As Amended by Senate Committee

Session of 2015

SENATE BILL No. 303

By Committee on Ways and Means

5-4

AN ACT concerning insurance; relating to coverage for autism spectrum disorder; amending K.S.A. 2014 Supp. 40-2,194 and repealing the existing section.

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

Section 1. K.S.A. 2014 Supp. 40-2,194 is hereby amended to read as follows: 40-2,194. (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. However, coverage for autism spectrum disorder shall not be required of a qualified health plan, as that term is defined in 42 U.S.C. § 18021, as in effect on July 1, 2015.

(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. However, coverage for autism spectrum disorder shall not be required of a qualified health plan, as that term is defined in 42 U.S.C. § 18021, as in effect on July 1, 2015.

(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 101 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 100
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.

Sec. 2. K.S.A. 2014 Supp. 40-2,194 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after
January 1, 2016 and its publication in the statute book.