

HOUSE BILL No. 2367

By Committee on Federal and State Affairs

3-5

9 AN ACT concerning insurance; providing coverage for autism spectrum
10 disorder; amending K.S.A. 2008 Supp. 40-2,103, 40-2,105, 40-2,105a
11 and 40-19c09 and repealing the existing sections.
12

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

14 New Section 1. (a) (1) Any individual or group health insurance pol-
15 icy, medical service plan, contract, hospital service corporation contract,
16 hospital and medical service corporation contract, fraternal benefit society
17 or health maintenance organization which provides coverage for accident
18 and health services and which is delivered, issued for delivery, amended
19 or renewed on or after July 1, 2009, shall provide coverage for the diag-
20 nosis and treatment of autism spectrum disorders in any covered
21 individual.

22 (2) Such coverage shall be provided in a manner determined in con-
23 sultation with the autism services provider and the patient. Services pro-
24 vided by an autism services provider under this section shall be limited
25 to those services prescribed by a licensed physician or a licensed psy-
26 chologist. Such coverage may be subject to appropriate annual deducti-
27 bles and coinsurance provisions as are consistent with those established
28 for other physical illness benefits under the plan or coverage.

29 (b) Each individual or group health insurance policy, medical service
30 plan, contract, hospital service corporation contract, hospital and medical
31 service corporation contract, fraternal benefit society or health mainte-
32 nance organization which provides coverage for accident and health serv-
33 ices and which provides medical and surgical benefits shall provide writ-
34 ten notice, as currently required, to all enrollees, insureds or subscribers
35 regarding the coverage required by this section.

36 (c) No individual or group health insurance policy, medical service
37 plan, contract, hospital service corporation contract, hospital and medical
38 service corporation contract, fraternal benefit society or health mainte-
39 nance organization which provides coverage for accident and health serv-
40 ices and which provides coverage with respect to an autism spectrum
41 disorder shall:

42 (1) Deny to a patient eligibility, or continued eligibility, to enroll or
43 to renew coverage, solely for the purpose of avoiding the requirements

1 of this section;

2 (2) deny or refuse to issue coverage on, refuse to contract with, or
3 refuse to renew, refuse to reissue or otherwise terminate or restrict cov-
4 erage on an individual solely because the individual is diagnosed with an
5 autism spectrum disorder;

6 (3) deny or refuse to issue coverage on, refuse to contract with, or
7 refuse to renew, refuse to reissue or otherwise terminate or restrict cov-
8 erage on an individual diagnosed with an autism spectrum disorder solely
9 on the basis coverage is necessary to develop, maintain or restore skills
10 of such individual or on the basis coverage is necessary to prevent the
11 loss of skills or functioning of such individual;

12 (4) impose on the coverage required by this section any dollar limits,
13 deductibles or coinsurance provisions that are less favorable to an insured
14 than the dollar limits, deductibles or coinsurance provisions that apply to
15 physical illness generally under the accident and sickness insurance policy;

16 (5) impose on the coverage required by this section any limit upon
17 the number of visits that a covered individual may make to an autism
18 services provider; or

19 (6) penalize or otherwise reduce or limit the reimbursement of an
20 autism services provider, or provide incentives, monetary or otherwise,
21 to an autism services provider for the purpose of inducing such autism
22 services provider to provide care to covered individuals in a manner in-
23 consistent with this section.

24 (d) For any employers that have more than 50 eligible employees,
25 coverage for applied behavior analysis shall be subject to a maximum
26 benefit of \$75,000 per year through age 21.

27 (e) (1) Any employer that has 50 or fewer employees shall have the
28 option to exclude the coverage required by this section from any health
29 benefit plan, as such term is defined in K.S.A. 40-2209d, and amendments
30 thereto, offered to such employees.

31 (2) Any individual with an individually underwritten health insurance
32 policy shall have the option to exclude the coverage required by this
33 section from such policy.

