

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 45
100TH GENERAL ASSEMBLY

0312H.09C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 208.227 and 376.1224, RSMo, and to enact in lieu thereof three new sections relating to health care for persons with disabilities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 208.227 and 376.1224, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 208.226, 208.227, and 376.1224, to read as follows:

208.226. 1. No restrictions to access shall be imposed that preclude availability of any individual antipsychotic medication.

2. The provisions of this section shall not prohibit the division from utilizing clinical edits to ensure clinical best practices including, but not limited to:

(1) Drug safety and avoidance of harmful drug interactions;

(2) Compliance with nationally recognized and juried clinical guidelines from national medical associations using medical evidence and emphasizing best practice principles;

(3) Detection of patients receiving prescription drugs from multiple prescribers;
and

(4) Detection, prevention, and treatment of substance use disorders.

3. The division shall issue a provider update no less than twice annually to enumerate treatment and utilization principles for MO HealthNet providers including, but not limited to:

(1) Treatment with antipsychotic drugs, as with any other form of treatment, should be individualized in order to optimize the patient's recovery and stability;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **(2) Treatment with antipsychotic drugs should be as effective, safe, and**
18 **well-tolerated as supported by best medical evidence;**

19 **(3) Treatment with antipsychotic drugs should consider the individual patient's**
20 **needs, preferences, and vulnerabilities;**

21 **(4) Treatment with antipsychotic drugs should support an improved quality of life**
22 **for the patient; and**

23 **(5) Treatment choices should be informed by the best current medical evidence and**
24 **should be updated consistent with evolving nationally recognized best practice guidelines.**

25 **4. If the division implements any new policy or clinical edit for an antipsychotic**
26 **drug, the division shall continue to allow MO HealthNet participants access to any**
27 **antipsychotic drug that they utilize and on which they are stable or that they have**
28 **successfully utilized previously. The division may recommend a resource list with no**
29 **restrictions to access.**

 208.227. 1. ~~[No restrictions to access shall be imposed that preclude availability of any~~
2 ~~individual atypical antipsychotic monotherapy for the treatment of schizophrenia, bipolar~~
3 ~~disorder, or psychosis associated with severe depression.]~~ The division shall establish a
4 pharmaceutical case management or polypharmacy program for high risk MO HealthNet
5 participants with numerous or multiple prescribed drugs. The division shall also establish a
6 behavioral health pharmacy and opioid surveillance program to encourage the use of best
7 medical evidence-supported prescription practices. The division shall communicate with
8 providers, as such term is defined in section 208.164, whose prescribing practices deviate from
9 or do not otherwise utilize best medical evidence-supported prescription practices. The
10 communication may be telemetric, written, oral, or some combination thereof. These programs
11 shall be established and administered through processes established and supported under a
12 memorandum of understanding between the department of mental health and the department of
13 social services, or their successor entities.

14 2. The provisions of this section shall not prohibit the division from utilizing clinical
15 edits to ensure clinical best practices including, but not limited to:

16 (1) Drug safety and avoidance of harmful drug interactions;

17 (2) Compliance with nationally recognized and juried clinical guidelines from national
18 medical associations using medical evidence and emphasizing best practice principles;

19 (3) Detection of patients receiving prescription drugs from multiple prescribers; and

20 (4) Detection, prevention, and treatment of substance use disorders.

21 3. ~~[The division shall issue a provider update no less than twice annually to enumerate~~
22 ~~treatment and utilization principles for MO HealthNet providers including, but not limited to:~~

