

HOUSE BILL No. 2744

AN ACT concerning insurance; providing coverage for autism spectrum disorder; requiring licensure of persons providing applied behavior analysis; amending K.S.A. 2013 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) (1) (A) Any large group health insurance policy, medical service plan, contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization which provides coverage for accident and health services and which is delivered, issued for delivery, amended or renewed on or after January 1, 2015, shall provide coverage for the diagnosis and treatment of autism spectrum disorder in any covered individual whose age is less than 12 years.

(B) Any grandfathered individual or group health insurance policy, medical service plan, contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization which provides coverage for accident and health services and which is delivered, issued for delivery, amended or renewed on or after January 1, 2016, shall provide coverage for the diagnosis and treatment of autism spectrum disorder in any covered individual whose age is less than 12 years.

(2) Such coverage shall be provided in a manner determined in consultation with the autism services provider and the patient. Services provided by autism services providers under this section shall include applied behavior analysis when required by a licensed physician, licensed psychologist or licensed specialist clinical social worker but otherwise shall be limited to the care, services and related equipment prescribed or ordered by a licensed physician, licensed psychologist or licensed specialist clinical social worker.

(3) Coverage provided under this section for applied behavior analysis shall be subject to a limitation of:

(A) 1,300 hours per calendar year for four years beginning on the later of the date of diagnosis or January 1, 2015, for any covered individual diagnosed with autism spectrum disorder between birth and five years of age; and

(B) except as provided in subparagraph (A), 520 hours per calendar year for any covered individual less than 12 years of age.

Upon prior approval by the health benefit plan, such maximum benefit limit may be exceeded if the provision of applied behavior analysis services beyond the maximum limit is medically necessary for such individual. Any payment made by an insurer on behalf of a covered individual for any care, treatment, intervention, service or item, the provision of which was for the treatment of a health condition unrelated to such covered individual's autism spectrum disorder, shall not be applied toward any maximum benefit established under this paragraph. Except for the coverage for applied behavior analysis, no coverage required under this section shall be subject to the age and hour limitations described in this paragraph.

(4) On or after January 1, 2015, through June 30, 2016, reimbursement shall be allowed only for services provided by a provider licensed, trained and qualified to provide such services or by an autism specialist or an intensive individual service provider as such terms are defined by the Kansas department for aging and disability services Kansas autism waiver. On or after July 1, 2016, reimbursement shall be allowed only for services provided by an autism service provider licensed or exempt from licensure under the applied behavior analysis licensure act, except that reimbursement shall be allowed for services provided by an autism specialist, an intensive individual service provider or any other individual qualified to provide services under the home and community based services autism waiver administered by the Kansas department for aging and disability services.

(5) Any insurer or other entity which administers claims for services provided for the treatment of autism spectrum disorder under this section shall have the right and obligation to deny any claim for services based upon medical necessity or a determination that the covered individual has reached the maximum medical improvement for the covered individual's autism spectrum disorder.

(6) Except for inpatient services, if an insured is receiving treatment for autism spectrum disorder, such insurer shall have the right to review

the treatment plan not more than once in a period of six consecutive months, unless the insurer 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 autism spectrum disorder and shall not apply to all individuals being treated for autism spectrum disorder by a physician or psychologist. The cost of obtaining any review or treatment plan shall be borne by the insurer.

(7) No insurer can terminate coverage, or refuse to deliver, execute, issue, amend, adjust or renew coverage to an individual solely because the individual is diagnosed with or has received treatment for autism spectrum disorder.

(b) For the purposes of 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 relationship between environment and behavior.

(2) "Autism spectrum disorder" means a neurobiological disorder, an illness of the nervous system, which includes:

(A) "Autistic disorder," which is:

(i) Six or more items from (a), (b) and (c) of this subparagraph, with at least two items from (a) of this subparagraph, and one item each from (b) and (c) of this subparagraph:

(a) Qualitative impairment in social interaction, as manifested by at least two of the following:

(1) Marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures and gestures to regulate social interaction;

(2) failure to develop peer relationships appropriate to developmental level;

(3) a lack of spontaneous seeking to share enjoyment, interests or achievements with other people; or

(4) lack of social or emotional reciprocity;

(b) qualitative impairments in communication as manifested by at least one of the following:

(1) Delay in, or total lack of, the development of spoken language;

(2) in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others;

(3) stereotyped and repetitive use of language or idiosyncratic language; or

(4) lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level;

