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

Be it enacted by the Legislature of the State of Kansas:

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

(2) "Autism specialist" shall have the meaning ascribed to such term as specified in the department of social and rehabilitation home community based service waiver as such waiver existed on July 1, 2010.

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

(4) "Behavior analyst" means an individual who is certified by the certifying entity as a certified behavior analyst.

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

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

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

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

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

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

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

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

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

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

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

(15) "Treatment for autism spectrum disorders" means any care, including equipment medically necessary for such care prescribed or ordered by a licensed physician or licensed psychologist pursuant to the powers granted under such licensed physician's or licensed psychologist's license, including, but not limited to:

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

(B) pharmacy care;

(C) psychiatric care;

(D) psychological care; and

(E) therapeutic care.

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

(2) No health carrier shall:

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

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

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

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

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

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

(3) Beginning July 1, 2013, and each July 1 thereafter, the
commissioner shall calculate the current value of the maximum benefit
limitation for applied behavior analysis coverage adjusted for inflation in
accordance with this subsection. This calculated value shall be effective
for all health benefit plans which become effective and are delivered,
issued for delivery, amended or renewed on or after January 1 of the
following calendar year. The commissioner shall furnish the calculated
value to the secretary of state, who shall publish such value in the Kansas
register as soon after each July 1 as practicable, but no later than
September 1.

(e) No coverage provided under this section shall impose any limit
on the number of visits an individual may make for treatment of an
autism spectrum disorder, except when the amount attributable to the
maximum total benefit for applied behavior analysis set forth in
subsection (d) is, or will be, exceeded.

(f) This section shall not be construed as limiting benefits which are
otherwise available to an individual under a health benefit plan. Coverage
of services may be subject to other general exclusions and limitations of
the contract or benefit plan, not in conflict with the provisions of this
section, such as coordination of benefits, exclusions for services provided
by family or household members, and utilization review of health care
services, including review of medical necessity and care management;
however, coverage for treatment under this section shall not be denied on
the basis that it is educational or nonrestorative in nature.

(g) Applied behavior analysis must be provided or supervised by a
behavioral analyst or an autism specialist. Payments or reimbursements
for applied behavior analysis shall be made to either the:

(A) Behavior analyst or autism specialist; or

(B) the entity or group for whom such behavior analyst or autism
specialist works or is associated.

Such payments or reimbursements under this subsection shall include
payments or reimbursements for treatment services provided by staff
working under the supervision of a behavior analyst or autism specialist if
such services are included in the treatment plan and are deemed
medically necessary.

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

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

(B) all self-insured group arrangements;

(C) all plans provided through a multiple-employer welfare
arrangement or plans provided through another benefit; and
(D) all self-insured school district health plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) No policy, agreement, contract or certificate issued by a
corporation to which this section applies shall contain a provision which
excludes, limits or otherwise restricts coverage because medicaid benefits
as permitted by title XIX of the social security act of 1965 are or may be
available for the same accident or illness.

(c) Violation of subsection (b) shall be subject to the penalties
prescribed by K.S.A. 40-2407 and 40-2411, and amendments thereto.

Sec. 4. K.S.A. 2010 Supp. 40-2,103 and 40-19c09 are hereby
repealed.

Sec. 5. This act shall take effect and be in force from and after its
publication in the statute book.