

HOUSE BILL No. 2744

By Committee on Taxation

3-5

1 AN ACT concerning insurance; providing coverage for autism spectrum
2 disorder; requiring licensure of persons providing applied behavior
3 analysis; amending K.S.A. 2013 Supp. 40-2,103 and 40-19c09 and
4 repealing the existing sections.
5

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

7 New Section 1. (a) (1) (A) Any large group health insurance policy,
8 medical service plan, contract, hospital service corporation contract,
9 hospital and medical service corporation contract, fraternal benefit society
10 or health maintenance organization which provides coverage for accident
11 and health services and which is delivered, issued for delivery, amended or
12 renewed on or after January 1, 2015, shall provide coverage for the
13 diagnosis and treatment of autism spectrum disorder in any covered
14 individual whose age is less than 18 years.

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

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

31 (3) Coverage provided under this section for applied behavior
32 analysis shall be subject to a limitation of 520 hours per calendar year for
33 any covered individual less than 18 years of age. Upon prior approval by
34 the health benefit plan, such maximum benefit limit may be exceeded if
35 the provision of applied behavior analysis services beyond the maximum
36 limit is medically necessary for such individual. Any payment made by an

1 insurer on behalf of a covered individual for any care, treatment,
2 intervention, service or item, the provision of which was for the treatment
3 of a health condition unrelated to such covered individual's autism
4 spectrum disorder, shall not be applied toward any maximum benefit
5 established under this paragraph. Except for the coverage for applied
6 behavior analysis, no coverage required under this section shall be subject
7 to the age and hour limitations described in this paragraph.

8 (4) On or after January 1, 2015, through December 31, 2015,
9 reimbursement shall be allowed only for services provided by a provider
10 licensed, trained and qualified to provide such services or by an autism
11 specialist or an intensive individual service provider as such terms are
12 defined by the Kansas department for aging and disability services Kansas
13 autism waiver. On or after January 1, 2016, reimbursement shall be
14 allowed only for services provided by an autism service provider licensed
15 under the applied behavior analysis licensure act.

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

22 (6) Except for inpatient services, if an insured is receiving treatment
23 for autism spectrum disorder, such insurer shall have the right to review
24 the treatment plan not more than once in a period of six consecutive
25 months, unless the insurer and the insured's treating physician or
26 psychologist agree that a more frequent review is necessary. Any such
27 agreement regarding the right to review a treatment plan more frequently
28 shall apply only to a particular insured being treated for autism spectrum
29 disorder and shall not apply to all individuals being treated for autism
30 spectrum disorder by a physician or psychologist. The cost of obtaining
31 any review or treatment plan shall be borne by the insurer.

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

36 (b) For the purposes of this section:

37 (1) "Applied behavior analysis" means the design, implementation
38 and evaluation of environmental modifications, using behavioral stimuli
39 and consequences, to produce socially significant improvement in human
40 behavior, including the use of direct observation, measurement and
41 functional analysis of the relationship between environment and behavior.

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

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

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

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

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

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

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

14 (4) lack of social or emotional reciprocity;

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

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

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

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

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

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

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

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

30 (3) stereotyped and repetitive motor mannerisms; or

31 (4) persistent preoccupation with parts of objects;

