

5-1-2013

Biomedical Treatment for PDD-NOS; A Valid Medical Expenditure

Rose Maureen Harper

Follow this and additional works at: https://scholarship.shu.edu/student_scholarship

Recommended Citation

Harper, Rose Maureen, "Biomedical Treatment for PDD-NOS; A Valid Medical Expenditure" (2013). *Law School Student Scholarship*. 232.
https://scholarship.shu.edu/student_scholarship/232

Rose Harper
Health Care Finance
Prof. Pasquale
Final Draft
January 15, 2013

BIOMEDICAL TREATMENT FOR PDD-NOS; A VALID MEDICAL EXPENDITURE.

INTRODUCTION

Recent movements in health insurance reform have moved away from actuarial fairness, which accesses the cost of insurance according to the individual risk of sickness, and towards a system based on social solidarity, which distributes insurance cost evenly across society.¹ Providing an individual with access to universal healthcare, will lower health care costs because services will be easily accessible without lapses in care.² Expanding health coverage will protect society from risks, which are indiscriminating, such as unpredictable and severe lifelong disorders such as Autism.³ Seamless health insurance coverage for an individual's entire life has yet to be achieved, but providing more comprehensive coverage for services needed to treat lifelong disorders like autism may be more readily achievable.

To date, susceptibility of having a child with Autism is relatively undeterminable and as a result, society as a whole is equally vulnerable to this lifelong disorder, and the expensive

¹ Hoffman, S. Unmanaged Care: Towards moral fairness in health care coverage. Available at, <http://www.ncbi.nlm.nih.gov/pubmed/15214342>. See also, Tom Baker. Health Insurance, Risk, and Responsibility After the Patient Protection and Affordable Care Act. University of Pennsylvania law Review. Available at, <http://www.pennumbra.com/issues/pdfs/159-6/Baker.pdf>.

² Deborah Stone. The Struggle for the Soul of Health Insurance. Brandeis University. The Journal of Health Politics, Policy and Law. Available at, http://myweb.shu.edu/bbcswebdav/pid-2452936-dt-content-rid-4320224_2/courses/2012_SPRING_HLTH7408MM/Stone%20Struggle%20for%20the%20Soul%20of%20HI%203%20excerpt.pdf (Positing that the most beneficial universal health coverage means coverage lasting for the entire lifespan of the individual).

³ Id.

treatments it requires.⁴ Thus, health insurance coverage should be expanded to provide comprehensive access to treatments for autism because of society's collective vulnerability to this particular illness. Insurance providers have avoided covering Autism treatments because treating Autism is a heavy financial burden. Treatment can run as much as \$72,000 for one child per year, or over 3.2 million over the course of that child's lifespan.⁵ Still, allocating this expense evenly across society is the most reasonable and fair approach because we cannot yet determine exactly who will have a child with Autism and should one have a child with this lifelong disorder, that person will want easy and comprehensive access to treatment. Further, implementing a system, which allocates the expense for Autism treatment evenly will only slightly increase insurance rates overall.⁶ Importantly, mandating broader insurance coverage for treating Autism will result in larger gains earlier in the child's development, which will result in higher levels of independent living during the child's adult life, thus, lowering society's burden

⁴ Looking at family history may be indicative of a likelihood of having a child with Autism Spectrum Disorder (ASD). Genetics may play a role in being able to determine if one is more likely to have a child with Autism. For example, Parents with one child with autism are more likely to have autistic children in the future. <http://autismnow.org/at-home/family/multiple-children-with-autism/>. See also, Autism and Genetics. The Tech Museum of Innovation. Available at, http://genetics.thetech.org/original_news/news49 ("If you have one child with autism, the risk for the next child is only 2-6% ... if you have two children with autism, the chances that the third will be autistic are around 35%"). See also, John Constantino. Sibling Recurrence and the Genetic Epidemiology of Autism. Available at, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2970737/> (families with autistic children had an occurrence of ASD in a sibling 10.9% of the time and "20% of non ASD affected siblings had a history of language delay half of which exhibited autistic qualities of speech.").

⁵ Anna Satz. Overcoming Fragmentation in Health and Disability Law. 60 Emory L. J. 277 (2011). Health insurance coverage based on universal vulnerability to illness. See also, Data & Statistics. Center for Disease Control. Available at, <http://www.cdc.gov/ncbddd/autism/data.html>. (estimates behavioral therapies to cost between 40 and 60 thousand per year and medical costs between 4 and 6 thousand per year for a child with ASD).

⁶ Autism. Centers for Disease Control and Prevention. <http://www.cdc.gov/ncbddd/autism/data.html>. See, Walecia Konrad. Dealing With the Financial Burden of Autism. The New York Times. Available at, http://www.nytimes.com/2010/01/23/health/23patient.html?_r=1&pagewanted=all.

of supporting adults with Autism, through programs such as SSI⁷ or SSDI.⁸ Specifically, comprehensive early intervention programs lessen the average cost of care, which is 3 to 5 million per child, by two thirds.⁹ Important to creating a comprehensive treatment plan for autism is incorporating innovative approaches, such as biomedical treatment.

Autism is a neurological disorder resulting in global delays in a child's adolescent development.¹⁰ Autism detrimentally affects a child's physical, mental, and social capabilities and significantly impairs a child's daily functioning.¹¹ If a child has a speech delay or disorder and physical coordination issues, as well as, an aversion to typical social behavior for a child of like age, the combination of all of those factors may indicate the child has Autism Spectrum Disorder (ASD).¹² Autism is a spectrum disorder, meaning that children diagnosed with ASD will have varying severity of their impairments.¹³ A child with the most severe diagnosis of Autism suffers from substantial barriers in all three areas of development; physical, mental, and

⁷ "The Social Security Income (SSI) program pays benefits to disabled adults and children who have limited income and resources." U.S. Social Security Administration. Available at, <http://www.ssa.gov/pgm/ssi.htm>.

⁸ Social Security and Supplemental Security Income Disability Programs. U.S. Social Security Administration. Available at, <http://www.ssa.gov/disability/> ("The Social Security and Supplemental Security Income disability programs are the largest of several Federal programs that provide assistance to people with disabilities. While these two programs are different in many ways, both are administered by the Social Security Administration and only individuals who have a disability and meet medical criteria may qualify for benefits under either program.").

⁹ See, The Budget Crisis. Autism Society. Available at, <http://www.autism-society.org/get-involved/the-budget-crisis.html>.

¹⁰ Autism Fact Sheet. National Institute of Neurological Disorders and Stroke. National Institutes of Health. Last updated October 17, 2012. Available at, http://www.ninds.nih.gov/disorders/autism/detail_autism.htm.

¹¹ Autism Spectrum Disorders (ASDs). Centers for Disease Control and Prevention. Available at, <http://www.cdc.gov/NCBDDD/autism/facts.html>.

¹² Autism Fact Sheet. National Institute of Neurological Disorders and Stroke. National Institutes of Health. Last updated October 17, 2012. Available at, http://www.ninds.nih.gov/disorders/autism/detail_autism.htm

¹³ Id.

emotional.¹⁴ Alternatively, a diagnosis of Asperger's is still considered ASD but includes children with higher cognitive ability, sometimes with exceptional ability in a particular area of study, but with rather significant social impairments.¹⁵ This article will focus on a third ASD diagnosis called Pervasive Developmental Disorder – Not Otherwise Specified (PDD-NOS), which typically includes children suffering from a combination of two impairment categories.¹⁶ Typically children diagnosed with PDD-NOS are also considered “high functioning.”¹⁷

This article focuses on PDD-NOS because these children are high functioning, and have the potential to become full independent significantly reducing the number of adults with ASD requiring expensive treatment. Children with PDD-NOS are a subset of the total population of children with ASD, and while biomedical treatment will help all children with ASD to progress, biomedical treatment in combination with other services for children with PDD-NOS could potentially result in that child becoming fully recovered, or no longer classified as ASD or needing special services and treatments.¹⁸

¹⁴ Autism Spectrum Disorders (ASDs). Centers for Disease Control and Prevention. Available at, <http://www.cdc.gov/NCBDDD/autism/facts.html>.

¹⁵ Id.

¹⁶ What is PDD-NOS? Autism Speaks Inc. Available at, <http://www.autismspeaks.org/what-autism/pdd-nos>.

¹⁷ Id.

¹⁸ See, Incidence of Autism. Autism-Help.org. Available at, <http://www.autism-help.org/autism-incidence-increase.htm>. See also, Study suggests kids can ‘recover’ from autism. Copyright 2009 The Associated Press. Available at, http://www.msnbc.msn.com/id/30645770/ns/health-mental_health/t/study-suggests-kids-can-recover-autism/#.UPXIOHfn-So. In 2007 PDD-NOS was thought to be more prevalent than a diagnosis of severe autism, and thus by providing expanded treatments that can help recover children with pdd-nos and allow them to be fully functioning independent adults, we can significantly reduce the overall health insurance costs for autism treatments within the autism community.

Treatment for PDD-NOS does not necessitate the most intense therapies reserved to treat severe autism, such as ABA therapy.¹⁹ Nonetheless, children with PDD-NOS do benefit from a combination of services now generally used to treat ASD's such as Speech Therapy (ST), Occupational Therapy (OT), and Physical Therapy (PT).²⁰ For the most effective treatment these traditional services should be implemented in conjunction with, other less traditional therapies.²¹ There is no prevention or a cure for autism, but early intervention with a combination of various therapies has shown to significantly reduce the symptoms and impairments inflicting children with PDD-NOS.²² Particularly, many in the autism community have advocated that including biomedical treatment as a part of an early intervention program is beneficial for children with PDD-NOS.²³

Biomedical treatment for autism reduces symptoms associated with one's inability to tolerate environmental stressors.²⁴ Such treatments seek to treat the person individually and holistically, addressing deficits with medical or chemical means.²⁵ Using biomedical treatments to alleviate sensory processing impairments include treating food sensitivities by employing

¹⁹ Autism Spectrum Disorders, Treatment. Center for Disease Control. May 24, 2012. Available at, <http://www.cdc.gov/ncbddd/autism/treatment.html>.

²⁰ Id.

²¹ Id.

²² Id.

²³ Id. See also, Why Should I Consider Biomedical Treatment for Autism? Treating Autism. Available at, <http://www.treatingautism.co.uk/why-biomedical/>.

²⁴ Kenneth Bock. Integrative Medicine. Rhinebeck Health Services. Available at, http://www.rhinebeckhealth.com/rhc/integ_med.php.

²⁵ Id.

special diet plans, such as gluten free and casine free diets.²⁶ Another aspect to biomedical treatment is treating vitamin deficiencies with supplements, which address deficiencies for example in amino acids and detoxifying the body of metals.²⁷ Biomedical treatment can also include using pharmaceuticals to treat symptoms of hyperactivity.²⁸ Problems with the digestion system are prevalent in children with ASD.²⁹ There are strong indicators that a healthy digestive system allows for proper cognitive function referred to as the mind-gut connection.³⁰ The goal of biomedical treatment is to alleviate digestive problems attributed to children with ASD reducing many of the symptoms causing social and cognitive impairments.³¹

Unfortunately, despite clinical case studies indicating the positive impact that biomedical approaches have on ASD's, insurance providers have managed to exclude coverage for such treatment(s) claiming them to be complementary or alternative treatment (CAM) and not medically necessary.³² Yet, hope is not lost. Further research is currently underway, which will ultimately prove biomedical treatment is effective and an essential part of an effective treatment

²⁶ Holly Bortfeld. GFCFSF Diet on a Budget. Talk About Curing Autism. July 7, 2010. Available at, <http://www.tacanow.org/family-resources/gfcfsf-diet-on-a-budget/>.

²⁷ James B. Adams. Summary of Biomedical Treatment for Autism. Autism Society. <http://www.autism-society.org/living-with-autism/treatment-options/summary-of-biomedical.html>.

²⁸ Id.

²⁹ Autism and GI Disorders. Autism Speaks. Available at, <http://www.autismspeaks.org/what-autism/treatment/treatment-associated-medical-conditions/gi-disorders>.

