

1 HB284
2 182346-3
3 By Representative Patterson
4 RFD: Insurance
5 First Read: 21-FEB-17

ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

Relating to health benefit plans; to amend Sections 10A-20-6.16, 27-21A-23, and 27-54A-2, Code of Alabama 1975, to require health benefit plans to cover the treatment of Autism Spectrum Disorder certain health insurance plans and contracts; and to require the Department of Insurance to file an annual report with the Legislature on the costs of providing treatment for Autism Spectrum Disorder.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 10A-20-6.16, 27-21A-23, and 27-54A-2, Code of Alabama 1975, are amended to read as follows:

"§10A-20-6.16.

"(a) No statute of this state applying to insurance companies shall be applicable to any corporation organized under this article and amendments thereto or to any contract made by the corporation; except the corporation shall be subject to all of the following:

"(1) The provisions regarding annual premium tax to be paid by insurers on insurance premiums.

1 "(2) Chapter 55 of Title 27, regarding the
2 prohibition of unfair discriminatory acts by insurers on the
3 basis of an applicant's or insured's abuse status.

4 "(3) The Medicare Supplement Minimum Standards set
5 forth in Article 2 of Chapter 19 of Title 27, and Long-Term
6 Care Insurance Policy Minimum Standards set forth in Article 3
7 of Chapter 19 of Title 27.

8 "(4) Section 27-1-17, requiring insurers and health
9 plans to pay health care providers in a timely manner.

10 "(5) Chapter 56 of Title 27, regarding the Access to
11 Eye Care Act.

12 "(6) Rules promulgated by the Commissioner of
13 Insurance pursuant to Sections 27-7-43 and 27-7-44.

14 "(7) Chapter 54 of Title 27.

15 "(8) Chapter 57 of Title 27, requiring coverage to
16 be offered for the payment of colorectal cancer examinations
17 for covered persons who are 50 years of age or older, or for
18 covered persons who are less than 50 years of age and at high
19 risk for colorectal cancer according to current American
20 Cancer Society colorectal cancer screening guidelines.

21 "(9) Chapter 58 of Title 27, requiring that policies
22 and contracts including coverage for prostate cancer early
23 detection be offered, together with identification of
24 associated costs.

25 "(10) Chapter 59 of Title 27, requiring that
26 policies and contracts including coverage for chiropractic be
27 offered, together with identification of associated costs.

1 "(11) Chapter 54A of Title 27, requiring that
2 policies and contracts ~~to offer coverage for~~ cover certain
3 treatment for Autism Spectrum Disorder under certain
4 conditions.

5 "(12) Chapter 12A of Title 27.

6 "(13) Chapter 2B of Title 27.

7 "(b) The provisions in subsection (a) that require
8 specific types of coverage to be offered or provided shall not
9 apply when the corporation is administering a self-funded
10 benefit plan or similar plan, fund, or program that it does
11 not insure.

12 "§27-21A-23.

13 "(a) Except as otherwise provided in this chapter,
14 provisions of the insurance law and provisions of health care
15 service plan laws shall not be applicable to any health
16 maintenance organization granted a certificate of authority
17 under this chapter. This provision shall not apply to an
18 insurer or health care service plan licensed and regulated
19 pursuant to the insurance law or the health care service plan
20 laws of this state except with respect to its health
21 maintenance organization activities authorized and regulated
22 pursuant to this chapter.

23 "(b) Solicitation of enrollees by a health
24 maintenance organization granted a certificate of authority
25 shall not be construed to violate any provision of law
26 relating to solicitation or advertising by health
27 professionals.

1 "(c) Any health maintenance organization authorized
2 under this chapter shall not be deemed to be practicing
3 medicine and shall be exempt from the provisions of Section
4 34-24-310, et seq., relating to the practice of medicine.

5 "(d) No person participating in the arrangements of
6 a health maintenance organization other than the actual
7 provider of health care services or supplies directly to
8 enrollees and their families shall be liable for negligence,
9 misfeasance, nonfeasance, or malpractice in connection with
10 the furnishing of such services and supplies.

