

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 399
100TH GENERAL ASSEMBLY

Reported from the Committee on Health and Pensions, April 18, 2019, with recommendation that the Senate Committee Substitute do pass.

1130S.06C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal section 376.1224, RSMo, and to enact in lieu thereof one new section 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Section A. Section 376.1224, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 376.1224, to read as follows:

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

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

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

18 Diagnostic and Statistical Manual of Mental Disorders of the American
19 Psychiatric Association;

20 (4) **"Developmental or physical disability", a severe chronic**
21 **disability that:**

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

26 (b) **Manifests before the individual reaches age nineteen;**

27 (c) **Is 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:**

30 a. **Self-care;**

31 b. **Understanding and use of language;**

32 c. **Learning;**

33 d. **Mobility;**

34 e. **Self-direction; or**

35 f. **Capacity for independent living;**

36 (5) **"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 or a developmental or physical disability;**

39 [(5)] (6) **"Habilitative or rehabilitative care", professional, counseling,**
40 **and guidance services and treatment programs, including applied behavior**
41 **analysis for those diagnosed with autism spectrum disorder, that are**
42 **necessary to develop the functioning of an individual;**

43 [(6)] (7) **"Health benefit plan", shall have the same meaning ascribed to**
44 **it as in section 376.1350;**

45 [(7)] (8) **"Health carrier", shall have the same meaning ascribed to it as**
46 **in section 376.1350;**

47 [(8)] (9) **"Line therapist", an individual who provides supervision of an**
48 **individual diagnosed with an autism diagnosis and other neurodevelopmental**
49 **disorders pursuant to the prescribed treatment plan, and implements specific**
50 **behavioral interventions as outlined in the behavior plan under the direct**
51 **supervision of a licensed behavior analyst;**

52 [(9)] (10) **"Pharmacy care", medications used to address symptoms of an**
53 **autism spectrum disorder or a developmental or physical disability**

54 prescribed by a licensed physician, and any health-related services deemed
55 medically necessary to determine the need or effectiveness of the medications only
56 to the extent that such medications are included in the insured's health benefit
57 plan;

58 [(10)] **(11)** "Psychiatric care", direct or consultative services provided by
59 a psychiatrist licensed in the state in which the psychiatrist practices;

60 [(11)] **(12)** "Psychological care", direct or consultative services provided
61 by a psychologist licensed in the state in which the psychologist practices;

62 [(12)] **(13)** "Therapeutic care", services provided by licensed speech
63 therapists, occupational therapists, or physical therapists;

64 [(13)] **(14)** "Treatment [for autism spectrum disorders]", care prescribed
65 or ordered for an individual diagnosed with an autism spectrum disorder by a
66 licensed physician or licensed psychologist, **or for an individual diagnosed**
67 **with a developmental or physical disability by a licensed physician or**
68 **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 **for those diagnosed with autism spectrum disorder**;

75 (d) Therapeutic care;

76 (e) Pharmacy care.

77 2. **Except as otherwise provided in subsection 12 of this section,**
78 all [group] health benefit plans that are delivered, issued for delivery, continued,
79 or renewed on or after January 1, [2011] **2020**, if written inside the state of
80 Missouri, or written outside the state of Missouri but insuring Missouri residents,
81 shall provide coverage for the diagnosis and treatment of autism spectrum
82 disorders **and for the diagnosis and treatment of developmental and**
83 **physical disabilities** to the extent that such diagnosis and treatment is not
84 already covered by the health benefit plan.

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

90 4. (1) Coverage provided under this section **for autism spectrum**
91 **disorder or developmental or physical disabilities** is limited to medically
92 necessary treatment that is ordered by the insured's treating licensed physician
93 or licensed psychologist, pursuant to the powers granted under such licensed
94 physician's or licensed psychologist's license, in accordance with 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 **or developmental or physical disability**, a
101 health carrier shall have the right to review the treatment plan not more than
102 once every six months unless the health carrier and the individual's treating
103 physician or psychologist agree that a more frequent review is necessary. Any
104 such agreement regarding the right to review a treatment plan more frequently
105 shall only apply to a particular individual [being treated for an autism spectrum
106 disorder] **receiving applied behavior analysis** and shall not apply to all
107 individuals [being treated for autism spectrum disorders by a] **receiving**
108 **applied behavior analysis from that autism service provider**, physician,
109 or psychologist. The cost of obtaining any review or treatment plan shall be
110 borne by the health benefit plan or health carrier, as applicable.

111 5. (1) Coverage provided under this section for applied behavior analysis
112 shall be subject to a maximum benefit of forty thousand dollars per calendar year
113 for individuals through eighteen years of age. Such maximum benefit limit may
114 be exceeded, upon prior approval by the health benefit plan, if the provision of
115 applied behavior analysis services beyond the maximum limit is medically
116 necessary for such individual. Payments made by a health carrier on behalf of
117 a covered individual for any care, treatment, intervention, service or item, the
118 provision of which was for the treatment of a health condition unrelated to the
119 covered individual's autism spectrum disorder, shall not be applied toward any
120 maximum benefit established under this subsection. Any coverage required
121 under this section, other than the coverage for applied behavior analysis, shall
122 not be subject to the age and dollar limitations described in this subsection.

