

**SUBCHAPTER JJ. AUTISM SPECTRUM DISORDER COVERAGE**  
**DIVISION 1. GENERAL PROVISIONS**  
**28 TAC §§21.4401 - 21.4404**

**INTRODUCTION.** The Texas Department of Insurance proposes amendments to 28 TAC §§21.4401 - 21.4404 concerning autism spectrum disorder coverage. These proposed amendments are necessary to conform TDI's rules to the statutory changes made by HB 3276 and SB 1484, 83rd Legislature, Regular Session (2013).

**EXPLANATION.** Insurance Code §1355.015 requires health benefit plans to provide a minimum level of coverage for autism spectrum disorder. SB 1484 removed an age restriction on the minimum coverage required by §1355.015 while an autism spectrum disorder diagnosis is in place. SB 1484 also amended §1355.015 to allow an annual limitation on applied behavior analysis for enrollees 10 years of age or older. HB 3276 amended §1355.015 to add a requirement for coverage of autism screening at the age of 18 and 24 months and provide that an individual acting under the supervision of a health care practitioner may provide covered treatment. The proposed amendments to 28 TAC §§21.4401 - 21.4404 are necessary to update the rules so they conform to the statute as amended.

The proposed amendments to §21.4403 address the changes made by SB 1484 and HB 3276 to mandated coverage related to autism spectrum disorder. TDI proposes amending §21.4403(a) to eliminate the age restriction on mandated autism coverage; amending §21.4403(b) to clarify that additional coverage beyond the mandate is not precluded; adding new §21.4403(e) to require coverage of autism screening at the ages of 18 and 24 months; and adding new §21.4403(f) to allow annual limits on applied behavior analysis benefits after the enrollee reaches age 10. The amendments are necessary to align TDI's rules with Insurance Code §1355.015 as amended by SB 1484 and HB 3276, and impose no new or additional requirements to those in the statute as amended.

The proposed amendments to §21.4404 allow an individual acting under the supervision of a health care practitioner to provide prescribed treatment under

Insurance Code §1355.015(b) and revises the structure of the rule to accommodate the addition. The amendments are necessary to align TDI's rules with §1355.015 as amended by HB 3276, and impose no new or additional requirements to those in the statute as amended.

Nonsubstantive changes are also necessary throughout §§21.4401 - 21.4404 to conform to agency style and usage guidelines.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Jan Graeber, chief actuary and director of the Rate and Form Review Office for the Life, Accident, and Health Section, has determined that, for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of this proposal. Ms. Graeber does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendments and new subsections are in effect, Ms. Graeber expects that enforcing or administering the proposed sections will have the significant public benefit of ensuring that TDI's rules conform to Insurance Code §1355.015. The proposed amendments will not increase the cost of compliance with §1355.015 because they do not impose requirements beyond those in the statute. Section 1355.015 requires that health benefit plans provide the minimum level of coverage related to autism spectrum disorder set out in the proposed amendments. As a result, the costs associated with providing the expanded coverage result from the statutory mandate and not from the enforcement or administration of §§21.4401 - 21.4404.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** As required by Government Code §2006.002, TDI has determined that the proposal will not have an adverse economic effect on small or micro businesses. The proposal does not include any new

requirements or costs with which businesses, regardless of size, must comply that are not already required by Insurance Code §1355.015 as amended by HB 3276 and SB 1484. As a result, TDI is not required to prepare a regulatory flexibility analysis.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and so does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** If you wish to comment on this proposal or request a hearing you must do so in writing no later than 5 p.m. Central time on January 20, 2015. Send your written comments or hearing request by email to [chiefclerk@tdi.texas.gov](mailto:chiefclerk@tdi.texas.gov), or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A hearing request must be on a separate page from any written comments. You must simultaneously submit an additional copy of the comments or hearing request either by email to [lhcomments@tdi.texas.gov](mailto:lhcomments@tdi.texas.gov), or by mail to Jan Graeber, Director and Chief Actuary, Rate and Form Review Office, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. If a hearing is held, TDI will consider written comments and public testimony presented at the hearing.

**STATUTORY AUTHORITY.** TDI proposes the amendments under Insurance Code §1355.015 and §36.001. Section 1355.015 establishes the requirement that health benefit plans provide autism spectrum disorder coverage. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

**CROSS REFERENCE TO STATUTE.** The proposal affects Insurance Code §1355.015.

**TEXT.**

**SUBCHAPTER JJ. Autism Spectrum Disorder Coverage**  
**28 TAC §§21.4401 - 21.4404**

**§21.4401. Purpose and Applicability**

(a) General Purpose. This subchapter implements those provisions of ~~the~~ Insurance Code Chapter 1355, Subchapter A, that relate to autism spectrum disorder coverage. The general purpose of this subchapter is to ensure health benefit plan coverage for the early intervention, treatment, and services of ~~certain child~~ enrollees diagnosed with autism spectrum disorder, as provided in ~~the~~ Insurance Code Chapter 1355, Subchapter A.

(b) Applicability.

(1) This subchapter applies to:

(A) the health benefit plans specified in ~~the~~ Insurance Code §1355.002; and

(B) small employer health benefit plans offered under ~~pursuant to the~~ Insurance Code §1501.252(c).

(2) This subchapter does not apply to:

(A) a standard health benefit plan ~~provided~~ under ~~the~~ Insurance Code Chapter 1507, as provided in ~~pursuant to the~~ Insurance Code §1355.015(e);

(B) a health benefit plan issued by a health carrier through a health group cooperative under ~~the~~ Insurance Code §1501.058, as provided in ~~pursuant to the~~ Insurance Code §1501.0581(i); or

(C) a health benefit plan specified in ~~the~~ Insurance Code §1355.003(a)(1) - (7).

