

**SENATE BILL No. 24**

By Committee on Financial Institutions and Insurance

1-11

Proposed Amendment to SB 24  
for Senate Committee on Financial Institutions and Insurance  
Office of Revisor of Statutes  
March 15, 2023

1 AN ACT concerning insurance; relating to coverage for autism spectrum  
2 disorder; changing the required number of employees contained in the  
3 definitions of "large employer" and "small employer"; amending  
4 K.S.A. 40-2,194 and repealing the existing section.  
5

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

7 Section 1. K.S.A. 40-2,194 is hereby amended to read as follows: 40-  
8 2,194. (a) (1) (A) Any large group health insurance policy, medical service  
9 plan, contract, hospital service corporation contract, hospital and medical  
10 service corporation contract, fraternal benefit society or health  
11 maintenance organization which provides coverage for accident and health  
12 services and which is delivered, issued for delivery, amended or renewed  
13 on or after January 1, 2015, shall provide coverage for the diagnosis and  
14 treatment of autism spectrum disorder in any covered individual whose  
15 age is less than 12 years.

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

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

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

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

1 years of age; and

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

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

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

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

34 (6) Except for inpatient services, if an insured is receiving treatment  
35 for autism spectrum disorder, such insurer shall have the right to review  
36 the treatment plan not more than once in a period of six consecutive  
37 months, unless the insurer and the insured's treating physician or  
38 psychologist agree that a more frequent review is necessary. Any such  
39 agreement regarding the right to review a treatment plan more frequently  
40 shall apply only to a particular insured being treated for autism spectrum  
41 disorder and shall not apply to all individuals being treated for autism  
42 spectrum disorder by a physician or psychologist. The cost of obtaining  
43 any review or treatment plan shall be borne by the insurer.

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

5 (b) ~~For the purposes of~~ *As used in this section:*

6 (1) "Applied behavior analysis" means the design, implementation  
7 and evaluation of environmental modifications, using behavioral stimuli  
8 and consequences, to produce socially significant improvement in human  
9 behavior, including the use of direct observation, measurement and  
10 functional analysis of the relationship between environment and behavior.

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

13 (A) "Autistic disorder," which is:

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

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

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

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

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

26 (4) lack of social or emotional reciprocity;

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

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

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

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

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

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

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

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

42 (3) stereotyped and repetitive motor mannerisms; or

43 (4) persistent preoccupation with parts of objects;

- 1 (ii) delays or abnormal functioning in at least one of the following  
2 areas, with onset prior to age three years, including social interaction,  
3 language as used in social communication or symbolic or imaginative  
4 play; and
- 5 (iii) the disturbance is not better accounted for by Rett's disorder or  
6 childhood disintegrative disorder;
- 7 (B) "Asperger's disorder," which is:
- 8 (i) A qualitative impairment in social interaction, as manifested by at  
9 least two of the following:
- 10 (a) Marked impairment in the use of multiple nonverbal behaviors  
11 such as eye-to-eye gaze, facial expression, body postures and gestures to  
12 regulate social interaction;
- 13 (b) failure to develop peer relationships appropriate to developmental  
14 level;
- 15 (c) lack of spontaneous seeking to share enjoyment, interests or  
16 achievements with other people; or
- 17 (d) lack of social or emotional reciprocity;
- 18 (ii) restricted repetitive and stereotyped patterns of behavior, interests  
19 and activities, as manifested by at least one of the following:
- 20 (a) Encompassing preoccupation with one or more stereotyped and  
21 restricted patterns of interest that is abnormal either in intensity or focus;
- 22 (b) apparently inflexible adherence to specific, nonfunctional routines  
23 or rituals;
- 24 (c) stereotyped and repetitive motor mannerisms; or
- 25 (d) persistent preoccupation with parts of objects;
- 26 (iii) the disturbance causes clinically significant impairment in social,  
27 occupational or other important areas of functioning;
- 28 (iv) there is no clinically significant general delay in language;
- 29 (v) there is no clinically significant delay in cognitive development or  
30 in the development of age-appropriate self-help skills, adaptive behavior  
31 (other than in social interaction), and curiosity about the environment in  
32 childhood; and
- 33 (vi) criteria are not met for another specific pervasive developmental  
34 disorder or schizophrenia;
- 35 (C) "pervasive developmental disorder not otherwise specified," is a  
36 severe and pervasive impairment in the development of reciprocal social  
37 interaction associated with impairment in either verbal or nonverbal  
38 communication skills or with the presence of stereotyped behavior,  
39 interests and activities, but the criteria are not met for a specific pervasive  
40 developmental disorder, schizophrenia, schizotypal personality disorder, or  
41 avoidant personality disorder;
- 42 (D) "Rett's disorder," includes:
- 43 (i) All of the following:

