

Senate Resolution 1055

By: Senator Mullis of the 53rd

A RESOLUTION

1 Creating the Joint 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, the federal courts have held that the state cannot regulate all activities of
12 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 GENERAL ASSEMBLY OF
29 GEORGIA:

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

32 (2) **Members and officers.**

33 (A) The committee shall be composed of ten members.

34 (B) The President of the Senate shall appoint five members of the Senate as members
35 of the committee and shall designate one of such members as cochairperson.

36 (C) The Speaker of the House of Representatives shall appoint five members of the
37 House of Representatives as members of the committee and shall designate one of such
38 members as cochairperson.

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

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

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

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

49 (B) The allowances authorized by this resolution shall not be received by any member
50 of the committee for more than five days unless additional days are authorized. Funds
51 necessary to carry out the provisions of this resolution shall come from funds
52 appropriated to the Senate and the House of Representatives.

53 (6) **Report.**

54 (A) In the event the committee adopts any specific findings or recommendations that
55 include suggestions for proposed legislation, the cochairpersons shall file a report of the
56 same prior to the date of abolishment specified in this resolution, subject to
57 subparagraph (C) of this paragraph.

58 (B) In the event the committee adopts a report that does not include suggestions for
59 proposed legislation, the cochairpersons shall file the report, subject to
60 subparagraph (C) of this paragraph.

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

63 A report so approved shall be signed by the cochairpersons of the committee and filed
64 with the Secretary of the Senate and the Clerk of the House of Representatives.

65 (D) In the absence of an approved report, the cochairpersons may file with the
66 Secretary of the Senate and the Clerk of the House of Representatives copies of the
67 minutes of the meetings of the committee in lieu thereof.

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