(c) restricted repetitive and stereotyped patterns of behavior, interests and activities, as manifested by at least one of the following:

(1) Encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus;

(2) apparently inflexible adherence to specific, nonfunctional routines or rituals;

(3) stereotyped and repetitive motor mannerisms; or

(4) persistent preoccupation with parts of objects;

(ii) delays or abnormal functioning in at least one of the following areas, with onset prior to age three years, including social interaction, language as used in social communication or symbolic or imaginative play; and

(iii) the disturbance is not better accounted for by Rett's disorder or childhood disintegrative disorder;

(B) "Asperger's disorder," which is:

(i) a qualitative impairment in social interaction, as manifested by at least two of the following:

(a) Marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures and gestures to regulate social interaction;

(b) failure to develop peer relationships appropriate to developmental level;

(c) lack of spontaneous seeking to share enjoyment, interests or achievements with other people; or

(d) lack of social or emotional reciprocity;

(ii) restricted repetitive and stereotyped patterns of behavior, interests and activities, as manifested by at least one of the following:

(a) Encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus;

(b) apparently inflexible adherence to specific, nonfunctional routines or rituals;

(c) stereotyped and repetitive motor mannerisms; or

(d) persistent preoccupation with parts of objects;

(iii) the disturbance causes clinically significant impairment in social, occupational or other important areas of functioning;

(iv) there is no clinically significant general delay in language;

(v) there is no clinically significant delay in cognitive development or in the development of age-appropriate self-help skills, adaptive behavior (other than in social interaction), and curiosity about the environment in childhood; and

(vi) criteria are not met for another specific pervasive developmental disorder or schizophrenia;

(C) “pervasive developmental disorder not otherwise specified,” is a severe and pervasive impairment in the development of reciprocal social interaction associated with impairment in either verbal or nonverbal communication skills or with the presence of stereotyped behavior, interests and activities, but the criteria are not met for a specific pervasive developmental disorder, schizophrenia, schizotypal personality disorder, or avoidant personality disorder;

(D) “Rett’s disorder,” includes:

(i) All of the following:

(a) Apparently normal prenatal and perinatal development;

(b) apparently normal psychomotor development through the first five months after birth; and

(c) normal head circumference at birth;

(ii) onset of all of the following after the period of normal development:

(a) Deceleration of head growth between ages five and 48 months;

(b) loss of previously acquired purposeful hand skills between ages five and 30 months with the subsequent development of stereotyped hand movements;

(c) loss of social engagement early in the course of development;

(d) appearance of poorly coordinated gait or trunk movements; and

(e) severely impaired expressive and receptive language development with severe psychomotor retardation;

(E) “childhood disintegrative disorder,” is:

(i) Apparently normal development for at least the first two years after birth as manifested by the presence of age-appropriate verbal and nonverbal communication, social relationships, play and adaptive behavior;

(ii) clinically significant loss of previously acquired skills in at least two of the following areas: Expressive or receptive language, social skills or adaptive behavior, bowel or bladder control or play and motor skills;

(iii) abnormalities of functioning in at least two of the following areas: Qualitative impairment in social interaction; qualitative impairments in communication; restricted, repetitive and stereotyped patterns of behavior, interests and activities, including motor stereotypies and mannerisms; and

(iv) the disturbance is not better accounted for by another specific pervasive developmental disorder or by schizophrenia.

(3) “Diagnosis of autism spectrum disorder” means any medically necessary assessment, evaluation or test performed by a licensed physician, licensed psychologist or licensed specialist clinical social worker to determine whether an individual has autism spectrum disorder.

(4) “Grandfathered health benefit plan” shall have the meaning ascribed to such term in 42 U.S.C. § 18011. The term “grandfathered health benefit plan” includes both small employer group health benefit plans that are grandfathered and individual health benefit plans that are grandfathered.

(5) “Health benefit plan” shall have the meaning ascribed to such term in K.S.A. 40-4602, and amendments thereto.

(6) “Large employer” means, in connection with a group health benefit plan with respect to a calendar year and a plan year, an employer who

employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year.

(7) “Small employer” means, in connection with a group health benefit plan with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 50 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year.

(c) If an individual has been diagnosed as having autism spectrum disorder meeting the diagnostic criteria described in the edition of the diagnostic and statistical manual of mental disorders available at the time of diagnosis, then that individual shall not be required to undergo any additional or repeated evaluation based upon the adoption of a subsequent edition of the diagnostic and statistical manual of mental disorders adopted by rules and regulations of the behavioral sciences regulatory board in order to remain eligible for coverage under this section.

