

HOUSE BILL No. 2216

By Committee on Children and Families

2-8

1 AN ACT concerning insurance; providing for coverage of autism
2 spectrum disorder; amending K.S.A. 2010 Supp. 40-2,103 and 40-
3 19c09 and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. (a) As used in this section, the following terms shall
7 have the meanings ascribed in this section: (1) "Applied behavior
8 analysis" means the design, implementation and evaluation of
9 environmental modifications using behavioral stimuli and consequences
10 to produce socially significant improvement in human behavior, including
11 the use of direct observation, measurement and functional analysis of the
12 relationships between environment and behavior.

13 (2) "Assistant behavior analyst" or "aBA" means an individual who
14 is certified by the certifying entity as a certified assistant behavior
15 analyst.

16 (3) "Autism service provider" means any:

17 (A) Person, entity or group that provides diagnostic or treatment
18 services for autism spectrum disorders; or

19 (B) individual who is board certified by the certification board as
20 either a behavior analyst or as an assistant board certified behavior
21 analyst.

22 (4) "Autism spectrum disorder" means any of the pervasive
23 development disorders including autistic disorder, Asperger's disorder,
24 pervasive developmental disorder not otherwise specified, Rett's disorder,
25 and childhood disintegrative disorder as such terms are specified in the
26 diagnostic and statistical manual of mental disorders, fourth edition, text
27 revision (DSM-IV-TR), of the American psychiatric association, as
28 published in May, 2000, or later versions as established in rules and
29 regulations adopted by the behavioral sciences regulatory board pursuant
30 to K.S.A. 74-7507, and amendments thereto.

31 (5) "Behavior analyst" or "BA" means an individual who is certified
32 by the certifying entity as a certified behavior analyst.

33 (6) "Behavioral health treatment" means any professional guidance
34 service or treatment program, including applied behavior analysis, that is
35 necessary to develop, maintain and restore the functioning of an
36 individual to the maximum extent practicable.

1 (7) "Certifying entity" means the nationally accredited behavior
2 analyst certification board, or other equivalent nationally accredited
3 nongovernmental agency which certifies individuals who have completed
4 academic, examination, training and supervision requirements in applied
5 behavior analysis.

6 (8) "Commissioner" means the commissioner of insurance.

7 (9) "Diagnosis of autism spectrum disorders" means any medically
8 necessary assessment, evaluation or test used in order to diagnose
9 whether an individual has an autism spectrum disorder.

10 (10) "Health benefit plan" shall have the meaning ascribed to it as in
11 K.S.A. 40-4602, and amendments thereto. Health benefit plan also
12 includes:

13 (A) Any policy or contract issued by a fraternal benefit society
14 which provides coverage for accident and health services; and

15 (B) the state health care benefits program established pursuant to
16 K.S.A. 75-6501 et seq., and amendments thereto.

17 (11) "Health carrier" shall have the meaning ascribed to it as in
18 K.S.A. 40-4602, and amendments thereto. Health carrier also includes
19 any fraternal benefit society which provides coverage for accident and
20 health services.

21 (12) "Line therapist" means an individual who:

22 (A) Provides supervision of an individual diagnosed with an autism
23 diagnosis and other neurodevelopmental disorders, if any, pursuant to the
24 prescribed treatment plan; and

25 (B) implements specific behavioral interventions as outlined in the
26 behavior plan under the direct supervision of a certified behavior analyst.

27 (13) "Pharmacy care" means any medication prescribed by a
28 licensed physician. Pharmacy care also includes any health-related
29 service deemed medically necessary to determine the effectiveness of any
30 such prescribed medication.

31 (14) (A) "Practice of applied behavior analysis" means the
32 application of the principles, methods and procedures of the experimental
33 analysis of behavior and applied behavior analysis, including principles
34 of operant and respondent learning, necessary to assess and improve
35 socially important human behaviors. Practice of applied behavior analysis
36 includes, but is not limited to, the application of those principles, methods
37 and procedures to:

38 (i) The design, implementation, evaluation and modification of
39 treatment programs to change behavior of individuals;

40 (ii) the design, implementation, evaluation and modification of
41 treatment programs to change behavior of groups; and

42 (iii) consultation to individuals and organizations.