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

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

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

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

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

- 1 (b) failure to develop peer relationships appropriate to developmental
2 level;
- 3 (c) lack of spontaneous seeking to share enjoyment, interests or
4 achievements with other people; or
- 5 (d) lack of social or emotional reciprocity;
- 6 (ii) restricted repetitive and stereotyped patterns of behavior, interests
7 and activities, as manifested by at least one of the following:
- 8 (a) Encompassing preoccupation with one or more stereotyped and
9 restricted patterns of interest that is abnormal either in intensity or focus;
- 10 (b) apparently inflexible adherence to specific, nonfunctional routines
11 or rituals;
- 12 (c) stereotyped and repetitive motor mannerisms; or
- 13 (d) persistent preoccupation with parts of objects;
- 14 (iii) the disturbance causes clinically significant impairment in social,
15 occupational or other important areas of functioning;
- 16 (iv) there is no clinically significant general delay in language;
- 17 (v) there is no clinically significant delay in cognitive development or
18 in the development of age-appropriate self-help skills, adaptive behavior
19 (other than in social interaction), and curiosity about the environment in
20 childhood; and
- 21 (vi) criteria are not met for another specific pervasive developmental
22 disorder or schizophrenia;
- 23 (C) "pervasive developmental disorder not otherwise specified," is a
24 severe and pervasive impairment in the development of reciprocal social
25 interaction associated with impairment in either verbal or nonverbal
26 communication skills or with the presence of stereotyped behavior,
27 interests and activities, but the criteria are not met for a specific pervasive
28 developmental disorder, schizophrenia, schizotypal personality disorder, or
29 avoidant personality disorder;
- 30 (D) "Rett's disorder," includes:
- 31 (i) All of the following:
- 32 (a) Apparently normal prenatal and perinatal development;
- 33 (b) apparently normal psychomotor development through the first
34 five months after birth; and
- 35 (c) normal head circumference at birth;
- 36 (ii) onset of all of the following after the period of normal
37 development:
- 38 (a) Deceleration of head growth between ages five and 48 months;
- 39 (b) loss of previously acquired purposeful hand skills between ages
40 five and 30 months with the subsequent development of stereotyped hand
41 movements;
- 42 (c) loss of social engagement early in the course of development;
- 43 (d) appearance of poorly coordinated gait or trunk movements; and

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

3 (E) "childhood disintegrative disorder," is:

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

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

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

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

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

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

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

29 (6) "Large employer" means, in connection with a group health
30 benefit plan with respect to a calendar year and a plan year, an employer
31 who employed an average of at least 51 employees on business days
32 during the preceding calendar year and who employs at least one employee
33 on the first day of the plan year.

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

39 (c) If an individual has been diagnosed as having autism spectrum
40 disorder meeting the diagnostic criteria described in the edition of the
41 diagnostic and statistical manual of mental disorders available at the time
42 of diagnosis, then that individual shall not be required to undergo any
43 additional or repeated evaluation based upon the adoption of a subsequent

1 edition of the diagnostic and statistical manual of mental disorders adopted
2 by rules and regulations of the behavioral sciences regulatory board in
3 order to remain eligible for coverage under this section.

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

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

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

18 (e) The provisions of this section shall not apply to any policy or
19 certificate which provides coverage for any specified disease, specified
20 accident or accident-only coverage, credit, dental, disability income,
21 hospital indemnity, long-term care insurance as defined by K.S.A. 40-
22 2227, and amendments thereto, vision care or any other limited
23 supplemental benefit nor to any medicare supplement policy of insurance
24 as defined by the commissioner of insurance by rules and regulations, any
25 coverage issued as a supplement to liability insurance, workers'
26 compensation or similar insurance, automobile medical-payment insurance
27 or any insurance under which benefits are payable with or without regard
28 to fault, whether written on a group, blanket or individual basis.

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

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

37 (h) The commissioner of the department of insurance shall grant a
38 small employer with a group health benefit plan a waiver from the
39 provisions of this section, if the small employer demonstrates to the
40 commissioner by actual claims experience over any consecutive twelve-
41 month period that compliance with this section has increased the cost of
42 the health insurance policy by an amount of two and a half percent or
43 greater over the period of a calendar year in premium costs to the small

1 employer.

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

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

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

16 (a) "Applied behavior analysis" means the design, implementation
17 and evaluation of environmental modifications, using behavioral stimuli
18 and consequences, to produce socially significant improvement in human
19 behavior, including the use of direct observation, measurement and
20 functional analysis of the relationship between environment and behavior;

21 (b) "autism service provider" means any person:

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

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

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

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

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

36 (f) "controlled substance" means any drug, substance or immediate
37 precursor included in any of the schedules designated in K.S.A. 65-4105,
38 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto;

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

42 (h) "licensed assistant behavior analyst" or "LaBA" means an
43 individual who is certified by the certifying entity as a certified assistant

1 behavior analyst and meets the licensing criteria as established by the
2 board by rules and regulations;

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

6 (j) "line therapist" means an individual who:

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

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

13 (k) "treatment for autism spectrum disorder" means care prescribed or
14 ordered for an individual diagnosed with an autism spectrum disorder by a
15 licensed physician or licensed psychologist, including equipment
16 medically necessary for such care, pursuant to the powers granted under
17 such licensed physician's or licensed psychologist's license.