³⁰ The Gut-Brain Connection. Harvard Health Publication. March 27, 2012. <http://www.health.harvard.edu/healthbeat/the-gut-brain-connection>.

³¹ James B. Adams. Summary of Biomedical Treatment for Autism. Autism Society. <http://www.autism-society.org/living-with-autism/treatment-options/summary-of-biomedical.html>.

³² What Is Complementary and Alternative Medicine? National Center for Complementary and Alternative Medicine. NCCAM Pub No.: D347 Date Created: October 2008 Last Updated: July 2011 <http://nccam.nih.gov/health/whatiscam>.

plan for ASD's.³³ With substantial empirical evidence, the judiciary and legislature alike will be compelled to require insurance providers to cover the cost of such proven beneficial treatments.

One hurdle in requiring insurance coverage for biomedical treatment is that each child responds differently to treatment.³⁴ For that reason, finding the appropriate combination of services for one child requires significant amounts of time and money. Subsequently, insurance providers are reluctant to cover treatment for autism. Previously, insurance providers fought to exclude treatments such as speech, occupational therapy, and physical therapy, claiming they are not medically necessary for the treatment of ASD's, but these treatments are now required to be covered.³⁵ Many states have continued with insurance reform and now have insurance mandates requiring Applied Behavioral Therapy (ABA) to be covered for treatment of severe Autism, which was also vehemently opposed by insurance providers.³⁶ This national trend towards providing more coverage for ASD's suggests that biomedical treatment, despite having yet to be required under coverage, will have a place as a covered therapy in the near future.³⁷ States

³³ See, Study to Explore Early Development (SEED). Centers for Disease Control and Prevention. Available at, <http://www.cdc.gov/ncbddd/autism/seed.html>. See also, Autism Speaks Announces \$6.9 Million in New Biomedical Research Grants. Autism Speaks. Available at, <http://www.autismspeaks.org/about-us/press-releases/autism-speaks-announces-69-million-new-biomedical-research-grants>. See also, Yale School of Medicine. Yale Child Study Center. Available at, <http://medicine.yale.edu/childstudy/autism/research>.

³⁴ Pervasive Developmental Disorders Information Page. National Institute of Neurological Disorders and Stroke. National Institutes of Health. Available at, <http://www.ninds.nih.gov/disorders/pdd/pdd.htm>.

³⁵ 29 U.S.C.A. § 1185a (West). See also, Angela Barner, Unlocking Access to Insurance Coverage for Autism Treatment, 6 J.L. Econ. & Pol'y 107 (2009). (Policy established in a settlement from Hatch v. Blue Cross Blue Shield of Minnesota "entitled Pervasive Development Disorders: Identification, Evaluation, and Treatment, defines pervasive developmental disorders (PDD) to include autism.").

³⁶ MaryAnne Lindeblad. Health Care Authority Approves ABA Therapy for Medicaid Children Diagnosed with Autism. Washington State Health Authority. Available at, http://www.hca.wa.gov/news_release/health-care-authority-approves-aba-therapy-for.html. See also, Paul Frysh. Moving Out of State to get Autism Treatment. Cnn. Available at, <http://www.cnn.com/2010/HEALTH/09/17/autism.aba.legislation/index.html>.

³⁷ State Initiatives. Autism Speaks. Available at, <http://www.autismspeaks.org/advocacy/states>.

should mandate insurance providers to cover biomedical treatment for children with ASD, because the treatment is beneficial and safe. Expanding insurance coverage will provide the child and their family with a better quality of life, and will also reduce the symptoms of their impairments allowing them to reach fuller potential.

Autism is a serious national health concern. Federal and state governments both support research on risk detection, prevention, and ultimately a cure.³⁸ Current treatments for Autism may only be effective for a small subset of the ASD population, which raises conflict over who should share in the cost. While ASD children and their families may only be a small subset of society, the potential for Autism to occur in the majority of the population is on the rise, thus more expansive insurance coverage for ASD treatments is necessary. Specifically, as innovative treatment modalities for ASD's are discovered and made available, the conflict over proper allocation of costs will require legislative and judicial intervention.

Mandated access to biomedical treatment for children with ASD will require a sustained effort at insurance reform. Assessing the benefits of biomedical treatment for children diagnosed with PDD-NOS involves examining the negative impact of excluding this treatment from health insurance coverage, the benefits to mandating private insurance coverage for biomedical treatments for Autism, and possible approaches advocates can use when attempting to obtain coverage for children with ASD. Part I provides an overview of Autism, its impact on families and society, and various treatment modalities. Part II provides an overview of statistical data which shows the benefits of a biomedical approach to treating ASD's. Part III discusses the two main positions insurance providers use to exclude biomedical treatment for ASD. Part IV

³⁸ National Database for Autism Research. National Institutes of Health. Available at, <http://ndar.nih.gov/>. See also, NIH Awards \$100 Million in Autism Research Grants Funded by CARA. Autism Speaks. Available at, <http://www.autismspeaks.org/news/news-item/nih-awards-100-million-autism-research-grants-funded-cara>.

presents responses to the insurance provider's positions for those advocating for insurance coverage for biomedical treatment. Part V proposes possible options for insurance mandates requiring coverage for biomedical treatment for ASD's. Part VI concludes this papers purpose, which is to advocate for the expansion of private insurance coverage to include biomedical treatment for PDD-NOS.

I. AUTISM DEFINED.

Autism is a neurological disorder thought to be caused by a biological predisposition to Autism (genetic abnormality), which is triggered or enhanced by environmental factors, which result in a disruption in the neurological development during early prenatal stages.³⁹ There is still unrest as to the exact cause of Autism, but the effects are known. Autism is a lifelong disorder that causes global developmental delays. Children with ASD have physical, mental, and social impairments, which can significantly limit their daily living capabilities.⁴⁰ Onset can be detected as early as infancy such as an infant unresponsive to social stimulus and failing to meet typical developmental milestones. Alternatively, infants may progress normally until around 15 – 24 months and then either stop progressing further (usually the case with a higher functioning diagnosis), or they can completely regress to infantile like behavior (typically associated with a more severe autistic diagnosis), both of which are also indicators of ASDs.⁴¹ Obtaining an official diagnosis for Autism usually requires an analysis of the history of the child and family, as well as, a series of tests conducted by a neurologist or a pediatric

³⁹ Autism Fact Sheet. Office of Communications and Public Liaison. National Institute of Neurological Disorders and Stroke. Last updated March 20, 2012. http://www.ninds.nih.gov/disorders/autism/detail_autism.htm

⁴⁰ Id.

⁴¹ Id.

neuropsychologist.⁴² The neuropsychologist will also access the child's personal capabilities according to the DSM-IV.⁴³ ASDs are generally separated by three main categories previously discussed, autism (most severe), PDD-NOS (less severe), or Asperger's (usually high functioning).⁴⁴ Those suffering the most severe impairments typically have substantial barriers in all three areas such as physical limitations effecting daily living like immature walking style or low muscle tone, lower mental capacity, limited memory retention or limited comprehension ability, and social limitations such as inability to communicate verbally, extreme behavioral episodes, and rapid movement of hands, legs, or arms.⁴⁵ Children who display the above symptoms are diagnosed with Autism.⁴⁶ Children with these severe limitations have proven to progress in their development through intense early intervention. Unfortunately, even with a rigorous course of treatment these children will likely remain rather dependent on caregivers throughout their lives.⁴⁷

Alternatively, a diagnosis of Asperger's is an ASD but is reserved for children with higher cognitive ability, sometimes with exceptional ability in a particular area of study, but

⁴² Autism Spectrum Disorders (ASDs) Screening and Diagnosis. Center for disease Control and Prevention. Available at, <http://www.cdc.gov/ncbddd/autism/screening.html>.

⁴³ Diagnostic Criteria. Centers for Disease Control and Prevention. Available at, <http://www.cdc.gov/ncbddd/autism/hcp-dsm.html>.

⁴⁴ Autism Spectrum Disorders (ASDs) Facts. Center for disease Control and Prevention. Available at, <http://www.cdc.gov/ncbddd/autism/facts.html>.

⁴⁵ Angela Barner, Unlocking Access to Insurance Coverage for Autism Treatment, 6 J.L. Econ. & Pol'y 107 (2009). See also, Autism Symptoms. Mayo Clinic. Available at, <http://www.mayoclinic.com/health/autism/DS00348/DSECTION=symptoms>.

⁴⁶ Id.

⁴⁷ Adults with Autism. National Alliance on Mental Illness. Available at, <http://www.nami.org/Template.cfm?Section=Helpline1&Template=/ContentManagement/ContentDisplay.cfm&ContentID=66015>.

with rather significant social impairments resulting in an inability to acquiesce to social norms such as hygiene, make eye contact, and often fail to develop empathy.⁴⁸ Children with mild Asperger's will often go undiagnosed and even those with more intense Asperger's symptoms will often go without treatment because children and adults with Asperger's are given social acceptance because they are generally able to achieve academic achievement.⁴⁹ A third diagnosis on the Autism Spectrum is Pervasive Developmental Disorder, will be the focus of this article.

A. *PERVASIVE DEVELOPMENTAL DISORDER (PDD-NOS) DISTINGUISHED.*

“Having autism can be extremely hard. However, having high-functioning autism can sometimes be even harder. [For example,] when a high-functioning autistic person communicates with a stranger, oftentimes the stranger doesn't realize the person has a disability; [therefore], I've been looked upon as odd, scared, and sometimes even stupid. My name is Russell Lehmann; I have high-functioning autism.”⁵⁰

A child diagnosed with Pervasive Developmental Disorder – Not Otherwise Specified (PDD-NOS), suffers from a combination of two impairment categories.⁵¹ The impairments of a child with PDD-NOS are less disabling than a more severe Autism diagnosis and children with PDD-NOS are usually considered high functioning.⁵² A child with PDD-NOS is more aware of people and situations around them, and thus, will be able to interact with others more

⁴⁸ [Asperger Syndrome Signs and Symptoms](http://kidshealth.org/parent/medical/brain/asperger.html#). KidsHealth.org. Available at, <http://kidshealth.org/parent/medical/brain/asperger.html#>.

⁴⁹ [Id.](#)

⁵⁰ Russell Lehmann. [The Poet](https://www.squag.com/696/). Available at, <https://www.squag.com/696/>. See also, Russell Lehmann. [Inside Out](http://www.autisticpoet.com/bio.php). Available at, <http://www.autisticpoet.com/bio.php>.

⁵¹ [Asperger's Syndrome](http://www.autism-society.org/about-autism/aspergers-syndrome/). Autism Society. Available at, <http://www.autism-society.org/about-autism/aspergers-syndrome/>.

⁵² Walker DR, Thompson A., Zwaigenbaum L., Golderberg J., Bryson SE, Mahoney WJ., Strawbridge CP, and Szatmari P. [Specifying PDD-NOS: a comparison of PDD-NOS, Asperger Syndrome and Autism](http://www.ncbi.nlm.nih.gov/pubmed/14726723). Available at, <http://www.ncbi.nlm.nih.gov/pubmed/14726723>.

regularly.⁵³ Still, as expressed by Russell Lehmann above children with PDD-NOS will experience limitations to such interactions.⁵⁴ Even within a diagnosis of PDD-NOS there is a wide range of impairment levels. Children with PDD-NOS may end up with significantly limited functional ability in society as adults. Thus, establishing a comprehensive early intervention plan is important for treating PDD-NOS.⁵⁵ Other children with PDD-NOS, typically those who receive the right combination of services early in their development, can become rather independent as adults; working, marrying, and having children of their own.⁵⁶ One barrier to receiving early treatment is that children with PDD-NOS are often misdiagnosed with ADHD or even Bi-Polar disorder because some symptoms for these very different disorders manifest themselves similarly in children with PDD-NOS.⁵⁷ Additionally, some children do not receive early intervention because they are not diagnosed with PDD-NOS occasionally because parents and doctors chose to wait and see if the child grows out of the symptoms on their own.⁵⁸ Importantly, many children are not receiving appropriate and comprehensive early intervention

⁵³ Diagnostic Classifications. Autism Society. Available at, <http://www.autism-society.org/about-autism/diagnosis/diagnostic-classifications.html>.

