

SENATE BILL No. 226

By Committee on Federal and State Affairs

3-7

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

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

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

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

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

36 (7) "Commissioner" means the commissioner of insurance.

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

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

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

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

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

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

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

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

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

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

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

34 (B) pharmacy care;

35 (C) psychiatric care;

36 (D) psychological care; and

37 (E) therapeutic care.

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

41 (2) No health carrier shall:

42 (A) Deny or refuse to issue coverage on, refuse to contract with, or
43 refuse to renew or refuse to reissue or otherwise terminate or restrict

1 coverage on an individual or their dependent because the individual is
2 diagnosed with autism spectrum disorder.

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

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

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

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

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

43 (3) Beginning July 1, 2013, and each July 1 thereafter, the

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

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

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

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

27 (A) Behavior analyst or autism specialist; or

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

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

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

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

41 (B) all self-insured group arrangements;

42 (C) all plans provided through a multiple-employer welfare
43 arrangement or plans provided through another benefit; and

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

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

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

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

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

23 (l) The provisions of this section shall not apply to the Kansas
24 insurance plan for coverage of children developed pursuant to K.S.A. 38-
25 2001 et seq., and amendments thereto.

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

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

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

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

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

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

40 (n) As of January 1, 2014, to the extent that this section requires
41 benefits that exceed the essential health benefits specified under section
42 1302(b) of the Patient Protection and Affordable Care Act, the specific
43 benefits that exceed the specified essential health benefits shall not be

1 required of a qualified health benefit plan when the health benefit plan is
2 offered in this state by a health carrier through the exchange. Nothing in
3 this subsection shall nullify application of this section to any health
4 benefit plan offered outside the exchange.

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

7 Sec. 2. K.S.A. 2010 Supp. 40-2,103 is hereby amended to read as
8 follows: 40-2,103. The requirements of K.S.A. 40-2,100, 40-2,101, 40-
9 2,102, 40-2,104, 40-2,105, 40-2,114, 40-2,160, 40-2,165 through 40-
10 2,170, inclusive, 40-2250, K.S.A. 2010 Supp. 40-2,105a, 40-2,105b ~~and~~
11 40-2,184 *and section 1*, and amendments thereto, shall apply to all
12 insurance policies, subscriber contracts or certificates of insurance
13 delivered, renewed or issued for delivery within or outside of this state or
14 used within this state by or for an individual who resides or is employed
15 in this state.

16 Sec. 3. K.S.A. 2010 Supp. 40-19c09 is hereby amended to read as
17 follows: 40-19c09. (a) Corporations organized under the nonprofit
18 medical and hospital service corporation act shall be subject to the
19 provisions of the Kansas general corporation code, articles 60 to 74,
20 inclusive, of chapter 17 of the Kansas Statutes Annotated, *and*
21 *amendments thereto*, applicable to nonprofit corporations, to the
22 provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222,
23 40-223, 40-224, 40-225, 40-226, 40-229, 40-230, 40-231, 40-235, 40-
24 236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-254,
25 40-2,100, 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-2,105, 40-2,116,
26 40-2,117, 40-2,153, 40-2,154, 40-2,160, 40-2,161, 40-2,163 through 40-
27 2,170, inclusive, 40-2a01 et seq., 40-2111 to 40-2116, inclusive, 40-2215
28 to 40-2220, inclusive, 40-2221a, 40-2221b, 40-2229, 40-2230, 40-2250,
29 40-2251, 40-2253, 40-2254, 40-2401 to 40-2421, inclusive, and 40-3301
30 to 40-3313, inclusive, K.S.A. 2010 Supp. 40-2,105a, 40-2,105b ~~and~~ 40-
31 2,184 *and section 1*, and amendments thereto, except as the context
32 otherwise requires, and shall not be subject to any other provisions of the
33 insurance code except as expressly provided in this act.

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

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

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

43 Sec. 5. This act shall take effect and be in force from and after its

- 1 publication in the statute book.