

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

INTRODUCTION. The Texas Department of Insurance adopts amendments to 28 TAC §§21.4401 - 21.4404, concerning autism spectrum disorder coverage. The amendments are adopted with changes to the proposed text published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 9799).

REASONED JUSTIFICATION. The amendments are necessary to update the rules so they conform to Insurance Code §1355.015 as amended by SB 1484 and HB 3276, 83rd Legislature, Regular Session (2013). TDI also makes nonsubstantive editorial changes throughout §§21.4401 - 21.4404.

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 months and 24 months and provide that an individual acting under the supervision of a health care practitioner may provide covered treatment.

The amendments to §21.4403 address the changes made to mandated coverage related to autism spectrum disorder by SB 1484 and HB 3276. TDI amends §21.4403(a) to eliminate the age restriction on mandated autism coverage; amends §21.4403(b) to clarify that additional coverage beyond the mandate is not prevented; adds new §21.4403(e) to require coverage of autism screening at the ages of 18 months and 24 months; and adds 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 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 revise 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.

In response to a comment on the published proposal, TDI adopts the rule with a change to the definition of "health care practitioner" in §21.4402(5). The update reflects the most current terminology used for advanced practice registered nurses in other statutes, and does not introduce new subject matter, create additional costs, or affect persons other than those previously on notice from the proposal.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: A commenter suggests amending the definition of "health care practitioner" in §21.4402(5) to reflect current law and terminology in Texas with regard to advanced practice registered nursing.

Agency Response: TDI agrees with the suggestion and makes the change in the adopted rule.

Comment: A commenter recommends that the rule include coverage for services by a licensed dietician.

Agency Response: TDI declines to make the recommended change. If services by a licensed dietician are generally recognized services, then medically necessary licensed dietician services included in the physician's treatment plan would be covered by the rule as currently written because the rule's definition of generally recognized services states that the term "includes, but is not limited to," the enumerated services. TDI

anticipates that a carrier would determine whether the services are generally recognized services and pay or reject the claim accordingly. A consumer or provider who disagrees with the determination could file a complaint with TDI. TDI declines to make the change at this time, but will monitor complaints for further consideration if needed.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For with changes: Texas Academy of Nutrition and Dietetics, and the Coalition for Nurses in Advanced Practice.

STATUTORY AUTHORITY. The amendments are adopted 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.

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 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 enrollees diagnosed with autism spectrum disorder, as provided in Insurance Code Chapter 1355, Subchapter A.

(b) Applicability.

(1) This subchapter applies to:

- (A) the health benefit plans specified in Insurance Code §1355.002; and
 - (B) small employer health benefit plans offered under Insurance Code §1501.252(c).
- (2) This subchapter does not apply to:
- (A) a standard health benefit plan under Insurance Code Chapter 1507, as provided in Insurance Code §1355.015(e);
 - (B) a health benefit plan issued by a health carrier through a health group cooperative under Insurance Code §1501.058, as provided in Insurance Code §1501.0581(i); or
 - (C) a health benefit plan specified in Insurance Code §1355.003(a)(1) - (7).

§21.4402. Definitions

The following words and terms, when used in this subchapter, 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 Insurance Code §1355.001(3).
- (3) Enrollee--A person covered by a health benefit plan described by Insurance Code §1355.002.

(4) Generally recognized services--The term includes, but is not limited to, the following services, when the services are prescribed as provided in Insurance Code §1355.015(b) and §21.4403(b) of this subchapter:

- (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, advanced practice registered nurse, physician assistant, or other individual appropriately licensed, registered, or certified, or whose professional credential is recognized and accepted as described by Insurance Code §1355.015(b).

(6) Neurobiological disorder--As defined in Insurance Code §1355.001(4).

(7) Primary care physician--A physician selected or otherwise designated as the enrollee's primary care physician under 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 Enrollees. At a minimum, a health benefit plan must provide coverage as provided by 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.

(b) Additional Coverage. A health benefit plan is not prevented from providing additional coverage beyond that required by Insurance Code §1355.015.

(c) Medical and Surgical Benefit. As provided in 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 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 months 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) Who May Provide Treatment. As required in Insurance Code §1355.015(b), an individual providing treatment for autism spectrum disorder under Insurance Code Chapter 1355, Subchapter A, and this subchapter must be:

(1) a health care practitioner:

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

(B) whose professional credentials are recognized and accepted by an appropriate agency of the United States; or

3841

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 21. Trade Practices

Adopted Sections
Page 7 of 7

(C) who is 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 subdivision (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 Insurance Code §1355.015(b).

CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on February 24, 2015.



Sara Waitt
General Counsel
Texas Department of Insurance

The commissioner adopts amendments to §§21.4401 - 21.4404.



David C. Mattax
Commissioner of Insurance

COMMISSIONER'S ORDER NO. **3841**