34 (f) The provisions of this section shall not apply to any policy or cer-
35 tificate which provides coverage for any specified disease, specified ac-
36 cident or accident only coverage, credit, dental, disability income, hospital
37 indemnity, long-term care insurance as defined by K.S.A. 40-2227, and
38 amendments thereto, vision care or any other limited supplemental ben-
39 efit nor to any medicare supplement policy of insurance as defined by
40 the commissioner of insurance by rule and regulation, any coverage issued
41 as a supplement to liability insurance, workers' compensation or similar
42 insurance, automobile medical-payment insurance or any insurance un-
43 der which benefits are payable with or without regard to fault, whether

- 1 written on a group, blanket or individual basis.
- 2 (g) This section shall not be construed as limiting benefits that are
3 otherwise available to an individual under a health coverage plan.
- 4 (h) For the purposes of this section:
- 5 (1) “Applied behavior analysis” means the design, implementation
6 and evaluation of environmental modifications, using behavioral stimuli
7 and consequences, to produce socially significant improvement in human
8 behavior, including the use of direct observation, measurement and func-
9 tional analysis of the relations between environment and behavior.
- 10 (2) “Autism services provider” means any person, entity or group that
11 provides treatment of any autism spectrum disorder.
- 12 (3) “Autism spectrum disorder” means the following disorders within
13 the autism spectrum: Autistic disorder, Asperger’s syndrome and perva-
14 sive developmental disorder not otherwise specified, as such terms are
15 specified in the diagnostic and statistical manual of mental disorders,
16 fourth edition, text revision (DSM-IV-TR), of the American psychiatric
17 association, as published in May, 2000, or later versions as established in
18 rules and regulations adopted by the behavioral sciences regulatory board
19 pursuant to K.S.A. 74-7507 and amendments thereto.
- 20 (4) “Diagnosis of autism spectrum disorder” means any medically
21 necessary assessment, evaluation or test to determine whether an indi-
22 vidual has an autism spectrum disorder.
- 23 (5) “Eligible employee” shall have the meaning ascribed to such term
24 in K.S.A. 40-2209d and amendments thereto.
- 25 (6) “Habilitative or rehabilitative care” means and includes any pro-
26 fessional, counseling and guidance service and treatment program, in-
27 cluding applied behavior analysis, that is necessary to develop, maintain
28 and restore, to the maximum extent possible, the functioning of an
29 individual.
- 30 (7) “Insurer” shall have the meaning ascribed to it in K.S.A. 40-2118
31 and amendments thereto.
- 32 (8) “Pharmacy care” means medications prescribed by a licensed phy-
33 sician and any health-related services deemed medically necessary to de-
34 termine the need or effectiveness of the medications.
- 35 (9) “Psychiatric care” means any direct or consultative service pro-
36 vided by a psychiatrist licensed in the state in which the psychiatrist
37 practices.
- 38 (10) “Psychological care” means direct or consultative services pro-
39 vided by a psychologist licensed in the state in which the psychologist
40 practices.
- 41 (11) “Therapeutic care” means services provided by licensed or cer-
42 tified speech therapists, occupational therapists or physical therapists.
- 43 (12) “Treatment for autism spectrum disorder” includes all medically

