

Senate Resolution 1043

By: Senator Mullis of the 53rd

### A RESOLUTION

1 Creating the Senate Study Committee on the Expansion of Autism Insurance Mandate to  
2 ERISA Plans; and for other purposes.

3 WHEREAS, the federal Employee Retirement Income Security Act of 1974 (ERISA)  
4 supersedes some state health care initiatives, such as employer insurance mandates and some  
5 types of managed care plan standards if they have a substantial impact on employer  
6 sponsored health plans; and

7 WHEREAS, this is an extremely complex area of the law, as ERISA preempts state law  
8 under which states are allowed to regulate traditional insurance carriers conducting  
9 traditional insurance business, including mandating the benefits the insurance company must  
10 offer; and

11 WHEREAS, however, the federal courts have held that the state cannot regulate all activities  
12 of insurers, but are not in agreement on which activities the states can regulate, as Georgia  
13 discovered in the overturning of its prompt pay legislation when the United States Court of  
14 Appeals for the Eleventh Circuit in *America's Health Insurance Plans v. Hudgens* found that  
15 this Georgia law substantially affected the risk-pooling arrangement between the insurer and  
16 the insured and consequently the law, as it applied to self-insured funds, was preempted; and

17 WHEREAS, the area of prompt pay was opined with some certainty, although opinions vary,  
18 to be an area whereby a state could regulate without running afoul of preemption; and

19 WHEREAS, although there is a weight of opinion that health benefit mandates are preempted  
20 by ERISA, there is an argument that mental health parity acts require insurance companies  
21 to cover Applied Behavioral Analysis (ABA) treatment for autism spectrum disorder and that  
22 ERISA insurers are required to follow the state's laws for mandated coverage; and

23 WHEREAS, because ERISA law in the area of health benefit mandates appears to be  
24 extremely uncertain and litigation is expensive for all parties, including the state, it is  
25 important to study and weigh any developments in federal ERISA law prior to changing state  
26 law to require ERISA regulated health plans to provide payment for ABA coverage as  
27 provided for in Georgia law.

28 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE:

29 (1) **Creation of Senate study committee.** There is created the Senate Study Committee  
30 on the Expansion of Autism Insurance Mandate to ERISA Plans.

31 (2) **Members and officers.** The committee shall be composed of six members of the  
32 Senate to be appointed by the President of the Senate. The President shall designate a  
33 member of the committee as chairperson of the committee.

34 (3) **Powers and duties.** The committee shall undertake a study of the conditions, needs,  
35 issues, and problems mentioned above or related thereto and recommend any action or  
36 legislation which the committee deems necessary or appropriate.

37 (4) **Meetings.** The chairperson shall call all meetings of the committee. The committee  
38 may conduct such meetings at such places and at such times as it may deem necessary or  
39 convenient to enable it to exercise fully and effectively its powers, perform its duties, and  
40 accomplish the objectives and purposes of this resolution.

41 (5) **Allowances and funding.**

42 (A) The legislative members of the committee shall receive the allowances provided  
43 for in Code Section 28-1-8 of the Official Code of Georgia Annotated.

44 (B) The allowances authorized by this resolution shall not be received by any member  
45 of the committee for more than five days unless additional days are authorized. Funds  
46 necessary to carry out the provisions of this resolution shall come from funds  
47 appropriated to the Senate.

48 (6) **Report.**

49 (A) In the event the committee adopts any specific findings or recommendations that  
50 include suggestions for proposed legislation, the chairperson shall file a report of the  
51 same prior to the date of abolishment specified in this resolution, subject to  
52 subparagraph (C) of this paragraph.

53 (B) In the event the committee adopts a report that does not include suggestions for  
54 proposed legislation, the chairperson shall file the report, subject to subparagraph (C)  
55 of this paragraph.

56 (C) No report shall be filed unless the same has been approved prior to the date of  
57 abolishment specified in this resolution by majority vote of a quorum of the committee.

58 A report so approved shall be signed by the chairperson of the committee and filed with  
59 the Secretary of the Senate.

60 (D) In the absence of an approved report, the chairperson may file with the Secretary  
61 of the Senate a copy of the minutes of the meetings of the committee in lieu thereof.

62 (7) **Abolishment.** The committee shall stand abolished on December 1, 2016.