

SESSION OF 2012

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2764

As Amended by House Committee of the Whole

Brief*

HB 2764 would enact new law and amend existing law to require coverage, with certain limitations established by the bill, of autism spectrum disorders (ASDs) in individual or group health insurance policies, plans and contracts and in the State's Medicaid Autism Waiver, Children's Health Insurance Program (CHIP), and other Medicaid programs covering children. The coverage requirement in the bill that applies to individual and group health insurance policies, plans and contracts also would apply to the State Employee Health Plan and the municipal funded pools. The bill also would require a study to determine the actual cost of providing coverage for the treatment and diagnosis of ASD in any individual living in Kansas who is under the age of 19.

Cost Study, Kansas Department of Social and Rehabilitation Services (New Section 1)

The bill would authorize and direct the Secretary of the Department of Social and Rehabilitation Services, or any successor agency, to study and identify the number of individuals in Kansas who need the coverage specified in the bill and the cost of providing treatment of autism to people in the state. The study would be required to include a determination of the actual cost of providing coverage for the treatment and diagnosis of ASDs in any individual in Kansas who is under the age of 19. The Secretary would be directed to prepare and submit a report containing the findings and recommendations on or before January 20, 2013, to the

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Senate President, House Speaker, the Senate Committee on Ways and Means, and the House Appropriations Committee.

Coverage Requirement, Individual and Group Health Insurance (New Section 2)

The bill would enact new law and amend existing law to require any individual or group health insurance policy, plan, contract, fraternal benefit society, or health maintenance organization that provides coverage for accident and health services on and after July 1, 2012, (for policies issued, amended or renewed) to provide coverage for the treatment and diagnosis of autism spectrum disorders (ASDs) for covered individuals less than 19 years of age. This proposed coverage would not be subject to the test track requirements specified in KSA 40-2249a.

Under the bill, insurers would be prohibited from terminating coverage or refusing to deliver, issue, or renew coverage to an individual solely because the individual is diagnosed with or has received treatment for ASD. The bill further states that coverage cannot be denied to any covered individual on the basis that the individual was diagnosed with an ASD prior to the effective date of the policy.

The bill also would specify the following terms and limitations for the coverage requirement:

- Coverage must be provided in a manner determined in consultation with the autism services provider and the patient. The services provided by the autism services provider must include applied behavioral analysis when required by a licensed physician, licensed psychologist, or licensed specialist clinical social worker, but otherwise are required to be limited to those services prescribed or ordered by the licensed physician, licensed psychologist, or licensed specialist clinical social worker. The services provided are to be those

services which are or have been recognized by peer-reviewed literature as providing medical benefit to the patient based upon the patient's particular autism spectrum disorder;

- Coverage for benefits for any covered person diagnosed with one or more autism spectrum disorders and whose age is less than seven years old cannot exceed \$36,000 per year;
- Coverage for benefits for any covered person diagnosed with one or more autism spectrum disorders and whose age is at least seven and less than 19 cannot exceed \$27,000 per year;
- Reimbursement would only be allowed for services provided by a provider licensed, trained, and qualified to provide such services or by an autism specialist or an intensive individual service provider, as those terms are defined by the Department of Social and Rehabilitation Services for the Kansas Autism Waiver;
- Any insurer or other entity which administers claims for services provided for the treatment of ASD is granted the right and obligation to deny any claim for services based upon medical necessity or a determination that a covered individual has reached the maximum medical improvement for his or her ASD; and
- With an exception for inpatient services, the bill provides that if an insured is receiving treatment for an ASD, such insurer has the right to review the treatment plan annually, unless the insurer and the insured's treating physician or psychologist agree that a more frequent review is necessary. Any such agreement regarding the right to review a treatment plan more frequently must apply only to a particular insured and must not apply to all

individuals being treated for ASD. The cost of obtaining a review or treatment plan shall be borne by the insurer.

The bill also makes two prohibitions relating to the coverage of ASD by insurance policies and contracts:

- No insurer could impose on the required coverage any dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to physical illness generally under the accident and sickness policy; or
- No insurer could impose any limit upon the number of visits that a covered individual may make for treatment of ASD.

Waiver Provisions, Small Employers

The bill would require the Insurance Commissioner to grant a small employer with a health benefit plan a waiver from the provisions requiring coverage in health insurance policies, contracts, and plans, if the small employer demonstrates that compliance with this requirement (using actual claims experience over any consecutive twelve-month period) has increased the cost of the health insurance policy by an amount of 2.5 percent or greater over the period of a calendar year in premium costs to the employer.

The term "small employer" is assigned its meaning in statute (KSA 40-2209d) and generally means an employer providing accident and sickness coverage to at least two and no more than 50 eligible employees.

Essential Health Benefits Requirements, Federal Health Insurance Reform Law

The bill would specify that, to the extent that the provisions requiring ASD coverage in individual and group

health insurance exceed the essential health benefits (as specified in section 1302(b) of the Patient Protection and Affordable Care Act), no health benefit plan offered by a health insurer in Kansas would be required to offer any specific benefits required by coverage provisions in this bill that exceed the essential health benefits specified in the federal law.