- 1 necessary services as determined by a licensed physician or a licensed
2 psychologist, including, but not limited to:
- 3 (A) Habilitative or rehabilitative care;
 - 4 (B) pharmacy care;
 - 5 (C) psychiatric care;
 - 6 (D) psychological care; and
 - 7 (E) therapeutic care.
- 8 (i) The provisions of this section shall be applicable to the Kansas
9 state employees health care benefits program and municipal funded
10 pools.
- 11 (j) The provisions of K.S.A. 40-2249a, and amendments thereto, shall
12 not apply to the provisions of this section.
- 13 (k) Except for inpatient services, if a covered individual is receiving
14 treatment for any autism spectrum disorder, an insurer will have the right
15 to request a review of that treatment not more than once every 12 months
16 unless the insurer and the individual's licensed physician or licensed psy-
17 chologist agrees that a more frequent review is necessary. The cost of
18 obtaining any review shall be borne by the insurer.
- 19 (l) On or before November 30, 2009 and annually on each November
20 30 thereafter, the commissioner of insurance shall adjust the maximum
21 benefit for inflation by using the medical care component of the United
22 States department of labor consumer price index for all urban consumers.
23 The commissioner shall submit the adjusted maximum benefit for pub-
24 lication in the Kansas register annually no later than December 10 of
25 each calendar year beginning with 2009, and the published adjusted max-
26 imum benefit shall be applicable on and after January 1 of the following
27 year to each individual or group health insurance policy, medical service
28 plan, contract, hospital service corporation contract, hospital and medical
29 service corporation contract, fraternal benefit society or health mainte-
30 nance organization which provides coverage for accident and health
31 services.
- 32 (m) (1) Upon an insurer's denial of a claim by a covered individual
33 for diagnostic assessment of any autism spectrum disorder or for treat-
34 ment of any autism spectrum disorder, such covered individual or such
35 covered individual's authorized representative shall be entitled to an ex-
36 pedited internal review process, followed by an independent expedited
37 external review process established and administered by the insurance
38 department. The independent expedited external review process shall be
39 provided in substantial compliance with the procedure established in
40 K.S.A. 40-22a13 et seq. as amended and supplemented.
- 41 (2) The decision resulting from the independent external review pro-
42 cess may be appealed in the manner provided in K.S.A. 40-22a16 and
43 amendments thereto. Pending a final decision of the district court, the

1 insurer shall pay for those covered services previously denied and any
2 additional services authorized by the district court.

3 (n) This section shall be known and may be cited as the accessing
4 autism services act.

5 Sec. 2. K.S.A. 2008 Supp. 40-2,103 is hereby amended to read as
6 follows: 40-2,103. The requirements of K.S.A. 40-2,100, 40-2,101, 40-
7 2,102, 40-2,104, 40-2,105, 40-2,114, 40-2,160, 40-2,165 through 40-2,170,
8 inclusive, 40-2250, K.S.A. 2008 Supp. 40-2,105a ~~and 40-2,105b~~, 40-
9 2,105b and section 1, and amendments thereto, shall apply to all insurance
10 policies, subscriber contracts or certificates of insurance delivered, re-
11 newed or issued for delivery within or outside of this state or used within
12 this state by or for an individual who resides or is employed in this state.

13 Sec. 3. K.S.A. 2008 Supp. 40-2,105 is hereby amended to read as
14 follows: 40-2,105. (a) On or after the effective date of this act, every
15 insurer which issues any individual or group policy of accident and sick-
16 ness insurance providing medical, surgical or hospital expense coverage
17 for other than specific diseases or accidents only and which provides for
18 reimbursement or indemnity for services rendered to a person covered
19 by such policy in a medical care facility; must provide for reimbursement
20 or indemnity under such individual policy or under such group policy,
21 except as provided in subsection (d), which shall be limited to not less
22 than 30 days per year when such person is confined for treatment of
23 alcoholism, drug abuse or nervous or mental conditions in a medical care
24 facility licensed under the provisions of K.S.A. 65-429 and amendments
25 thereto, a treatment facility for alcoholics licensed under the provisions
26 of K.S.A. 65-4014 and amendments thereto, a treatment facility for drug
27 abusers licensed under the provisions of K.S.A. 65-4605 and amendments
28 thereto, a community mental health center or clinic licensed under the
29 provisions of K.S.A. 75-3307b and amendments thereto or a psychiatric
30 hospital licensed under the provisions of K.S.A. 75-3307b and amend-
31 ments thereto. Such individual policy or such group policy shall also pro-
32 vide for reimbursement or indemnity, except as provided in subsection
33 (d), of the costs of treatment of such person for alcoholism, drug abuse
34 and nervous or mental conditions, limited to not less than 100% of the
35 first \$100, 80% of the next \$100 and 50% of the next \$1,640 in any year
36 and limited to not less than \$7,500 in such person's lifetime, in the facil-
37 ities enumerated when confinement is not necessary for the treatment or
38 by a physician licensed or psychologist licensed to practice under the laws
39 of the state of Kansas.