11 "(e) Nothing in this chapter shall be construed in
12 any way to repeal or conflict with any provision of the
13 certificate of need law.

14 "(f) Notwithstanding the provisions of subsection
15 (a), a health maintenance organization shall be subject to all
16 of the following:

17 "(1) Section 27-1-17.

18 "(2) Chapter 56, regarding the Access to Eye Care
19 Act.

20 "(3) Chapter 54, regarding mental illness coverage.

21 "(4) Chapter 57, requiring coverage to be offered
22 for the payment of colorectal cancer examinations for covered
23 persons who are 50 years of age or older, or for covered
24 persons who are less than 50 years of age and at high risk for
25 colorectal cancer according to current American Cancer Society
26 colorectal cancer screening guidelines.

1 "(5) Chapter 58, requiring that policies and
2 contracts including coverage for prostate cancer early
3 detection be offered, together with identification of
4 associated costs.

5 "(6) Chapter 59, requiring that policies and
6 contracts including coverage for chiropractic be offered,
7 together with identification of associated costs.

8 "(7) Rules promulgated by the Commissioner of
9 Insurance pursuant to Sections 27-7-43 and 27-7-44.

10 "(8) Chapter 12A.

11 "(9) Chapter 54A, requiring policies and contracts
12 to ~~offer coverage for~~ cover certain treatment for Autism
13 Spectrum Disorder under certain conditions.

14 "(10) Chapter 2B, regarding risk-based capital.

15 "(11) Chapter 29, regarding insurance holding
16 company systems.

17 "§27-54A-2.

18 "(a) As used in this section, the following words
19 have the following meanings:

20 "(1) APPLIED BEHAVIOR ANALYSIS. The design,
21 implementation, and evaluation of environmental modifications,
22 using behavioral stimuli and consequences, to produce socially
23 significant improvement in human behavior, including the use
24 of direct observation, measurement, and functional analysis of
25 the relationship between environment and behavior.

26 "(2) AUTISM SPECTRUM DISORDER. Any of the pervasive
27 developmental disorders or autism spectrum disorders as

1 defined by the most recent edition of the Diagnostic and
2 Statistical Manual of Mental Disorders (DSM), ~~including~~
3 ~~Autistic Disorder, Asperger's Disorder, and Pervasive~~
4 ~~Developmental Disorder Not Otherwise Specified~~ or the edition
5 that was in effect at the time of diagnosis.

6 "(3) BEHAVIORAL HEALTH TREATMENT. Counseling and
7 treatment programs, including applied behavior analysis that
8 are both of the following:

9 "a. Necessary to develop, maintain, or restore, to
10 the maximum extent practicable, the functioning of an
11 individual.

12 "b. Provided or supervised, either in person or by
13 telemedicine, by a Board Certified Behavior Analyst, licensed
14 in the State of Alabama, or a psychologist, licensed in the
15 State of Alabama, so long as the services performed are
16 commensurate with the psychologist's formal university
17 training and supervised experience.

18 "c. Behavioral health treatment does not include
19 psychological testing, neuropsychology, psychotherapy,
20 intellectual assessment, cognitive therapy, sex therapy,
21 psychoanalysis, hypotherapy, and long-term counseling as
22 treatment modalities.

23 "(4) DIAGNOSIS OF AUTISM SPECTRUM DISORDER.
24 Medically necessary assessment, evaluations, or tests to
25 diagnose whether an individual has an autism spectrum
26 disorder.

