

Insurance Coverage for Autism Spectrum Disorder; HB 2744

HB 2744 requires health insurance coverage for the diagnosis and treatment of Autism Spectrum Disorder (ASD) in children under the age of 12 years and creates the Applied Behavior Analysis (ABA) Licensure Act (Act). The bill requires large health insurance plans to provide ASD coverage effective January 1, 2015; extends the autism coverage requirement to grandfathered individual or small group plans effective July 1, 2016; places limits on ABA coverage, with higher limits for the first four years beginning with the later of the date of diagnosis or January 1, 2015, for children diagnosed with ASD between birth and 5 years of age and then reduced limits for children less than 12 years of age; defines terms related to ASD; phases in licensure requirements for ABA providers and allows for exemption from licensure for certain providers; requires the Behavioral Sciences Regulatory Board (BSRB) to adopt rules and regulations for the implementation and administration of the Act; authorizes the BSRB to take disciplinary action as to the licenses of licensees and applicants for licensure; and applies the ASD coverage requirement outlined in New Section 1 of the bill to all insurance policies, subscriber contracts or certificates of insurance available to individuals residing or employed in Kansas and to corporations organized under the Nonprofit Medical and Hospital Service Corporation Act.

Further details are addressed below.

Affected Plans

Coverage for the diagnosis and treatment of ASD for any covered individual less than 12 years old is required under:

- 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 that provides coverage for accident and health services and which is delivered, issued for delivery, amended, or renewed on or after January 1, 2015; and
- 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 that provides coverage for accident and health services and which is delivered, issued for delivery, amended, or renewed on or after January 1, 2016.

[Note: Grandfathered plans are health insurance plans in existence on or before March 23, 2010, that are exempt from certain changes required under the Affordable Care Act. Grandfathered plans could lose their grandfathered status as provided in 26 CFR § 54.9815-1251T(g)(1), 29 CFR § 2590.715-1251(g)(1), and 45 CFR § 147.140(g)(1).]

Unaffected Plans

The ASD coverage requirements do not apply to any policy or certificate providing coverage for any specified disease, specified accident or accident-only coverage, credit, dental,

disability income, hospital indemnity, long-term care insurance as defined by KSA 40-2227, vision care or any other limited supplemental benefit; to any Medicare supplement policy of insurance defined by the Insurance Commissioner 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.

The ASD coverage requirements are not to be construed as limiting benefits otherwise available under any individual or group health insurance plan.

Covered Services

ASD coverage is to be provided in a manner determined by consultation with the autism services provider and the patient. ASD services include ABA when required by a licensed physician, licensed psychologist, or licensed special clinical social worker, but otherwise are limited to care, services, and related equipment prescribed or ordered by these same licensed providers.

Non-covered Services

The bill does not 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; or
- 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.

Only those services actually provided on an hourly basis or fractional portion thereof by certified ABA providers are required to be covered.

Coverage Limits

Coverage for ABA is subject to the following limitations:

- 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 ASD between birth and five years of age; and
- After the first four years of coverage as described above, the limit is 520 hours per calendar year for any covered individual less than 12 years of age.

The bill provides that, with prior approval by the health benefit plan, the maximum benefit limit for ABA services may be exceeded if such provision is medically necessary for the individual. Payment by an insurer for care, treatment, intervention, service, or item for treatment unrelated to ASD is not applied toward the maximum benefit limit for ABA services.

Except for ABA coverage, ASD services are not subject to the age and hour limitations imposed by the bill. No insurer is allowed to 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 ASD.

With the exception of the ABA coverage limitations allowed under the bill, individual and group health insurance plans that provide coverage for ASD are not allowed to:

- Impose any dollar limits, deductibles, or coinsurance provisions on ASD coverage that would be less favorable to an insured than those applicable to physical illness generally under the accident and sickness insurance policy; or
- Impose limitations on the number of visits a covered individual may make for treatment of ASD.

Reimbursement

Beginning January 1, 2015, through June 30, 2016, reimbursement is 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 defined by the Kansas Department for Aging and Disability Services (KDADS) Autism Waiver.

On and after July 1, 2016, reimbursement is allowed only for services provided by an autism services provider licensed or exempt from licensure under the Act; except reimbursement is allowed for services provided by an autism specialist, an intensive service provider, or any other individual qualified to provide services under the Home and Community Based Services (HCBS) Autism Waiver administered by KDADS.

Any insurer or other entity which administers claims for ASD services has the right and obligation to deny a claim based on medical necessity or a determination the maximum medical improvement for the covered individual's ASD has been reached.

Except for inpatient services, an insurer has the right to review the ASD treatment plan once during a six-month period, unless the insurer and the insured's treating physician or psychologist agree a more frequent review is necessary. The agreement to review a treatment plan more frequently applies only to the particular insured and not to all individuals being treated for ASD by a physician or psychologist.

Definitions

The following terms are defined in the bill:

- "Applied behavior analysis" (ABA) 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;

- “Autism spectrum disorder” (ASD) means a neurobiological disorder, an illness of the nervous system, which includes autistic disorder, Asperger’s disorder, pervasive developmental disorder not otherwise specified, Rett’s disorder, and childhood disintegrative disorder. The detailed diagnostic criteria for each specific ASD disorder included in the bill are as outlined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (DSM-IV), without specific reference to the DSM-IV in the bill. [The bill provides that individuals diagnosed with ASD under the diagnostic criteria available at the time of diagnosis are not required to undergo additional or repeated evaluation based upon the adoption of a subsequent DSM edition by rules and regulations of the BSRB to remain eligible for ASD coverage.]; and
- “Grandfathered health benefit plan” has the meaning ascribed in 42 USC § 18011 and includes both small employer group health benefit plans that are grandfathered and individual health benefit plans that are grandfathered.