43 (B) The practice of applied behavior analysis does not include any

1 cognitive therapy or psychological testing, personality assessment,
2 intellectual assessment, neuropsychological assessment, psychotherapy,
3 cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, family
4 therapy or long-term counseling as treatment modalities.

5 (15) "Psychiatric care" means any direct or consultative services
6 provided by a psychiatrist licensed in the state in which the psychiatrist
7 practices.

8 (16) "Psychological care" means any direct or consultative services
9 provided by a psychologist licensed in the state in which the psychologist
10 practices.

11 (17) "Therapeutic care" means any service provided by a licensed
12 speech therapist, occupational therapist or physical therapist.

13 (18) "Treatment for autism spectrum disorders" means any care,
14 including equipment medically necessary for such care prescribed or
15 ordered for an individual diagnosed with an autism spectrum disorder by
16 a licensed physician or licensed psychologist pursuant to the powers
17 granted under such licensed physician's or licensed psychologist's license,
18 including, but not limited to:

19 (A) Behavioral health treatments, including applied behavior
20 analysis therapy;

21 (B) pharmacy care;

22 (C) psychiatric care;

23 (D) psychological care; and

24 (E) therapeutic care.

25 (b) (1) Any health benefit plan which is delivered, issued for
26 delivery, amended or renewed on or after January 1, 2012 shall provide
27 coverage for the diagnosis and treatment of autism spectrum disorders.

28 (2) No health carrier shall:

29 (A) Deny or refuse to issue coverage on, refuse to contract with, or
30 refuse to renew or refuse to reissue or otherwise terminate or restrict
31 coverage on an individual or their dependent because the individual is
32 diagnosed with autism spectrum disorder.

33 (B) Impose on the coverage required by this section any dollar
34 limits, deductibles, or coinsurance provisions that are less favorable to an
35 insured than the dollar limits, deductibles or coinsurance provisions that
36 apply to physical illness generally under the accident and sickness
37 insurance policy.

38 (c) Coverage provided under this section shall be limited to
39 medically necessary treatment that is ordered by the insured's treating
40 licensed physician or licensed psychologist, pursuant to the powers
41 granted under such licensed physician's or licensed psychologist's license,
42 in accordance with a treatment plan. Such coverage may be subject to
43 annual deductibles and coinsurance provisions as may be deemed

1 appropriate and as are consistent with those established for other benefits
2 or coverage under the health benefit plan.

3 (d) (1) Upon request by the health benefit plan or health carrier,
4 the treatment plan shall include all elements necessary for the health
5 benefit plan or health carrier to pay claims. Such elements may include,
6 but are not limited to, a diagnosis, proposed treatment by type, frequency
7 and duration of treatment, and goals.

8 (2) Except for inpatient services, if an insured is receiving treatment
9 for an autism spectrum disorder, a health carrier shall have the right to
10 review the treatment plan not more than once every year unless the health
11 carrier and the insured's treating physician or psychologist agree that a
12 more frequent review is necessary. Any such agreement regarding the
13 right to review a treatment plan more frequently shall apply only to a
14 particular insured being treated for an autism spectrum disorder and shall
15 not apply to all individuals being treated for autism spectrum disorders by
16 a physician or psychologist. The cost of obtaining any review or
17 treatment plan shall be borne by the health benefit plan or health carrier,
18 as applicable.

19 (e) (1) Coverage provided under this section for applied behavior
20 analysis shall be subject to a maximum benefit of \$40,000, per calendar
21 year, for individuals through 18 years of age, except that upon prior
22 approval by the health benefit plan, the maximum benefit limit may be
23 exceeded when cost of the provision of applied behavior analysis services
24 beyond the maximum limit is determined to be medically necessary for
25 such individual. Any payment made by a health carrier on behalf of a
26 covered individual for any care, treatment, intervention, service or item,
27 for the treatment of a health condition unrelated to the covered
28 individual's autism spectrum disorder, shall not be applied toward any
29 maximum benefit established under this subsection. Except for coverage
30 for applied behavior analysis, no other coverage required under this
31 section shall be subject to the age and dollar limitations described in this
32 paragraph.

33 (2) The maximum benefit limitation for applied behavior analysis
34 described in paragraph (1) shall be adjusted by the health carrier at least
35 triennially by an amount equal to the percentage increase in the consumer
36 price index for all urban consumers as published by the bureau of labor
37 statistics of the United States department of labor or its successor agency.

