

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

299W0658

HOUSE STATE AFFAIRS
ENGROSSED NO. **SB 190** - 03/04/2015

Introduced by: Senators Solano, Brown, and Rave and Representatives Munsterman, Cronin,
Gosch, and Westra

1 FOR AN ACT ENTITLED, An Act to clarify health coverage for applied behavior analysis.

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

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

5 Terms used in this Act mean:

- 6 (1) "Applied behavior analysis," the design, implementation, and evaluation of
7 environmental modifications, using behavioral stimuli and consequences, to produce
8 socially significant improvement in human behavior, including the use of direct
9 observation, measurement, and functional analysis of the relationship between
10 environment and behavior;
- 11 (2) "Autism spectrum disorder," a complex neurodevelopmental medical disorder
12 characterized by social impairment, communication difficulties, and restricted,
13 repetitive, and stereotyped patterns of behavior;
- 14 (3) "Behavioral health treatment," evidence-based interventions, including applied



1 behavior analysis, that:

2 (a) Achieve specific improvements in functional capacity of a person; and

3 (b) Are provided or supervised by a licensed or certified practitioner as provided
4 in section 6 of this Act;

5 (4) "Treatment," evidence-based care which is prescribed or ordered for a person
6 diagnosed with an autism spectrum disorder by a licensed physician or psychologist,
7 including:

8 (a) Behavioral health treatment;

9 (b) Pharmacy care; and

10 (c) Therapeutic care.

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

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

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

23 Except as provided in section 2 of this Act, this Act applies to all individual and group
24 health insurance policies, contracts, and certificates issued by health carriers as defined in

1 subdivision 58-17H-1(19) and self-funded nonfederal governmental plans with the exception
2 of the state employee health plan sponsored by the State of South Dakota.

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

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

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

10 Coverage for an applied behavior analysis may be subject to pre-authorization, prior
11 approval, and other care management requirements for applied behavior analysis, and may be
12 subject to dollar limits, deductibles, copayments, or coinsurance provisions that apply to other
13 medical or surgical services covered under the policy. The coverage for applied behavior
14 analysis shall be subject to an annual maximum benefit as follows:

- | | | | |
|----|-----|-----------------------|----------|
| 15 | (1) | Through age 6 | \$50,000 |
| 16 | (2) | Age 7 through age 13 | \$25,000 |
| 17 | (3) | Age 14 through age 18 | \$12,500 |

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

- 19 (1) Be licensed by the South Dakota Board of Medical and Osteopathic Examiners or the
20 Board of Examiners of Psychologists and be performing services that are
21 commensurate with the licensee's scope of practice;
- 22 (2) Have a master's degree or a doctoral degree and be certified by the National Behavior
23 Analyst Certification Board with a designation of board certified behavior analyst;
- 24 or

1 (3) Be certified or registered by the National Behavior Analyst Certification Board with
2 the designation of board certified assistant behavior analyst or registered behavior
3 technician and work under the supervision of a person who meets the requirements
4 in subdivision (1) or (2).

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

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

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

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

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