123 [6.] (2) The maximum benefit limitation for applied behavior analysis
124 described in [subsection 5] **subdivision (1)** of this [section] **subsection** shall
125 be adjusted by the health carrier at least triennially for inflation to reflect the

126 aggregate increase in the general price level as measured by the Consumer Price
127 Index for All Urban Consumers for the United States, or its successor index, as
128 defined and officially published by the United States Department of Labor, or its
129 successor agency. Beginning January 1, 2012, and annually thereafter, the
130 current value of the maximum benefit limitation for applied behavior analysis
131 coverage adjusted for inflation in accordance with this subsection shall be
132 calculated by the director of the department of insurance, financial institutions
133 and professional registration. The director shall furnish the calculated value to
134 the secretary of state, who shall publish such value in the Missouri Register as
135 soon after each January first as practicable, but it shall otherwise be exempt from
136 the provisions of section 536.021.

137 [7.] (3) Subject to the provisions set forth in subdivision (3) of subsection
138 4 of this section, coverage provided **for autism spectrum disorders** under this
139 section shall not be subject to any limits on the number of visits an individual
140 may make to an autism service provider, except that the maximum total benefit
141 for applied behavior analysis set forth in **subdivision (1) of this** subsection [5
142 of this section] shall apply to this [subsection] **subdivision**.

143 **6. Coverage for therapeutic care provided under this section for**
144 **developmental or physical disabilities may be limited to a number of**
145 **visits per calendar year, provided that upon prior approval by the**
146 **health benefit plan, coverage shall be provided beyond the maximum**
147 **calendar limit if such therapeutic care is medically necessary as**
148 **determined by the health care plan.**

149 [8.] 7. This section shall not be construed as limiting benefits which are
150 otherwise available to an individual under a health benefit plan. The health care
151 coverage required by this section shall not be subject to any greater deductible,
152 coinsurance, or co-payment than other physical health care services provided by
153 a health benefit plan. Coverage of services may be subject to other general
154 exclusions and limitations of the contract or benefit plan, not in conflict with the
155 provisions of this section, such as coordination of benefits, exclusions for services
156 provided by family or household members, and utilization review of health care
157 services, including review of medical necessity and care management; however,
158 coverage for treatment under this section shall not be denied on the basis that it
159 is educational or habilitative in nature.

160 [9.] 8. To the extent any payments or reimbursements are being made for
161 applied behavior analysis, such payments or reimbursements shall be made to

162 either:

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

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

172 [10.] 9. Notwithstanding any other provision of law to the contrary,
173 health carriers shall not be held liable for the actions of line therapists in the
174 performance of their duties.

175 [11.] 10. The provisions of this section shall apply to any health care
176 plans issued to employees and their dependents under the Missouri consolidated
177 health care plan established pursuant to chapter 103 that are delivered, issued
178 for delivery, continued, or renewed in this state on or after January 1, [2011]
179 2020. The terms "employees" and "health care plans" shall have the same
180 meaning ascribed to them in section 103.003.

181 [12.] 11. The provisions of this section shall also apply to the following
182 types of plans that are established, extended, modified, or renewed on or after
183 January 1, [2011] 2020:

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

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

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

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

193 [13. The provisions of this section shall not automatically apply to an
194 individually underwritten health benefit plan, but shall be offered as an option
195 to any such plan.

196 [14.] 12. The provisions of this section shall not apply to a supplemental
197 insurance policy, including a life care contract, accident-only policy, specified

198 disease policy, hospital policy providing a fixed daily benefit only, Medicare
199 supplement policy, long-term care policy, short-term major medical policy of six
200 months or less duration, or any other supplemental policy. **The provisions of**
201 **this section requiring coverage for autism spectrum disorders shall not**
202 **apply to an individually underwritten health benefit plan issued prior**
203 **to January 1, 2011. The provisions of this section requiring coverage**
204 **for a developmental or physical disability shall not apply to a health**
205 **benefit plan issued prior to January 1, 2014.**

206 [15.] 13. Any health carrier or other entity subject to the provisions of
207 this section shall not be required to provide reimbursement for the applied
208 behavior analysis delivered to a person insured by such health carrier or other
209 entity to the extent such health carrier or other entity is billed for such services
210 by any Part C early intervention program or any school district for applied
211 behavior analysis rendered to the person covered by such health carrier or other
212 entity. This section shall not be construed as affecting any obligation to provide
213 services to an individual under an individualized family service plan, an
214 individualized education plan, or an individualized service plan. This section
215 shall not be construed as affecting any obligation to provide reimbursement
216 pursuant to section 376.1218.

217 [16.] 14. The provisions of sections 376.383, 376.384, and 376.1350 to
218 376.1399 shall apply to this section.

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

227 18.] 15. The provisions of this section shall not apply to the Mo HealthNet
228 program as described in chapter 208.

229 [19. (1) By February 1, 2012, and every February first thereafter, the
230 department of insurance, financial institutions and professional registration shall
231 submit a report to the general assembly regarding the implementation of the
232 coverage required under this section. The report shall include, but shall not be
233 limited to, the following:

- 234 (a) The total number of insureds diagnosed with autism spectrum
235 disorder;
- 236 (b) The total cost of all claims paid out in the immediately preceding
237 calendar year for coverage required by this section;
- 238 (c) The cost of such coverage per insured per month; and
- 239 (d) The average cost per insured for coverage of applied behavior analysis;
- 240 (2) All health carriers and health benefit plans subject to the provisions
241 of this section shall provide the department with the data requested by the
242 department for inclusion in the annual report.]

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