

CHAPTER 150**(HB 159)**

AN ACT relating to behavioral disorders.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. KRS CHAPTER 319B IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

As used in this chapter, unless the context requires otherwise:

- (1) *"Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior;*
- (2) *"Applied behavior analysis interventions" means interventions that are based on scientific research and the direct observation and measurement of behavior and environment which utilize contextual factors, establishing operations, antecedent stimuli, positive reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and elicit behaviors under specific environmental conditions;*
- (3) *"Board" means the Kentucky Applied Behavior Analysis Licensing Board;*
- (4) *"Certification board" means the Behavior Analyst Certification Board® or its successor;*
- (5) *"Certified" means a practitioner who has met the certification criteria of the certification board;*
- (6) *"Licensed behavior analyst" means an individual who is licensed by the board and meets the requirements of Section 8 of this Act;*
- (7) *"Licensed assistant behavior analyst" means an individual who:*
 - (a) *Is licensed by the board as an assistant behavior analyst and meets the requirements of Section 8 of this Act; and*
 - (b) *Works under the supervision of a certified behavior analyst;*
- (8) *"Practice of applied behavior analysis" means the application of the principles, methods, and procedures of the experimental analysis of behavior and applied behavior analysis, including but not limited to applications of those principles, methods, and procedures to:*
 - (a) *Design, implement, evaluate, and modify treatment programs to change the behavior of individuals diagnosed with an autism spectrum disorder;*
 - (b) *Design, implement, evaluate, and modify treatment programs to change the behavior of individuals;*
 - (c) *Design, implement, evaluate, and modify treatment programs to change the behavior of groups; and*
 - (d) *Consult with individuals and organizations.*

The practice of applied behavior analysis shall not include diagnosis, counseling, psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, or hypnotherapy as treatment modalities;
- (9) *"Supervised experience" means services rendered as a part of the certification requirements of a behavior analyst or assistant behavior analyst under the supervision of a licensed behavior analyst;*
- (10) *"Supervisee" means a person who is not licensed but acts under the extended authority and direction of a licensed behavior analyst or a licensed assistant behavior analyst to provide applied behavior analysis services; and*
- (11) *"Temporary licensee" means a person who is obtaining supervised experience and has obtained a temporary license.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

(1) No person shall:

- (a) Engage in the practice of applied behavior analysis, assist in the practice of applied behavior analysis, render services designated as applied behavior analysis, or hold himself or herself out as a practitioner of applied behavior analysis in this state, unless licensed under the provisions of this chapter; or*
- (b) Use the title "licensed behavior analyst" or "licensed assistant behavior analyst" or any title which is substantially the same unless licensed by the board.*

Any person who violates this subsection shall be subject to the penalties contained in Section 15 of this Act.

(2) The provisions of this chapter shall not apply to any person who is:

- (a) Providing applied behavior analysis services to an individual in a public school setting;*
- (b) Implementing applied behavior analysis intervention services to an immediate family member or as a supervisee;*
- (c) Licensed, certified, or registered as a health or allied health professional under any other provisions of the Kentucky Revised Statutes, including but not limited to physicians, psychologists, social workers, nurses, counselors, therapists, including occupational therapists, physical therapists and speech therapists, or students within accredited training programs of these professions. Nothing in this chapter shall be construed to limit, interfere with, or restrict the practice, descriptions of services, or manner in which the health or allied health professional listed in this subsection hold themselves out to the public; or*
- (d) Providing applicable Medicaid waiver services.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

(1) (a) There is hereby created the Kentucky Applied Behavior Analysis Licensing Board. The board shall consist of seven (7) members appointed by the Governor.**(b) The initial board members shall be appointed as follows:**

- 1. Four (4) members shall be credentialed behavior analysts nominated by a credentialed behavior analyst practicing in the state;*
- 2. One (1) member shall be a psychologist licensed in the state, the majority of whose practice is related to the treatment of behavior disorders, including but not limited to autism spectrum disorders. The psychologist member shall be nominated by a credentialed behavior analyst practicing in the state; and*
- 3. Two (2) members shall be the parent of a child diagnosed with and treated for a behavior disorder, including but not limited to an autism spectrum disorder, selected from the state at large.*