- 1 (a) Apparently normal prenatal and perinatal development;
- 2 (b) apparently normal psychomotor development through the first  
3 five months after birth; and
- 4 (c) normal head circumference at birth;
- 5 (ii) onset of all of the following after the period of normal  
6 development:
- 7 (a) Deceleration of head growth between ages five and 48 months;
- 8 (b) loss of previously acquired purposeful hand skills between ages  
9 five and 30 months with the subsequent development of stereotyped hand  
10 movements;
- 11 (c) loss of social engagement early in the course of development;
- 12 (d) appearance of poorly coordinated gait or trunk movements; and
- 13 (e) severely impaired expressive and receptive language development  
14 with severe psychomotor retardation;
- 15 (E) "childhood disintegrative disorder," is:
- 16 (i) Apparently normal development for at least the first two years  
17 after birth as manifested by the presence of age-appropriate verbal and  
18 nonverbal communication, social relationships, play and adaptive  
19 behavior;
- 20 (ii) clinically significant loss of previously acquired skills in at least  
21 two of the following areas: Expressive or receptive language, social skills  
22 or adaptive behavior, bowel or bladder control or play and motor skills;
- 23 (iii) abnormalities of functioning in at least two of the following  
24 areas: Qualitative impairment in social interaction; qualitative impairments  
25 in communication; restricted, repetitive and stereotyped patterns of  
26 behavior, interests and activities, including motor stereotypies and  
27 mannerisms; and
- 28 (iv) the disturbance is not better accounted for by another specific  
29 pervasive developmental disorder or by schizophrenia.
- 30 (3) "Diagnosis of autism spectrum disorder" means any medically  
31 necessary assessment, evaluation or test performed by a licensed  
32 physician, licensed psychologist or licensed specialist clinical social  
33 worker to determine whether an individual has autism spectrum disorder.
- 34 (4) "Grandfathered health benefit plan"—~~shall have the meaning~~  
35 ~~ascribed to such term~~ *means the same as defined* in 42 U.S.C. § 18011.  
36 The term "grandfathered health benefit plan" includes both small employer  
37 group health benefit plans that are grandfathered and individual health  
38 benefit plans that are grandfathered.
- 39 (5) "Health benefit plan"—~~shall have the meaning ascribed to such~~  
40 ~~term~~ *means the same as defined* in K.S.A. 40-4602, and amendments  
41 thereto.
- 42 (6) "Large employer" means, in connection with a group health  
43 benefit plan with respect to a calendar year and a plan year, an employer

1 who employed an average of at least ~~101~~ 51 employees on business days  
2 during the preceding calendar year and who employs at least one employee  
3 on the first day of the plan year.

4 (7) "Small employer" means, in connection with a group health  
5 benefit plan with respect to a calendar year and a plan year, an employer  
6 who employed an average of at least ~~one~~ two but not more than ~~100~~ 50  
7 employees on business days during the preceding calendar year and who  
8 employs at least one employee on the first day of the plan year.

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

17 (d) Except as otherwise provided in subsection (a), no individual or  
18 group health insurance policy, medical service plan, contract, hospital  
19 service corporation contract, hospital and medical service corporation  
20 contract, fraternal benefit society or health maintenance organization  
21 ~~which that~~ provides coverage for accident and health services and ~~which~~  
22 provides coverage with respect to autism spectrum disorder shall *impose*  
23 *on the coverage required by this section*:

24 (1) ~~Impose on the coverage required by this section~~ Any dollar limits,  
25 deductibles or coinsurance provisions that are less favorable to an insured  
26 than the dollar limits, deductibles or coinsurance provisions that apply to  
27 physical illness generally under the accident and sickness insurance policy;  
28 or

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

32 (e) The provisions of this section shall not apply to any policy or  
33 certificate ~~which that~~ provides coverage for any specified disease,  
34 specified accident or accident-only coverage, credit, dental, disability  
35 income, hospital indemnity, long-term care insurance as defined by K.S.A.  
36 40-2227, and amendments thereto, vision care or any other limited  
37 supplemental benefit nor to any medicare supplement policy of insurance  
38 as defined by the commissioner of insurance by rules and regulations, any  
39 coverage issued as a supplement to liability insurance, workers'  
40 compensation or similar insurance, automobile medical-payment insurance  
41 or any insurance under which benefits are payable with or without regard  
42 to fault, whether written on a group, blanket or individual basis.

43 (f) This section shall not be construed as limiting benefits that are

1 otherwise available to an individual under any individual or group health  
2 insurance policy, medical service plan, contract, hospital service  
3 corporation contract, hospital and medical service corporation contract,  
4 fraternal benefit society or health maintenance organization which  
5 provides coverage for accident and health services.

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

8 (h) The commissioner of the department of insurance shall grant a  
9 small employer with a group health benefit plan a waiver from the  
10 provisions of this section, if the small employer demonstrates to the  
11 commissioner by actual claims experience over any consecutive ~~twelve-~~  
12 ~~month~~ 12-month period that compliance with this section has increased the  
13 cost of the health insurance policy by an amount of ~~two and a half percent~~  
14 2.5% or greater over the period of a calendar year in premium costs to the  
15 small employer.

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

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

28 Sec. 3. This act shall take effect and be in force from and after its  
29 publication in the ~~statute book.~~

Kansas register