. Individualized Education Program (IEP) Teams must continue to consider whether a student with ASD requires services such as speech therapy, occupational therapy, physical therapy, ABA, social skills groups, and parent training in order to meet the student's unique needs and to make effective educational progress. The IEP Team must continue to include such services in the student's IEP if required to provide FAPE.

Though ARICA will increase the level of services available to students with ASD, ARICA is also clear that reimbursement from designated private health insurers is not available to school districts for services included in the IEP of a student with ASD. Similarly, school districts may not require parents to obtain FAPE-related services outside of school through their private health insurance, and school districts may not unilaterally reduce the level of a service (such as speech therapy or ABA) provided through the IEP because a student receives the same or similar services outside of school.¹⁵

Even without reimbursement, increased access to services through private insurance subject to ARICA has potential for long term cost-savings to school districts and municipalities as ARICA insurers begin to cover necessary medical treatments, such as ABA, before a child enters school. Increased access to services outside of school will assist students with intensive needs to receive required supports in their home and community and may increase their skills.

It is our understanding that representatives of designated private health insurers may contact parents of students with ASD or school districts to obtain IEPs of covered students in the course of making continuity of care and other decisions in connection with their provision of medical services. We have encouraged private insurers to obtain such information directly from parents. In the event that the insurer contacts the district directly, we remind school officials that, under Massachusetts Student Records Regulations,¹⁶ a student's IEP and other student record information may not be disclosed to a private insurer without the specific informed written consent of the parent.

Conclusion

The fact that a family has a private health insurance plan/policy covered by ARICA does not reduce the obligation of a school district to provide special education services to a student with ASD. Federal and state special education laws are not altered by the enactment of ARICA, and ARICA does not authorize reimbursement to school districts or others for special education services provided under an IEP to students with ASD.

Passage of ARICA will enable many individuals with ASD to obtain additional medically necessary services. Over the long term, we expect this legislation to be cost effective because students will arrive at school better prepared to learn as a result of accessing treatments that were previously unavailable to them, and parents will have access to home services that help their children. In order to achieve these long term benefits, we encourage school districts, private insurers, and parents to work together to maximize services to students with ASD.

1 See: <http://www.malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter207>

2 For purposes of this memorandum, the term "covered private health insurance plan" or "covered private health insurance provider" shall mean a plan or provider to which ARICA applies and "exempt plan" shall mean a health insurance plan to which ARICA is not applicable.

3 St. 2010 c. 207, §2; G.L. c. 32A

4 St. 2010 c. 207, §1; G.L. c. 175

5 St. 2010 c. 207, §3, 4; G.L. c. 176A, 176B

6 St. 2010 c. 207, §5; G.L. c. 176G

7 In a self-funded health plan, an employer funds the cost of all health services covered by the health plan. Although many employers hire an administrator to handle claims payments, the employer is responsible for funding these payments. Self-funded plans, generally, are not subject to state insurance laws, but are subject to several federal laws and may be set up by any administrator hired by employers.

<http://www.mass.gov/ocabr/consumer/insurance/consumer-alerts/consumer-alert-beware-of-the-risks-in.html>

8 <http://www.mass.gov/eohhs/docs/eohhs/autism/arica-factsheet.pdf>

9 Formerly, Massachusetts Department of Mental Retardation.

10 <http://www.mass.gov/eohhs/docs/eohhs/autism/arica-factsheet.pdf>

11 <http://www.mass.gov/eohhs/docs/eohhs/autism/arica-factsheet.pdf>

12 St. 2010 c. 207, §§1-5

13 Id.

14 Id.

15 School districts may continue to seek reimbursement for services covered under Medicaid or other exempt plans, but the IDEA imposes conditions on these reimbursement arrangements and requires, among other things, that school districts first seek consent from parents, who are not required to grant it or to incur other associated expenses. 34 CFR 154(d),(e).

16 See 603 CMR 23.07(4).