

# Q & A: Connor's Law and Autism Insurance Reform

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The following Q & A is intended to help parents navigate complicated insurance issues. It expands on information available in the NH Council on ASD's brochure, which is linked here: [http://nhautisminsurancereform.homestead.com/Brochure\\_RE\\_insurance\\_for\\_ASD.pdf](http://nhautisminsurancereform.homestead.com/Brochure_RE_insurance_for_ASD.pdf)

## Q. Which health insurance policies are subject to Connor's Law?

A. One of the many confusing things about health insurance is the fact that not all policies are regulated the same way. To keep it simple, imagine that the insurance market is a pie divided into three, roughly equal slices.

- 1) One slice represents publicly funded health insurance – in other words, Medicaid and Medicare. Since we're talking about children, we're concerned with **Medicaid**. One way that children receive Medicaid is through the federal Children's Health Improvement Act (or CHIP). Until recently, you may have known CHIP as NH's Health Kids Gold and Silver. As NH begins to roll out its new managed care program, however, these policies will simply be called "NH Medicaid."



Medicaid, which is jointly funded by the federal and state government, is available to children and pregnant women who fall below a certain income level. It's designed to make sure that children in all socio-economic situations receive needed healthcare services as they grow and develop.

**Unfortunately, at this time the autism related benefits in Connor's Law do not apply to NH Medicaid.**

- 2) The next piece of the pie represents companies, usually large ones, that cover their employees through what is known as a "self-insured plan." Technically, these plans are not considered health insurance; instead, they are a "health benefit." From a consumer perspective, however, these plans look the same as any other plan written by insurance companies like Anthem or Cigna. This is because the corporation that chooses to self-insure typically retains the services of an insurance carrier to process claims, design the benefits, and administer the program

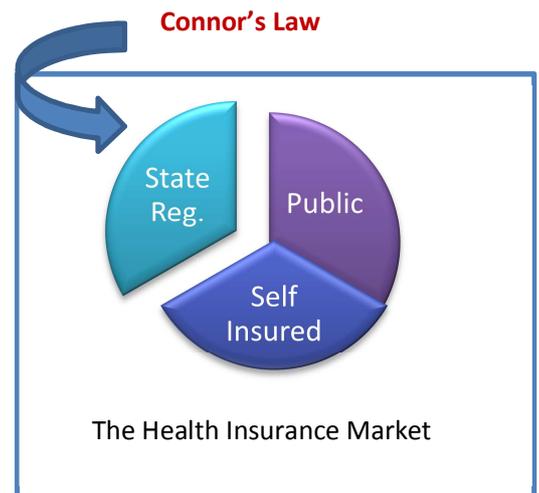


**Connor's Law does not apply to self-insured policies.** The option of self-insuring was made possible. For this reason, Congress regulates these types of plans, not the state legislature.

When it comes to any type of government regulation, the general rule of thumb is “**the Feds set the floor, and the state raises the roof.**” In other words, the federal government sets a minimum standard below which states cannot go, and which states choose to exceed. Because it represents a minimum standard – and is therefore thought to be less costly – an increasing number of companies choose to self-insure. This is true for many companies operating in NH – for example, Dartmouth Hitchcock Medical Center, Timkin, Hypertherm, and , yes, the State of NH itself. In truth, this slice probably represents more than a third of the pie; nationally, half of all non-public (that is, privately funded) policies now use this model.

3) So, what’s left?

This final piece is where Connor’s Law comes into play. These are privately funded group plans– typically those offered to employees of small companies that have fewer than 50 workers – that are subject to NH state regulations. Examples of a small group employer might include local businesses like your salon, dentist’s office, or auto mechanic shop. Note that *individual policies*, those written on behalf of a single person or family rather than a group of people, were exempted from Connor’s Law. This is common, because Individual policies already represent some of the most expensive health insurance available. Because of the cost, individual policies constitute only a tiny fraction of the health insurance market.



**CONSUMER TIP:** If you are unsure whether your employer self-insures or offers a state-regulated plan, contact your company’s human resources department or call the insurance carrier at the customer service number listed on your group insurance card or other documents.

