1
2 An act relating to children with disabilities;
3 amending s. 409.906, F.S.; creating the "Window of
4 Opportunity Act"; authorizing the Agency for Health Care
5 Administration to seek federal approval through a state
6 plan amendment to provide home and community-based
7 services for autism spectrum disorder and other
8 developmental disabilities; specifying eligibility
9 criteria; specifying limitations on provision of benefits;
10 requiring reports to the Legislature; requiring
11 legislative approval for implementation of certain
12 provisions; creating s. 624.916, F.S.; creating the
13 "Steven A. Geller Autism Coverage Act"; directing the
14 Office of Insurance Regulation to establish a workgroup to
15 develop and execute a compact relating to coverage for
16 insured persons with developmental disabilities; providing
17 for membership of the workgroup; requiring the workgroup
18 to convene within a specified period of time; directing
19 the office to establish a consumer advisory workgroup and
20 providing purpose thereof; requiring the compact to
21 contain specified components; requiring reports to the
22 Governor and the Legislature; creating s. 627.6686, F.S.;
23 providing health insurance coverage for individuals with
24 autism spectrum disorder; providing definitions; providing
25 coverage for certain screening to diagnose and treat
26 autism spectrum disorder; providing limitations on
27 coverage; providing for eligibility standards for benefits
28 and coverage; prohibiting insurers from denying coverage
29 under certain circumstances; specifying required elements

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30 of a treatment plan; providing, beginning January 1, 2011,
31 that the maximum benefit shall be adjusted annually;
32 clarifying that the section may not be construed as
33 limiting benefits and coverage otherwise available to an
34 insured under a health insurance plan; prohibiting the
35 Office of Insurance Regulation from enforcing certain
36 provisions against insurers that are signatories to the
37 developmental disabilities compact by a specified date;
38 creating s. 641.31098, F.S.; providing coverage under a
39 health maintenance contract for individuals with autism
40 spectrum disorder; providing definitions; providing
41 coverage for certain screening to diagnose and treat
42 autism spectrum disorder; providing limitations on
43 coverage; providing for eligibility standards for benefits
44 and coverage; prohibiting health maintenance organizations
45 from denying coverage under certain circumstances;
46 specifying required elements of a treatment plan;
47 providing, beginning January 1, 2011, that the maximum
48 benefit shall be adjusted annually; prohibiting the Office
49 of Insurance Regulation from enforcing certain provisions
50 against health maintenance organizations that are
51 signatories to the developmental disabilities compact by a
52 specified date; providing an effective date.
53
54 Be It Enacted by the Legislature of the State of Florida:
55
56 Section 1. Subsection (26) is added to section 409.906,
57 Florida Statutes, to read:
58 409.906 Optional Medicaid services.--Subject to specific

59 appropriations, the agency may make payments for services which
60 are optional to the state under Title XIX of the Social Security
61 Act and are furnished by Medicaid providers to recipients who are
62 determined to be eligible on the dates on which the services were
63 provided. Any optional service that is provided shall be provided
64 only when medically necessary and in accordance with state and
65 federal law. Optional services rendered by providers in mobile
66 units to Medicaid recipients may be restricted or prohibited by
67 the agency. Nothing in this section shall be construed to prevent
68 or limit the agency from adjusting fees, reimbursement rates,
69 lengths of stay, number of visits, or number of services, or
70 making any other adjustments necessary to comply with the
71 availability of moneys and any limitations or directions provided
72 for in the General Appropriations Act or chapter 216. If
73 necessary to safeguard the state's systems of providing services
74 to elderly and disabled persons and subject to the notice and
75 review provisions of s. 216.177, the Governor may direct the
76 Agency for Health Care Administration to amend the Medicaid state
77 plan to delete the optional Medicaid service known as
78 "Intermediate Care Facilities for the Developmentally Disabled."
79 Optional services may include:
80 (26) HOME AND COMMUNITY-BASED SERVICES FOR AUTISM SPECTRUM
81 DISORDER AND OTHER DEVELOPMENTAL DISABILITIES.--The agency is
82 authorized to seek federal approval through a Medicaid waiver or
83 a state plan amendment for the provision of occupational therapy,
84 speech therapy, physical therapy, behavior analysis, and behavior
85 assistant services to individuals who are 5 years of age and
86 under and have a diagnosed developmental disability as defined in
87 s. 393.063, autism spectrum disorder as defined in s. 627.6686,