⁵⁴ Russell Lehmann. The Poet. Available at, <https://www.squag.com/696/>. See also, Russell Lehmann. Inside Out. Available at, <http://www.autisticpoet.com/bio.php>.

⁵⁵ Autism. American Academy of Child and Adolescent Psychiatry. Autism Research Center. Available at, http://www.aacap.org/cs/autism_resource_center/faqs_on_autism.

⁵⁶ Autism Spectrum Disorder Relationships and Sexuality. Centre for Autism. Available at, <http://www.middletonautism.com/fs/doc/publications/mca-booklet-0005-wlink.pdf>.

⁵⁷ Kenneth Bock and Cameron Stauth. Healing the New Childhood Epidemics. 2008 Ballantine Books Trade. Random House, Inc. New York, New York.

⁵⁸ Pervasive Developmental Disorder. Emory University. Available at, <http://www.psychiatry.emory.edu/PROGRAMS/autism/pdd.html#3>.

to help them progress because the treatments they need are not being covered by insurance providers.⁵⁹

B. WITHOUT A CURE, WHAT TREATMENTS CAN BE USED TO REDUCE THE BLIGHTING SYMPTOMS OF AUTISM?

The most basic treatments for ASD include the combination of three services abbreviated as ST, OT, and PT. Speech therapy (ST) is best provided multiple times per week with individual and group sessions.⁶⁰ Many children with ASD require ST for improvements in articulation, chewing and swallowing, help with auditory processing, as well as, categorization of words and sounds to provide them with skills so they can better involve themselves in general conversation.⁶¹ Additionally, group speech therapy sessions teach peer conversational skills and techniques such as not cutting someone off, using proper eye contact, and recognizing when to end the conversation.⁶² Speech therapy for a child with ASD is critical to their overall development as our academic system is heavily dependent on language acquisition.⁶³

Another common course of treatment for ASD is Occupational Therapy (OT). OT improves fine motor skills like learning how to properly use a pencil and scissors or button

⁵⁹ See section IV. PRIVATE INSURANCE PROVIDER'S STRONGEST ARGUMENTS FOR EXCLUDING BIOMEDICAL TREATMENT FROM COVERAGE on page 24.

⁶⁰ See, Isa Marrs. Speech and Language Therapy. Available at, <http://www.speechlanguagefeeding.com/speech-language-therapy-westchester/>.

⁶¹ Id.

⁶² Id.

⁶³ See also, Communication for a Lifetime. American Speech-Language-Hearing Association. Available at, <http://www.asha.org/public/>.

clothing, which requires hand strengthening exercises.⁶⁴ OT also helps gross motor skills, such as overall planning of body movement and awareness of one's body in space, ability to sit in a chair plus endurance to sit upright in a chair or the ability to stand independently without leaning on someone or something without throwing one's body on the floor for sensory stimulation.⁶⁵ Using OT to address sensory processing issues significantly reduces many of the social impairments children with ASD exhibit, which prevent them from connecting with their peers.⁶⁶ Specifically, this OT approach addresses with dynamic equilibrium issues and teaches techniques to the child to help them ease over or under stimulation issues.⁶⁷ This approach has proven to reduce "stimming," or rapid body movements, which result in social isolation, and also reduces symptoms similar to those exhibited with ADHD, which is the reason for much misdiagnosis.⁶⁸ Unfortunately, OT for sensory processing is only offered by private OT clinics, not by public schools, and is similarly not covered by private health insurance providers.⁶⁹

Physical therapy (PT) for ASDs addresses low muscle tone, toe walking and the like.⁷⁰ Providing PT to a child with ASD can help to lengthen their stride while walking, increase their running speed, balance and coordination for riding a bike, develop their muscle strength for

⁶⁴ Sue Seiler. Kidabilities. Copyright 2007. Available at, <http://www.kidabilities.com/services.htm>.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ See, Sue Seiler. Kidabilities. Copyright 2007. Available at, <http://www.kidabilities.com/faqs.htm>.

⁶⁹ Florence Clark. Essay: The Current Status of Sensory Integration Therapy. AOTA Blogs. August 7, 2012. http://otconnections.aota.org/aota_blogs/b/aota_presidential_blog/archive/2012/08/07/essay-the-current-status-of-sensory-integration-therapy.aspx.

⁷⁰ See, Patient Care Overview. Kennedy Krieger Institute. Available at, <http://www.kennedykrieger.org/patient-care/patient-care-centers/center-autism-and-related-disorders?gclid=CLTKwuvw6rQCFUbf4AodgDEAdw>.

sitting, standing, rolling kicking, and teach them how to catch and throw a ball properly.⁷¹ It is imperative that children with ASD receive PT as it is essential to their daily lives, allowing them to participate in more activities with their peers and improving their overall quality of life.⁷²

Further, regular Behavioral therapy/psychological counseling is beneficial to children with ASD teaching them skills necessary to understand and identify their own emotions and show empathy to others.⁷³ Through psychological counseling children with ASD learn how to better deal with the severe stress, depression, and anxiety, which are prevalent will experience throughout their lives, thus reducing many of the symptoms, induced during stress.⁷⁴

Additionally, Applied Behavioral Therapy (ABA) is used for children with the most severe impairments.⁷⁵ This is a micro-approach, which breaks down each essential life skill into multiple steps that are innate to most children but need to be taught to children on the spectrum.⁷⁶ This repetitive and basic approach has proven significantly effective and allows even the most severely impaired children to begin interaction with the world around them, and

⁷¹ See, Treatments & Therapies. Autism Speaks. Available at, <http://www.autismspeaks.org/family-services/tool-kits/100-day-kit/treatments-therapies>.

⁷² Treatment & Interventions. Southwest Autism Research & Resource Center. Available at, http://autismcenter.org/treatment_interventions.aspx#q5.

⁷³ See, ADHD Autism Psychological Service and Advocacy. Available at, <http://www.aapsa.net/Website/Team/Staff.aspx>. See also, Autism Therapists in Massachusetts (MA). Psychology Today. http://therapists.psychologytoday.com/rms/prof_results.php?state=MA&spec=167.

⁷⁴ Lisa Jo Rudy. What is Psychology and How does it relate to Autism? Autism Spectrum Disorders. About.com. Updated May 17, 2010. Available at, <http://autism.about.com/od/autismtherapy101/a/psychautism.htm>.

⁷⁵ Autism Spectrum Disorders, Treatment. Center for Disease Control. May 24, 2012. Available at, <http://www.cdc.gov/ncbddd/autism/treatment.html>.

⁷⁶ MaryAnne Lindeblad. Health Care Authority Approves ABA Therapy for Medicaid Children Diagnosed with Autism. Washington State Health Authority. Available at, http://www.hca.wa.gov/news_release/health-care-authority-approves-aba-therapy-for.html. See also, Paul Frysh. Moving Out of State to get Autism Treatment. Cnn. Available at, <http://www.cnn.com/2010/HEALTH/09/17/autism.aba.legislation/index.html>.

teaches them basic functioning skills like how to hold a spoon in order to feed themselves.⁷⁷ Once a child begins to respond positively to aba therapy this will continue in conjunction with the other more traditional forms of therapy.

Currently, ST, OT, and PT are considered traditional treatment plans for autism and thus private insurance providers are now required to cover them.⁷⁸ After much contention, ABA therapy is also now required to be covered. All of these treatments seek to improve the symptoms, which impair the functional lives of people with autism through.⁷⁹ Still, none of these treatments address the underlying cause of the symptoms, the neurological malfunction. Biomedical Treatment for ASD involves physiological analysis and treatment.⁸⁰ Many professionals believe that there is a strong correlation between the neurological impairments of a child with ASD and the digestive issues common for a child with ASD.⁸¹ The biomedical approach involves assessing the overall physical function of the child through testing their blood and stool for deficiencies in certain nutrients and identifying any substances that should not be there such as heavy metals or overproduction of candida.⁸² After testing, children are often placed on strict diets to account for any food sensitivities they may have, as well as, prescribed

⁷⁷ Id.

⁷⁸ Autism Spectrum Disorders, Treatment. Center for Disease Control. May 24, 2012. Available at, <http://www.cdc.gov/ncbddd/autism/treatment.html>.

⁷⁹ Id.

⁸⁰ Kenneth Bock. Integrative Medicine. Rhinebeck Health Services. Available at, http://www.rhinebeckhealth.com/rhc/integ_med.php.

⁸¹ The Gut-Brain Connection. Harvard Health Publication. March 27, 2012. <http://www.health.harvard.edu/healthbeat/the-gut-brain-connection>.

⁸² Lewis Mehl-Madrona. Autism: Treatments Anti-Fungal Treatment. Autism Research. Available at, <http://www.healing-arts.org/children/antifungal.htm>.

nutritional supplements in order to counteract any deficiencies identified.⁸³ Occasionally, the use of psychotropic drugs to address symptoms of ADHD is used in conjunction with other biomedical treatments.⁸⁴ The goal of biomedical treatment is to purify the body to allow for optimal cellular function so the body can heal itself. Currently, biomedical treatment is not covered by private insurance providers.⁸⁵

Distinguishable from biomedical treatments are homeopathic approaches, which include, acupuncture, music therapy, and dog therapy.⁸⁶ These approaches are merely supplemental and should not be used to replace the other therapies discussed above. These approaches are not medical as they do not address the underlying causes of the impairment and do not change cellular function or body chemistry of the child. Further, the cost of these approaches tends to be minimal and their effect is more to encourage emotional well-being.⁸⁷ These avenues of treatment are typically excluded by insurance providers.⁸⁸ Biomedical treatment should not be considered part of this group of alternative treatment as biomedical approaches actually change the chemical composition of the child's body and biomedicine is implemented and monitored by a physician.

⁸³ James B. Adams. Summary of Biomedical Treatments for Autism. Available at, <http://www.autism-society.org/living-with-autism/treatment-options/summary-of-biomedical.html>

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Alesha Williams Boyd. Autistic Kids find Music Therapeutic. Asbury Park Press.com. Gannett Company. Available at, <http://www.app.com/article/20120420/NJNEWS10/304200097/Autistic-kids-find-music-therapeutic>.

⁸⁷ Music Therapy Tuition and Fees. Levine School of Music. Available at, <http://www.levineschool.org/instruction/programs/music-therapy/580-music-therapy-tuition-and-fees>.

⁸⁸ See section IV. PRIVATE INSURANCE PROVIDER'S STRONGEST ARGUMENTS FOR EXCLUDING BIOMEDICAL TREATMENT FROM COVERAGE on page 24.

While, neither a preventative strategy, nor a cure for autism has been discovered, early intervention involving a combination of the above referenced therapies has shown to significantly reduce the symptoms and impairments inflicting children with ASD, thus allowing these “recovered” children to lead relatively independent adult lives. More expansive insurance coverage should be provided to children with ASD.

C. IMPACT OF AUTISM: HIGH HOPES LEAD TO LARGE DEBT.

While the benefits of biomedical treatment for children diagnosed with PDD-NOS will only help a small subset of the population, the negative impact of excluding this treatment from health insurance coverage is immense. Overall, treating autism is a heavy financial burden, running as much as \$72,000 for one child per year, or over 3.2 million over the course of that child’s lifespan.⁸⁹ If insurance providers are required to allocate this cost more evenly across the entire pool of insured, it will only slightly increase rates but the benefit is significantly helping the individual families effected by ASD.⁹⁰ One study revealed that total expenditures per 10,000 covered lives associated with ASDs increased 142.1% over a 5-year period.⁹¹ With costs of care rising annually, and the current cost of treating a child with ASD, this is a significant amount of money for a family to have to pay. One family even admits that in ten years the cost of their sons

⁸⁹ Anna Satz. Overcoming Fragmentation in Health and Disability Law. 60 Emory L. J. 277 (2011). Health insurance coverage based on universal vulnerability to illness. See also, Data & Statistics. Center for Disease Control. Available at, <http://www.cdc.gov/ncbddd/autism/data.html>. (estimates behavioral therapies to cost between 40 and 60 thousand per year and medical costs between 4 and 6 thousand per year for a child with ASD).