1 "(5) HEALTH BENEFIT PLAN. Any individual or group
2 insurance plan, policy, or contract for health care services
3 that covers hospital, medical, or surgical expenses, health
4 maintenance organizations, preferred provider organizations,
5 medical service organizations, physician-hospital
6 organizations, or any other person, firm, corporation, joint
7 venture, or other similar business entity that pays for,
8 purchases, or furnishes group health care services to
9 patients, insureds, or beneficiaries in this state. For the
10 purposes of this section, a health benefit plan located or
11 domiciled outside of the State of Alabama is deemed to be
12 subject to this section if the plan, policy, or contract is
13 issued or delivered in the State of Alabama. The term
14 includes, but is not limited to, entities created pursuant to
15 Article 6, Chapter 20, Title 10A and health insurance plans
16 administered or offered by the State Employees Insurance Board
17 and the Public Education Employees Health Insurance Plan. The
18 term does not include the Alabama Health Insurance Plan or the
19 Alabama Small Employer Allocation Program provided in Chapter
20 52 of this title. The term also includes the terms health
21 insurance policy and health insurance plan. The term does not
22 include non-grandfathered plans in the individual and small
23 group markets that are required to provide essential health
24 benefits under the Patient Protection and Affordable Care Act,
25 or accident-only, specified disease, individual hospital
26 indemnity, credit, dental-only, Medicare-supplement, long-term
27 care, or disability income insurance, other limited benefit

1 health insurance policies, coverage issued as a supplemental
2 to liability insurance, workers' compensation or similar
3 insurance, or automobile medical-payment insurance.

4 "(6) PHARMACY CARE. Medications prescribed by a
5 licensed physician and any health related services deemed
6 medically necessary to determine the need or effectiveness of
7 the medications.

8 "(7) PSYCHIATRIC CARE. Direct or consultative
9 services provided by a psychiatrist licensed in the State of
10 Alabama.

11 "(8) PSYCHOLOGICAL CARE. Direct or consultative
12 services provided by a psychologist licensed in the State of
13 Alabama.

14 "(9) THERAPEUTIC CARE. Services provided by licensed
15 and certified speech therapists, occupational therapists, or
16 physical therapists.

17 "(10) TREATMENT FOR AUTISM SPECTRUM DISORDER.
18 Evidence-based care prescribed or ordered for an individual
19 diagnosed with an autism spectrum disorder by a licensed
20 physician or a licensed psychologist who determines the care
21 to be medically necessary, including, but not limited to, all
22 of the following:

23 "a. Behavioral health treatment.

24 "b. Pharmacy care.

25 "c. Psychiatric care.

26 "d. Psychological care.

27 "e. Therapeutic care.

1 "(b) (1) A health benefit plan shall ~~offer coverage~~
2 ~~for~~ cover the screening, diagnosis, and treatment of Autism
3 Spectrum Disorder ~~for an insured nine years of age or under in~~
4 policies and contracts issued or delivered in the State of
5 Alabama. ~~to employers with at least 51 employees for at least~~
6 ~~50 percent of its working days during the preceding calendar~~
7 ~~year.~~ Coverage provided under this section is limited to
8 treatment that is prescribed by the insured's treating
9 licensed physician or licensed psychologist in accordance with
10 a treatment plan.

11 "(2) To the extent that the screening, diagnosis,
12 and treatment of autism spectrum disorder are not already
13 covered by a health insurance policy, coverage under this
14 section shall be ~~offered for inclusion~~ included in health
15 insurance policies that are delivered, executed, issued,
16 amended, adjusted, or renewed in the State of Alabama at the
17 date of the annual renewal for coverage.

18 "(3) A health benefit plan may not deny or refuse to
19 issue coverage on, refuse to contract with, or refuse to renew
20 or refuse to reissue or otherwise terminate or restrict
21 coverage on an individual solely because the individual is
22 diagnosed with Autism Spectrum Disorder.

23 "(c) (1) ~~The~~ Except as provided in subsection (g),
24 the coverage required pursuant to this section ~~may~~ shall not
25 be subject to dollar limits, deductibles, or coinsurance
26 provisions that are less favorable to an insured than the
27 dollar limits, deductibles, or coinsurance provisions that

1 apply to ~~physical illness generally~~ substantially all medical
2 and surgical benefits under the health insurance plan, ~~except~~
3 ~~as otherwise provided for in subsection (e).~~

4 "(2) The coverage required pursuant to subsection
5 (b) may be subject to other general exclusions and limitations
6 of the health benefit plan, including, but not limited to,
7 coordination of benefits, participating provider requirements,
8 restrictions on services provided by family or household
9 members, utilization review of health care services including
10 review of medical necessity, case management, and other
11 managed care provisions.