40 (b) For the purposes of this section "nervous or mental conditions"
41 means disorders specified in the diagnostic and statistical manual of men-
42 tal disorders, fourth edition, ~~(DSM-IV, 1994)~~ of the American psychiatric
43 association text revision (DSM-IV-TR) of the American psychiatric asso-

1 *ciation, as published in May 2000, or later versions as established in rules*
2 *and regulations adopted by the behavioral sciences regulatory board pur-*
3 *suant to K.S.A. 74-7507, and amendments thereto, but shall not include*
4 *conditions:*

5 (1) Not attributable to a mental disorder that are a focus of attention
6 or treatment (~~DSM-IV, 1994~~); and

7 (2) defined as a mental illness in K.S.A. 2008 Supp. 40-2,105a and
8 amendments thereto.

9 (c) The provisions of this section shall be applicable to health main-
10 tenance organizations organized under article 32 of chapter 40 of the
11 Kansas Statutes Annotated.

12 (d) There shall be no coverage under the provisions of this section
13 for any assessment against any person required by a diversion agreement
14 or by order of a court to attend an alcohol and drug safety action program
15 certified pursuant to K.S.A. 8-1008 and amendments thereto or for eval-
16 uations and diagnostic tests ordered or requested in connection with
17 criminal actions, divorce, child custody or child visitation proceedings.

18 (e) The provisions of this section shall not apply to any medicare
19 supplement policy of insurance, as defined by the commissioner of in-
20 surance by rule and regulation.

21 (f) The provisions of this section shall be applicable to the Kansas
22 state employees health care benefits program developed and provided by
23 the Kansas state employees health care commission.

24 (g) The outpatient coverage provisions of this section shall not apply
25 to a high deductible health plan as defined in federal law if such plan is
26 purchased in connection with a medical or health savings account pur-
27 suant to that federal law, regardless of the effective date of the insurance
28 policy. After the amount of eligible deductible expenses have been paid
29 by the insured, the outpatient costs of treatment of the insured for al-
30 colism, drug abuse and nervous or mental conditions shall be paid on
31 the same level they are provided for a medical condition, subject to the
32 yearly and lifetime maximums provided in subsection (a).

33 Sec. 4. K.S.A. 2008 Supp. 40-2,105a is hereby amended to read as
34 follows: 40-2,105a. (a) (1) Any group health insurance policy, medical
35 service plan, contract, hospital service corporation contract, hospital and
36 medical service corporation contract, fraternal benefit society or health
37 maintenance organization which provides coverage for mental health ben-
38 efits and which is delivered, issued for delivery, amended or renewed on
39 or after January 1, 2002, shall include coverage for diagnosis and treat-
40 ment of mental illnesses. Except as provided in paragraph (2), such cov-
41 erage shall be subject to the same deductibles, coinsurance and other
42 limitations as apply to other covered services.

43 (2) The coverage required by paragraph (1) shall include annual cov-

1 erage for both 45 days of in-patient care for mental illness and for 45
2 visits for out-patient care for mental illness.

3 (b) Notwithstanding the provisions of K.S.A. 40-2249a, and amend-
4 ments thereto, the state insurance department shall deliver to the presi-
5 dent of the senate and to the speaker of the house of representatives on
6 or before January 1, 2003, a report indicating the impact of providing
7 mental illness benefits required by this act. Such report shall include
8 information regarding access to and usage of such services and the cost
9 of such services.

