

AN ACT

ENTITLED, An Act to clarify health coverage for applied behavior analysis, and to establish the Applied Behavior Analysis Provider Workgroup.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as follows:

Terms used in this Act mean:

- (1) "Applied behavior analysis," 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;
- (2) "Autism spectrum disorder," a complex neurodevelopmental medical disorder characterized by social impairment, communication difficulties, and restricted, repetitive, and stereotyped patterns of behavior;
- (3) "Behavioral health treatment," evidence-based interventions that:
 - (a) Achieve specific improvements in functional capacity of a person; and
 - (b) Are provided by a licensed or certified practitioner as provided in section 6 of this Act;
- (4) "Treatment," evidence-based care which is prescribed or ordered for a person diagnosed with an autism spectrum disorder by a licensed physician or psychologist, including:
 - (a) Behavioral health treatment;
 - (b) Pharmacy care; and
 - (c) Therapeutic care.

Section 2. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as

follows:

Nothing in this Act applies to nongrandfathered plans in the individual and small group markets that are required to include essential health benefits under the federal Patient Protection and Affordable Care Act of 2010, as in effect on January 1, 2015, or to Medicare supplement, accident-only, specified disease, hospital indemnity, disability income, long-term care, major medical policies with a limited duration of less than twelve months, or other limited benefit hospital insurance policies, or any plan or coverage exempted from state regulation by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 18, as in effect on January 1, 2015.

Section 3. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as follows:

Except as provided in section 2 of this Act, this Act applies to all individual and group health insurance policies, contracts, and certificates issued by health carriers as defined in subdivision 58-17H-1(19) and self-funded nonfederal governmental plans with the exception of the state employee health plan sponsored by the State of South Dakota.

Section 4. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as follows:

Every policy, contract, certificate, or plan subject to the provisions of this Act shall provide coverage for applied behavior analysis for the treatment of autism spectrum disorders consistent with this Act.

Section 5. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as follows:

Coverage for an applied behavior analysis may be subject to pre-authorization, prior approval, and other care management requirements including limits on the number of individual visits a person may make for applied behavior analysis subject to the general care management provisions of the

plan, and may be subject to dollar limits, deductibles, copayments, or coinsurance provisions that apply to other medical or surgical services covered under the policy. The coverage for applied behavior analysis shall provide an annual maximum benefit that may not be less than the following:

- | | | |
|-----|-----------------------|----------|
| (1) | Through age 6 | \$36,000 |
| (2) | Age 7 through age 13 | \$25,000 |
| (3) | Age 14 through age 18 | \$12,500 |

Section 6. Any person who performs applied behavior analysis shall:

- (1) Be licensed by the South Dakota Board of Medical and Osteopathic Examiners or the Board of Examiners of Psychologists; or
- (2) Have a master's degree or a doctoral degree and be certified by the National Behavior Analyst Certification Board with a designation of board certified behavior analyst.

Supervisory services performed by such practitioners are not required to be covered.

Section 7. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as follows:

A health carrier or plan provider subject to this Act shall have the right to request a review of the treatment that a person is receiving not more than once every three months unless the insurer and the person's licensed physician or licensed psychologist execute an agreement that a more frequent review is necessary. Any agreement regarding the right to review a treatment plan more frequently applies only to a particular person receiving applied behavior analysis and may not apply to all persons receiving applied behavior analysis by a licensed physician, licensed psychologist, or board certified behavior analyst. The cost of obtaining a review under this section shall be paid by the health carrier or plan.

Section 8. Nothing in this Act may be construed to affect any obligation to provide services to a person under an individualized family service plan, an individualized education program, or an

individualized service plan.

Section 9. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as follows:

The effective date of this Act is the first plan year, policy year, or renewal date on or after January 1, 2016.

Section 10. There is hereby established the Applied Behavior Analysis Provider Workgroup, operated under the Department of Human Services, to advise and make recommendations to the Governor and the Legislature regarding the certification and licensure of applied behavior analysis therapy providers.

The workgroup shall consist of the following members appointed by the Governor by July 1, 2015: two members of the Senate; two members of the House of Representatives; two persons who have a family member with autism spectrum disorder; two persons who are behavior analysts certified by the National Behavior Analyst Certification Board, including one at a supervisory level; one licensed healthcare provider who provides other medical or therapy services to children with autism spectrum disorder; one representative from the Department of Human Services; one representative from the Department of Social Services; one representative from the Department of Education; one representative from the Department of Labor and Regulation; two persons representing health insurance carriers who offer health coverage in the state of South Dakota; and one person who serves as an executive director of a medical or therapy licensing board. The Department of Human Services representative will chair the workgroup.

The workgroup shall make a final report including a record of its discussions and recommendations to the Governor and to the Legislature by December 1, 2015.

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I certify that the attached Act originated in the

SENATE as Bill No. 190

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 190
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State