- 23 ~~———(1) Treatment with antipsychotic drugs, as with any other form of treatment, should be~~
24 ~~individualized in order to optimize the patient’s recovery and stability;~~
- 25 ~~———(2) Treatment with antipsychotic drugs should be as effective, safe, and well-tolerated~~
26 ~~as supported by best medical evidence;~~
- 27 ~~———(3) Treatment with antipsychotic drugs should consider the individual patient’s needs,~~
28 ~~preferences, and vulnerabilities;~~
- 29 ~~———(4) Treatment with antipsychotic drugs should support an improved quality of life for~~
30 ~~the patient;~~
- 31 ~~———(5) Treatment choices should be informed by the best current medical evidence and~~
32 ~~should be updated consistent with evolving nationally recognized best practice guidelines; and~~
- 33 ~~———(6) Cost considerations in the context of best practices, efficacy, and patient response~~
34 ~~to adverse drug reactions should guide antipsychotic medication policy and selection once the~~
35 ~~preceding principles have been maximally achieved.~~
- 36 ~~———4. If the division implements any new policy or clinical edit for an antipsychotic drug,~~
37 ~~the division shall continue to allow MO HealthNet participants access to any antipsychotic drug~~
38 ~~that they utilize and on which they are stable or that they have successfully utilized previously.~~
39 ~~The division shall adhere to the following:~~
- 40 ~~———(1) If an antipsychotic drug listed as “nonpreferred” is considered clinically appropriate~~
41 ~~for an individual patient based on the patient’s previous response to the drug or other medical~~
42 ~~considerations, prior authorization procedures, as such term is defined in section 208.164, shall~~
43 ~~be simple and flexible;~~
- 44 ~~———(2) If an antipsychotic drug listed as “nonpreferred” is known or found to be safe and~~
45 ~~effective for a given individual, the division shall not restrict the patient’s access to that drug.~~
46 ~~Such nonpreferred drug shall, for that patient only and if that patient has been reasonably~~
47 ~~adherent to the prescribed therapy, be considered “preferred” in order to minimize the risk of~~
48 ~~relapse and to support continuity of care for the patient;~~
- 49 ~~———(3) A patient shall not be required to change antipsychotic drugs due to changes in~~
50 ~~medication management policy, prior authorization, or a change in the payor responsible for the~~
51 ~~benefit; and~~
- 52 ~~———(4) Patients transferring from state psychiatric hospitals to community-based settings,~~
53 ~~including patients previously found to be not guilty of a criminal offense by reason of insanity~~
54 ~~or who have previously been found to be incompetent to stand trial, shall be permitted to~~
55 ~~continue the medication regimen that aided the stability and recovery so that such patient was~~
56 ~~able to successfully transition to the community-based setting.~~
- 57 ~~———5. The division’s medication policy and clinical edits shall provide MO HealthNet~~
58 ~~participants initial access to multiple Food and Drug Administration-approved antipsychotic~~

59 ~~drugs that have substantially the same clinical differences and adverse effects that are predictable~~
60 ~~across individual patients and whose manufacturers have entered into a federal rebate agreement~~
61 ~~with the Department of Health and Human Services. Clinical differences may include, but not~~
62 ~~be limited to, weight gain, extrapyramidal side effects, sedation, susceptibility to metabolic~~
63 ~~syndrome, other substantial adverse effects, the availability of long-acting formulations, and~~
64 ~~proven efficacy in the treatment of psychosis. The available drugs for an individual patient shall~~
65 ~~include, but not be limited to, the following categories:~~

66 ~~—— (1) At least one relatively weight-neutral atypical antipsychotic medication;~~

67 ~~—— (2) At least one long-acting injectable formulation of an atypical antipsychotic;~~

68 ~~—— (3) Clozapine;~~

69 ~~—— (4) At least one atypical antipsychotic medication with relatively potent sedative effects;~~

70 ~~—— (5) At least one medium-potency typical antipsychotic medication;~~

71 ~~—— (6) At least one long-acting injectable formulation of a high-potency typical~~
72 ~~antipsychotic medication;~~

73 ~~—— (7) At least one high-potency typical antipsychotic medication; and~~

74 ~~—— (8) At least one low-potency typical antipsychotic medication.~~

75 ~~—— 6. Nothing in subsection 5 of this section shall be construed to require any of the~~
76 ~~following:~~

77 ~~—— (1) Step therapy or a trial of a typical antipsychotic drug before permitting a patient~~
78 ~~access to an atypical drug or antipsychotic medication;~~

79 ~~—— (2) A limit of one atypical antipsychotic drug as an open-access, first-choice agent; or~~