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

20 (1) Licensed behavior analysts;

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

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

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

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

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

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

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

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

43 (c) The board shall not issue a license under this act until the license

1 applicant provides proof that such applicant has met the certification
2 requirements of a certifying entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (13) Violated any professional trust or confidence.

43 (14) Used any advertisement or solicitation which is false, misleading

1 or deceptive to the general public or persons to whom the advertisement or
2 solicitation is primarily directed.

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

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

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

12 (a) The form and content of license applications required and the
13 procedures for filing an application for an initial or renewal license in this
14 state;

15 (b) the establishment of fees for licenses, and the renewal thereof, to
16 cover all or any part of the cost of administering the provisions of this act;

17 (c) the educational and training requirements for licensed behavior
18 analysts and licensed assistant behavior analysts;

19 (d) the roles, responsibilities and duties of licensed behavior analysts
20 and licensed assistant behavior analysts;

21 (e) the characteristics of supervision and supervised clinical
22 practicum experience for the licensed behavior analysts and the licensed
23 assistant behavior analysts;

24 (f) the supervision of licensed behavior analysts and licensed assistant
25 behavior analysts;

26 (g) the requirements for continuing education for licensed behavior
27 analysts and licensed assistant behavior analysts;

28 (h) standards of professional competency;

29 (i) standards of professional conduct; and

30 (j) such other rules and regulations as the board deems necessary to
31 carry out the provisions of this act.

32 Sec. 7. K.S.A. 2013 Supp. 40-2,103 is hereby amended to read as
33 follows: 40-2,103. The requirements of K.S.A. 40-2,100, 40-2,101, 40-
34 2,102, 40-2,104, 40-2,105, 40-2,114, 40-2,160, 40-2,165 through 40-2,170,
35 inclusive, 40-2250, K.S.A. 2013 Supp. 40-2,105a, 40-2,105b, 40-2,184
36 ~~and~~, 40-2,190 *and section I*, and amendments thereto, shall apply to all
37 insurance policies, subscriber contracts or certificates of insurance
38 delivered, renewed or issued for delivery within or outside of this state or
39 used within this state by or for an individual who resides or is employed in
40 this state.

41 Sec. 8. K.S.A. 2013 Supp. 40-19c09 is hereby amended to read as
42 follows: 40-19c09.(a) Corporations organized under the nonprofit medical
43 and hospital service corporation act shall be subject to the provisions of

1 the Kansas general corporation code, articles 60 to 74, inclusive, of
2 chapter 17 of the Kansas Statutes Annotated, and amendments thereto,
3 applicable to nonprofit corporations, to the provisions of K.S.A. 40-214,
4 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, 40-229,
5 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250,
6 40-251, 40-252, 40-2,100, 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-
7 2,105, 40-2,116, 40-2,117, 40-2,125, 40-2,153, 40-2,154, 40-2,160, 40-
8 2,161, 40-2,163 through 40-2,170, inclusive, 40-2a01 et seq., 40-2111 to
9 40-2116, inclusive, 40-2215 to 40-2220, inclusive, 40-2221a, 40-2221b,
10 40-2229, 40-2230, 40-2250, 40-2251, 40-2253, 40-2254, 40-2401 to 40-
11 2421, inclusive, and 40-3301 to 40-3313, inclusive, K.S.A. 2013 Supp. 40-
12 2,105a, 40-2,105b, 40-2,184 ~~and~~, 40-2,190 *and section 1*, and amendments
13 thereto, except as the context otherwise requires, and shall not be subject
14 to any other provisions of the insurance code except as expressly provided
15 in this act.

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

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

23 Sec. 9. K.S.A. 2013 Supp. 40-2,103 and 40-19c09 are hereby
24 repealed.

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