Definitions

The bill establishes three definitions for the coverage terms and limitations associated with the diagnosis and treatment of Autism Spectrum Disorder:

- **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;
- **Autism spectrum disorder**—the following disorders within the autism spectrum: Autistic Disorder, Asperger’s Syndrome, and Pervasive Developmental Disorder Not Otherwise Specified, as such terms are specified in the Diagnostic and Statistical Manual of Mental Disorders, fourth edition, text revision (DSM-IV-TR) of the American Psychiatric Association, as published in May, 2000, or later versions as established in rules and regulations adopted by the Behavioral Sciences Regulatory Board pursuant to KSA 74-7507 and amendments thereto; and
- **Diagnosis of autism spectrum disorder**—any medically necessary assessment, evaluation, or test to determine whether an individual has an autism spectrum disorder.

Autism Spectrum Disorder Premium Rate; Calculation of Benefits Level (New Section 3)

The bill would require, on January 1, 2013, and on January 1 of the year following the year in which related rules and regulations become effective, the Insurance Commissioner to obtain certain information from health insurers who provided ASD coverage. The information would include the total cost of that portion of all premiums paid in all insurance policies or similar documents (e.g. plans and contracts) which can be attributed to ASD coverage required by this bill for the preceding calendar year.

The calculation rate, using the date provided by health insurers, and corresponding benefit levels are described as follows:

- **Autism spectrum disorder premium rate**—equal to the average cost per person per month (pppm) of the total premium collection which is attribute to coverage for ASD.
 - If this rate exceeds \$.31 ppm, then the amount of the benefit specified for covered individuals (yearly cap: \$36,000 for children under age 7 and \$27,000 for children 7 to age 19) must be reduced by the percentage which is equal to the ratio which is determined by dividing the difference between the ASD premium rate by \$.31 ppm. The amount of benefit, however, could not be reduced below zero.
- As soon as the new level of benefits has been calculated, the Insurance Commissioner would be required to adopt a rule and regulation establishing the new benefits level for the amount of benefit specified for covered individuals (the two-tier cap described above), for the next policy year commencing after the rule and regulation becomes

effective. The benefit levels establish by such rule and regulation would remain in effect until changed by a subsequent rule and regulation or by legislation.

Under the bill, the Insurance Commissioner is authorized and directed to adopt rules and regulations necessary to implement the premium rate calculation and related benefit levels.

***Coverage Requirement, Medicaid and CHIP
(New Section 4)***

The bill would require the Kansas Department of Health and Environment (KDHE), or any successor agency, to provide services for the diagnosis and treatment of Autism Spectrum Disorders for any individual in the state who age is less than 19 years and who qualifies for certain services (described below). The service for the diagnosis and treatment of ASDs must be at least equal to the services provided under the coverage required by the bill for individual and group health insurance policies, plans, and contracts.

The services for the diagnosis and treatment of ASDs must be provided to:

- Any individual who qualifies for or is provided services by the State's Children's Health Insurance Program (KSA 39-2001); or
- Any individual who does not meet the prior requirement (CHIP eligibility or services) and who qualifies for or is provided services under an autism waiver or other Kansas Medicaid program.

The KDHE, or its successor agency, would be directed to seek any necessary waivers from program requirements of the federal government as may be needed to carry out the coverage requirements assigned to the agency and to

maximize federal matching and other funds with respect to this coverage. If the KDHE, or its successor, determines that one of more waivers are needed to carry out the coverage requirements under the bill, the KDHE would be directed to implement the provisions only if the waivers to federal program requirements have been obtained.

The bill also would establish requirements for the review and update of rules and regulations establishing eligibility requirements for the Kansas Medicaid program. The revisions would be required to be completed within twelve calendar months, following either the date of receipt of the waivers, or if no waivers are required, the effective date of the bill (statute: July 1, 2012).

The bill assigns the definitions of "autism spectrum disorder" and "diagnosis of autism spectrum disorder" (terms and definitions identical to those in earlier coverage requirements) to the coverage provisions specified for children qualified for or receiving services through the Medicaid program and autism waiver.

Background

Senate Sub. for HB 2160 (enacted by the 2010 Legislature) required a pilot study in the State Employee Health Plan for PY 2011, beginning on January 1, 2011, and a report to be presented to the Legislature by March 1, 2012, for further consideration. The reporting provision, as specified in KSA 75-6524 specified in subsection (c)(2) that the Legislature may consider "[a]t the next legislative session following the receipt of the (required) report..." the coverage of Autism Spectrum Disorder for policies and contracts issued, amended or reviewed, on and after July 1, 2013. HB 2764, as introduced, incorporates the coverage provisions applied to the State Employee Health Plan under this law (KSA 75-6524) to health insurance policies subject to state law. The coverage requirements would not apply to self-insured plans which are subject to the federal Employee Retirement Income Security Act (ERISA) requirements.