(c) Subsequent board members shall be appointed by the Governor as follows:

- 1. Four (4) members shall be licensed behavior analysts nominated by a licensed behavior analyst practicing in the state;*
- 2. One (1) member shall be a psychologist licensed in the state, the majority of whose practice is related to the treatment of behavior disorders, including but not limited to autism spectrum disorders. The psychologist member shall be nominated by a licensed behavior analyst practicing in the state; and*
- 3. Two (2) members shall be the parent of a child diagnosed with and treated for a behavior disorder, including but not limited to an autism spectrum disorder, selected from the state at large.*

(2) The terms of the board members shall be as follows:

- (a) The initial board members shall be appointed as determined by the Governor for the following terms:**
 - 1. Two (2) behavior analysts shall serve for one (1) year;*
 - 2. Two (2) behavior analysts shall serve for three (3) years;*

3. *A psychologist shall serve for two (2) years;*
 4. *One (1) parent shall serve for one (1) year; and*
 5. *One (1) parent shall serve for two (2) years;*
- (b) *The terms of subsequent board members shall be for three (3) years; and*
- (c) *A vacancy of any board member shall be filled in the manner of the original appointment for the unexpired portion of the term only or as provided by KRS 12.070. The Governor, after notice and opportunity for a hearing, may remove any member of the board for malfeasance, neglect of duty, incompetency, or revocation or suspension of a license.*
- (3) *Members of the board shall not receive a salary but shall be allowed the usual mileage, subsistence, and per diem as provided for members of state boards, commissions, and committees. No member shall serve more than two (2) consecutive terms.*
 - (4) *The board may request the removal of a board member by the Governor.*
 - (5) *The board shall annually elect a chair, vice chair, and secretary.*
 - (6) *There shall be no liability on the part of, and no action for damages against, any current or former board member, representative, agent, or employee of the board, when the person is functioning within the scope of board duties, acting without malice and with the reasonable belief that the actions taken by him or her are warranted by law.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall meet at least twice annually and may meet at such other times as necessary to complete the business required. A majority of the members of the board shall constitute a quorum for the transaction of business.*
- (2) *The board may employ an executive secretary and such clerical or other assistants as are necessary for the performance of its work and may make expenditures of its funds for any purpose which in the opinion of the board is necessary for proper performance of its duties, including compensation of the executive secretary and the premium on his or her bond.*
- (3) *The executive secretary or any other person so designated by the board shall give bond to the state in such sum as determined by the board, to be approved by the State Treasurer for the faithful performance of his or her duties. The executive secretary shall receive and account for all moneys derived under this chapter and shall pay such moneys to the State Treasurer who shall maintain them in the manner provided for other such agencies and boards of the Commonwealth.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *It shall be the duty of the board to establish requirements for licensure to practice applied behavior analysis in the state in accordance with Section 6 of this Act, to receive applications for licensure from persons desiring to become a behavior analyst, an assistant behavior analyst, or a temporary licensee from persons seeking to obtain supervised experience in the state, and to determine whether those applicants meet the qualifications and standards required by this chapter of all behavior analysts, assistant behavior analysts, or temporary licensees.*
- (2) *The board is an agency of state government with the power to institute criminal proceedings in the name of the Commonwealth against violators of this chapter, and to institute civil proceedings to enjoin any violation of this chapter. The board shall investigate every alleged violation of this chapter brought to the board's notice and shall take action as it may deem appropriate. It shall be the duty of the Attorney General, the Commonwealth's attorneys, and the county attorneys to assist the board in prosecuting all violations of this chapter.*
- (3) *All meetings shall be held at the call of the chair or at a call of a majority of members upon not less than ten (10) days' written notice, unless notice shall be waived. The presence of any member at any meeting of the board shall constitute a waiver of notice thereof by the member.*
- (4) *The board may conduct investigations and schedule and conduct administrative hearings in accordance with KRS Chapter 13B to enforce the provisions of this chapter or administrative regulations promulgated*