⁹⁰ Id.

⁹¹ Leslie DL, Martin A. Health Care Expenditures Associated with Autism Spectrum Disorders. Department of Psychiatry, Yale University School of Medicine. Available at, <http://www.ncbi.nlm.nih.gov/pubmed?term=total%20expenditures%20for%20autism%20increased%20over%205-year%20period>.

treatments for ASD topped one million dollars.⁹² While the average cost of treating a child with ASD is 3 to 5 million per child, this cost can be reduced by two thirds by implementing appropriate early intervention.⁹³ By helping children who have ASD but are high functioning, like the sub population of children with PDD-NOS, we can significantly reduce the total lifespan cost for children with ASD.

Specifically, biomedical treatment should be covered by insurance providers because the treatment is beneficial and will result in lowering the overall cost of caring for a child with ASD because they will progress faster in their development. Also, requiring insurance coverage for biomedical treatment is important because the treatment can be very costly for a family to have to pay out of pocket. One study conducted by, “retrospective analysis of private health insurance claims,” revealed that the average health care expenditures in annual inpatient, outpatient, and prescription drug expenditures for children under seventeen with an ASD increased 20.4% from \$4,965 per patient in 2000, to \$5,979 per patient in 2004.⁹⁴ Many families have started to ask family, friends, and even strangers to help donate to help pay for biomedical treatments for their child with ASD.⁹⁵ Without insurance coverage, families will not be able to access appropriate

⁹² See, Holly Bortfeld. Health Insurance Coverage on a Budget. Talk About Curing Autism. Available at, <http://www.tacanow.org/family-resources/health-insurance-coverage-on-a-budget/>. See also, Jessica Dickler. The Financial Toll of Autism. CNN MONEY. Available at, <http://money.cnn.com/2012/04/02/pf/autism/index.htm>.

⁹³ See, The Budget Crisis. Autism Society. Available at, <http://www.autism-society.org/get-involved/the-budget-crisis.html>.

⁹⁴ Leslie DL. And Martin A. Health Care Expenditures Associated with Autism Spectrum Disorders. Arch Pediatric Adolescent Medicine. 2007 April. Available at, <http://www.ncbi.nlm.nih.gov/pubmed/17404131>.

⁹⁵ See, Setup your family & friends fundraising page. Talk about curing Autism. Available at, <http://www.tacanow.org/ways-to-help/family-friends-campaign/setup-fundraising-page/>. See also, The Hamilton’s Fundraising Page. Available at, <http://www.firstgiving.com/fundraiser/alison-hamilton/TACACAMPAIGN2012>.

early intervention for their children and thus the cost of caring for that child will remain high throughout adulthood.

Early therapeutic intervention for ASD is the key difference between developing into an adult needing full-time care and an adult capable of living an independent productive life without expensive aide. Thus, even though these treatments may be expensive, they are well worth the cost early in life, because they will increase the possibility that the child with PDD-NOS will be independent as an adult, able to hold a job and be self-sustaining therefore reducing their economic dependence on the system as a whole.⁹⁶ Caring for a child with ASD is a social concern and the financial burden should be shared accordingly. This cost should not be left to the families that happen to have a child with autism because society as a whole is universally vulnerable to autism. Thus, the benefit to mandating insurance coverage for biomedical treatments for ASD is that it will protect the insured so they can effectively find a treatment plan that their child responds to, and in turn, can achieve a greater level of overall health and less reliance on costly treatments in the long run.

II. BIOMEDICAL TREATMENT IS EFFECTIVE IN TREATING PDD-NOS.

Treating ASD with biomedicine is based on the application of the principals of natural science to clinical practices through physiological interventions, which reduce the symptoms associated with one's inability to tolerate environmental stressors.⁹⁷ Such treatments seek to treat the child individually and holistically, addressing imbalances with medical or chemical

⁹⁶ See, The Budget Crisis. Autism Society. Available at, <http://www.autism-society.org/get-involved/the-budget-crisis.html>.

⁹⁷ Kenneth Bock. Integrative Medicine. Rhinebeck Health Services. Available at, http://www.rhinebeckhealth.com/rhc/integ_med.php.

means.⁹⁸ The biomedical approach to ASD aims to address the genetic, epigenetic, and biochemical issues that are the underlying causes of the child's symptoms."⁹⁹ Epigenetics studies the changes in DNA expressions which cause impairments when the underlying DNA sequence has not changed.¹⁰⁰ ASD's are thought to be caused by a genetic mutation that occurs during prenatal development possibly triggered by environmental factors. Thus, environmental factors may be what has significantly impacted the DNA to cause it to express itself differently when there is no specific genetic reason (DNA sequence is not different).¹⁰¹ Environmental insults (at this point specific causes are unknown but believe to be a combination of chemicals, metals, radiation, and preservatives) lead to biochemical changes manifesting themselves through behavioral impairments and result in a vicious cycle of developmental delays.¹⁰² Treating ASD with a biomedical approach aims to interrupt the cycle in an effort to restore proper cell function.¹⁰³

Biomedical treatment alleviates digestive problems, which are common to children with ASD, and by altering their body chemistry to reduce many impairing social and cognitive

⁹⁸ Id.

⁹⁹ Autism Treatment Facts. Available at, <http://www.autismfile.com/what-is-autism-facts/autism-treatment-facts/biomedical-treatment>.

¹⁰⁰ Miyake K, Hirasawa T, Koide T, and Kubota T. Epigenetics in Autism and Other Neurodevelopmental diseases. Department of Epigenetics Medicine, Univeristy of Yamanashi, Yamanashi, Japan. Adv. Exp. Med. Biol. 2012. Available at, <http://www.ncbi.nlm.nih.gov/pubmed/22411236>

¹⁰¹ See, Benedict Carey. Scientists Link Gene Mutation to Autism Risk. New York Times. April 4, 2012. Available at, http://www.nytimes.com/2012/04/05/health/research/scientists-link-rare-gene-mutations-to-heightened-risk-of-autism.html?pagewanted=all&_r=0.

¹⁰² Herbert MR. Contributions of the environment and environmentally vulnerable physiology to autism spectrum disorders. Transcend Research Program, Pediatric Neurology, Massachusetts General Hospital. Available at, <http://www.ncbi.nlm.nih.gov/pubmed/20087183>.

¹⁰³ Id.

symptoms.¹⁰⁴ Particularly, using biomedical treatments for Autism involves removing environmental toxins present in the body and repairing any damage which has resulted.¹⁰⁵ Biomedical treatment for ASD typically includes treatment of food sensitivities by employing special diet plans (such as gluten free casein free diet), treating vitamin deficiencies with supplements (deficiencies in amino acids and detoxifying the body of metals), and even pharmaceuticals (to treat symptoms of hyperactivity).¹⁰⁶

Specifically, food sensitivity has been linked to improper bodily processes, thus by identifying which foods are causing reactions and eliminating those from the diet some children show improvement in overall functioning (including the improvement of cognitive ability).¹⁰⁷ This is supported by empirical data provided by multiple studies. One United Kingdom study showed positive development in children with ASD put on gluten and casein-free diets (GFCF).¹⁰⁸ Additional studies prove that daily supplements of vital nutrients, such as those

¹⁰⁴ James B. Adams. Summary of Biomedical Treatments for Autism. Available at, <http://autism.asu.edu/Additional/Summarybiomed07.pdf>

¹⁰⁵ Id.

¹⁰⁶ Id. See also, Holly Bortfeld. GFCFSF Diet on a Budget. Talk About Curing Autism. July 7, 2010. Available at, <http://www.tacanow.org/family-resources/gfcfsf-diet-on-a-budget/>.

¹⁰⁷ Whiteley P, Haracopos D, et al. The ScanBrit randomised, controlled, single-blind study of a gluten- and casein-free dietary intervention for children with autism spectrum disorders. Dept of Pharmacy, Health & Well-being, Faculty of Applied Sciences, University of Sunderland, UK. Available at, <http://www.ncbi.nlm.nih.gov/pubmed/20406576>. “This study used 72 Danish children (aged 4 years to 10 years 11 months) assigned to diet (A) or non-diet (B) groups by stratified randomisation. They regulated the childrens improvement through the Autism Diagnostic Observation Schedule (ADOS) and the Gilliam Autism Rating Scale (GARS) were used to assess core autism behaviors, Vineland Adaptive Behavior Scales (VABS) to ascertain developmental level, and Attention-Deficit Hyperactivity Disorder - IV scale (ADHD-IV) to determine inattention and hyperactivity. Participants were tested at baseline, 8, and 12 months and 24 months. In the absence of a placebo condition to the current investigation, we are, however, unable to disqualify potential effects derived from intervention outside of dietary changes. Further studies are required to ascertain potential best- and non-responders to intervention.”

¹⁰⁸ Id.

containing amino acids, often effectively reduce symptoms associated with ASD, because they are converted into neurotransmitters, which can alleviate mental disorders caused by chemical imbalances in the brain such as depression.¹⁰⁹ One study in particular conducted on a 9-year-old boy with autism proved he responded positively to the nutritional supplements, Dimethylglycine and a combination of a large dose of Vitamin B6 (Pyridoxal HCl) and Magnesium.¹¹⁰ Still, the reported findings from this study cannot be generalized because every child may react differently or need a different combination of supplements. A case study on an individual child such as this provides preliminary evidence enhancing an accumulating body of literature supporting the theory and efficacies of nutritional supplements in ASDs.¹¹¹ Further, a randomized, double-blind, placebo-controlled study conducted over a three month period administered vitamin and mineral treatment to 141 children and adults with ASD showed that the supplement group had significantly greater improvements than the placebo group on the Parental Global Impressions-Revised, which showed decreased hyperactivity, less tantruming, and increased ability in receptive language.¹¹² This suggests that vitamin and mineral

¹⁰⁹ Ibrahim KS, El-Sayed EM. Proposed remedies for some developmental disorders. Toxicol Ind Health. 2012 Feb 2. Available at, <http://www.ncbi.nlm.nih.gov/pubmed/22301819>.

¹¹⁰ Xia RR. Effectiveness of nutritional supplements for reducing symptoms in autism-spectrum disorder: a case report. J Altern Complement Med. 2011 Mar;17(3):271-4. Source Department of Physical Therapy, Creighton University, available at, <http://www.ncbi.nlm.nih.gov/pubmed/21417812>. Two family members independently administered the The Autism Treatment Evaluation Checklist (ATEC) at baseline and at 5 months into treatment to gauge improvement. The ATEC evaluates four areas: communication, sociability, sensory/cognitive awareness, and behavior. The lower the scores are, the less severe the symptoms are. The ATEC evaluations showed that the changes in total ATEC were from 63 at pretest to 33 at post-test, and from 64 at pretest to 30 at post-test, respectively. These changes represented reductions of 47.6% and 53.1%. The school teachers also noticed improvements in various areas consistent with the ATEC evaluations.

¹¹¹ Id.

¹¹² Adams JB, et al. Effect of a vitamin/mineral supplement on children and adults with autism. BMC Pediatr. 2011 Dec 12;11:111. Autism/Asperger's Research Program, Arizona State University, Tempe, available at <http://www.ncbi.nlm.nih.gov/pubmed/22151477>. Vitamin/mineral supplementation is beneficial in improving the nutritional and metabolic status of children with autism, including improvements in methylation, glutathione,

supplement are a reasonable and effective course of therapy to consider for most children and adults with ASD.¹¹³ Nutritional supplements have proven effective for treating ASD for specific children, but biomedical treatment goes beyond just nutritional assessment and treatment.

Pharmaceutical interventions, have also proven a useful biomedical approach. Supporting this, the article Therapies for Children with Autism Spectrum Disorder synthesized data from medical studies conducted from January 2000 to May 2010 the results of which determined antipsychotic drugs Risperidone and Aripiprazole aide improvement in “challenging behavior that includes emotional distress, aggression, hyperactivity, and self-injury.”¹¹⁴ Some of the cases in the above referenced study revealed some mild side effects (emphasized as not being significant). Still, the results supports the use of medical intervention as a part of an early intensive behavioral and developmental plan to improve cognitive performance, language skills, and adaptive behavior in children with ASD.