80 ~~—— (3) A trial of one of the eight categories of drugs listed in subsection 5 of this section~~
81 ~~before having access to the other seven categories.~~

82 ~~—— 7.] The department of social services may promulgate rules and regulations to implement~~
83 ~~the provisions of this section. Any rule or portion of a rule, as that term is defined in section~~
84 ~~536.010, that is created under the authority delegated in this section shall become effective only~~
85 ~~if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section~~
86 ~~536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the~~
87 ~~general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove~~
88 ~~and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority~~
89 ~~and any rule proposed or adopted after August 28, 2017, shall be invalid and void.~~

90 ~~[8.] 4. The department shall submit such state plan amendments and waivers to the~~
91 ~~Centers for Medicare and Medicaid Services of the federal Department of Health and Human~~
92 ~~Services as the department determines are necessary to implement the provisions of this section.~~

93 ~~[9. As used in this section, the following terms mean:~~

94 ~~—— (1) “Division”, the MO HealthNet division of the department of social services;~~

95 ~~———— (2) “Reasonably adherent”, a patient’s adherence to taking medication on a prescribed~~
96 ~~schedule as measured by a medication position ratio of at least seventy-five percent;~~

97 ~~———— (3) “Successfully utilized previously”, a drug or drug regimen’s provision of clinical~~
98 ~~stability in treating a patient’s symptoms.]~~

376.1224. 1. For purposes of this section, the following terms shall mean:

2 (1) "Applied behavior analysis", the design, implementation, and evaluation of
3 environmental modifications, using behavioral stimuli and consequences, to produce socially
4 significant improvement in human behavior, including the use of direct observation,
5 measurement, and functional analysis of the relationships between environment and behavior;

6 (2) "Autism service provider":

7 (a) Any person, entity, or group that provides diagnostic or treatment services for autism
8 spectrum disorders who is licensed or certified by the state of Missouri; or

9 (b) Any person who is licensed under chapter 337 as a board-certified behavior analyst
10 by the behavior analyst certification board or licensed under chapter 337 as an assistant
11 board-certified behavior analyst;

12 (3) "Autism spectrum disorders", a neurobiological disorder, an illness of the nervous
13 system, which includes Autistic Disorder, Asperger's Disorder, Pervasive Developmental
14 Disorder Not Otherwise Specified, Rett's Disorder, and Childhood Disintegrative Disorder, as
15 defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders
16 of the American Psychiatric Association;

17 (4) "**Developmental or physical disability**", a severe chronic disability that:

18 (a) **Is attributable to cerebral palsy, epilepsy, or any other condition other than**
19 **mental illness or autism spectrum disorder which results in impairment of general**
20 **intellectual functioning or adaptive behavior and requires treatment or services;**

21 (b) **Manifests before the individual reaches nineteen years of age;**

22 (c) **Is likely to continue indefinitely; and**

23 (d) **Results in substantial functional limitations in three or more of the following**
24 **areas of major life activities:**

25 a. **Self-care;**

26 b. **Understanding and use of language;**

27 c. **Learning;**

28 d. **Mobility;**

29 e. **Self-direction; or**

30 f. **Capacity for independent living;**

31 (5) "Diagnosis [~~of autism spectrum disorders~~]", medically necessary assessments,
32 evaluations, or tests in order to diagnose whether an individual has an autism spectrum disorder
33 **or a developmental or physical disability;**

34 ~~[(5)]~~ (6) "Habilitative or rehabilitative care", professional, counseling, and guidance
35 services and treatment programs, including applied behavior analysis **for those diagnosed with**
36 **autism spectrum disorder**, that are necessary to develop the functioning of an individual;

37 ~~[(6)]~~ (7) "Health benefit plan", shall have the same meaning ascribed to it as in section
38 376.1350;

39 ~~[(7)]~~ (8) "Health carrier", shall have the same meaning ascribed to it as in section
40 376.1350;

41 ~~[(8)]~~ (9) "Line therapist", an individual who provides supervision of an individual
42 diagnosed with an autism diagnosis and other neurodevelopmental disorders pursuant to the
43 prescribed treatment plan, and implements specific behavioral interventions as outlined in the
44 behavior plan under the direct supervision of a licensed behavior analyst;

