

HOUSE BILL No. 2764

By Committee on Federal and State Affairs

2-21

1 AN ACT concerning insurance; providing coverage for autism spectrum
2 disorder; amending K.S.A. 2011 Supp. 40-2,103 and 40-19c09 and
3 repealing the existing sections.
4

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

6 **New Section 1. (a) The secretary of the department of social and**
7 **rehabilitation services, or any successor agency, is hereby authorized**
8 **and directed to study and identify the number of individuals in**
9 **Kansas who need this coverage and the cost of providing treatment for**
10 **autism to people in the state of Kansas. Such study shall include a**
11 **determination of the actual cost of providing coverage for the**
12 **treatment and diagnosis of autism spectrum disorders in any**
13 **individual in the state of Kansas whose age is less than 19 years. The**
14 **coverage and level of service for the treatment and diagnosis of autism**
15 **spectrum disorders required by this subsection shall be the same as**
16 **the coverage and level of service required by section 2, and**
17 **amendments thereto.**

18 **(b) The secretary of the department of social and rehabilitation**
19 **services, or any successor agency, shall prepare and submit a report**
20 **containing the secretary's findings and recommendations. This report**
21 **shall be submitted to the president of the senate, the speaker of the**
22 **house of representatives, the senate committee on ways and means and**
23 **the house of representatives committee on appropriations on or before**
24 **January 20, 2013.**

25 ~~New Section 1.~~ **New Sec. 2. (a) (1) {Except as provided in**
26 **subsection (h),}** any individual or group health insurance policy, medical
27 service plan, contract, hospital service corporation contract, hospital and
28 medical service corporation contract, fraternal benefit society or health
29 maintenance organization which provides coverage for accident and health
30 services and which is delivered, issued for delivery, amended or renewed
31 on or after July 1, 2012, shall provide coverage for the treatment and
32 diagnosis of autism spectrum disorders in any covered individual whose
33 age is less than 19 years.

34 (2) Such coverage shall be provided in a manner determined in

1 consultation with the autism services provider and the patient. Services
2 provided by an autism services provider under this section shall include
3 applied behavior analysis when required by a licensed physician, licensed
4 psychologist or licensed specialist clinical social worker but otherwise
5 shall be limited to those services prescribed or ordered by a licensed
6 physician, licensed psychologist or licensed specialist clinical social
7 worker. Services provided pursuant to this paragraph shall be those
8 services which are or have been recognized by peer reviewed literature as
9 providing medical benefit to the patient based upon the patient's particular
10 autism spectrum disorder.

11 (3) Coverage for benefits for any covered person diagnosed with one
12 or more autism spectrum disorders and whose age is between birth and
13 less than seven years shall not exceed \$36,000 per year.

14 (4) Coverage for benefits for any covered person diagnosed with one
15 or more autism spectrum disorders and whose age is at least seven years
16 and less than 19 years shall not exceed \$27,000 per year.

17 (5) Reimbursement shall be allowed only for services provided by a
18 provider licensed, trained and qualified to provide such services or by an
19 autism specialist or an intensive individual service provider as such terms
20 are defined by the department of social and rehabilitation services Kansas
21 autism waiver.

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

28 (7) Except for inpatient services, if an insured is receiving treatment
29 for an autism spectrum disorder, such insurer shall have the right to review
30 the treatment plan annually, unless the insurer and the insured's treating
31 physician or psychologist agree that a more frequent review is necessary.
32 Any such agreement regarding the right to review a treatment plan more
33 frequently shall apply only to a particular insured being treated for an
34 autism spectrum disorder and shall not apply to all individuals being
35 treated for autism spectrum disorder by a physician or psychologist. The
36 cost of obtaining any review or treatment plan shall be borne by the
37 insurer.

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

42 (b) For the purposes of this section:

43 (1) "Applied behavior analysis" means the design, implementation

1 and evaluation of environmental modifications, using behavioral stimuli
2 and consequences, to produce socially significant improvement in human
3 behavior, including the use of direct observation, measurement and
4 functional analysis of the relationship between environment and behavior.

5 (2) "Autism spectrum disorder" means the following disorders within
6 the autism spectrum: Autistic disorder, Asperger's syndrome and pervasive
7 developmental disorder not otherwise specified, as such terms are
8 specified in the diagnostic and statistical manual of mental disorders,
9 fourth edition, text revision (DSM-IV-TR), of the American psychiatric
10 association, as published in May, 2000, or later versions as established in
11 rules and regulations adopted by the behavioral sciences regulatory board
12 pursuant to K.S.A. 74-7507, and amendments thereto.

