

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

299W0658

CONFERENCE COMMITTEE
ENGROSSED NO. **SB 190** - 03/13/2015

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, and
2 to establish the Applied Behavior Analysis Provider Workgroup.

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

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

6 Terms used in this Act mean:

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



- 1 (3) "Behavioral health treatment," evidence-based interventions that:
 - 2 (a) Achieve specific improvements in functional capacity of a person; and
 - 3 (b) Are provided by a licensed or certified practitioner as provided in section 6 of
 - 4 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 including limits on the number of individual
12 visits a person may make for applied behavior analysis subject to the general care management
13 provisions of the plan, and may be subject to dollar limits, deductibles, copayments, or
14 coinsurance provisions that apply to other medical or surgical services covered under the policy.
15 The coverage for applied behavior analysis shall provide an annual maximum benefit that may
16 not be less than the following:

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

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

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

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

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

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

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

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

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

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

23 The workgroup shall consist of the following members appointed by the Governor by July 1,
24 2015: two members of the Senate; two members of the House of Representatives; two persons

1 who have a family member with autism spectrum disorder; two persons who are behavior
2 analysts certified by the National Behavior Analyst Certification Board, including one at a
3 supervisory level; one licensed healthcare provider who provides other medical or therapy
4 services to children with autism spectrum disorder; one representative from the Department of
5 Human Services; one representative from the Department of Social Services; one representative
6 from the Department of Education; one representative from the Department of Labor and
7 Regulation; two persons representing health insurance carriers who offer health coverage in the
8 state of South Dakota; and one person who serves as an executive director of a medical or
9 therapy licensing board. The Department of Human Services representative will chair the
10 workgroup.

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