45 ~~[(9)]~~ (10) "Pharmacy care", medications used to address symptoms of an autism
46 spectrum disorder **or a developmental or physical disability** prescribed by a licensed physician,
47 and any health-related services deemed medically necessary to determine the need or
48 effectiveness of the medications only to the extent that such medications are included in the
49 insured's health benefit plan;

50 ~~[(10)]~~ (11) "Psychiatric care", direct or consultative services provided by a psychiatrist
51 licensed in the state in which the psychiatrist practices;

52 ~~[(11)]~~ (12) "Psychological care", direct or consultative services provided by a
53 psychologist licensed in the state in which the psychologist practices;

54 ~~[(12)]~~ (13) "Therapeutic care", services provided by licensed speech therapists,
55 occupational therapists, or physical therapists;

56 ~~[(13)]~~ (14) "Treatment [~~for autism spectrum disorders~~]", care prescribed or ordered for
57 an individual diagnosed with an autism spectrum disorder by a licensed physician or licensed
58 psychologist, **or for an individual diagnosed with a developmental or physical disability by**
59 **a licensed physician or licensed psychologist**, including equipment medically necessary for
60 such care, pursuant to the powers granted under such licensed physician's or licensed
61 psychologist's license, including, but not limited to:

62 (a) Psychiatric care;

63 (b) Psychological care;

64 (c) Habilitative or rehabilitative care, including applied behavior analysis therapy **for**
65 **those diagnosed with autism spectrum disorder;**

66 (d) Therapeutic care;

67 (e) Pharmacy care.

68 2. **Except as otherwise provided in subsection 12 of this section**, all ~~[group]~~ health
69 benefit plans that are delivered, issued for delivery, continued, or renewed on or after January
70 1, ~~[2011]~~ **2020**, if written inside the state of Missouri, or written outside the state of Missouri but
71 insuring Missouri residents, shall provide coverage for the diagnosis and treatment of autism
72 spectrum disorders **and for the diagnosis and treatment of developmental or physical**
73 **disabilities** to the extent that such diagnosis and treatment is not already covered by the health
74 benefit plan.

75 3. With regards to a health benefit plan, a health carrier shall not deny or refuse to issue
76 coverage on, refuse to contract with, or refuse to renew or refuse to reissue or otherwise
77 terminate or restrict coverage on an individual or their dependent because the individual is
78 diagnosed with autism spectrum disorder **or developmental or physical disabilities**.

79 4. (1) Coverage provided under this section **for autism spectrum disorder or**
80 **developmental or physical disabilities** is limited to medically necessary treatment that is
81 ordered by the insured's treating licensed physician or licensed psychologist, pursuant to the
82 powers granted under such licensed physician's or licensed psychologist's license, in accordance
83 with a treatment plan.

84 (2) The treatment plan, upon request by the health benefit plan or health carrier, shall
85 include all elements necessary for the health benefit plan or health carrier to pay claims. Such
86 elements include, but are not limited to, a diagnosis, proposed treatment by type, frequency and
87 duration of treatment, and goals.

88 (3) Except for inpatient services, if an individual is receiving treatment for an autism
89 spectrum disorder **or a developmental or physical disability**, a health carrier shall have the
90 right to review the treatment plan not more than once every six months unless the health carrier
91 and the individual's treating physician or psychologist agree that a more frequent review is
92 necessary. Any such agreement regarding the right to review a treatment plan more frequently
93 shall only apply to a particular individual ~~[being treated for an autism spectrum disorder]~~
94 **receiving applied behavior analysis** and shall not apply to all individuals ~~[being treated for~~
95 ~~autism spectrum disorders by a]~~ **receiving applied behavior analysis from that autism service**
96 **provider**, physician, or psychologist. The cost of obtaining any review or treatment plan shall
97 be borne by the health benefit plan or health carrier, as applicable.