13 (3) "Diagnosis of autism spectrum disorder" means any medically
14 necessary assessment, evaluation or test to determine whether an
15 individual has an autism spectrum disorder.

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

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

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

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

41 (e) This section shall not be construed as limiting benefits that are
42 otherwise available to an individual under any individual or group health
43 insurance policy, medical service plan, contract, hospital service

1 corporation contract, hospital and medical service corporation contract,
2 fraternal benefit society or health maintenance organization which
3 provides coverage for accident and health services.

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

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 insurance shall grant a small employer
9 with a health benefit plan, as such term is defined in K.S.A. 40-2209d,
10 and amendments thereto, a waiver from the provisions of this section,
11 if the small employer demonstrates to the commissioner of insurance
12 by actual claims experience over any consecutive twelve-month period
13 that compliance with this section has increased the cost of the health
14 insurance policy by an amount of two and a half percent or greater
15 over the period of a calendar year in premium costs to such small
16 employer.}**

17 **{(i) To the extent that the provisions of this section require
18 benefits that exceed the essential health benefits specified under
19 section 1302(b) of the patient protection and affordable care act, Pub.
20 L. No. 111-148, as amended, no health benefit plan offered by a health
21 insurer in this state shall be required to offer any specific benefits
22 required by this section that exceed the essential benefits specified
23 under section 1302(b) of the patient protection and affordable care
24 act, Pub. L. No. 111-148, as amended.}**

25 **{(j) Coverage required under this section shall not be denied to
26 any covered individual on the basis that such individual was diagnosed
27 with an autism spectrum disorder prior to the effective date of the
28 policy.}**

29 **{New Sec. 3. (a) (1) On January 1, 2013, and on January 1 of the
30 year following the year in which the rule and regulation required
31 pursuant to subsection (b) becomes effective, the commissioner of
32 insurance shall obtain from each health insurer who provided autism
33 coverage in this state pursuant to this act the total cost of that portion
34 of all premiums paid in all insurance policies or similar documents as
35 specified in section 2(a), and amendments thereto, which is
36 attributable to coverage for autism spectrum disorder as required by
37 section 2, and amendments thereto, for the preceding calendar year.**

38 **(2) From the data accumulated by the commissioner of insurance
39 shall be calculated an autism spectrum disorder premium rate which
40 shall be equal to the average cost per person per month of the total
41 premium collected which is attributable to coverage for autism
42 spectrum disorder as required by section 2, and amendments thereto.**

43 **(3) If the autism spectrum disorder rate calculated pursuant to**

1 paragraph (2) exceeds \$.31 per person per month, then the amount of
2 benefits specified in paragraphs (3) and (4) of section 2(a), and
3 amendments thereto, shall be reduced by the percentage which is
4 equal to the ratio which is determined by dividing the difference
5 between the autism spectrum disorder rate by \$.31, except that the
6 amount of benefits specified in paragraphs (3) and (4) of section 2(a),
7 and amendments thereto, shall not be reduced below zero.

8 (b) As soon as a new level of benefits has been calculated
9 pursuant to subsection (a), the commissioner of insurance shall adopt
10 a rule and regulation establishing the new benefit levels for
11 paragraphs (3) and (4) of section 2(a), and amendments thereto, for
12 the next policy year commencing after the rule and regulation
13 required by this subsection becomes effective. The benefit levels
14 established by such rule and regulation shall remain in effect until
15 changed by a subsequent rule and regulation or by legislation.

16 (c) The commissioner is hereby authorized and directed to adopt
17 rules and regulations necessary to implement this section.}

18 {New Sec. 4. (a) (1) The department of health and environment,
19 or any successor agency, shall provide services for the diagnosis and
20 treatment of autism spectrum disorders for any individual in the state
21 of Kansas whose age is less than 19 years and who is described in
22 paragraph (2). Such services for the diagnosis and treatment of autism
23 spectrum disorders shall be at least equal to the services for the
24 treatment and diagnosis of autism spectrum disorders required
25 pursuant to section 2, and amendments thereto.

26 (2) The services for the diagnosis and treatment of autism
27 spectrum disorders specified in paragraph (1) shall be provided to:

28 (A) Any individual who qualifies for or is provided services
29 pursuant to the provisions of K.S.A. 38-2001, and amendments
30 thereto; or

31 (B) any individual who is not listed in subsection (a)(2)(A) and
32 who qualifies for or is provided services under an autism waiver or
33 other Kansas program of medical assistance established in accordance
34 with title XIX of the federal social security act, 42 U.S.C. § 1396 *et seq.*

35 (b) The department of health and environment, or any successor
36 agency, is hereby directed to seek any necessary waivers from
37 program requirements of the federal government as may be needed to
38 carry out the provisions of this section and to maximize federal
39 matching and other funds with respect to the provisions of this section.
40 If the department of health and environment, or any successor agency,
41 determines that one or more waivers from program requirements of
42 the federal government are needed to carry out the provisions of this
43 section, the department of health and environment, or any successor

1 agency, shall implement the provisions of this section only if such
2 waivers to federal program requirements have been obtained from the
3 federal government.