### **§21.4402. Definitions**

The following words and terms, when used in this subchapter, ~~[shall]~~ have the following meanings unless the context clearly indicates otherwise.

(1) Applied behavior analysis--The design, implementation, and evaluation of systematic environmental changes to produce socially significant change in human behavior through skill acquisition and the reduction of problematic behavior. Applied behavior analysis includes direct observation and measurement of behavior and the identification of functional relations between behavior and the environment. Contextual factors, establishing operations, antecedent stimuli, positive reinforcers, and other consequences are used to produce the desired behavior change.

(2) Autism spectrum disorder--As defined in ~~[the]~~ Insurance Code §1355.001(3).

(3) Enrollee--A person covered by a health benefit plan described by ~~[the]~~ Insurance Code §1355.002.

(4) Generally recognized services--The term includes, but is not limited to, the following services, when the ~~[such]~~ services are prescribed as provided in ~~[in accordance with the]~~ Insurance Code §1355.015(b) and §21.4403(b) of this subchapter ~~[(relating to Required Coverage)]~~:

- (A) evaluation and assessment services;
- (B) applied behavior analysis;
- (C) behavior training and behavior management;
- (D) speech therapy;
- (E) occupational therapy;
- (F) physical therapy; or
- (G) medications or nutritional supplements used to address symptoms of autism spectrum disorder.

(5) Health care practitioner--A physician, advance practice nurse, physician assistant, or other individual appropriately licensed, registered, or certified, or whose professional credential is recognized and accepted as described by ~~[the]~~ Insurance Code §1355.015(b).

(6) Neurobiological disorder--As defined in ~~[the]~~ Insurance Code §1355.001(4).

(7) Primary care physician--A physician selected or otherwise designated as the enrollee's primary care physician under ~~[pursuant to]~~ the provisions of the enrollee's health benefit plan or, if the enrollee's health benefit plan does not contain provisions concerning selection or designation of a primary care physician, a physician selected or otherwise designated by the enrollee or the enrollee's parent or guardian to develop a treatment plan for the purpose of treating autism spectrum disorder.

### **§21.4403. Required Coverage**

(a) Certain ~~[Children]~~ Enrollees.

~~[(1)]~~ At a minimum, a health benefit plan must provide coverage as provided by ~~[the]~~ Insurance Code §1355.015 to an enrollee who is diagnosed with autism spectrum disorder from the date of diagnosis if the diagnosis was in place prior to the enrollee's 10th birthday ~~[described by the Insurance Code §1355.015(a)].~~

~~[(2) Pursuant to the Insurance Code §1355.015(a), the health benefit plan is not precluded from providing coverage of treatment and services described by §1355.015(b) of the Insurance Code because an enrollee who is being treated for autism spectrum disorder becomes older than the age range specified by §1355.015(a).]~~

(b) Additional Coverage ~~[Enrollees of Other Ages]~~. A health benefit plan is not prevented ~~[precluded]~~ from providing additional coverage beyond that required by Insurance Code §1355.015 ~~[of treatment and services described by §1355.015(b) of the Insurance Code for enrollees of other ages]~~.

(c) Medical and Surgical Benefit. As provided in ~~[In accordance with the]~~ Insurance Code §1355.002 and §1355.015(b), a health benefit plan issuer must provide coverage as a medical and surgical benefit under the health benefit plan for all generally recognized services prescribed in relation to autism spectrum disorder by the enrollee's primary care physician in the treatment plan recommended by that physician.

(d) Deductibles, Copayments, and Coinsurance. Under ~~[Pursuant to the]~~ Insurance Code §1355.015(d), coverage under this section may be subject to annual deductibles, copayments, and coinsurance that are consistent with annual deductibles, copayments, and coinsurance required for other coverage under the health benefit plan.

(e) Screening. A health benefit plan must provide coverage for screening a child for autism spectrum disorder at the ages of 18 and 24 months as provided by Insurance Code §1355.015.

(f) Allowable Limits on Applied Behavior Analysis Benefits. The health benefit plan is not required to provide coverage under Insurance Code §1355.015(b) for benefits for an enrollee 10 years of age or older for applied behavior analysis in an amount that exceeds \$36,000 per year, as provided in Insurance Code §1355.015(c-1).

#### **§21.4404. Health Care Practitioners**

(a) ~~[Health Care Practitioner]~~ Who May Provide ~~[Provides]~~ Treatment. As required in ~~[Pursuant to the]~~ Insurance Code §1355.015(b), an individual ~~[a health care practitioner]~~ providing treatment for autism spectrum disorder under ~~[the]~~ Insurance Code Chapter 1355, Subchapter A, and this subchapter must be:

(1) a health care practitioner:

(A) who is ~~[be]~~ licensed, certified, or registered by an appropriate agency of this state;

(B) [(2)] whose ~~[have]~~ professional credentials ~~[that]~~ are recognized and accepted by an appropriate agency of the United States; or

(C) [(3)] who is ~~[be]~~ certified as a provider under the TRICARE military health system; or

(2) an individual acting under the supervision of a health care practitioner described by paragraph (1) of this subsection.

(b) Coverage for Applied Behavior Analysis. A health benefit plan issuer may not deny coverage for services for autism spectrum disorder on the basis that a health care practitioner providing applied behavior analysis does not hold a license issued by

an agency of this state, as long the health care practitioner otherwise meets one of the requirements of [the] Insurance Code §1355.015(b).

**CERTIFICATION.** This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued at Austin, Texas, on December 5, 2014.



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Sara Waitt  
General Counsel  
Texas Department of Insurance