12 "(d) Coverage under this section shall not be
13 subject to any limits on the number of visits an individual
14 may make for treatment of autism spectrum disorder.

15 "(e) This section may not be construed as limiting
16 benefits that are otherwise available to an individual under a
17 health insurance policy.

18 "(f) Coverage for applied behavior analysis shall
19 include the services of the personnel who work under the
20 supervision of the board certified behavior analyst or the
21 licensed psychologist overseeing the program.

22 "(g) (1) Except as provided in subdivision (2),
23 coverage provided under this section for applied behavior
24 analysis shall be subject to a maximum benefit as follows:

25 "a. Forty thousand dollars (\$40,000) per year for an
26 insured individual between zero and nine years of age.

1 "b. Thirty thousand dollars (\$30,000) per year for
2 an insured individual between 10 and 13 years of age.

3 "c. Twenty thousand dollars (\$20,000) per year for
4 an insured individual between 14 and 18 years of age.

5 "d. Ten thousand dollars (\$10,000) per year for an
6 insured individual 19 years of age or older.

7 "(2) The maximum benefit limitation for applied
8 behavior analysis described in subdivision (1) shall be
9 adjusted for inflation to reflect the aggregate increase in
10 the general price level as measured by the Consumer Price
11 Index for All Urban Consumers. Beginning January 1, 2018, and
12 annually thereafter, the current value of the maximum benefit
13 limitation for applied behavior analysis coverage adjusted for
14 inflation shall be calculated by the Commissioner of
15 Insurance. The commissioner shall publish, on an annual basis,
16 the calculated value pursuant to rules adopted by the
17 department.

18 "(3) The maximum benefit limit may be exceeded, upon
19 prior approval by the insurer administering a health benefit
20 plan, if the provision of applied behavior analysis services
21 beyond the maximum limit is medically necessary for the
22 insured individual. Payments made by a health benefit plan on
23 behalf of an individual for any care, treatment, intervention,
24 service, or item, the provision of which was for the treatment
25 of a health condition unrelated to the individual's autism
26 spectrum disorder, shall not be applied toward any maximum
27 benefit established under this subsection. Any coverage

1 required under this section, other than the coverage for
2 applied behavior analysis, shall not be subject to the dollar
3 limitations described in this subsection.

4 ~~"(g)~~ (h) This section may not be construed as
5 affecting any obligation to provide services to an individual
6 under an individualized family service plan, an individualized
7 education program, or an individualized service plan.

8 ~~"(d) (h)~~ (i) The treatment plan required pursuant to
9 subsection (b) shall include all elements necessary for the
10 health insurance plan to appropriately pay claims. These
11 elements include, but are not limited to, a diagnosis,
12 proposed treatment by type, frequency, and duration of
13 treatment, the anticipated outcomes stated as goals, the
14 frequency by which the treatment plan will be updated, and the
15 treating licensed physician's or licensed psychologist's
16 signature. The health insurance plan may ~~only~~ request an
17 updated treatment plan only once every six months from the
18 treating licensed physician or licensed psychologist to review
19 medical necessity, unless the health insurance plan and the
20 treating licensed physician or licensed psychologist agree
21 that a more frequent review is necessary for a particular
22 patient. Any agreement regarding the right to review a
23 treatment plan more frequently applies only to a particular
24 insured being treated for an autism spectrum disorder and does
25 not apply to all individuals being treated for autism spectrum
26 disorder by a physician or psychologist. The cost of obtaining
27 any review or treatment plan shall be borne by the insurer.