The bill was introduced by the House Federal and State Affairs Committee. Proponents of the bill included Representatives Siegfried and Kiegerl, representatives of Autism Speaks, Community Living Opportunities (CLO), Heartspring, and relatives of children diagnosed with Autism Spectrum Disorders. Representative Arlen Siegfried testified that autism is not untreatable, it is not an educational disorder, and when treated early, it is frequently a very manageable disease. The Representative noted that 29 states representing 70 percent of the U.S. population have enacted autism insurance reform legislation. Representatives of Autism Speaks and the CLO cited cost analysis, including the cost benefit of providing Applied Behavioral Analysis treatment to a child at an early age. Parents of children with autism provided information about the costs and outcomes of therapies for their children, insurance coverage requirements, and the waiting list for the Kansas Autism Waiver.

Neutral testimony was presented to the House Committee by representatives of the Kansas Insurance Department and the Mental Health Credentialing Coalition (MHCC). The representative for the Insurance Department provided information regarding the potential fiscal impact of adopting any new mandates under Kansas law based on the current health insurance reform law. As the law and rules associated with the Patient Protection and Affordable Care Act currently stand, Kansas would have to pay the costs associated with any mandate not in place by March 31, 2012, for 2014 and 2015 ("benchmark" plan requirement, essential health benefits.) The testimony submitted by the MHCC representative included an amendment that would allow all providers licensed by the Behavioral Sciences Regulatory Board to diagnose and treat mental disorders in independent practice (listed in the DSM-V TR) to prescribe or order services required by the bill.

Opponents of the bill included representatives of the Kansas Association of Health Plans (KAHP), the Kansas Chamber, National Federation of Independent Business (NFIB-KS), and Wichita Independent Business Association.

Testimony submitted by the KAHP representative indicates Kansas health insurance carriers already provide coverage for “medically necessary” services to children diagnosed with ASD; these services include initial screenings for autism, occupational therapy, physical therapy, and coverage for common medical issues suffered by individuals with autism. The KAHP representative also indicated that similar credentialing provisions from the Autism Waiver program should be required for the services and providers specified in the bill. Testimony submitted by the NFIB-KS states mandates drive up the cost of health insurance, especially in the small employer market (2 to 50 employees) where the cost of mandates hits the hardest.

The House Committee on Insurance amendment directs the Secretary of the Department of Social and Rehabilitation Services to conduct a study of certain costs associated with providing treatment consistent with the coverage provisions specified in the bill.

The House Committee of the Whole amendments insert: an exception for certain small employers offering health insurance coverage; specify health insurers would not be required to offer any benefits that exceed the Essential Health Benefits (as outlined in Section 1302(b) of the federal Patient Protection and Affordable Care Act); clarify coverage could not be denied to individuals diagnosed with an ASD prior to the effective date of the policy; require calculation of an ASD premium rate and a level of benefits in instances where a prescribed amount is exceeded via agency rule and regulation; and require the Kansas Department of Health and Environment, or its successor, to provide coverage for ASD, as required in the bill for individual and group health insurance plans subject to state law, for children who met the qualifications of or are being provided services in the State Children's Health Insurance Program, on the Kansas Medicaid Autism Waiver, or through another Medicaid program.

The fiscal note prepared by the Division of the Budget on the original bill indicates the State Employee Health Plan is already piloting this coverage for ASD [pursuant to the requirements of Senate Sub. for HB 2160]. Coverage began on January 1, 2011. The bill would make this a permanent benefit instead of a pilot benefit for the SEHP. The Centers for Disease Control and Prevention (CDC) estimates the prevalence on average of one in 110 children being diagnosed with ASD. Under the pilot program during Plan Year 2011, 126 members received services for ASD. (The SEHP report for PY 2011 states the number of members receiving services equates to a one in 800 prevalence rate). There are 23,087 children under age 19 in the SEHP, which would indicate an ASD prevalence factor of 0.55 percent. The Plan expects that utilization of this benefit would increase over time as patients and providers become more familiar with the coverage. This would be consistent with any new mandated benefit and is not specific to ASD. The Plan estimates increased utilization based on the prevalence rate of the CDC. Using the actual dollars spent in PY 2011, the Plan estimates additional expenditures of \$259,184 in FY 2013.

The fiscal note also comments on the fiscal effect outside of the state budget, noting the effect on health insurers and the insured. This mandated coverage, the note continues, would cause an increase in expenditures for plans that currently do not offer coverage. Insurers could increase premiums to fund the additional expenditures. This increased cost of insurance would affect employers that provide health insurance for employees and individuals who pay for a part or all of their insurance. Conversely, individuals who currently receive services for ASD that are not paid for by their health care plan would realize personal savings from the additional coverage.

The fiscal note does not address any costs associated with the coverage and study requirements established by the House Committee and House Committee of the Whole amendments.