These studies provide a basis for linking biomedical treatments to symptom reduction for ASD. Still, in order to require private insurance companies to cover biomedical treatment more studies will need to be done in order for biomedical treatments to be sufficiently accepted in the medical community to require coverage. Otherwise sufficient studies will need to be done to provide enough empirical evidence to show that despite not being accepted as treatment it

oxidative stress, sulfation, ATP, NADH, and NADPH. The supplement group had significantly greater improvements than did the placebo group on the PGI-R Average Change. (PGI-R, Average Change, $p = 0.008$), and on the subscores for Hyperactivity ($p = 0.003$), Tantrumming ($p = 0.009$), Overall ($p = 0.02$), and Receptive Language ($p = 0.03$).

¹¹³ Id.

¹¹⁴ Warren Z, et al. Therapies for Children With Autism Spectrum Disorders. Agency for Healthcare Research and Quality (US); 2011 Apr. Report No.: 11-EHC029-EF. AHRQ Comparative Effectiveness Reviews. Available at, <http://www.ncbi.nlm.nih.gov/pubmed/21834171>. (statistics excluding studies with fewer than 30 participants; behavioral, educational, and allied health studies with fewer than 10 participants; and studies lacking relevance to treatment for ASDs).

should be covered because the data shows it is effective and safe. Additional studies are currently being conducted with results soon to be released.¹¹⁵

III. PRIVATE INSURANCE PROVIDER’S STRONGEST ARGUMENTS FOR EXCLUDING BIOMEDICAL TREATMENT FROM COVERAGE.

“What is it about the little boy;
he acts different in every way
What is it about the little boy;
they say it won’t go away

What is it about the little boy?
What is the cause for concern?
What it is about the little boy,
has a diagnosis we’ve learned

Now we know about the little boy
So now where do we turn?
Now we know about the little boy;
there is so much to learn

So, who will help the little boy?
Insurance says no way!
Who will help the little boy
If we cannot pay?”¹¹⁶

Private health insurance may be governed through federal legislation, ERISA or through state regulation of smaller employers.¹¹⁷ ASD has been explicitly included in the mental health parity law as a neurological disorder which requires coverage by insurance providers.¹¹⁸ Nonetheless, Insurance coverage is not absolute. In many cases insurance coverage is restricted

¹¹⁵ Autism Speaks Announces \$6.9 Million in New Biomedical Research Grants. <http://www.autismspeaks.org/about-us/press-releases/autism-speaks-announces-69-million-new-biomedical-research-grants>. See also, http://www.autism.com/pro_biomedical_research.asp#Biomedical, and <http://medicine.yale.edu/childstudy/autism/research/guan-pdd.aspx>.

¹¹⁶ Linda Moran. The Little Boy. <http://www.karensscrapsandgraphics.com/poetry/lboy.htm>

¹¹⁷ 29 U.S.C.A. § 1185a (West). See also, Angela Barner, Unlocking Access to Insurance Coverage for Autism Treatment, 6 J.L. Econ. & Pol’y 107 (2009). (Policy established in a settlement from Hatch v. Blue Cross Blue Shield of Minnesota “entitled Pervasive Development Disorders: Identification, Evaluation, and Treatment, defines pervasive developmental disorders (PDD) to include autism.”).

¹¹⁸ Id.

to particular services, preferred health care providers, and can also have annual monetary limits.¹¹⁹ Further, private insurance providers often limit coverage to statutory mandates which set the minimum for emergency care, preventative care, and chronic illness care.¹²⁰ Unfortunately, many private insurance plans are allowed to create major loopholes, which insurance providers use to deny insurance coverage for many treatments. Insurance Providers exclude ASD treatments claiming them to be Complementary and Alternative Medicine and not medically necessary.¹²¹

A. *INSURANCE PROVIDERS EXCLUDE COVERAGE FOR BIOMEDICAL TREATMENT BY CLAIMING IT IS “COMPLIMENTARY ALTERNATIVE MEDICINE” (CAM).*

Insurance providers avoid coverage by claiming services are Complementary and Alternative Medicine (CAM). CAM is defined as, “a group of diverse medical and health care systems, practices, and products that are not presently considered to be part of conventional medicine.”¹²²

Typical exclusions of CAM treatments involve acupuncture, massage, hypnotherapy, and probiotics.¹²³ Private insurance carriers have been allowed the freedom to exclude many useful medical treatments under this broad exclusion. This reallocation of medical expenditure has heavily burdened individual citizens. According to the American Hospital Assoc., in 2007 US consumers spent 33.9 billion out-of-pocket for CAM including both the purchase of CAM

¹¹⁹ N.J. Stat. Ann. § 17B:27-46.1ii (West).

¹²⁰ 29 U.S.C.A. § 1185a (West). See also, Angela Barner, Unlocking Access to Insurance Coverage for Autism Treatment, 6 J.L. Econ. & Pol'y 107 (2009).

¹²¹ N.J. Admin. Code 11:4-57.3. See also, N.J. Stat. Ann. § 17B:27-46.1ii (West)

¹²² What is CAM? The National Institutes of Health National Center for Complementary and Alternative Medicine. Available at, <http://nccam.nih.gov/health/whatiscam>.

¹²³ Id.

products and materials as well as the estimated 354.2 million visits to CAM practitioners.¹²⁴ Additionally, even hospitals which primarily focus on emergency and terminal illness are increasing the availability of typical CAM services in house, as well as, increasing their referrals for CAM treatments.¹²⁵ Insurance providers trying to prevent additional costs for treatments for ASDs have a stronger argument in excluding music therapy or dog therapy (even though both of these have proven effective in reaching a child with ASD), than they do with blocking biomedical treatment administered by an Medical Doctor.

B. INSURANCE PROVIDERS EXCLUDE BIOMEDICAL TREATMENT FROM COVERAGE BY CLAIMING IT IS NOT "MEDICALLY NECESSARY."

A common provision in health insurance policies is to require that covered services, equipment or supplies be medically necessary.¹²⁶ Conversely, services that are not medically necessary are excluded from coverage.¹²⁷ If the terms of the contract are unambiguous as to how the insurance provider defines a medically necessary treatment then the treatment is evaluated according to the terms of the contract. For example, some policies define "medically necessary" as a service or treatment in accordance with accepted medical standards in the area, which services could not be omitted without an adverse effect on the patient.¹²⁸ If, on the other hand,

¹²⁴ David Allen and Matthew Fenwick. Latest Survey Shows More Hospitals Offering Complementary and Alternative Medicine Services. American Hospital Association. <http://www.aha.org/presscenter/pressrel/2008/080915-pr-cam.shtml>.

¹²⁵ Id.

¹²⁶ What services, equipment, or supplies are "medically necessary" for purposes of coverage under medical insurance. 75 A.L.R.4th 763 (Originally published in 1989).

¹²⁷ Id.

¹²⁸ Id.

the contract is ambiguous then the contract will be strictly interpreted in favor of the insured and will consider safety and efficacy to determine if the treatment is a covered benefit.¹²⁹

To determine if a treatment is medically necessary, the courts will first consider the terms of the policy and the nature of the treatment.¹³⁰ To evaluate the nature of the treatment, the court may consider; appropriateness of the level or intensity of the service, the individual patients condition and if the request treatment is appropriate to treat that condition, and whether the therapy is “merely performance enhancing or discretionary in nature.”¹³¹ The court will also consider if the terms of the contract are clear and unambiguous.

One example of an insurance policy attempting to define medical necessity gives the insured’s the right, “to have a candid discussion about appropriate or medically necessary treatment options for your condition, regardless of cost or benefit coverage.”¹³² While it is beneficial to know about medically necessary treatment options by ones doctor, if they are not going to be covered by the insurance provider, the discussion itself does the patient little good. Still, the plan also provides insured’s the right to receive medically necessary specialty care,¹³³ and allows the insured to request a waiver for medically necessary prescriptions that are not covered under the plan.¹³⁴ To determine if a treatment of service is medically necessary, this

¹²⁹ Id.

¹³⁰ Id.

¹³¹ Brown E. Medically necessary? Physician Exec. 1999 Mar-Apr;25(2):74-6. Available at, <http://www.ncbi.nlm.nih.gov/pubmed/10351736>.

¹³² MVP health plan 2011 Annual Notices. MVP Health Care. Page 1. Available at, <http://www.mvphealthcare.com/documents/MemberAnnualNotice.pdf>.

¹³³ Id. at 2.

¹³⁴ Id. at 8

plan has medical staff comprised of physicians, registered nurses and other health care providers that “review requests for health care services to determine if the requested service is medically necessary.”¹³⁵ The plan fails to provide a specific rubric or the actual consideration the medical staff uses in order to make such a determination.

Further, in April 2000, Aetna (one of the largest health insurance providers), agreed to a settlement contract that stipulated medically necessary as,

"health services and supplies that under the applicable standard of care are appropriate: (a) to *improve* or preserve health, life, or *function*; or (b) to slow the deterioration of health, life, or function; or (c) for the *early* screening, prevention, evaluation, diagnosis or *treatment of a disease, condition, illness or injury.*" Included in this definition is the *cost effectiveness of services and supplies.* A treatment is cost effective if it is the least expensive medically necessary treatment selected from two or more treatments that are "equally effective."¹³⁶

This definition would provide for great leeway in arguing that biomedical treatment for autism is a cost effective way to change their overall function, improve their health, and ultimately reduce costs of their services in the future. As there is no standard legislative definition of the term medically necessary, all therapies will be considered by assessing the terms of the contract.

Still, in the absence of a definition for medically necessary treatment in the plan, or when there is an ambiguity in the terms of the plan, courts will adopt their own assessment for what is

¹³⁵ Id. at 12

¹³⁶ Brown E. Medically necessary? Physician Exec. 1999 Mar-Apr;25(2):74-6. Available at, <http://www.ncbi.nlm.nih.gov/pubmed/10351736>. See also, Glossary. Aetna. Available at, https://www.aetnastudenthealth.com/stu_conn/glossary.aspx#M. (“Medically necessary services or supplies that are appropriate for or consistent with the diagnosis according to accepted medical standards as described in the Covered Benefits section of the plan.”).

a medically necessary and thus covered treatment under that particular plan. The second circuit adopted an individual assessment of medically necessary procedures positing,

“unless the contrary is specified, the term “medical necessity” must refer to what is medically necessary *for a particular patient*, and hence entails an individual assessment rather than a general determination of what works in the ordinary case.”¹³⁷

Some courts have determined that, “medical necessity is strictly a contractual term in which a patient’s physician must prove that a procedure is medically appropriate and efficacious.”¹³⁸ Other courts have defined medical necessary as, “a treatment that is commonly recommended, or not outside the mainstream of the usual customary practice of medicine, or meets the common standard of care.”¹³⁹

IV. MODALITIES FOR LAWYERS ADVOCATING FOR COVERAGE FOR THEIR CLIENTS.

Insurance providers try to escape coverage for ASD treatments by claiming they are not medically necessary and/or that they are experimental. In order for advocates to successfully convince the judiciary that biomedical treatment for ASDs should be covered by private insurance providers, advocates must prove that the treatment is either accepted in the medical community as a legitimate treatment and/or that the treatment is beneficial and not dangerous.

Advocates seeking to expand benefits that children with ASD receive should emphasize the public policy behind protecting this vulnerable class of people. “Exclusion of [health benefit]

¹³⁷ Janet L. Kaminski. Defining Medical Necessity. OLR Research Report. February 23, 2007. Available at, <http://www.cga.ct.gov/2007/rpt/2007-r-0055.htm>.

¹³⁸ Morris A. Landau. The Difficulties in Defining Medical Necessity. University of Houston Law Center. November 29, 2000. Available at, <http://www.law.uh.edu/healthlaw/perspectives/Managed/001129Difficulties.html>.