(d) Except as otherwise provided in subsection (a), no individual or group health insurance policy, medical service plan, contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization which provides coverage for accident and health services and which provides coverage with respect to autism spectrum disorder shall:

(1) 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; or

(2) impose on the coverage required by this section any limit upon the number of visits that a covered individual may make for treatment of autism spectrum disorder.

(e) The provisions of this section shall not apply to any policy or certificate which provides coverage for any specified disease, specified accident or accident-only coverage, credit, dental, disability income, hospital indemnity, long-term care insurance as defined by K.S.A. 40-2227, and amendments thereto, vision care or any other limited supplemental benefit nor to any medicare supplement policy of insurance as defined by the commissioner of insurance by rules and regulations, any coverage issued as a supplement to liability insurance, workers’ compensation or similar insurance, automobile medical-payment insurance or any insurance under which benefits are payable with or without regard to fault, whether written on a group, blanket or individual basis.

(f) This section shall not be construed as limiting benefits that are otherwise available to an individual under any individual or group health insurance policy, medical service plan, contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization which provides coverage for accident and health services.

(g) The provisions of K.S.A. 40-2249a, and amendments thereto, shall not apply to the provisions of this section.

(h) The commissioner of the department of insurance shall grant a small employer with a group health benefit plan 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 insurance policy by an amount of two and a half percent or greater over the period of a calendar year in premium costs to the small employer.

(i) Nothing contained in this section shall require coverage for or payment of full or partial day care or habilitation services, community support services, services at intermediate care facilities, school-based rehabilitative services or overnight, boarding and extended stay services at facilities for autism patients. Only services actually rendered on an hourly basis or fractional portion thereof by certified applied behavior analysis (ABA) providers as herein defined shall be required to be covered under this section. Nothing in this section shall require coverage or payment hereunder for services that are otherwise provided, authorized or required to be provided by public or private schools receiving any state or federal funding for such services.

New Sec. 2. Sections 2 through 6, and amendments thereto, shall be known and may be cited as the applied behavior analysis licensure act.

New Sec. 3. For the purposes of this act:

(a) “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 relationship between environment and behavior;

(b) “autism service provider” means any person:

(1) That provides diagnostic or treatment services for autism spectrum disorders who is licensed or certified by the state of Kansas; or

(2) who is licensed by the behavioral sciences regulatory board as a licensed behavior analyst or a licensed assistant behavior analyst;

(c) “autism spectrum disorder” has the meaning ascribed to such term by section 1, and amendments thereto.

(d) “board” means the behavioral sciences regulatory board created under K.S.A. 74-7501, and amendments thereto;

(e) “certifying entity” means the national accredited behavior analyst certification board or other equivalent nationally accredited nongovernmental agency approved by the behavioral sciences regulatory board which certifies individuals who have completed academic, examination, training and supervision requirements in applied behavior analysis;

(f) “controlled substance” means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto;

(g) “diagnosis of autism spectrum disorders” means any medically necessary assessments, evaluations or tests in order to diagnose whether an individual has an autism spectrum disorder;

(h) “licensed assistant behavior analyst” or “LaBA” means an individual who is certified by the certifying entity as a certified assistant behavior analyst and meets the licensing criteria as established by the board by rules and regulations;

(i) “licensed behavior analyst” or “LBA” means an individual who is certified by the certifying entity as a certified behavior analyst and meets the licensing criteria as established by the board by rules and regulations;

(j) “line therapist” means an individual who:

(1) Provides supervision of an individual diagnosed with autism spectrum disorder and other neurodevelopmental disorders pursuant to the prescribed treatment plan; and

(2) implements specific behavioral interventions as outlined in the prescribed treatment plan under the direct supervision of a licensed behavior analyst; and

(k) “treatment for autism spectrum disorder” means care prescribed or ordered for an individual diagnosed with an autism spectrum disorder by a licensed physician or licensed psychologist, including equipment medically necessary for such care, pursuant to the powers granted under such licensed physician’s or licensed psychologist’s license.

New Sec. 4. (a) On or after July 1, 2016, no person shall practice applied behavior analysis in this state unless they are:

(1) Licensed behavior analysts;

(2) licensed assistant behavior analysts working under the supervision of a licensed behavior analyst;

(3) an individual who has a bachelor’s or graduate degree and completed course work for licensure as a behavior analyst and is obtaining supervised field experience under a licensed behavior analyst pursuant to required supervised work experience for licensure at the behavior analyst or assistant behavior analyst level; or

(4) licensed psychologists practicing within the rules and standards of practice for psychologists in the state of Kansas and whose practice is commensurate with their level of training and experience.

