

REVISED
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SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2744

As Amended by House Committee of the Whole

Brief*

HB 2744, as amended, would require health insurance coverage for the diagnosis and treatment of Autism Spectrum Disorder (ASD) in children under the age of 12 years and create the Applied Behavior Analysis (ABA) Licensure Act (Act). The bill would require large health insurance plans to provide ASD coverage effective January 1, 2015; extend the autism coverage requirement to grandfathered individual or small group plans effective July 1, 2016; place 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; define terms related to ASD; phase in licensure requirements for ABA providers and allow for exemption from licensure for certain providers; require the Behavioral Sciences Regulatory Board (BSRB) to enact rules and regulations for the implementation and administration of the Act; authorize the BSRB to take disciplinary action as to the licenses of licensees and applicants for licensure; and apply 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.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Affected Plans (New Section 1)

Coverage for the diagnosis and treatment of ASD for any covered individual less than 12 years old would be 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.

[Staff 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 (New Section 1)

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

Covered Services (New Section 1)

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

Non-covered Services (New Section 1)

The bill would 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 would be required to be covered.

Coverage Limits (New Section 1)

Coverage for ABA would be subject to the following limitations:

- 1,300 hours per calendar year for 4 years beginning on the later of the date of diagnosis or January 1, 2015, for any covered individual diagnosed with ASD between birth and 5 years of age; and
- Except, after the first 4 years of coverage as described above, the limit would be 520 hours per calendar year for any covered individual less than 12 years of age.

The bill would provide 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 would not be applied toward the maximum benefit limit for ABA services.

Except for ABA coverage, ASD services would not be subject to the age and hour limitations imposed by the bill. No insurer would be 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 that would be allowed under the bill, individual and group health insurance plans that provide coverage for ASD would not be 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 (New Section 1)

Beginning January 1, 2015, through June 30, 2016, reimbursement would be 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 would be allowed only for services provided by an autism services provider licensed or exempt from licensure under the Act, except reimbursement would be 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 would have 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 had been reached.

Except for inpatient services, an insurer would have 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 would apply only to the particular insured and not

to all individuals being treated for ASD by a physician or psychologist.

Definitions (New Section 1)

The following terms would be defined in the bill:

- “Applied behavior analysis” (ABA) would mean 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) would mean 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 would provide that individuals diagnosed with ASD under the diagnostic criteria available at the time of diagnosis would not be 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” would have the meaning ascribed in 42 U.S.C. Section 18011 and would include both small employer group health

benefit plans that are grandfathered and individual health benefit plans that are grandfathered.

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

No Pilot Project Requirement (New Section 1)

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

Hardship Waiver for Small Employer Group Health Plans (New Section 1)

The Insurance Commissioner would be 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 (New Sections 2-6)

The bill would create 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” would be consistent with those found in New Section 1 of the bill.

Additional terms that would be defined under the Act include:

- “Autism service provider” would mean 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” would mean the BSRB;

- “Certifying entity” would be 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” would mean 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) would 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 would define “controlled substance” as a substance included in the controlled substance schedules in state statute and define “treatment for ASD.”

Licensure Requirements

On or after July 1, 2016, ABA practice would be 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 would not be 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 would 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 would be 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 that would be 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 would be required to establish the rules and regulations needed to implement and administer the Act. The rules and regulations would 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 New Section 1 of the bill would apply 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 would be subject to the ASD coverage requirements outlined in New Section 1 of the bill.

Background

At the hearing before the House Committee on Insurance, testimony in favor of the bill was provided by

Representative Rubin; representatives of America's Health Insurance Plans, American Academy of Pediatrics (Kansas Chapter), Autism Speaks, Easter Seals Capper Foundation, Kansas Association of Health Plans, Kansas Occupational Therapy Association, University of Kansas Medical Center Community Research and Training and the Department of Pediatrics; and three parents of children with ASD. Representative Rubin testified the compromise consensus bill was an agreement between himself and other 2014 autism insurance legislative co-sponsors and the Kansas health insurance industry. Proponents generally testified as to the need to expand basic health insurance coverage to provide services for Kansas children with ASD. Amendments to the bill were suggested by several proponents.

Written testimony in favor of the bill was provided by representatives of Aetna, Association of Community Mental Health Centers of Kansas, and Kansas Association for Marriage and Family Therapy; the Director of Special Education with the Northwest Kansas Educational Service Center; and three parents of children with ASD.

Opponent testimony was presented by a school psychologist and autism specialist on the Kansas Autism Waiver, representatives of the Kansas Counseling Association and the National Association of Social Workers (Kansas Chapter), and two parents of children with ASD. The testimony of opponents included concerns over the need for inclusion of providers currently providing services under the HCBS Autism Waiver, a request for a review process to be completed before pursuit of an ABA practice act, concerns over the use of DSM-IV language, concerns regarding the infringement on the scope of practice of licensed mental health professionals, and a need for additional hours for ABA services.

Neutral testimony was presented by a representative of the Kansas Association of Special Education Administrators. Written neutral testimony was provided by representatives of the Association of Professional Behavior Analysts, KDADS,

Kansas Chamber of Commerce, and National Federation of Independent Business.

The House Committee amended the bill by reducing the maximum age for ASD coverage from less than 18 years of age to less than 12 years of age; increasing the number of hours of ABA coverage per calendar year for the first 4 years from ASD diagnosis and no later than age 5; expanding the time frame during which certain providers of autism services may be reimbursed without licensure under the ABA Licensure Act; delaying the licensure requirement for autism services providers to qualify for reimbursement; exempting individuals qualified to provide services under the HCBS Autism Waiver administered by KDADS from such licensure requirement and to qualify for reimbursement; and exempting licensed occupational therapists acting within the scope of such license and scope of practice from licensure under the ABA Licensure Act.

The House Committee of the Whole amended the bill by clarifying language regarding the provision of ABA services, adding speech-language pathologists and audiologists licensed by KDADS to those exempt from the licensing requirements to practice ABA, and making technical amendments.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Kansas Department of Health and Environment (KDHE) indicates the bill would expand the coverage provided for autism spectrum disorder currently offered in the State Employee Health Plan by removing the current annual dollar limit on services and potentially increasing the plan expenditures for these services. KDHE noted, depending on the utilization that results from removing the annual benefit cap, the bill could have an impact on the state's and other covered public employers cost for recovering employees under the plan.

The BSRB states the fiscal effect of the bill, as introduced, would be dependent upon the actual number of

licensees that would be required to submit applications for licensure. The BSRB indicated, if the number of licensees is relatively small, the agency could process the applications utilizing existing resources. However, the BSRB noted, if the number of applications is much larger than a hundred, an additional credentialing specialist position would be required. The agency estimates annual salary expenditures of \$49,500 and a one-time expenditure of \$1,500 for a computer. The BSRB would charge license application fees and renewal fees in order to cover the additional expenditures. Any fiscal effect associated with the bill is not reflected in *The FY 2015 Governor's Budget Report*.