

SECOND REGULAR SESSION

SENATE BILL NO. 1074

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROWDEN.

Read 1st time February 28, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6703S.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Section A. Section 376.1224, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 376.1223 and 376.1224, to read as follows: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 nondisabled 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:

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

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
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,
43 and guidance services and treatment programs, including applied behavior
44 analysis, 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 [6.] 7. The maximum benefit limitation for applied behavior analysis
138 described 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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