1 ~~"(e) (i) (j) (1) The benefits and coverage provided~~
2 ~~pursuant to this section shall be provided to any eligible~~
3 ~~person nine years of age or under. Coverage for behavioral~~
4 ~~therapy is subject to a thirty-six thousand dollars (\$36,000)~~
5 ~~maximum benefit per year. Beginning October 1, 2013, this~~
6 ~~maximum benefit shall be adjusted annually on January 1 of~~
7 ~~each calendar year to reflect any change from the previous~~
8 ~~year in the current Consumer Price Index, All Urban Consumers,~~
9 ~~as published by the United States Department of Labor's Bureau~~
10 ~~of Labor Statistics. By February 1, 2019, and every February~~
11 ~~first thereafter, the Department of Insurance shall submit a~~
12 ~~report to the Legislature regarding the implementation of the~~
13 ~~coverage required under this section. The report shall~~
14 ~~include, but not be limited to, all of the following:~~

15 "a. The total number of insureds diagnosed with
16 autism spectrum disorder.

17 "b. The total cost of all claims paid out in the
18 preceding calendar year for coverage required by this section.

19 "c. The cost of coverage required by this section
20 per insured per month.

21 "d. The average cost per insured for coverage of
22 applied behavior analysis.

23 "(2) All health benefit plans subject to this
24 section shall provide the department with the data requested
25 by the department for inclusion in the annual report."

26 "(k) (1) A health benefit plan that does not provide
27 coverage for applied behavior analysis as of September 30,

1 2017, shall be exempt for a period of one year from the
2 requirement to provide coverage for applied behavior analysis
3 if the following criteria are met:

4 "a. An actuary who is affiliated with the insurer
5 administering the health benefit plan, who is a member of the
6 American Academy of Actuaries and who meets the American
7 Academy of Actuaries' professional qualification standards for
8 rendering an actuarial opinion relating to health insurance
9 ratemaking, certifies in writing to the Commissioner of
10 Insurance both of the following:

11 "1. Based on an analysis to be completed by the
12 insurer, for the most recent experience period of at least one
13 year's duration, that the costs associated with coverage of
14 applied behavior analysis exceeded one percent of the premiums
15 charged over the experience period by the health benefit plan.

16 "2. That those costs solely would lead to an
17 increase in average premiums charged of more than one percent
18 for all health benefit plans commencing on inception or the
19 next renewal date, based on the premium rating methodology and
20 practices the insurer employs.

21 "b. The Commissioner of Insurance approves the
22 certification of the actuary.

23 "(2) An exemption allowed under subdivision (1)
24 shall apply for a one-year coverage period following inception
25 or the next renewal date for all health benefit plans issued
26 or renewed during the one-year period following the date of
27 the exemption, after which the health benefit plan shall again

1 provide coverage for applied behavior analysis required under
2 this section. An insurer may claim an exemption for a
3 subsequent year, provided the conditions specified in
4 subdivision (1) again are met.

5 "(3) If, upon investigation, the Commissioner of
6 Insurance finds that any statement or certification made
7 pursuant to subdivision (1) by an insurer is knowingly false,
8 the health benefit plan may be subject to suspension or loss
9 of license or any other penalty as determined by the
10 commissioner.

11 "(4) Notwithstanding the exemption allowed under
12 subdivision (1), an insurer may elect to continue to provide
13 coverage for applied behavior analysis required under this
14 section."

15 Section 2. In the administration of and provision of
16 benefits for the Alabama Medicaid program and the Children's
17 Health Insurance Plan (ALL Kids), the Alabama Medicaid Agency
18 and the Alabama Department of Public Health shall provide
19 coverage and reimbursement for the treatment of Autism
20 Spectrum Disorder in the same manner and same levels as health
21 benefit plans.

22 Section 3. This act shall become effective October
23 1, 2017.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Insurance 21-FEB-17

Read for the second time and placed
on the calendar 2 amendments 13-APR-17

Read for the third time and passed
as amended..... 20-APR-17
Yeas 100, Nays 0, Abstains 3

Jeff Woodard
Clerk