10 (c) For the purposes of this section, "mental illness" means the fol-
11 lowing: Schizophrenia, schizoaffective disorder, schizophreniform disorder,
12 brief reactive psychosis, paranoid or delusional disorder, atypical psy-
13 chosis, major affective disorders (bipolar and major depression),
14 cyclothymic and dysthymic disorders, obsessive compulsive disorder,
15 panic disorder, ~~pervasive developmental disorder, including autism,~~ at-
16 tention deficit disorder and attention deficit hyperactive disorder as such
17 terms are defined in the diagnostic and statistical manual of mental dis-
18 orders, fourth edition, ~~(DSM-IV, 1994)~~ of the American psychiatric as-
19 ~~sociation~~ *text revision (DSM-IV-TR) of the American psychiatric associ-*
20 *ation, as published in May 2000, or later versions as established in rules*
21 *and regulations adopted by the behavioral sciences regulatory board pur-*
22 *suant to K.S.A. 74-7507, and amendments thereto, but shall not include*
23 *conditions not attributable to a mental disorder that are a focus of atten-*
24 *tion or treatment.*

25 (d) The provisions of this section shall be applicable to health main-
26 tenance organizations organized under article 32 of chapter 40 of the
27 Kansas Statutes Annotated.

28 (e) The provisions of this section shall not apply to any medicare
29 supplement policy of insurance, as defined by the commissioner of in-
30 surance by rule and regulation.

31 (f) The provisions of this section shall be applicable to the Kansas
32 state employees health care benefits program and municipal funded
33 pools.

34 (g) The provisions of this section shall not apply to any policy or cer-
35 tificate which provides coverage for any specified disease, specified ac-
36 cident or accident only coverage, credit, dental, disability income, hospital
37 indemnity, long-term care insurance as defined by K.S.A. 40-2227 and
38 amendments thereto, vision care or any other limited supplemental ben-
39 efit nor to any medicare supplement policy of insurance as defined by
40 the commissioner of insurance by rule and regulation, any coverage issued
41 as a supplement to liability insurance, workers compensation or similar
42 insurance, automobile medical-payment insurance or any insurance un-
43 der which benefits are payable with or without regard to fault, whether

1 written on a group, blanket or individual basis.

2 (h) From and after January 1, 2002, the provisions of K.S.A. 40-2,105,
3 and amendments thereto, shall not apply to mental illnesses as defined
4 in this act.

5 (i) There shall be no coverage under this section for evaluations and
6 diagnostic tests ordered or requested in connection with criminal actions,
7 divorce, child custody or child visitation proceedings.

8 Sec. 5. K.S.A. 2008 Supp. 40-19c09 is hereby amended to read as
9 follows: 40-19c09. (a) Corporations organized under the nonprofit med-
10 ical and hospital service corporation act shall be subject to the provisions
11 of the Kansas general corporation code, articles 60 to 74, inclusive, of
12 chapter 17 of the Kansas Statutes Annotated, applicable to nonprofit cor-
13 porations, to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-
14 219, 40-222, 40-223, 40-224, 40-225, 40-226, 40-229, 40-230, 40-231, 40-
15 235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252,
16 40-254, 40-2,100, 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-2,105, 40-
17 2,116, 40-2,117, 40-2,153, 40-2,154, 40-2,160, 40-2,161, 40-2,163 through
18 40-2,170, inclusive, 40-2a01 et seq., 40-2111 to 40-2116, inclusive, 40-
19 2215 to 40-2220, inclusive, 40-2221a, 40-2221b, 40-2229, 40-2230, 40-
20 2250, 40-2251, 40-2253, 40-2254, 40-2401 to 40-2421, inclusive, and 40-
21 3301 to 40-3313, inclusive, K.S.A. 2008 Supp. 40-2,105a ~~and 40-2,105b~~,
22 *40-2,105b and section 1*, and amendments thereto, except as the context
23 otherwise requires, and shall not be subject to any other provisions of the
24 insurance code except as expressly provided in this act.

25 (b) No policy, agreement, contract or certificate issued by a corpo-
26 ration to which this section applies shall contain a provision which ex-
27 cludes, limits or otherwise restricts coverage because medicaid benefits
28 as permitted by title XIX of the social security act of 1965 are or may be
29 available for the same accident or illness.

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

32 Sec. 6. K.S.A. 2008 Supp. 40-2,103, 40-2,105, 40-2,105a and 40-
33 19c09 are hereby repealed.

34 Sec. 7. This act shall take effect and be in force from and after its
35 publication in the statute book.