(b) The licensing requirements of subsection (a) shall not apply to any person:

(1) Licensed by the board who practices any component of applied behavior analysis within the scope of such person’s license and scope of practice as required by law;

(2) who provides services under the individuals with disabilities education act (IDEA), 20 U.S.C. § 1400 et seq.;

(3) who provides services under § 504 of the federal rehabilitation act of 1973, 20 U.S.C. § 794;

(4) is enrolled in a course of study at a recognized educational institution through which such person provides applied behavior analysis as part of supervised clinical experience;

(5) who is an autism specialist, an intensive individual service provider or any other individual qualified to provide services under the home and community based services autism waiver administered by the Kansas department for aging and disability services;

(6) who is an occupational therapist licensed by the state board of healing arts, acting within the scope of such person's license and scope of practice as required by law; or

(7) who is a speech-language pathologist or audiologist licensed by the Kansas department for aging and disability services, acting within the scope of such person's license and scope of practice as required by law.

(c) The board shall not issue a license under this act until the license applicant provides proof that such applicant has met the certification requirements of a certifying entity.

New Sec. 5. (a) The board may deny, suspend, revoke or refuse renewal of any license issued under this act if the board finds that the applicant or license holder has:

(1) Used any controlled substance or alcoholic beverage to an extent that such use impairs such person's ability to perform the work of any profession licensed or regulated by this act.

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any professional licensed or regulated under this act, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not a sentence is imposed.

(3) Used any fraud, deception or misrepresentation in securing any license issued under this act.

(4) Obtained or attempted to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation.

(5) Committed any act of incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed by the board.

(6) Committed any violation of or assisted or enabled any person to violate any provision of this act or any rule and regulation promulgated thereunder.

(7) Impersonated any person holding a certificate of registration or authority, permit or license or allowed any other person to use such person's certificate of registration or authority, permit, license or diploma from any school.

(8) Been disciplined in any action by another state, territory, federal agency or country which would constitute grounds for a license issued under this act being suspended or revoked.

(9) Been finally adjudged insane or incapacitated by a court of competent jurisdiction.

(10) Assisted or enabled any person to practice or offer to practice any profession licensed or regulated by the board when such person is not eligible to practice such profession as required by law.

(11) Issued any certificate of registration or authority, permit or license based upon a material mistake of fact.

(12) Failed to display a valid certificate or license if so required by this act or any rules and regulations promulgated thereunder.

(13) Violated any professional trust or confidence.

(14) Used any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed.

(15) Been found guilty of unprofessional conduct or professional incompetency as defined by the board by rules and regulations.

(b) Any action taken under this section which affects any license or imposes any administrative penalty shall be taken only after notice and an opportunity for a hearing conducted in accordance with the provisions of the Kansas administrative procedure act.

New Sec. 6. The board shall promulgate rules and regulations necessary to implement and administer this act. Such rules and regulations shall include, but not be limited to:

- (a) The form and content of license applications required and the procedures for filing an application for an initial or renewal license in this state;
- (b) the establishment of fees for licenses, and the renewal thereof, to cover all or any part of the cost of administering the provisions of this act;
- (c) the educational and training requirements for licensed behavior analysts and licensed assistant behavior analysts;
- (d) the roles, responsibilities and duties of licensed behavior analysts and licensed assistant behavior analysts;
- (e) the characteristics of supervision and supervised clinical practicum experience for the licensed behavior analysts and the licensed assistant behavior analysts;
- (f) the supervision of licensed behavior analysts and licensed assistant behavior analysts;
- (g) the requirements for continuing education for licensed behavior analysts and licensed assistant behavior analysts;
- (h) standards of professional competency;
- (i) standards of professional conduct; and
- (j) such other rules and regulations as the board deems necessary to carry out the provisions of this act.

Sec. 7. K.S.A. 2013 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. 2013 Supp. 40-2,105a, 40-2,105b, 40-2,184 ~~and~~, 40-2,190 *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. 8. K.S.A. 2013 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, 40-229, 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-2,100, 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-2,105, 40-2,116, 40-2,117, 40-2,125, 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. 2013 Supp. 40-2,105a, 40-2,105b, 40-2,184 ~~and~~, 40-2,190 *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. 9. K.S.A. 2013 Supp. 40-2,103 and 40-19c09 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.