¹³⁹ Whitehead v. Federal Express Corp., 878 F. Supp. 1066 (W.D. Tenn. 1994).

coverage based solely because of [a] disability is against legislative intent.”¹⁴⁰ While there is currently no mandate that explicitly requires insurance carriers to cover biomedical treatment, denying children with ASD access to this treatment is contrary to public interest. “Every child is born with the potential to develop those skills necessary to life in society.”¹⁴¹ Children afflicted with ASD cannot achieve their full potential without a comprehensive treatment plan specific to their individual needs, and biomedical treatments have become an essential part of such a plan. Early intense treatments can help restore children with ASDs’ potential.¹⁴² The court in, Micheletti v. State Health Benefits Comm’n, further posited that when a treatment is not exotic nor economically wasteful it should be covered.¹⁴³ Further, the court emphasized that including treatment for a small number of children with ASD would not necessary overly burden the provider or the entire community of insured.¹⁴⁴ It is important for advocates to remember the vulnerability of the population seeking treatment, the fact that the cost of covering them will not be overly burdensome on the insurance provider or on the population of insured overall, and that it is the intent of the legislature to protect the rights of those inflicted with lifelong impairments such as ASD.

Advocates seeking remedy in the judiciary for biomedical treatment coverage will likely be facing an insurance provider that claims biomedical treatment is excluded under the policies

¹⁴⁰ Micheletti v. State Health Benefits Comm’n, 913 A.2d 842, 844 (App. Div. 2007).

¹⁴¹ Id. (“developmental defines childhood”).

¹⁴² Id.

¹⁴³ Id. (the necessity of the speech and occupational therapy treatment in this case was not disputed).

¹⁴⁴ Murray v. State Health Benefits Comm’n, 767 A.2d 509, 510 (App. Div. 2001). (The plaintiff sought reimbursement of 170 dollars for colonic hydrotherapy which was excluded under the experimental provisions of the contract, although similar to an enema which is covered by the insurance it was different in the administration of the procedure).

CAM provision. Many policies consider treatments, which are not common or “outside the prevailing opinion within the appropriate specialty,” to be complimentary, and thus excluded.¹⁴⁵ Also, if treatments are still in the clinical trials or research stages and being used as educational tools then providers typically try to exclude the treatment as CAM as well.¹⁴⁶ Where the terms of the contract are not ambiguous as to what constitutes an experimental treatment, and the treatment in question is in phase II clinical trial or less and the insured signs a consent form, which specifically states the treatment is for research and/or is experimental the insurance company was not required to cover this treatment.¹⁴⁷ Exclusions under CAM were originally allowed in order to ensure safety and efficacy of treatments. Yet, courts have recognized that the use of alternative medical treatments is expanding, and thus they should not be excluded from insurance coverage without careful consideration. If treatments are commonly accepted among alternative medicine practitioners they should not be excluded solely because “traditional doctors do not yet utilize the treatment or are completely unfamiliar with the practice.”¹⁴⁸ This

¹⁴⁵ Id.

¹⁴⁶ Parsons v. Sisters of Charity of Leavenworth Health Sys., Inc., 2011 WL 2144894 (D. Mont. May 31, 2011). Coverage for a treatment that was proven partially successful through clinical trials was denied for a twenty year old suffering from a chronic autoimmune disease with no cure called Crohn’s disease, which attacks the gastrointestinal tract. Several reasons to conclude this treatment was in fact experimental (peer review article stating randomized studies needed to be conducted still, partial approval of the procedure by FDA not full, the consent letter for the clinical trial explicitly stated that it was an experimental research study, and severe possibility of serious health risks with the procedure). In order to enter into the clinical trial the plaintiff was required to sign a consent form which contains specific language stating it was an agreement to participate in an “experimental research study” which involves a “risky” procedure which “may not work” and may “result in death.” The consent form also state that even though this procedure was full approved by the FDA for some transplants for cancer it was not approved for the treatment of crohns disease yet, thus it was not standard within the medical community for this purpose.

¹⁴⁷ Murray v. State Health Benefits Comm'n, 767 A.2d 509, 510 (App. Div. 2001).

¹⁴⁸ Id. See also, Michael H. Cohen, Holistic Health Care: Including Alternative and Complementary Medicine in Insurance and Regulatory Schemes, 28 Ariz.L.Rev. 83, 156 (1996). “Insurer inclusion of alternative and

growing acceptance for CAM treatments is exhibited by medical schools, which now teach alternative approaches to accompany traditional medical practices.¹⁴⁹ Another consideration in evading CAM exclusions is that if the alternative treatment is potentially dangerous for the patient the court likely proceed with caution and require more studies before ruling the treatment must be covered by insurance.¹⁵⁰ This is not a concern with biomedical treatment. Biomedical treatment does not have significant side effects that would cause a court to take pause in determine the safety of the treatments. Further, any proposed therapy must be viewed in its entirety to discern whether the treatment qualifies as experimental.¹⁵¹ The courts have much difficulty in determining if a treatment should be considered experimental and thus excludable as they are recognizing that alternative treatments can be cost effective and as medicine continues with new innovation the courts have more difficulty in denying coverage for more efficient and more economic treatments.¹⁵²

complementary therapies is likely to expand as therapies gain acceptance and credibility, and gain support by data showing that such treatment can contribute to health so as to minimize insurers' overall costs.”

¹⁴⁹ Kathleen M. Boozang, Western Medicine Opens the Door to Alternative Medicine, 24 Am.J.L. & Med. 185, 186-187 (1998). “As more doctors are taught these techniques the availability and utilization of alternative treatments will increase.”

¹⁵⁰ Id. at 514-15. (“there was sufficient evidence for the Commission to conclude that this particular treatment was potentially unsafe and inefficacious for the purposes prescribed, and it was not error to consider the gastroenterologist as the “appropriate specialty” to determine whether this particular treatment requires further evaluation.”).

¹⁵¹ Kopicki v. Fitzgerald Auto. Family Employee Benefits Plan, 121 F. Supp. 2d 467, 469-70 (D. Md. 2000). See also, Hendricks and Martin, 39 F.3d at 514–515. Id. at 477.

¹⁵² Vellios v. IPRO, External Review Agent, 765 N.Y.S.2d 222, 223 (Sup. Ct. 2003). (In order to resolve whether new alternative treatments should be covered by insurance, “the prudent course of action might be to establish some sort of regional cooperative committees comprised of oncologists, internists, surgeons, experts in medical ethics, medical school administrators, economists, representatives of the insurance industry, patient advocates and politicians. Through such a collective task force perhaps some consensus might be reached concerning the definition of experimental procedures, as well as agreement on the

Advocates need to convince the court that despite having yet to be proven efficacious it is in the public's best interest for insurance providers to cover biomedical treatment.¹⁵³ Typically the plaintiffs' burden of proof in trying to obtain coverage under a perspective insurance plan requires that the plaintiff fulfill the "medically necessary" provision. Occasionally, insurance providers will explicitly enumerate requirements for a treatment to be medically necessary. The determination of coverage should not be based solely on the "likelihood of success" but instead should be a balance between the irreparable harm to the plaintiff against the harm to the defendant and if the balance goes towards the plaintiff the likelihood of success test is displaced.¹⁵⁴ The position of the Health Care Financing Administration (HCFA) on the procedure may also factor into the analysis.¹⁵⁵ As a final element or consideration, "public interest favors the preservation of life and a patient receiving medical benefits to which he is entitled."¹⁵⁶

Advocates should emphasize to the court that private insurance providers' decisions to exclude coverage are given less discretion than state benefits providers. State benefits plans are

procedures, which are so cost prohibitive that requiring insurers to cover them might result in the collapse of the healthcare industry." Article 49 of the Insurance Law, determinations of health care plans to deny coverage for medical treatment to their insureds'").

¹⁵³ Fuja v. Benefit Trust Life Ins. Co., 18 F.3d 1405, 1407 (7th Cir. 1994).

¹⁵⁴ Kopicki v. Fitzgerald Auto. Family Employee Benefits Plan, 121 F. Supp. 2d 467, 479-80 (D. Md. 2000). See also, Blackwelder Furn., 550 F.2d at 194.

¹⁵⁵ Id. 476.

¹⁵⁶ Id. (quoting), Accord Dozsa v. Crum & Forster Ins. Co., 716 F.Supp. 131, 140 (D.N.J.1989). ("In Wilson, the court found that the total absence of Phase III clinical trials on the therapy in question did not justify a categorical determination that such a procedure was experimental or investigational. 65 F.3d at 365-66. Rather, the court found that "a therapy could become standard practice in the medical community before it had been proven more effective than traditional treatmentwhere a highly promising treatment for a terminal illness is known to be harmless, but has yet to be proven efficacious in prospective, randomized testing." Wilson, 65 F.3d at 366. Id. 481.").

provided more discretion for limiting or excluding coverage as necessary to “avoid inequity and unnecessary utilization.”¹⁵⁷ Courts have recognized that state health plans and commercial insurance plans are distinguishable because the state commission “must balance its obligations of meeting the health care needs of its members with a fiduciary obligation to make the program cost effective.”¹⁵⁸ Private insurance carriers do not have the incentive to keep the program cost effective. Consequently, ambiguous provisions will be construed against commercial policies as an adhesion contract (unlike deference given to state plan administrative decisions).¹⁵⁹

Additionally, the court will limit the discretion given to insurance provider’s decisions to exclude treatment when there is a conflict of interest. A conflict of interests exists if the plan administrator is given sole authority to review and make decisions on plan terms and on benefit coverage determinations.¹⁶⁰ When there is a conflict of interest, ambiguities are to be construed against the insurers.¹⁶¹

Biomedical treatment for autism does have a place in the insurance provider’s coverage plan. There have been randomized tests done that show that biomedical treatment can be effective in treating ASDs. Additionally, there is a movement towards acceptance of alternative

¹⁵⁷ Markiewicz v. State Health Benefits Comm'n., 915 A.2d 553, 561 (App. Div. 2007). (arbitrary and capricious review of decisions).

¹⁵⁸ Id.

¹⁵⁹ Murray v. State Health Benefits Comm'n., 767 A.2d 509, 511 (App. Div. 2001) (quoting) Heaton v. State Health Benefits Comm'n., 624 A.2d 69 (App.Div.1993). see also, Kievit v. Loyal Protective Life Ins. Co., 170 A.2d 22 (1961). Thus, for commercial plans the insurance providers decision to exclude experimental treatments will not be given as much discretion by the courts, providing plaintiffs with a lower threshold to prove the private insurance companies decisions to exclude was wrong.

¹⁶⁰ Kopicki v. Fitzgerald Auto. Family Employee Benefits Plan, 121 F. Supp. 2d 467, 473 (D. Md. 2000). See also, Killian v. Healthsource Provident Administrators, Inc., 152 F.3d 514, 521 (6th Cir.1998) (finding when an employer “both funds and administers the plan at issue, there is an actual and apparent conflict.”).

¹⁶¹ Id. at 475. (referencing) Bailey v. Blue Cross/Blue Shield of Virginia, 866 F.Supp. 277 (E.D.Va.1994).

medicine, in particular holistic approaches to alleviating impairing physiological symptoms. Considering that there is a lower differential standard for private insurance companies than the one given to state insurance, the judiciary should require private insurance carriers to cover biomedical treatment for children with ASDs.

Advocates attempting to get judicially mandated coverage for biomedical treatment for ASDs by private insurance carriers have an uphill battle. Advocates should emphasize the public interest in protecting the rights to comprehensive treatment benefits, of children with ASD, as they are a vulnerable community. They should also emphasize that providing children with ASD better treatment will reduce the overall costs of caring for them, as they will require less services as they continue to progress developmentally. Further, by ensuring such treatment for children with PDD-NOS who are typically higher functioning, they possibly can become completely independent as adults. As more clinical studies come out, advocates must prove that the treatment is accepted in the medical community as a legitimate treatment. Further, advocates should emphasize that the treatment is beneficial and not dangerous and thus should be covered even if it has not yet been accepted by mainstream medicine.

