

FIRST REGULAR SESSION

# SENATE BILL NO. 45

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOSKINS.

Pre-filed December 1, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0312S.01I

## AN ACT

To repeal section 376.1224, RSMo, and to enact in lieu thereof two new sections relating to health care for persons with disabilities.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 376.1224, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 376.1223 and 376.1224, to read as follows:

**376.1223. 1. No third-party payer for health care services including, but not limited to, health carriers, as such terms are defined in section 376.1350, shall limit coverage or deny reimbursement for treatment of symptoms and behaviors for individuals with physical or developmental disabilities, as defined in section 630.005, if, as determined by a licensed physician or psychologist, the symptoms or behaviors caused by the identified disability:**

**(1) Require the individual to receive care or assistance at any level or age from another person; and**

**(2) Directly interfere with or prevent independent participation in the everyday purposeful and functional activities typically practiced by a person of the same chronological age as the disabled individual.**

**2. Such coverage shall include, but not be limited to, therapeutic care, habilitative or rehabilitative care, or services by a licensed psychologist or applied behavior analyst, as such terms are defined in section 376.1224.**

376.1224. 1. For purposes of this section, the following terms shall mean:

(1) "Applied behavior analysis", the design, implementation, and

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

3 evaluation of environmental modifications, using behavioral stimuli and  
4 consequences, to produce socially significant improvement in human behavior,  
5 including the use of direct observation, measurement, and functional analysis of  
6 the relationships between environment and behavior;

7 (2) "Autism service provider":

8 (a) Any person, entity, or group that provides diagnostic or treatment  
9 services for autism spectrum disorders who is licensed or certified by the state of  
10 Missouri; or

11 (b) Any person who is licensed under chapter 337 as a board-certified  
12 behavior analyst by the behavior analyst certification board or licensed under  
13 chapter 337 as an assistant board-certified behavior analyst;

14 (3) "Autism spectrum disorders", a neurobiological disorder, an illness of  
15 the nervous system, which includes Autistic Disorder, Asperger's Disorder,  
16 Pervasive Developmental Disorder Not Otherwise Specified, Rett's Disorder, and  
17 Childhood Disintegrative Disorder, as defined in the most recent edition of the  
18 Diagnostic and Statistical Manual of Mental Disorders of the American  
19 Psychiatric Association;

20 (4) **"Developmental disability", severe, chronic disabilities that**  
21 **meet all of the following conditions:**

22 (a) **Attributable to cerebral palsy or epilepsy, or any other**  
23 **condition other than mental illness that results in impairment of**  
24 **general intellectual functioning or adaptive behavior and requires**  
25 **treatment or services;**

26 (b) **Manifests before the individual reaches age twenty-two;**

27 (c) **Likely to continue indefinitely; and**

28 (d) **Results in substantial functional limitations in three or more**  
29 **of the following areas of major life activities: self care, understanding**  
30 **and use of language, learning, mobility, self direction, capacity for**  
31 **independent living, plus a need for the level of care provided in an**  
32 **independent care facility;**

33 (5) **"Diagnosis of a developmental disability", medically necessary**  
34 **assessments, evaluations, or tests in order to diagnose a developmental**  
35 **disability;**

36 (6) **"Diagnosis of autism spectrum disorders", medically necessary**  
37 **assessments, evaluations, or tests in order to diagnose whether an individual has**  
38 **an autism spectrum disorder;**

39           **(7) "Diagnosis of physical disability", medically necessary**  
40 **assessments, evaluations, or tests in order to diagnose a physical**  
41 **disability;**

42           [(5)] **(8)** "Habilitative or rehabilitative care", professional, counseling, and  
43 guidance services and treatment programs, including applied behavior analysis,  
44 that are necessary to develop the functioning of an individual;

45           [(6)] **(9)** "Health benefit plan", shall have the same meaning ascribed to  
46 it as in section 376.1350;

47           [(7)] **(10)** "Health carrier", shall have the same meaning ascribed to it as  
48 in section 376.1350;