38 (3) Beginning July 1, 2013, and each July 1 thereafter, the
39 commissioner shall calculate the current value of the maximum benefit
40 limitation for applied behavior analysis coverage adjusted for inflation in
41 accordance with this subsection. This calculated value shall be effective
42 for all health benefit plans which become effective and are delivered,
43 issued for delivery, amended or renewed on or after January 1 of the

1 following calendar year. The commissioner shall furnish the calculated
2 value to the secretary of state, who shall publish such value in the Kansas
3 register as soon after each July 1 as practicable, but no later than
4 September 1.

5 (f) No coverage provided under this section shall impose any limit
6 on the number of visits an individual may make to an autism service
7 provider, except when the amount attributable to the maximum total
8 benefit for applied behavior analysis set forth in subsection (e) is, or will
9 be, exceeded.

10 (g) This section shall not be construed as limiting benefits which are
11 otherwise available to an individual under a health benefit plan. The
12 health care coverage required by this section shall not be subject to any
13 greater deductible, coinsurance, or co-payment than other physical health
14 care services provided by a health benefit plan. Coverage of services may
15 be subject to other general exclusions and limitations of the contract or
16 benefit plan, not in conflict with the provisions of this section, such as
17 coordination of benefits, exclusions for services provided by family or
18 household members, and utilization review of health care services,
19 including review of medical necessity and care management; however,
20 coverage for treatment under this section shall not be denied on the basis
21 that it is educational or behavioral in nature.

22 (h) To the extent any payments or reimbursements are being made
23 for applied behavior analysis, such payments or reimbursements shall be
24 made to either the:

25 (A) Autism service provider, as defined in this section; or

26 (B) entity or group for whom such supervising person works or is
27 associated and if the supervising person is certified as a board certified
28 behavior analyst by the behavior analyst certification board.

29 Such payments or reimbursements under this subsection to an autism
30 service provider or a board certified behavior analyst shall include
31 payments or reimbursements for services provided by a line therapist
32 under the supervision of such provider or behavior analyst if such
33 services provided by the line therapist are included in the treatment plan
34 and are deemed medically necessary.

35 (i) Notwithstanding any other provision of law to the contrary, no
36 health carrier shall be held liable for the actions of line therapists in the
37 performance of their duties.

38 (j) To the extent permitted by and not preempted by federal law, the
39 provisions of this section shall also apply to the following types of plans
40 that are established, extended, modified, or renewed on or after January 1,
41 2012:

42 (A) All self-insured governmental plans, as that term is defined in 29
43 U.S.C. § 1002(32);

1 (B) all self-insured group arrangements;

2 (C) all plans provided through a multiple-employer welfare
3 arrangement, or plans provided through another benefit; and

4 (D) all self-insured school district health plans.

5 (k) The provisions of this section shall not automatically apply to an
6 individually underwritten health benefit plan, but shall be offered as an
7 option to any such plan.

8 (l) (1) No health carrier or other entity subject to the provisions of
9 this section shall be required to provide reimbursement for the applied
10 behavior analysis delivered to a person insured by such health carrier or
11 other entity to the extent such health carrier or other entity is billed for
12 such services by any part C early intervention program or any school
13 district for applied behavior analysis rendered to the person covered by
14 such health carrier or other entity.

15 (2) This section shall not be construed as affecting any obligation to
16 provide services to an individual under an individualized family service
17 plan, an individualized education plan, or an individualized service plan.

18 (m) The commissioner shall grant a small employer with a health
19 benefit plan, as such term is defined in K.S.A. 44-2209d, and
20 amendments thereto, a waiver from the provisions of this section if the
21 small employer demonstrates to the commissioner by actual claims
22 experience over any consecutive twelve-month period that compliance
23 with this section has increased the cost of the health benefit plan by an
24 amount of 2½% or greater over the period of a calendar year in premium
25 costs to the small employer.

26 (n) The provisions of this section shall not apply to the Kansas
27 insurance plan for coverage of children developed pursuant to K.S.A. 38-
28 2001 et seq., and amendments thereto.

29 (o) (1) By February 1, 2013, and every February 1 thereafter, the
30 commissioner shall submit a report to the Kansas legislature regarding
31 the implementation of the coverage required under this section. The
32 report shall include, but shall not be limited to, the following:

33 (A) The total number of insureds diagnosed with autism spectrum
34 disorder;

35 (B) the total cost of all claims paid out in the immediately preceding
36 calendar year for coverage required by this section;

37 (C) the cost of such coverage per insured, per month; and

38 (D) the average cost per insured for coverage of applied behavior
39 analysis.