V. POSSIBLE LEGISLATIVE REFORM.

Biomedical treatment will have a relatively low cost per child but can have a cumulative heavy burden on insurance companies. Additionally, treatment is extremely individualized and may or may not work for any individual child. Thus, insurance providers are reluctant to cover this expense. Regardless of insurance providers resistance, the rise in ASD has prompted federal and state mandates expanding insurance coverage for ASD treatments to expand.¹⁶² Further,

¹⁶² Justine Redmen. Mom Wins Fight For Autism Insurance. CNN.com. Available at, <http://www.cnn.com/2008/HEALTH/conditions/04/01/autism.insurance/index.html>. See also, South Carolina: Frequently Asked Questions About the Autism Insurance Reform Law (Ryan's Law). Available at,

once additional clinical trials are conducted on biomedical approaches to reduce ASD symptoms, insurance companies will eventually be required to cover the cost of these treatments as biomedical approaches for ASD become more widely accepted in the mainstream medical community or as the empirical evidence clearly shows a health benefit and no dangerous side effects.

One possible approach to achieving mandated coverage would be to propose legislation similar to that of Ryan's Law but instead of advocating for ABA therapy, the new legislation would explicitly require biomedical treatment for ASD to be coverage by private insurance.¹⁶³ A compromising limitation could be to set yearly limitations on the amount the insurance provider will cover towards biomedical treatments.¹⁶⁴ Another possible requirement would be for insurance companies pay for initial testing, with a referral from the primary care physician, to determine if that particular child requires or would benefit from biomedical treatment. Moving forward, if the doctor at the initial visit/testing phase recommends a course of action then those subsequent treatment expenses will be required to be covered up to the annual policy limit. Many state legislatures so far have also included age limits suggesting mandatory coverage up until a certain age.¹⁶⁵ Possibly adding a simple sentence to these already implemented mandates to include coverage nutritional supplements and medications would also be beneficial. For new state mandates, an age limit for biomedical treatment coverage is not beneficial because children

<http://ddsn.sc.gov/providers/medicaidwaiverservices/pdd/Documents/PDDManual/Ryan%27s%20Law%20FAQ.pdf>

¹⁶³ Id.

¹⁶⁴ For visitation limits see, N.J. Admin. Code 11:4-57.3. For Coverage limits see, N.J. Stat. Ann. § 17B:27-46.1ii (West).

¹⁶⁵ Tex. Ins. Code Ann. § 1355.015 (West). (coverage from date of diagnosis until the age of nine). See also, Alaska Admin. Code tit. 7, § 135.220 (coverage for those “under 21 years of age with a severe behavioral disorder”).

likely will still need this treatment as their symptoms increase and decrease as the child goes through various life stages. A beneficial proposal to expand coverage may read:

“At a minimum, a health benefit plan must provide coverage as provided by this section to an enrollee who is diagnosed with autism spectrum disorder.”¹⁶⁶

- (1) initial testing by a specialist for biomedical treatments for autism including but not limited to blood and stool testing for food sensitivities, digestive track issues, testing for chemical imbalances, testing for vitamin deficiencies, and any test that is prescribed in order to access and implement biomedical treatment.
- (2) Physician recommended medications or nutritional supplements used to address symptoms of autism spectrum disorder.¹⁶⁷
- (3) Comprehensive testing/evaluations to reassess the child’s progress, to cover at least two comprehensive tests/evaluations per year (one comprehensive test every six months). The specialist shall have the discretion to determine, which tests shall be conducted for the bi-annual evaluations. The specialist will have the ability to test/evaluate more frequently than twice per year.

“The benefits provided pursuant to this subsection shall be provided to the same extent as for any other medical condition under the policy,” and cannot be excluded as being non-restorative, except that the provider may implement certain exclusions and/or requirements such as:¹⁶⁸

- (A) Treatment limits for biomedical treatments of \$10,000 per year.
- (B) Require a prescription for the visit to the specialist by the primary care physician.¹⁶⁹

¹⁶⁶ Tex. Ins. Code Ann. § 1355.015 (West).

¹⁶⁷ Id.

¹⁶⁸ N.J. Stat. Ann. § 17B:27-46.1ii (West). (“The benefits provided pursuant to this subsection shall not be denied on the basis that the treatment is not restorative.”).

¹⁶⁹ N.J. Admin. Code 11:4-57.3 (preauthorization requirement).

- (C) Limit the amount of visits to the nutritional specialist to 20 visits per year and can count phone consultations that the doctor charges as a visit in the visitation limit.¹⁷⁰
- (D) Providers may choose to only cover the initial specialist visit and testing and upon recommendation with explanation from the specialist the provider will then be required to cover the recommended course of action including (2) form this subsection up until any explicit treatment limits in section (A) of this subsection.

Legislative reform for biomedical treatment is a distant reality considering more clinical studies need to be done in order to have enough evidence that this treatment is successful, that is it not harmful, and that it is accepted in the medical community.¹⁷¹ Still, a basic proposal similar to the one posited above seems to be a fair compromise between the needs of children with ASD and the needs of insurance providers to keep expenses low. A mandate similar to this will require children with ASD to be allowed to at least get initial testing to see if they may benefit from a biomedical treatment program and ensure that if the specialist determines they will benefit, that the insurance provider will cover up to 10,000 in expenses towards the treatment annually. While this may not cover the complete cost of biomedical treatment for every child with ASD, it is certainly a major help to families who are currently paying completely out of pocket for their children's biomedical treatment. Further, this proposal protects insurance providers interests by allowing an annual limit, and limiting the amount of comprehensive

¹⁷⁰ Id. (annual visitation limits allowed).

¹⁷¹ Dreher W. Evidence-based medicine and public health law: statutory health insurance. Z Arztl Fortbild Qualitatssich. 2004 Sep;98(6):489-93. Available at, <http://www.ncbi.nlm.nih.gov/pubmed/15527192>. Positing that quality of medical services should be a consideration in determining if a treatment is medically necessary, and that quality of services is the main concern of Evidence-based Medicine (EbM).

testing to twice annually. Ultimately, a proposal like this will help to make biomedical treatment an accessible treatment option for children with ASD, thus allow children with ASD to access to a more comprehensive treatment plan earlier in life so they can achieve larger developmental gains and have lower health care costs throughout their lives, which should be the ultimate goal of health insurance reform for this vulnerable population.

VI. CONCLUDING THOUGHTS: BIOMEDICAL TREATMENT IS A USEFUL MEDICAL TREATMENT THAT SHOULD BE COVERED BY INSURANCE IN ACCORDANCE WITH THE PUBLIC POLICY OF PROVIDING ACCESS TO BENEFICIAL TREATMENT THAT IS NOT DANGEROUS.

Children with developmental disabilities are the most vulnerable community in our society and should receive the highest level of protection, and the most significant access to health care. ASD is unpredictable, it crosses socioeconomic boundaries and it can cause severe impairments, which significantly reduces life opportunities for many children. Thus, expanding coverage to help this community is the obligation of society as a whole. Particularly children diagnosed with PDD-NOS have the potential to lead independent and productive adult lives but they experience very real barriers to their physical, educational, and social development. If there is a possibility those barriers can be alleviated through biomedical treatment, the small cost is worth the great gain, the life of a child.

Table of Authorities

Page

CASES:

<u>Accord Dozsa v. Crum & Forster Ins. Co.</u> , 716 F.Supp. 131, 140 (D.N.J.1989).....	34
<u>Bailey v. Blue Cross/Blue Shield of Virginia</u> , 866 F.Supp. 277 (E.D.Va.1994).....	35
<u>Fuja v. Benefit Trust Life Ins. Co.</u> , 18 F.3d 1405 (7th Cir. 1994).....	34
<u>Killian v. Healthsource Provident Administrators, Inc.</u> , 152 F.3d 514, 521 (6th Cir.1998).....	35
<u>Kopicki v. Fitzgerald Auto. Family Employee Benefits Plan</u> , 121 F. Supp. 2d 467 (D. Md. 2000).....	33-35
<u>Markiewicz v. State Health Benefits Comm'n</u> , 915 A.2d 553 (App. Div. 2007).....	35
<u>Micheletti v. State Health Benefits Comm'n</u> , 913 A.2d 842 (App. Div. 2007).....	31
<u>Murray v. State Health Benefits Comm'n</u> , 767 A.2d 509 (App. Div. 2001).....	31, 32, 35
<u>Parsons v. Sisters of Charity of Leavenworth Health Sys., Inc.</u> , 2011 WL 2144894 (D. Mont. May 31, 2011).....	31
<u>Vellios v. IPRO, External Review Agent</u> , 765 N.Y.S.2d 222 (Sup. Ct. 2003).....	33

STATUTES:

29 U.S.C.A. § 1185a (West).....	7, 25, 26
N.J. Admin. Code 11:4-57.3.....	26, 37, 38
N.J. Stat. Ann. § 17B:27-46.1ii (West).....	26, 37, 38
Tex. Ins. Code Ann. § 1355.015 (West).....	38

OTHER AUTHORITIES:

Adams JB, et al. Effect of a vitamin/mineral supplement on children and adults with autism. BMC Pediatr. 2011 Dec 12;11:111. Autism/Asperger's Research Program, Arizona State University, Tempe, available at <http://www.ncbi.nlm.nih.gov/pubmed/22151477>.....23

ADHD Autism Psychological Service and Advocacy. Available at, <http://www.aapsa.net/Website/Team/Staff.aspx>.....15

Adults with Autism. National Alliance on Mental Illness. Available at, <http://www.nami.org/Template.cfm?Section=Helpline1&Template=/ContentManagement/ContentDisplay.cfm&ContentID=66015>.....10

Alesha Williams Boyd. Autistic Kids find Music Therapeutic. Asbury Park Press.com. Gannett Company. Available at, <http://www.app.com/article/20120420/NJNEWS10/304200097/Autistic-kids-find-music-therapeutic>.....17

Angela Barner, Unlocking Access to Insurance Coverage for Autism Treatment, 6 J.L. Econ. & Pol'y 107 (2009).....7, 10, 25, 26

Anna Satz. Overcoming Fragmentation in Health and Disability Law. 60 Emory L. J. 277 (2011).....2, 18

Asperger Syndrome Signs and Symptoms. KidsHealth.org. Available at, <http://kidshealth.org/parent/medical/brain/asperger.html#>.....11

Autism. Centers for Disease Control and Prevention. <http://www.cdc.gov/ncbddd/autism/data.html>.....2

Autism. American Academy of Child and Adolescent Psychiatry. Autism Research Center.

Available at,

http://www.aacap.org/cs/autism_resource_center/faqs_on_autism.....12

Autism and Genetics. The Tech Museum of Innovation. Available at,

http://genetics.thetech.org/original_news/news49.....2

Autism Fact Sheet. National Institute of Neurological Disorders and Stroke. National Institutes of Health. Last updated October 17, 2012. Available at,

http://www.ninds.nih.gov/disorders/autism/detail_autism.htm.....3, 9

Autism Speaks Announces \$6.9 Million in New Biomedical Research Grants.