98 5. **(1)** Coverage provided under this section for applied behavior analysis shall be
99 subject to a maximum benefit of forty thousand dollars per calendar year for individuals through
100 eighteen years of age. Such maximum benefit limit may be exceeded, upon prior approval by
101 the health benefit plan, if the provision of applied behavior analysis services beyond the
102 maximum limit is medically necessary for such individual. Payments made by a health carrier

103 on behalf of a covered individual for any care, treatment, intervention, service or item, the
104 provision of which was for the treatment of a health condition unrelated to the covered
105 individual's autism spectrum disorder, shall not be applied toward any maximum benefit
106 established under this subsection. Any coverage required under this section, other than the
107 coverage for applied behavior analysis, shall not be subject to the age and dollar limitations
108 described in this subsection.

109 ~~[6-]~~ (2) The maximum benefit limitation for applied behavior analysis described in
110 ~~[subsection 5]~~ **subdivision (1)** of this ~~[section]~~ **subsection** shall be adjusted by the health carrier
111 at least triennially for inflation to reflect the aggregate increase in the general price level as
112 measured by the Consumer Price Index for All Urban Consumers for the United States, or its
113 successor index, as defined and officially published by the United States Department of Labor,
114 or its successor agency. Beginning January 1, 2012, and annually thereafter, the current value
115 of the maximum benefit limitation for applied behavior analysis coverage adjusted for inflation
116 in accordance with this subsection shall be calculated by the director of the department of
117 insurance, financial institutions and professional registration. The director shall furnish the
118 calculated value to the secretary of state, who shall publish such value in the Missouri Register
119 as soon after each January first as practicable, but it shall otherwise be exempt from the
120 provisions of section 536.021.

121 ~~[7-]~~ (3) Subject to the provisions set forth in subdivision (3) of subsection 4 of this
122 section, coverage provided **for autism spectrum disorders** under this section shall not be
123 subject to any limits on the number of visits an individual may make to an autism service
124 provider, except that the maximum total benefit for applied behavior analysis set forth in
125 **subdivision (1) of this subsection** ~~[5 of this section]~~ shall apply to this ~~[subsection]~~ **subdivision**.

126 **6. Coverage for therapeutic care provided under this section for developmental or**
127 **physical disabilities may be limited to a number of visits per calendar year; provided that,**
128 **upon prior approval by the health benefit plan, coverage shall be provided beyond the**
129 **maximum calendar limit if such therapeutic care is medically necessary as determined by**
130 **the health care plan.**

131 ~~[8-]~~ 7. This section shall not be construed as limiting benefits which are otherwise
132 available to an individual under a health benefit plan. The health care coverage required by this
133 section shall not be subject to any greater deductible, coinsurance, or co-payment than other
134 physical health care services provided by a health benefit plan. Coverage of services may be
135 subject to other general exclusions and limitations of the contract or benefit plan, not in conflict
136 with the provisions of this section, such as coordination of benefits, exclusions for services
137 provided by family or household members, and utilization review of health care services,

138 including review of medical necessity and care management; however, coverage for treatment
139 under this section shall not be denied on the basis that it is educational or habilitative in nature.

140 ~~[9-]~~ **8.** To the extent any payments or reimbursements are being made for applied
141 behavior analysis, such payments or reimbursements shall be made to either:

142 (1) The autism service provider, as defined in this section; or

143 (2) The entity or group for whom such supervising person, who is certified as a
144 board-certified behavior analyst by the Behavior Analyst Certification Board, works or is
145 associated.

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147 Such payments or reimbursements under this subsection to an autism service provider or a
148 board-certified behavior analyst shall include payments or reimbursements for services provided
149 by a line therapist under the supervision of such provider or behavior analyst if such services
150 provided by the line therapist are included in the treatment plan and are deemed medically
151 necessary.

152 ~~[10-]~~ **9.** Notwithstanding any other provision of law to the contrary, health carriers shall
153 not be held liable for the actions of line therapists in the performance of their duties.

154 ~~[11-]~~ **10.** The provisions of this section shall apply to any health care plans issued to
155 employees and their dependents under the Missouri consolidated health care plan established
156 pursuant to chapter 103 that are delivered, issued for delivery, continued, or renewed in this state
157 on or after January 1, ~~[2011]~~ **2020**. The terms "employees" and "health care plans" shall have
158 the same meaning ascribed to them in section 103.003.