40 (2) All health carriers and health benefit plans subject to the
41 provisions of this section shall provide the commissioner with the data
42 requested by the commissioner for inclusion in the annual report.

43 (p) The provisions of this section shall not apply to any person who:

1 (A) Provides services under the individuals with disabilities
2 education act (IDEA), 20 U.S.C. § 1400 et seq.; or

3 (B) provides services under Section 504 of the federal Rehabilitation
4 Act of 1973, 20 U.S.C. § 794; or

5 (C) is enrolled in a course of study at a recognized educational
6 institution through which the person provides applied behavior analysis
7 as part of supervised clinical experience.

8 (q) As of January 1, 2014, to the extent that this section requires
9 benefits that exceed the essential health benefits specified under section
10 1302(b) of the Patient Protection and Affordable Care Act, the specific
11 benefits that exceed the specified essential health benefits shall not be
12 required of a qualified health benefit plan when the health benefit plan is
13 offered in this state by a health carrier through the exchange. Nothing in
14 this subsection shall nullify application of this section to any health
15 benefit plan offered outside the exchange.

16 (r) The provisions of this section shall not be subject to the
17 requirements of K.S.A. 40-2249a, and amendments thereto.

18 Sec. 2. K.S.A. 2010 Supp. 40-2,103 is hereby amended to read as
19 follows: 40-2,103. The requirements of K.S.A. 40-2,100, 40-2,101, 40-
20 2,102, 40-2,104, 40-2,105, 40-2,114, 40-2,160, 40-2,165 through 40-
21 2,170, inclusive, 40-2250, K.S.A. 2010 Supp. 40-2,105a, 40-2,105b ~~and~~,
22 40-2,184 *and section 1*, and amendments thereto, shall apply to all
23 insurance policies, subscriber contracts or certificates of insurance
24 delivered, renewed or issued for delivery within or outside of this state or
25 used within this state by or for an individual who resides or is employed
26 in this state.

27 Sec. 3. K.S.A. 2010 Supp. 40-19c09 is hereby amended to read as
28 follows: 40-19c09. (a) Corporations organized under the nonprofit
29 medical and hospital service corporation act shall be subject to the
30 provisions of the Kansas general corporation code, articles 60 to 74,
31 inclusive, of chapter 17 of the Kansas Statutes Annotated, applicable to
32 nonprofit corporations, to the provisions of K.S.A. 40-214, 40-215, 40-
33 216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, 40-226, 40-229,
34 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-
35 250, 40-251, 40-252, 40-254, 40-2,100, 40-2,101, 40-2,102, 40-2,103,
36 40-2,104, 40-2,105, 40-2,116, 40-2,117, 40-2,153, 40-2,154, 40-2,160,
37 40-2,161, 40-2,163 through 40-2,170, inclusive, 40-2a01 et seq., 40-2111
38 to 40-2116, inclusive, 40-2215 to 40-2220, inclusive, 40-2221a, 40-
39 2221b, 40-2229, 40-2230, 40-2250, 40-2251, 40-2253, 40-2254, 40-2401
40 to 40-2421, inclusive, and 40-3301 to 40-3313, inclusive, K.S.A. 2010
41 Supp. 40-2,105a, 40-2,105b ~~and~~, 40-2,184 *and section 1*, and
42 amendments thereto, except as the context otherwise requires, and shall
43 not be subject to any other provisions of the insurance code except as

1 expressly provided in this act.
2 (b) No policy, agreement, contract or certificate issued by a
3 corporation to which this section applies shall contain a provision which
4 excludes, limits or otherwise restricts coverage because medicaid benefits
5 as permitted by title XIX of the social security act of 1965 are or may be
6 available for the same accident or illness.
7 (c) Violation of subsection (b) shall be subject to the penalties
8 prescribed by K.S.A. 40-2407 and 40-2411, and amendments thereto.
9 Sec. 4. K.S.A. 2010 Supp. 40-2,103 and 40-19c09 are hereby
10 repealed.
11 Sec. 5. This act shall take effect and be in force from and after its
12 publication in the statute book.
13