<http://www.autismspeaks.org/about-us/press-releases/autism-speaks-announces-69-million-new-biomedical-research-grants>.....25

Autism Spectrum Disorders (ASDs). Centers for Disease Control and Prevention. Available at,

<http://www.cdc.gov/NCBDDD/autism/facts.html>.....3,4

Autism Spectrum Disorder Relationships and Sexuality. Centre for Autism. Available at,

<https://www.middletownautism.com/fs/doc/publications/mca-booklet-0005-wlink.pdf>.....12

Autism Spectrum Disorders, Treatment. Center for Disease Control. May 24, 2012. Available

at, <http://www.cdc.gov/ncbddd/autism/treatment.html>.....5, 15, 16

Autism Spectrum Disorders (ASDs) Screening and Diagnosis. Center for disease Control and

Prevention. Available at,

<http://www.cdc.gov/ncbddd/autism/screening.html>.....10

Autism Therapists in Massachusetts (MA). Psychology Today.

http://therapists.psychologytoday.com/rms/prof_results.php?state=MA&spec=167.....15

Benedict Carey. Scientists Link Gene Mutation to Autism Risk. New York Times. April 4, 2012. Available at, http://www.nytimes.com/2012/04/05/health/research/scientists-link-rare-gene-mutations-to-heightened-risk-of-autism.html?pagewanted=all&_r=0.....21

Brown E. Medically necessary? Physician Exec. 1999 Mar-Apr;25(2):74-6. Available at, <http://www.ncbi.nlm.nih.gov/pubmed/10351736>.....28, 29

The Budget Crisis. Autism Society. Available at, <http://www.autism-society.org/get-involved/the-budget-crisis.html>.....3, 19, 20

Communication for a Lifetime. American Speech-Language-Hearing Association. Available at, <http://www.asha.org/public/>.....13

Data & Statistics. Center for Disease Control. Available at, <http://www.cdc.gov/ncbddd/autism/data.html>.....2, 18

David Allen and Matthew Fenwick. Latest Survey Shows More Hospitals Offering Complementary and Alternative Medicine Services. American Hospital Association. <http://www.aha.org/presscenter/pressrel/2008/080915-pr-cam.shtml>.....27

Deborah Stone. The Struggle for the Soul of Health Insurance. Brandeis University. The Journal of Health Politics, Policy and Law. Available at, http://myweb.shu.edu/bbcswebdav/pid-2452936-dt-content-rid-4320224_2/courses/2012_SPRING_HLTH7408MM/Stone%20Struggle%20for%20the%20Soul%20of%20HI%2093%20excerpt.pdf.....1

Dreher W. Evidence-based medicine and public health law: statutory health insurance. Z Arztl Fortbild Qualitatssich. 2004 Sep;98(6):489-93. Available at, <http://www.ncbi.nlm.nih.gov/pubmed/15527192>.....39

Diagnostic Classifications. Autism Society. Available at, <http://www.autism-society.org/about-autism/diagnosis/diagnostic-classifications.html>.....12

Diagnostic Criteria. Centers for Disease Control and Prevention. Available at, <http://www.cdc.gov/ncbddd/autism/hcp-dsm.html>..... 10

Florence Clark. Essay: The Current Status of Sensory Integration Therapy. AOTA Blogs. August 7, 2012. http://otconnections.aota.org/aota_blogs/b/aota_presidential_blog/archive/2012/08/07/essay-the-current-status-of-sensory-integration-therapy.aspx.....14

Glossary. Aetna. Available at, https://www.aetnastudenthealth.com/stu_conn/glossary.aspx#M.....29

The Gut-Brain Connection. Harvard Health Publication. March 27, 2012. <http://www.health.harvard.edu/healthbeat/the-gut-brain-connection>.....6, 16

The Hamilton’s Fundraising Page. Available at, <http://www.firstgiving.com/fundraiser/alison-hamilton/TACACAMPAIGN2012>.....19

Herbert MR. Contributions of the environment and environmentally vulnerable physiology to autism spectrum disorders. Transcend Research Program, Pediatric Neurology, Massachusetts General Hospital. Available at, <http://www.ncbi.nlm.nih.gov/pubmed/20087183>.....21

Hoffman, S. Unmanaged Care: Towards moral fairness in health care coverage. Available at, <http://www.ncbi.nlm.nih.gov/pubmed/15214342>. See also, Tom Baker. Health Insurance, Risk, and Responsibility After the Patient Protection and Affordable Care Act. University of Pennsylvania law Review. Available at, <http://www.pennumbra.com/issues/pdfs/159-6/Baker.pdf>.....1

Holly Bortfeld. GFCFSF Diet on a Budget. Talk About Curing Autism. July 7, 2010. Available at, <http://www.tacanow.org/family-resources/gfcfsf-diet-on-a-budget/>.....6, 19, 22

Incidence of autism. Autism-Help.org. Available at, <http://www.autism-help.org/autism-incidence-increase.htm>.....4

Isa Marrs. Speech and Language Therapy. Available at, <http://www.speechlanguagefeeding.com/speech-language-therapy-westchester/>.....13

James B. Adams. Summary of Biomedical Treatment for Autism. Autism Society. <http://www.autism-society.org/living-with-autism/treatment-options/summary-of-biomedical.html>.....6, 17, 22

Janet L. Kaminski. Defining Medical Necessity. OLR Research Report. February 23, 2007. Available at, <http://www.cga.ct.gov/2007/rpt/2007-r-0055.htm>.....30

Jessica Dickler. The Financial Toll of Autism. CNN MONEY. Available at, <http://money.cnn.com/2012/04/02/pf/autism/index.htm>.....19

John Constantino. Sibling Recurrence and the Genetic Epidemiology of Autism. Available at, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2970737>.....2

Justine Redmen. Mom Wins Fight For Autism Insurance. CNN.com. Available at, <http://www.cnn.com/2008/HEALTH/conditions/04/01/autism.insurance/index.html>.....36

Kathleen M. Boozang, Western Medicine Opens the Door to Alternative Medicine, 24 Am.J.L. & Med. 185, 186-187 (1998).....33

Kenneth Bock. Integrative Medicine. Rhinebeck Health Services. Available at, http://www.rhinebeckhealth.com/rhc/integ_med.php.....5, 12, 15, 20

Kenneth Bock and Cameron Stauth. Healing the New Childhood Epidemics. 2008 Ballantine Books Trade. Random House, Inc. New York, New York.....12

Leslie DL, Martin A. Health care expenditures associated with autism spectrum disorders. Department of Psychiatry, Yale University School of Medicine, Arch Pediatr Adolesc Med. 2007 Apr;161(4):350-5. Available at, <http://www.ncbi.nlm.nih.gov/pubmed/17404131>.....18, 19

Lewis Mehl-Madrona. Autism: Treatments Anti-Fungal Treatment. Autism Research. Available at, <http://www.healing-arts.org/children/antifungal.htm>.....16

Linda Moran. The Little Boy. <http://www.karensscrapsandgraphics.com/poetry/lboy.htm>.....25

Lisa Jo Rudy. What is Psychology and How does it relate to Autism? Autism Spectrum Disorders. About.com. Updated May 17, 2010. Available at, <http://autism.about.com/od/autismtherapy101/a/psychautism.htm>.....15

MaryAnne Lindeblad. Health Care Authority Approves ABA Therapy for Medicaid Children Diagnosed with Autism. Washington State Health Authority. Available at, http://www.hca.wa.gov/news_release/health-care-authority-approves-aba-therapy-for.html.....7, 15

Michael H. Cohen, Holistic Health Care: Including Alternative and Complementary Medicine in Insurance and Regulatory Schemes, 28 Ariz.L.Rev. 83, 156 (1996).....31

Miyake K, Hirasawa T, Koide T, and Kubota T. Epigenetics in Autism and Other Neurodevelopmental diseases. Department of Epigenetics Medicine, University of Yamanashi, Yamanashi, Japan. Adv. Exp. Med. Biol. 2012. Available at, <http://www.ncbi.nlm.nih.gov/pubmed/22411236>.....21

Morris A. Landau. The Difficulties in Defining Medical Necessity. University of Houston Law Center. November 29, 2000. Available at, <http://www.law.uh.edu/healthlaw/perspectives/Managed/001129Difficulties.html>.....30

Music Therapy Tuition and Fees. Levine School of Music. Available at, <http://www.levineschool.org/instruction/programs/music-therapy/580-music-therapy-tuition-and-fees>.....17

MVP health plan 2011 Annual Notices. MVP Health Care. Page 1. Available at, <http://www.mvphealthcare.com/documents/MemberAnnualNotice.pdf>.....28

National Database for Autism Research. National Institutes of Health. Available at, <http://ndar.nih.gov/>.....8

NIH Awards \$100 Million in Autism Research Grants Funded by CARA. Autism Speaks. Available at, <http://www.autismspeaks.org/news/news-item/nih-awards-100-million-autism-research-grants-funded-cara>.....8

Patient Care Overview. Kennedy Krieger Institute. Available at, <http://www.kennedykrieger.org/patient-care/patient-care-centers/center-autism-and-related-disorders?gclid=CLTKwuvw6rQCFUbf4AodgDEAdw>.....14

Paul Frysh. Moving Out of State to get Autism Treatment. Cnn. Available at, <http://www.cnn.com/2010/HEALTH/09/17/autism.aba.legislation/index.html>.....15

Pervasive Developmental Disorder. Emory University. Available at, <http://www.psychiatry.emory.edu/PROGRAMS/autism/pdd.html#3>.....12

Pervasive Developmental Disorders Information Page. National Institute of Neurological Disorders and Stroke. National Institutes of Health. Available at, <http://www.ninds.nih.gov/disorders/pdd/pdd.htm>.....7

Russell Lehmann. The Poet. Available at, <https://www.squag.com/696/>. See also, Russell Lehmann. Inside Out. Available at, <http://www.autisticpoet.com/bio.php>.....11, 12

Setup your family & friends fundraising page. Talk about curing Autism. Available at, <http://www.tacanow.org/ways-to-help/family-friends-campaign/setup-fundraising-page/....>19

Social Security Income. U.S. Social Security Administration. Available at, <http://www.ssa.gov/pgm/ssi.htm>.....3

Social Security and Supplemental Security Income Disability Programs. U.S. Social Security Administration. Available at, <http://www.ssa.gov/disability/>.....3

State Initiatives. Autism Speaks. Available at, <http://www.autismspeaks.org/advocacy/states>.....7

Study suggests kids can ‘recover’ from autism. Copyright 2009 The Associated Press. Available at, http://www.msnbc.msn.com/id/30645770/ns/health-mental_health/t/study-suggests-kids-can-recover-autism/#.UPXlOHfn-So.....4

Study to Explore Early Development (SEED). Centers for Disease Control and Prevention. Available at, <http://www.cdc.gov/ncbddd/autism/seed.html>.....7

Sue Seiler. Kidabilities. Copyright 2007. Available at, <http://www.kidabilities.com/services.htm>.....14

Treatment & Interventions. Southwest Autism Research & Resource Center. Available at,
http://autismcenter.org/treatment_interventions.aspx#q5.....15

Treatments & Therapies. Autism Speaks. Available at, <http://www.autismspeaks.org/family-services/tool-kits/100-day-kit/treatments-therapies>.....15

Walker DR, Thompson A., Zwaigenbaum L., Golderberg J., Bryson SE, Mahoney WJ.,
 Strawbridge CP, and Szatmari P. Specifying PDD-NOS: a comparison of PDD-NOS,
 Asperger Syndrome and Autism. Available at,
<http://www.ncbi.nlm.nih.gov/pubmed/14726723>.....11

Warren Z, et al. Therapies for Children With Autism Spectrum Disorders. Agency for
 Healthcare Research and Quality (US); 2011 Apr. Report No.: 11-EHC029-EF. AHRQ
 Comparative Effectiveness Reviews. available at,
<http://www.ncbi.nlm.nih.gov/pubmed/21834171>.....24

Walecia Konrad. Dealing With the Financial Burden of Autism. The New York Times.
 Available at,
http://www.nytimes.com/2010/01/23/health/23patient.html?_r=1&pagewanted=all.....2

What Is Complementary and Alternative Medicine? National Center for Complementary and
 Alternative Medicine. NCCAM Pub No.: D347 Date Created: October 2008 Last Updated:
 July 2011
<http://nccam.nih.gov/health/whatiscam>.....6, 26

What is PDD-NOS? Autism Speaks Inc. Available at, <http://www.autismspeaks.org/what-autism/pdd-nos>.....4

What services, equipment, or supplies are "medically necessary" for purposes of coverage under medical insurance. 75 A.L.R.4th 763 (Originally published in 1989).....27

Whitehead v. Federal Express Corp., 878 F. Supp. 1066 (W.D. Tenn. 1994).....30

Whiteley P, Haracopos D, et al. The ScanBrit randomised, controlled, single-blind study of a gluten- and casein-free dietary intervention for children with autism spectrum disorders.
 Dept of Pharmacy, Health & Well-being, Faculty of Applied Sciences, University of
 Sunderland, UK. Available at, <http://www.ncbi.nlm.nih.gov/pubmed/20406576>22

Xia RR. Effectiveness of nutritional supplements for reducing symptoms in autism-spectrum disorder: a case report. J Altern Complement Med. 2011 Mar;17(3):271-4. Source
 Department of Physical Therapy, Creighton University, available at,
<http://www.ncbi.nlm.nih.gov/pubmed/21417812>.....23