49           [(8)] **(11)** "Line therapist", an individual who provides supervision of an  
50 individual diagnosed with an autism diagnosis and other neurodevelopmental  
51 disorders pursuant to the prescribed treatment plan, and implements specific  
52 behavioral interventions as outlined in the behavior plan under the direct  
53 supervision of a licensed behavior analyst;

54           [(9)] **(12)** "Pharmacy care", medications used to address symptoms of an  
55 autism spectrum disorder prescribed by a licensed physician, and any  
56 health-related services deemed medically necessary to determine the need or  
57 effectiveness of the medications only to the extent that such medications are  
58 included in the insured's health benefit plan;

59           [(10)] **(13)** "Psychiatric care", direct or consultative services provided by  
60 a psychiatrist licensed in the state in which the psychiatrist practices;

61           [(11)] **(14)** "Psychological care", direct or consultative services provided  
62 by a psychologist licensed in the state in which the psychologist practices;

63           [(12)] **(15)** "Therapeutic care", services provided by licensed speech  
64 therapists, occupational therapists, or physical therapists;

65           [(13)] **(16)** "Treatment [for autism spectrum disorders]", care prescribed  
66 or ordered for an individual diagnosed with an autism spectrum disorder,  
67 **developmental disabilities, or physical disabilities** by a licensed physician  
68 or licensed psychologist, including equipment medically necessary for such care,  
69 pursuant to the powers granted under such licensed physician's or licensed  
70 psychologist's license, including, but not limited to:

71           (a) Psychiatric care;

72           (b) Psychological care;

73           (c) Habilitative or rehabilitative care, including applied behavior analysis  
74 therapy;

75 (d) Therapeutic care;

76 (e) Pharmacy care.

77 2. All group health benefit plans that are delivered, issued for delivery,  
78 continued, or renewed on or after January 1, 2011, if written inside the state of  
79 Missouri, or written outside the state of Missouri but insuring Missouri residents,  
80 shall provide coverage for the diagnosis and treatment of autism spectrum  
81 disorders, **developmental disabilities, or physical disabilities** to the extent  
82 that such diagnosis and treatment is not already covered by the health benefit  
83 plan.

84 3. With regards to a health benefit plan, a health carrier shall not deny  
85 or refuse to issue coverage on, refuse to contract with, or refuse to renew or refuse  
86 to reissue or otherwise terminate or restrict coverage on an individual or their  
87 dependent because the individual is diagnosed with autism spectrum disorder,  
88 **developmental disabilities, or physical disabilities.**

89 4. (1) Coverage provided under this section is limited to medically  
90 necessary treatment [that is], **as determined by the health benefit plan,**  
91 ordered by the insured's treating licensed physician or licensed psychologist[,]  
92 pursuant to the powers granted under such licensed physician's or licensed  
93 psychologist's license[, in accordance with]. **For applied behavioral analysis,**  
94 **such provider may submit** a treatment plan.

95 (2) The treatment plan, upon request by the health benefit plan or health  
96 carrier, shall include all elements necessary for the health benefit plan or health  
97 carrier to pay claims. Such elements include, but are not limited to, a diagnosis,  
98 proposed treatment by type, frequency and duration of treatment, and goals.

99 (3) Except for inpatient services, if an individual is receiving treatment  
100 for an autism spectrum disorder, **developmental disabilities, or physical**  
101 **disabilities,** a health carrier shall have the right to review the treatment plan  
102 not more than once every six months unless the health carrier and the  
103 individual's treating physician or psychologist agree that a more frequent review  
104 is necessary. Any such agreement regarding the right to review a treatment plan  
105 more frequently shall only apply to a particular individual [being treated for an  
106 autism spectrum disorder] and shall not apply to all individuals being treated for  
107 [autism spectrum disorders] **that disorder** by a physician or psychologist. The  
108 cost of obtaining any review or treatment plan shall be borne by the health  
109 benefit plan or health carrier, as applicable.

