

# State of South Dakota

NINETIETH SESSION  
LEGISLATIVE ASSEMBLY, 2015

299W0658

## SENATE BILL NO. 190

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 that:

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



1 (b) Are provided by a licensed or certified practitioner as provided in section 6 of  
2 this Act;

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

6 (a) Behavioral health treatment;

7 (b) Pharmacy care; and

8 (c) Therapeutic care.

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

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

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

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

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

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

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

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

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

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

- 18 (1) Be licensed by the South Dakota Board of Medical and Osteopathic Physicians or the  
19 Board of Psychology Examiners; or
  - 20 (2) Have a master's degree or a doctoral degree and be certified by the National Behavior  
21 Analyst Certification Board with a designation of board certified behavior analyst.
- 22 Supervisory services performed by such practitioners are not required to be covered.

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

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

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

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