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88 or Down syndrome, a genetic disorder caused by the presence of
89 extra chromosomal material on chromosome 21. Causes of the
90 syndrome may include Trisomy 21, Mosaicism, Robertsonian
91 Translocation, and other duplications of a portion of chromosome
92 21. Coverage for such services shall be limited to $36,000
93 annually and may not exceed $108,000 in total lifetime benefits.
94 The agency shall submit an annual report beginning on January 1,
95 2009, to the President of the Senate, the Speaker of the House of
96 Representatives, and the relevant committees of the Senate and
97 the House of Representatives regarding progress on obtaining
98 federal approval and recommendations for the implementation of
99 these home and community-based services. The agency may not
100 implement this subsection without prior legislative approval.
101 Section 2. Section 624.916, Florida Statutes, is created to
102 read:
103 624.916 Developmental disabilities compact.--
104 (1) This section may be cited as the "Window of Opportunity
105 Act."
106 (2) The Office of Insurance Regulation shall convene a
107 workgroup by August 31, 2008, for the purpose of negotiating a
108 compact that includes a binding agreement among the participants
109 relating to insurance and access to services for persons with
110 developmental disabilities. The workgroup shall consist of the
111 following:
112 (a) Representatives of all health insurers licensed under
113 this chapter.
114 (b) Representatives of all health maintenance organizations
115 licensed under part I of chapter 641.
116 (c) Representatives of employers with self-insured health

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117 benefit plans.
118 (d) Two designees of the Governor, one of whom must be a
119 consumer advocate.
120 (e) A designee of the President of the Senate.
121 (f) A designee of the Speaker of the House of
122 Representatives.
123 (3) The Office of Insurance Regulation shall convene a
124 consumer advisory workgroup for the purpose of providing a forum
125 for comment on the compact negotiated in subsection (2). The
126 office shall convene the workgroup prior to finalization of the
127 compact.
128 (4) The agreement shall include the following components:
129 (a) A requirement that each signatory to the agreement
130 increase coverage for behavior analysis and behavior assistant
131 services as defined in s. 409.815(2)(r) and speech therapy,
132 physical therapy, and occupational therapy when medically
133 necessary due to the presence of a developmental disability.
134 (b) Procedures for clear and specific notice to
135 policyholders identifying the amount, scope, and conditions under
136 which coverage is provided for behavior analysis and behavior
137 assistant services as defined in s. 409.815(2)(r) and speech
138 therapy, physical therapy, and occupational therapy when
139 medically necessary due to the presence of a developmental
140 disability.
141 (c) Penalties for documented cases of denial of claims for
142 medically necessary services due to the presence of a
143 developmental disability.
144 (d) Proposals for new product lines that may be offered in
145 conjunction with traditional health insurance and provide a more

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146 appropriate means of spreading risk, financing costs, and
147 accessing favorable prices.
148 (5) Upon completion of the negotiations for the compact,
149 the office shall report the results to the Governor, the
150 President of the Senate, and the Speaker of the House of
151 Representatives.
152 (6) Beginning February 15, 2009, and continuing annually
153 thereafter, the Office of Insurance Regulation shall provide a
154 report to the Governor, the President of the Senate, and the
155 Speaker of the House of Representatives regarding the
156 implementation of the agreement negotiated under this section.
157 The report shall include:
158 (a) The signatories to the agreement.
159 (b) An analysis of the coverage provided under the
160 agreement in comparison to the coverage required under ss.
161 627.6686 and 641.31098.
162 (c) An analysis of the compliance with the agreement by the
163 signatories, including documented cases of claims denied in
164 violation of the agreement.
165 (7) The Office of Insurance Regulation shall continue to
166 monitor participation, compliance, and effectiveness of the
167 agreement and report its findings at least annually.
168 (8) As used in this section, the term "developmental
169 disabilities" includes:
170 (a) The term as defined in s. 393.063;
171 (b) Down syndrome, a genetic disorder caused by the
172 presence of extra chromosomal material on chromosome 21. Causes
173 of the syndrome may include Trisomy 21, Mosaicism, Robertsonian
174 Translocation, and other duplications of a portion of chromosome