110 5. Coverage provided under this section for applied behavior analysis

111 shall be subject to a maximum benefit of forty thousand dollars per calendar year  
112 for individuals through eighteen years of age. Such maximum benefit limit may  
113 be exceeded, upon prior approval by the health benefit plan, if the provision of  
114 applied behavior analysis services beyond the maximum limit is medically  
115 necessary for such individual. Payments made by a health carrier on behalf of  
116 a covered individual for any care, treatment, intervention, service or item, the  
117 provision of which was for the treatment of a health condition unrelated to the  
118 covered individual's autism spectrum disorder, shall not be applied toward any  
119 maximum benefit established under this subsection. Any coverage required  
120 under this section, other than the coverage for applied behavior analysis, shall  
121 not be subject to the age and dollar limitations described in this subsection.

122 **6. Coverage provided under this section for therapeutic care**  
123 **shall be subject to a maximum benefit of forty thousand dollars per**  
124 **calendar year for individuals through eighteen years of age. Such**  
125 **maximum benefit limit may be exceeded, upon prior approval by the**  
126 **health benefit plan, if the provision of therapeutic care beyond the**  
127 **maximum limit is medically necessary for such individual. Payments**  
128 **made by a health carrier on behalf of a covered individual for any care,**  
129 **treatment, intervention, service or item, the provision of which was for**  
130 **the treatment of a health condition unrelated to the covered**  
131 **individual's developmental disabilities or physical disabilities, shall not**  
132 **be applied toward any maximum benefit established under this**  
133 **subsection. Any coverage required under this section, other than the**  
134 **coverage for applied behavioral analysis or therapeutic care, shall not**  
135 **be subject to the age and dollar limitations described in this**  
136 **subsection.**

137 **7. The maximum benefit limitation for applied behavior analysis described**  
138 **in subsection 5 of this section or therapeutic care as described in**  
139 **subsection 6 of this section shall be adjusted by the health carrier at least**  
140 **triennially for inflation to reflect the aggregate increase in the general price level**  
141 **as measured by the Consumer Price Index for All Urban Consumers for the**  
142 **United States, or its successor index, as defined and officially published by the**  
143 **United States Department of Labor, or its successor agency. Beginning January**  
144 **1, 2012, and annually thereafter, the current value of the maximum benefit**  
145 **limitation for applied behavior analysis coverage adjusted for inflation in**  
146 **accordance with this subsection shall be calculated by the director of the**

147 department of insurance, financial institutions and professional registration. The  
148 director shall furnish the calculated value to the secretary of state, who shall  
149 publish such value in the Missouri Register as soon after each January first as  
150 practicable, but it shall otherwise be exempt from the provisions of section  
151 536.021.

152 [7.] 8. Subject to the provisions set forth in subdivision (3) of subsection  
153 4 of this section, coverage provided under this section shall not be subject to any  
154 limits on the number of visits an individual may make to an autism service  
155 provider **or therapeutic care provider**, except that the maximum total benefit  
156 for applied behavior analysis set forth in subsection 5 **or therapeutic care as**  
157 **set forth in subsection 6** of this section shall apply to this subsection.

158 [8.] 9. This section shall not be construed as limiting benefits which are  
159 otherwise available to an individual under a health benefit plan. The health care  
160 coverage required by this section shall not be subject to any greater deductible,  
161 coinsurance, or co-payment than other physical health care services provided by  
162 a health benefit plan. Coverage of services may be subject to other general  
163 exclusions and limitations of the contract or benefit plan, not in conflict with the  
164 provisions of this section, such as coordination of benefits, exclusions for services  
165 provided by family or household members, and utilization review of health care  
166 services, including review of medical necessity and care management; however,  
167 coverage for treatment under this section shall not be denied on the basis that it  
168 is educational or habilitative in nature.

169 [9.] 10. To the extent any payments or reimbursements are being made  
170 for applied behavior analysis, such payments or reimbursements shall be made  
171 to either:

- 172 (1) The autism service provider, as defined in this section; or
- 173 (2) The entity or group for whom such supervising person, who is certified  
174 as a board-certified behavior analyst by the Behavior Analyst Certification Board,  
175 works or is associated.