The bill also defines “diagnosis of autism spectrum disorder,” “health benefit plan,” “large employer,” and “small employer.”

No Pilot Project Requirement

Statutory provisions requiring a state employee group pilot project for new mandated health benefits do not apply to ASD coverage under the provisions of the bill.

Hardship Waiver for Small Employer Group Health Plans

The Insurance Commissioner is required to grant a waiver from the ASD coverage requirements to a small employer with a group health benefit plan if the small employer demonstrates, with actual claims experience over any consecutive 12-month period, that compliance with ASD coverage requirements has increased the premium cost of the health insurance policy by 2.5 percent or greater over a calendar year.

Applied Behavior Analysis Licensure Act

The bill creates the Applied Behavior Analysis Licensure Act for the licensure of ABA service providers by the BSRB.

Definitions

Definitions under the Act for “ABA,” “ASD,” and “diagnosis of ASD” are consistent with those found in New Section 1 of the bill.

Additional terms defined under the Act include:

- “Autism service provider” means any person who:

- Provides diagnostic or treatment services for ASD who is licensed by the State of Kansas; or
- Is licensed by the BSRB as a licensed behavior analyst or a licensed assistant behavior analyst;
- “Board” means the BSRB;
- “Certifying entity” is defined as the national accredited Behavior Analyst Certification Board or other equivalent nationally accredited nongovernmental agency approved by the BSRB which certifies individuals who have completed academic, examination, training, and supervision requirements in ABA;
- “Line therapist” means an individual who:
 - Provides supervision of an individual diagnosed with ASD and other neurodevelopmental disorders pursuant to the described treatment plan; and
 - Implements specific behavioral interventions as outlined in the prescribed treatment plan under the direct supervision of a licensed behavior analyst; and
- “Licensed assistant behavior analyst” (LaBA) and “licensed behavior analyst” (LBA) mean an individual who is certified by the certifying entity as a certified assistant behavior analyst or a certified behavior analyst, respectively, and meets the licensing criteria established by the BSRB by rules and regulations.

The bill also defines “controlled substance” as a substance included in the controlled substance schedules in state statute and defines “treatment for ASD.”

Licensure Requirements

On or after July 1, 2016, ABA practice is restricted to:

- LBAs;
- Any LaBA working under the supervision of an LBA;
- An individual who has a bachelor’s or graduate degree and completed course work for licensure as a behavior analyst and is obtaining supervised field experience under an LBA pursuant to required supervised work experience for licensure at the LBA or LaBA level; or
- Any licensed psychologist practicing within state rules and standards of practice for psychologists and whose practice is commensurate with the psychologist’s level of training and experience.

The BSRB is not allowed to issue a license under the Act until the applicant provides proof the certification requirements of a certifying entity have been met.

Persons Exempt from Licensure under the Act

Licensing requirements for the practice of ABA under the Act do not apply to any person:

- Licensed by the BSRB who practices any component of ABA within the scope of such person's license and scope of practice as required by law;
- Who provides services under:
 - The federal Individuals with Disabilities Education Act; or
 - Section 504 of the federal Rehabilitation Act of 1973;
- Enrolled in a course of study at a recognized educational institution through which such person provides ABA as part of a supervised clinical experience;
- Who is an autism specialist, an intensive individual service provider, or any other individual qualified to provide services under the HCBS Autism Waiver administered by KDADS;
- Who is an occupational therapist licensed by the State Board of Healing Arts, acting within such person's scope of license and practice, as required by law; or
- Who is a speech-language pathologist or audiologist licensed by KDADS, acting within such person's scope of license and practice, as required by law.

Disciplinary Action

The BSRB is authorized to deny, suspend, revoke or refuse renewal of any license issued under the Act upon finding the applicant or licensee has committed acts itemized in the bill as creating grounds for disciplinary action. Included among the 15 grounds for disciplinary action established by the bill are the following:

- Use of any controlled substance or alcoholic beverage to an extent as to impair the person's ability to perform the work of any profession licensed or regulated by this Act;
- A final adjudication and finding of guilt, or entry of a plea of guilty or *nolo contendere*, in a criminal prosecution under any state or federal laws, for any offense:
 - Reasonably related to the qualifications, functions or duties of any professional licensed or regulated under the Act;
 - With fraud, dishonesty or an act of violence as an essential element; or
 - Involving moral turpitude, whether or not a sentence is imposed;

- Commission of any act of incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any profession licensed by the BSRB; or
- A guilty finding of unprofessional conduct or professional incompetency as defined by the BSRB by rules and regulations.

Rules and Regulations Authority

The BSRB is required to establish the rules and regulations needed to implement and administer the Act. The rules and regulations are to include, but not be limited to:

- Form and content of initial and renewal license applications;
- Establishment of fees for licenses and renewals;
- Educational and training requirements of LBAs and LaBAs;
- Roles, responsibilities, and duties of LBAs and LaBAs;
- Characteristics of supervision and supervised clinical practicum experience for LBAs and LaBAs;
- Supervision of LBAs and LaBAs;
- Continuing education requirements for LBAs and LaBAs;
- Standards of professional competency and conduct; and
- Such other rules and regulations deemed necessary by the BSRB to carry out the provisions of the Act.

Additional Applicability of Autism Coverage Requirement

The ASD coverage requirement outlined in the bill applies to all insurance policies, subscriber contracts or certificates of insurance delivered, renewed, or issued for delivery in or outside the state or used in the state by or for an individual who resides or is employed in the state.

Corporations organized under the Nonprofit Medical and Hospital Service Corporation Act are subject to the ASD coverage requirements outlined in the bill.