*Q. If my health insurance policy is subject to Connor’s Law, what kinds of benefits is my child entitled to?*

A. Connor’s Law recognizes that ASD is a **neurologically based medical condition** and coverage for its symptoms should therefore be “in parity” -- that is, equal to -- coverage provided for any other type of physical condition. Connor’s Law says that children with a diagnosis of any of the three autism spectrum disorders (Autistic Disorder, Asperger Syndrome, or Pervasive Developmental Disorder Not Otherwise Specified or PDD-NOS) are entitled to diagnostic evaluation, pharmacy care, and specialty care. These are important protections, but in point of fact, these were generally being covered in New Hampshire prior to the new legislations. What has changed, however, is that Connor’s Law closed two loop holes use by insurance carriers to deny certain types of therapy, including Applied Behavior Analysis (ABA).

- 1) First, therapy based on the principles of behavioral science is now a covered service; ABA is specifically named in Connor's Law. Moreover, as the law notes, the use of ABA therapy in the treatment of autism is consistent with the recommendations of the American Academy of Pediatrics and other professional groups. These recommendations reflect a large body of research attesting to the effectiveness of ABA. **Coverage for ABA therapy should not be denied based on the claim that it is "experimental."**
- 2) **Second, carriers may not deny coverage for therapy based on the claim that the intervention is "habilitative in nature."** "Habilitation" is a confusing term that means the therapy did not restore a skill or capacity that the patient previously had. In the case of developing children, this makes little sense, and Connor's Law does not permit carriers to use this concept as a basis for denying coverage. Note that this applies to many types of therapy, including speech, occupational therapy, physical therapy, and ABA.

*Q. Under Connor's Law, can the insurance carrier place limits or other conditions on the coverage of therapy for children with autism?*

- A. Nobody likes to write a blank check, least of all insurance carriers. There are some conditions built into obtaining benefits under Connor's Law. These include the following:
- To be eligible for coverage, applied behavior analysis must be provided by a person professionally certified by the national Behavior Analyst Certification Board or performed under the supervision of a person professionally certified by the national Behavior Analyst Certification Board.
  - To be eligible, services must be provided by a professional who is licensed.
  - An insurer may require submission of a treatment plan, including the frequency and duration of treatment, signed by the primary care provider, an appropriately credentialed treating specialist, a child psychiatrist, a pediatrician with a specialty in behavioral-developmental pediatrics, a neurologist with a specialty in child neurology, or a licensed psychologist with training in child psychology, that the treatment is medically necessary for the patient and is consistent with nationally recognized treatment standards for the condition such as those set forth by the American Academy of Pediatrics. NOTE: An insurer may require an updated treatment plan no more frequently than on a semi-annual basis.
  - The policy, contract, or certificate may limit coverage for applied behavior analysis to \$36,000 per year for children 0 to 12 years of age, and \$27,000 from ages 13 to 21. An insurer may not apply payments for coverage unrelated to autism spectrum disorders to any maximum benefit established under this paragraph. NOTE: These caps will be overturned by a provision in the Affordable Care Act in 2014 and will therefore not apply.

For exact language, see <http://www.gencourt.state.nh.us/rsa/html/XXXVII/417-E/417-E-2.htm>

*Q. What does a carrier mean when they say I have to use an "in network" provider?*

- A. Large insurance companies don't like surprises. They prefer to set up a network of providers with whom they have negotiated a contract and set up a specific rate schedule. From the provider perspective, it is often advantageous to contract with insurance carriers since they can then bill the carrier directly, as opposed to billing the client. Such "courtesy billing" is an expectation in most other sectors of the healthcare system, and when things are going smoothly, it insulates providers from the unpleasant chore of hounding their patients for payment. Typically providers are willing to accept a somewhat lower fee in exchange for the convenience that direct billing affords them and their patients.

However, providers may also have good reasons why they do not wish to contract with a particular carrier – for example, they may feel that the carrier is offering too low a rate to allow them to clear their costs. In this case, they would be considered an "out-of-network provider." Some health insurance policies give subscribers the option of using an out-of-network provider, but the consumer will have to pay the provider out of their own pocket and then seek reimbursement from the insurance carrier. Often the co-pay and deductible is higher if the consumer chooses to use an out-of-network service

It is important to know that insurance carriers are legally required to make a good faith effort to insure "network adequacy." This means that they must have enough in-network providers under contract to meet subscriber demand and to assure that consumers can access services within a reasonable distance. **In fact, when a carrier has been unable to establish an adequate network, they must honor claims for reimbursement by out-of-network providers at the provider's customary rate.** This means that in a situation where there is not an adequate network, you can hire a provider and expect your carrier to reimburse you for the full cost (minus co-payments and the deductible), even if your policy does not have a provision for out-of-network services. In reality, however, this may involve a lengthy appeal process. Most parents cannot sustain the up-front costs (as much as 9 months out-of-pocket) before reimbursement is secured retroactively.