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175 21; and
176 (c) Autism spectrum disorder, as defined in s. 627.6686.
177 Section 3. Section 627.6686, Florida Statutes, is created
178 to read:
179 627.6686 Coverage for individuals with autism spectrum
180 disorder required; exception.--
181 (1) This section and section 641.31098, may be cited as the
182 "Steven A. Geller Autism Coverage Act."
183 (2) As used in this section, the term:
184 (a) "Applied behavior analysis" means the design,
185 implementation, and evaluation of environmental modifications,
186 using behavioral stimuli and consequences, to produce socially
187 significant improvement in human behavior, including, but not
188 limited to, the use of direct observation, measurement, and
189 functional analysis of the relations between environment and
190 behavior.
191 (b) "Autism spectrum disorder" means any of the following
192 disorders as defined in the most recent edition of the Diagnostic
193 and Statistical Manual of Mental Disorders of the American
194 Psychiatric Association:
195 1. Autistic disorder.
196 2. Asperger's syndrome.
197 3. Pervasive developmental disorder not otherwise
198 specified.
199 (c) "Eligible individual" means an individual under 18
200 years of age or an individual 18 years of age or older who is in
201 high school who has been diagnosed as having a developmental
202 disability at 8 years of age or younger.

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203 (d) "Health insurance plan" means a group health insurance
204 policy or group health benefit plan offered by an insurer which
205 includes the state group insurance program provided under s.
206 110.123. The term does not include any health insurance plan
207 offered in the individual market, any health insurance plan that
208 is individually underwritten, or any health insurance plan
209 provided to a small employer.
210 (e) "Insurer" means an insurer providing health insurance
211 coverage, which is licensed to engage in the business of
212 insurance in this state and is subject to insurance regulation.
213 (3) A health insurance plan issued or renewed on or after
214 April 1, 2009, shall provide coverage to an eligible individual
215 for:
216 (a) Well-baby and well-child screening for diagnosing the
217 presence of autism spectrum disorder.
218 (b) Treatment of autism spectrum disorder through speech
219 therapy, occupational therapy, physical therapy, and applied
220 behavior analysis. Applied behavior analysis services shall be
221 provided by an individual certified pursuant to s. 393.17 or an
222 individual licensed under chapter 490 or chapter 491.
223 (4) The coverage required pursuant to subsection (3) is
224 subject to the following requirements:
225 (a) Coverage shall be limited to treatment that is
226 prescribed by the insured's treating physician in accordance with
227 a treatment plan.
228 (b) Coverage for the services described in subsection (3)
229 shall be limited to $36,000 annually and may not exceed $200,000
230 in total lifetime benefits.
231 (c) Coverage may not be denied on the basis that provided

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232 services are habilitative in nature.
233 (d) Coverage may be subject to other general exclusions and
234 limitations of the insurer's policy or plan, including, but not
235 limited to, coordination of benefits, participating provider
236 requirements, restrictions on services provided by family or
237 household members, and utilization review of health care
238 services, including the review of medical necessity, case
239 management, and other managed care provisions.
240 (5) The coverage required pursuant to subsection (3) may
241 not be subject to dollar limits, deductibles, or coinsurance
242 provisions that are less favorable to an insured than the dollar
243 limits, deductibles, or coinsurance provisions that apply to
244 physical illnesses that are generally covered under the health
245 insurance plan, except as otherwise provided in subsection (4).
246 (6) An insurer may not deny or refuse to issue coverage for
247 medically necessary services, refuse to contract with, or refuse
248 to renew or reissue or otherwise terminate or restrict coverage
249 for an individual because the individual is diagnosed as having a
250 developmental disability.
251 (7) The treatment plan required pursuant to subsection (4)
252 shall include all elements necessary for the health insurance
253 plan to appropriately pay claims. These elements include, but are
254 not limited to, a diagnosis, the proposed treatment by type, the
255 frequency and duration of treatment, the anticipated outcomes
256 stated as goals, the frequency with which the treatment plan will
257 be updated, and the signature of the treating physician.
258 (8) Beginning January 1, 2011, the maximum benefit under
259 paragraph (4)(b) shall be adjusted annually on January 1 of each
260 calendar year to reflect any change from the previous year in the

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261 medical component of the then current Consumer Price Index for
262 all urban consumers, published by the Bureau of Labor Statistics
263 of the United States Department of Labor.
264 (9) This section may not be construed as limiting benefits
265 and coverage otherwise available to an insured under a health
266 insurance plan.
267 (10) The Office of Insurance Regulation may not enforce
268 this section against an insurer that is a signatory no later than
269 April 1, 2009, to the developmental disabilities compact
270 established under s. 624.916. The Office of Insurance Regulation
271 shall enforce this section against an insurer that is a signatory
272 to the compact established under s. 624.916 if the insurer has
273 not complied with the terms of the compact for all health
274 insurance plans by April 1, 2010.
275 Section 4. Section 641.31098, Florida Statutes, is created
276 to read:
277 641.31098 Coverage for individuals with developmental
278 disabilities.--
279 (1) This section and section 627.6686, may be cited as the
280 "Steven A. Geller Autism Coverage Act."
281 (2) As used in this section, the term:
282 (a) "Applied behavior analysis" means the design,
283 implementation, and evaluation of environmental modifications,
284 using behavioral stimuli and consequences, to produce socially
285 significant improvement in human behavior, including, but not
286 limited to, the use of direct observation, measurement, and
287 functional analysis of the relations between environment and
288 behavior.