176 Such payments or reimbursements under this subsection to an autism service  
177 provider or a board-certified behavior analyst shall include payments or  
178 reimbursements for services provided by a line therapist under the supervision  
179 of such provider or behavior analyst if such services provided by the line  
180 therapist are included in the treatment plan and are deemed medically necessary.

181 [10.] 11. Notwithstanding any other provision of law to the contrary,  
182 health carriers shall not be held liable for the actions of line therapists in the

183 performance of their duties.

184 [11.] **12.** The provisions of this section shall apply to any health care  
185 plans issued to employees and their dependents under the Missouri consolidated  
186 health care plan established pursuant to chapter 103 that are delivered, issued  
187 for delivery, continued, or renewed in this state on or after January 1, 2011. The  
188 terms "employees" and "health care plans" shall have the same meaning ascribed  
189 to them in section 103.003.

190 [12.] **13.** The provisions of this section shall also apply to the following  
191 types of plans that are established, extended, modified, or renewed on or after  
192 January 1, 2011:

193 (1) All self-insured governmental plans, as that term is defined in 29  
194 U.S.C. Section 1002(32);

195 (2) All self-insured group arrangements, to the extent not preempted by  
196 federal law;

197 (3) All plans provided through a multiple employer welfare arrangement,  
198 or plans provided through another benefit arrangement, to the extent permitted  
199 by the Employee Retirement Income Security Act of 1974, or any waiver or  
200 exception to that act provided under federal law or regulation; and

201 (4) All self-insured school district health plans.

202 [13.] **14.** The provisions of this section shall not automatically apply to  
203 an individually underwritten health benefit plan, but shall be offered as an option  
204 to any such plan.

205 [14.] **15.** The provisions of this section shall not apply to a supplemental  
206 insurance policy, including a life care contract, accident-only policy, specified  
207 disease policy, hospital policy providing a fixed daily benefit only, Medicare  
208 supplement policy, long-term care policy, short-term major medical policy of six  
209 months or less duration, or any other supplemental policy.

210 [15.] **16.** Any health carrier or other entity subject to the provisions of  
211 this section shall not be required to provide reimbursement for the applied  
212 behavior analysis **or therapy** delivered to a person insured by such health  
213 carrier or other entity to the extent such health carrier or other entity is billed  
214 for such services by any Part C early intervention program or any school district  
215 for applied behavior analysis rendered to the person covered by such health  
216 carrier or other entity. This section shall not be construed as affecting any  
217 obligation to provide services to an individual under an individualized family  
218 service plan, an individualized education plan, or an individualized service

219 plan. This section shall not be construed as affecting any obligation to provide  
220 reimbursement pursuant to section 376.1218.

221 [16.] 17. The provisions of sections 376.383, 376.384, and 376.1350 to  
222 376.1399 shall apply to this section.

223 [17.] 18. The director of the department of insurance, financial  
224 institutions and professional registration shall grant a small employer with a  
225 group health plan, as that term is defined in section 379.930, a waiver from the  
226 provisions of this section if the small employer demonstrates to the director by  
227 actual claims experience over any consecutive twelve-month period that  
228 compliance with this section has increased the cost of the health insurance policy  
229 by an amount of two and a half percent or greater over the period of a calendar  
230 year in premium costs to the small employer.

231 [18.] 19. The provisions of this section shall not apply to the Mo  
232 HealthNet program as described in chapter 208.

233 [19.] 20. (1) By February 1, 2012, and every February first thereafter,  
234 the department of insurance, financial institutions and professional registration  
235 shall submit a report to the general assembly regarding the implementation of  
236 the coverage required under this section. The report shall include, but shall not  
237 be limited to, the following:

238 (a) The total number of insureds diagnosed with autism spectrum  
239 disorder;

240 (b) The total cost of all claims paid out in the immediately preceding  
241 calendar year for coverage required by this section;

242 (c) The cost of such coverage per insured per month; and

243 (d) The average cost per insured for coverage of applied behavior analysis;

244 (2) All health carriers and health benefit plans subject to the provisions  
245 of this section shall provide the department with the data requested by the  
246 department for inclusion in the annual report.

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