4 (c) (1) Except as provided in paragraph (2), the review and
5 update of the rules and regulations establishing eligibility
6 requirements for the Kansas program of medical assistance
7 established in accordance with title XIX of the federal social security
8 act, 42 U.S.C. § 1396 *et seq.*, shall be completed and the revisions of
9 such rules and regulations shall be adopted in accordance with the
10 rules and regulations filing act no later than 12 calendar months
11 following the date of receipt of the waivers required under subsection
12 (b).

13 (2) If the department of health and environment, or any successor
14 agency, determines that no waivers are required to implement the
15 provisions of subsection (b), the review and update of the rules and
16 regulations establishing eligibility requirements for the Kansas
17 program of medical assistance established in accordance with title
18 XIX of the federal social security act, 42 U.S.C. § 1396 *et seq.*, shall be
19 completed and the revisions of such rules and regulations shall be
20 adopted in accordance with the rules and regulations filing act no
21 later than 12 calendar months following the effective date of this act.

22 (d) For the purposes of this section:

23 (1) "Autism spectrum disorder" means the following disorders
24 within the autism spectrum: Autistic disorder, Asperger's syndrome
25 and pervasive developmental disorder not otherwise specified, as such
26 terms are specified in the diagnostic and statistical manual of mental
27 disorders, fourth edition, text revision (DSM-IV-TR), of the American
28 psychiatric association, as published in May, 2000, or later versions as
29 established in rules and regulations adopted by the behavioral sciences
30 regulatory board pursuant to K.S.A. 74-7507, and amendments
31 thereto.

32 (2) "Diagnosis of autism spectrum disorder" means any
33 medically necessary assessment, evaluation or test to determine
34 whether an individual has an autism spectrum disorder.}

35 ~~See 2. Sec. 3-5.~~ K.S.A. 2011 Supp. 40-2,103 is hereby amended to
36 read as follows: 40-2,103. The requirements of K.S.A. 40-2,100, 40-2,101,
37 40-2,102, 40-2,104, 40-2,105, 40-2,114, 40-2,160, 40-2,165 through 40-
38 2,170, inclusive, 40-2250, K.S.A. 2011 Supp. 40-2,105a, 40-2,105b, 40-
39 2,184 ~~and~~, 40-2,190 ~~and section 12~~, and amendments thereto, shall apply
40 to all insurance policies, subscriber contracts or certificates of insurance
41 delivered, renewed or issued for delivery within or outside of this state or
42 used within this state by or for an individual who resides or is employed in
43 this state.

1 ~~Sec. 3-4 {6.}~~ K.S.A. 2011 Supp. 40-19c09 is hereby amended to read
2 as follows: 40-19c09. (a) Corporations organized under the nonprofit
3 medical and hospital service corporation act shall be subject to the
4 provisions of the Kansas general corporation code, articles 60 to 74,
5 inclusive, of chapter 17 of the Kansas Statutes Annotated, and
6 amendments thereto, applicable to nonprofit corporations, to the
7 provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-
8 223, 40-224, 40-225, 40-226, 40-229, 40-230, 40-231, 40-235, 40-236, 40-
9 237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-254, 40-2,100,
10 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-2,105, 40-2,116, 40-2,117, 40-
11 2,153, 40-2,154, 40-2,160, 40-2,161, 40-2,163 through 40-2,170,
12 inclusive, 40-2a01 *et seq.*, 40-2111 to 40-2116, inclusive, 40-2215 to 40-
13 2220, inclusive, 40-2221a, 40-2221b, 40-2229, 40-2230, 40-2250, 40-
14 2251, 40-2253, 40-2254, 40-2401 to 40-2421, inclusive, and 40-3301 to
15 40-3313, inclusive, K.S.A. 2011 Supp. 40-2,105a, 40-2,105b, 40-2,184
16 ~~and~~, 40-2,190 *and section 12*, and amendments thereto, except as the
17 context otherwise requires, and shall not be subject to any other provisions
18 of the insurance code except as expressly provided in this act.

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

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

26 ~~Sec. 4-5: {7.}~~ K.S.A. 2011 Supp. 40-2,103 and 40-19c09 are hereby
27 repealed.

28 ~~Sec. 5-6: {8.}~~ This act shall take effect and be in force from and after
29 its publication in the statute book.