*Q. What is the status of the networks in NH for the provision of common treatments such as ABA, Occupational Therapy, or Speech Therapy? How do I find out about my carrier's network?*

- A. Carriers are highly motivated to promote their network providers. A simple call to your carrier's information number will in all likelihood result in a list of regionally available providers, especially if you are seeking a medical sub-specialist, psychologist, or therapist licensed in occupational, physical or speech therapy.

There are, however, a number of challenging service gaps that impact families who support a child with ASD. These include:

- Therapists of all kinds - Speech, OT, PT, ABA -- working in the North Country.
- Child psychiatrists specializing in the evaluation of or medication management for children and adolescents with ASD.

- Board Certified Behavior Analysts (BCBA) and/or group practices that provide ABA.

**CONSUMER TIP:** If you are not receiving reimbursement in a timely manner and without undue burden, you have a right to appeal directly to the NH Department of Insurance. If you or your provider are experiencing poor customer service in the form of confusing or inaccurate information, this should also be documented and shared with the NH Department of Insurance.

A “complaint” -- as opposed to a formal appeal -- is a relatively simple process. For more information, contact the NH Coalition for Autism Insurance Reform.

To file a complaint, go to:

<http://www.nh.gov/insurance/consumers/complaints.htm>

It is worth noting that the gap in ABA services appears to be at least in part carrier-specific: Harvard Pilgrim, also identified as United Behavioral Health (UBH), has done a good job of establishing a network of eligible providers. There is excellent consumer information on their website and families report that they are generally satisfied with how UBH has administered benefits under Connor’s Law. Although their web-based information is not as developed, Aetna and Cigna appear to have adequate networks in most areas of the state; and they are reported to be responsive when a provider seeks to enroll or a consumer seeks reimbursement out of network. Anthem, which is NH’s largest carrier, has had more difficulty establishing a network and consumer reports are more mixed.

**Q. What are my options for advocating that my child have access to benefits similar to Connor’s Law?**

A. The NH Coalition for Autism Insurance Reform believes that *all* health insurance policies -- public and private, state and federally regulated, individual and group, small and large market-- should cover the evidence based treatment of ASD. Connor’s Law is an important step in that direction, but by no means does it mark the end of our advocacy efforts. Even if your policy is not subject to Connor’s Law, there are things you can do to obtain coverage and to help extend an autism treatment benefit to all families.

- 1) NH Medicaid: If your primary health insurance comes through Medicaid, this is an excellent time to let the NH Department of Health and Human Services (DHHS) know how important access to early treatment and appropriate coverage is to the long-term welfare of your child. DHHS is in the midst of rolling out the most significant change in healthcare delivery ever undertaken in our state. The advent of managed care may be an opportunity to expand the autism benefit. The Coalition can assist you with talking points or a draft of a letter that you can tailor to describe your situation.
- 2) Self-insuring Companies: If you are a NH resident and employed by a company that self-insures, we have materials that may help you to

**CONSUMER TIP:** Do not assume that because your employer self-insures, you do not have an autism treatment benefit. A number of companies are now offering a benefit equivalent to that required by Connor’s Law. Some, but not all, are listed on the resource page of: [www.autismvotes.org](http://www.autismvotes.org)

advocate your company voluntarily include an autism benefit. Again, ASNH can assist you in approaching the Human Services Department at your company.

- 1) State-regulated Insurance: If you have denied coverage to which believe you are entitled under Connor's Law, it is especially important to contact the NH Coalition for Autism Insurance Reform. We can help you to file a and to navigate the appeal process and to file a complaint with the NH Department of Insurance

*To contact the NH Coalition for Autism Insurance Reform for questions or assistance in advocating for coverage: [Kirsten.Murphy23@gmail.com](mailto:Kirsten.Murphy23@gmail.com).*