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289 (b) "Autism spectrum disorder" means any of the following
290 disorders as defined in the most recent edition of the Diagnostic
291 and Statistical Manual of Mental Disorders of the American
292 Psychiatric Association:
293 1. Autistic disorder.
294 2. Asperger's syndrome.
295 3. Pervasive developmental disorder not otherwise
296 specified.
297 (b) "Eligible individual" means an individual under 18
298 years of age or an individual 18 years of age or older who is in
299 high school who has been diagnosed as having a developmental
300 disability at 8 years of age or younger.
301 (c) "Health maintenance contract" means a group health
302 maintenance contract offered by a health maintenance
303 organization. This term does not include a health maintenance
304 contract offered in the individual market, a health maintenance
305 contract that is individually underwritten, or a health
306 maintenance contract provided to a small employer.
307 (3) A health maintenance contract issued or renewed on or
308 after April 1, 2009, shall provide coverage to an eligible
309 individual for:
310 (a) Well-baby and well-child screening for diagnosing the
311 presence of autism spectrum disorder.
312 (b) Treatment of autism spectrum disorder through speech
313 therapy, occupational therapy, physical therapy, and applied
314 behavior analysis services. Applied behavior analysis services
315 shall be provided by an individual certified pursuant to s.
316 393.17 or an individual licensed under chapter 490 or chapter
317 491.

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318 (4) The coverage required pursuant to subsection (3) is
319 subject to the following requirements:
320 (a) Coverage shall be limited to treatment that is
321 prescribed by the subscriber's treating physician in accordance
322 with a treatment plan.
323 (b) Coverage for the services described in subsection (3)
324 shall be limited to $36,000 annually and may not exceed $200,000
325 in total benefits.
326 (c) Coverage may not be denied on the basis that provided
327 services are habilitative in nature.
328 (d) Coverage may be subject to general exclusions and
329 limitations of the subscriber's contract, including, but not
330 limited to, coordination of benefits, participating provider
331 requirements, and utilization review of health care services,
332 including the review of medical necessity, case management, and
333 other managed care provisions.
334 (5) The coverage required pursuant to subsection (3) may
335 not be subject to dollar limits, deductibles, or coinsurance
336 provisions that are less favorable to a subscriber than the
337 dollar limits, deductibles, or coinsurance provisions that apply
338 to physical illnesses that are generally covered under the
339 subscriber's contract, except as otherwise provided in subsection
340 (3).
341 (6) A health maintenance organization may not deny or
342 refuse to issue coverage for medically necessary services, refuse
343 to contract with, or refuse to renew or reissue or otherwise
344 terminate or restrict coverage for an individual solely because
345 the individual is diagnosed as having a developmental disability.

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346 (7) The treatment plan required pursuant to subsection (4)
347 shall include, but is not limited to, a diagnosis, the proposed
348 treatment by type, the frequency and duration of treatment, the
349 anticipated outcomes stated as goals, the frequency with which
350 the treatment plan will be updated, and the signature of the
351 treating physician.
352 (8) Beginning January 1, 2011, the maximum benefit under
353 paragraph (4)(b) shall be adjusted annually on January 1 of each
354 calendar year to reflect any change from the previous year in the
355 medical component of the then current Consumer Price Index for
356 all urban consumers, published by the Bureau of Labor Statistics
357 of the United States Department of Labor.
358 (9) The Office of Insurance Regulation may not enforce this
359 section against a health maintenance organization that is a
360 signatory no later than April 1, 2009, to the developmental
361 disabilities compact established under s. 624.916. The Office of
362 Insurance Regulation shall enforce this section against a health
363 maintenance organization that is a signatory to the compact
364 established under s. 624.916 if the health maintenance
365 organization has not complied with the terms of the compact for
366 all health maintenance contracts by April 1, 2010.
367 Section 5. This act shall take effect July 1, 2008.

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