159 ~~[12-]~~ **11.** The provisions of this section shall also apply to the following types of plans
160 that are established, extended, modified, or renewed on or after January 1, ~~[2011]~~ **2020**:

161 (1) All self-insured governmental plans, as that term is defined in 29 U.S.C. Section
162 1002(32);

163 (2) All self-insured group arrangements, to the extent not preempted by federal law;

164 (3) All plans provided through a multiple employer welfare arrangement, or plans
165 provided through another benefit arrangement, to the extent permitted by the Employee
166 Retirement Income Security Act of 1974, or any waiver or exception to that act provided under
167 federal law or regulation; and

168 (4) All self-insured school district health plans.

169 ~~[13- The provisions of this section shall not automatically apply to an individually
170 underwritten health benefit plan, but shall be offered as an option to any such plan.~~

171 ~~————~~ ~~[14-]~~ **12.** The provisions of this section shall not apply to a supplemental insurance policy,
172 including a life care contract, accident-only policy, specified disease policy, hospital policy
173 providing a fixed daily benefit only, Medicare supplement policy, long-term care policy,

174 short-term major medical policy [~~of six months or less duration~~] **having a duration of less than**
175 **one year**, or any other supplemental policy. **The provisions of this section requiring coverage**
176 **for autism spectrum disorders shall not apply to an individually underwritten health**
177 **benefit plan issued prior to January 1, 2011. The provisions of this section requiring**
178 **coverage for a developmental or physical disability shall not apply to a health benefit plan**
179 **issued prior to January 1, 2014.**

180 ~~[15.]~~ **13.** Any health carrier or other entity subject to the provisions of this section shall
181 not be required to provide reimbursement for the applied behavior analysis delivered to a person
182 insured by such health carrier or other entity to the extent such health carrier or other entity is
183 billed for such services by any Part C early intervention program or any school district for
184 applied behavior analysis rendered to the person covered by such health carrier or other entity.
185 This section shall not be construed as affecting any obligation to provide services to an
186 individual under an individualized family service plan, an individualized education plan, or an
187 individualized service plan. This section shall not be construed as affecting any obligation to
188 provide reimbursement pursuant to section 376.1218.

189 ~~[16.]~~ **14.** The provisions of sections 376.383, 376.384, and 376.1350 to 376.1399 shall
190 apply to this section.

191 ~~[17. The director of the department of insurance, financial institutions and professional~~
192 ~~registration shall grant a small employer with a group health plan, as that term is defined in~~
193 ~~section 379.930, a waiver from the provisions of this section if the small employer demonstrates~~
194 ~~to the director by actual claims experience over any consecutive twelve-month period that~~
195 ~~compliance with this section has increased the cost of the health insurance policy by an amount~~
196 ~~of two and a half percent or greater over the period of a calendar year in premium costs to the~~
197 ~~small employer.~~

198 ~~———[18.]~~ **15.** The provisions of this section shall not apply to the ~~[Mø]~~ **MO** HealthNet
199 program as described in chapter 208.

200 ~~[19. (1) By February 1, 2012, and every February first thereafter, the department of~~
201 ~~insurance, financial institutions and professional registration shall submit a report to the general~~
202 ~~assembly regarding the implementation of the coverage required under this section. The report~~
203 ~~shall include, but shall not be limited to, the following:~~

- 204 ~~———(a) The total number of insureds diagnosed with autism spectrum disorder;~~
205 ~~———(b) The total cost of all claims paid out in the immediately preceding calendar year for~~
206 ~~coverage required by this section;~~
207 ~~———(c) The cost of such coverage per insured per month; and~~
208 ~~———(d) The average cost per insured for coverage of applied behavior analysis;~~

209 ~~——(2) All health carriers and health benefit plans subject to the provisions of this section~~
210 ~~shall provide the department with the data requested by the department for inclusion in the~~
211 ~~annual report.]~~

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