pursuant to this chapter. The board shall have the authority to administer oaths, receive evidence, interview persons, issue subpoenas, and require the production of books, papers, documents, or other evidence. In case of disobedience to a subpoena, the board may invoke the aid of the Franklin Circuit Court. Any order or subpoena of the court requiring the attendance or testimony of witnesses or the production of documentary evidence may be enforced and shall be valid anywhere in the Commonwealth.

- (5) *The board shall keep a minute book containing a record of all meetings of the board.*
- (6) *The board shall maintain a register of all persons licensed under this chapter. This register shall show the name of every licensee in this state, his or her current business and residence address and telephone numbers, and the date and number of his or her license. A licensee shall notify the board of a change of name, address, or telephone number, within thirty (30) days of the change.*
- (7) *The board's records shall be updated annually.*
- (8) *The board shall publish annually and make available a current directory of all licensed behavior analysts, licensed assistant behavior analysts, and temporary licensees obtaining supervised experience.*
- (9) *The board shall adopt a seal which shall be affixed to every license and certificate granted by it.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall have the right to regulate the practice of applied behavior analysis in the state including behavior analysts, assistant behavior analysts, and temporary licensees, including licensure, limitations of activities, supervision, and educational qualifications and continuing education requirements for behavior analysts, assistant behavior analysts, temporary licensees and supervisees. The board shall administer and enforce the provisions of this chapter and shall have the responsibility of evaluating the qualifications of applicants for licensure.*
- (2) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A relating to the licensure and regulation of behavior analysts, assistant behavior analysts, and temporary licensees including:*
 - (a) *Establishing standards for licensure, temporary licensure, limitations of activities, supervision, and compliance with the educational qualifications as required by Section 8 of this Act for behavior analysts, assistant behavior analysts, and temporary licensees;*
 - (b) *Establishing the number of persons a licensed behavior analyst may supervise at one (1) time, including temporary licensees and supervisees;*
 - (c) *Adopting a code of ethical standards and standards of practice for all licensed behavior analysts, assistant behavior analysts, and temporary licensees;*
 - (d) *Establishing a measure of continued competency as a condition of license renewal and standards for suspension, revocation, or refusal to issue or renew a license of a behavior analyst, assistant behavior analyst, or temporary licensee;*
 - (e) *Governing the physical and mental examination of behavior analysts, assistant behavior analysts, and temporary licensees who may be impaired by reason of a mental, physical, or other condition that impedes their ability to practice competently. For purposes of enforcing this section, the board shall have the power to order an immediate temporary suspension in accordance with KRS 13B.125 if there is a reasonable cause to believe that a behavior analyst, assistant behavior analyst, temporary licensee, or applicant may be impaired by reason of a mental, physical, or other condition that impedes his or her ability to practice competently; and*
 - (f) *Establishing reasonable fees for the licensure and license renewal of behavior analysts, assistant behavior analysts, and temporary licensees.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

The board may deny an application or reregistration for a license, place a licensee on probation for a period not to exceed five (5) years, suspend a license for a period not to exceed five (5) years, limit or restrict a license for an indefinite period, or revoke any license issued by the board, upon proof that the licensee has:

- (1) *Knowingly made or presented, or caused to be made or presented, any false, fraudulent, or forged statement, writing, certificate, diploma, or other thing, in connection with an application for a license or permit;*

- (2) *Practiced, or aided or abetted in the practice of, fraud, forgery, deception, collusion, or conspiracy in connection with an examination for a license;*
- (3) *Entered a guilty or nolo contendere plea, or been convicted, by any court within or without the Commonwealth of Kentucky, of committing an act which is, or would be, a felony under the laws of the Commonwealth of Kentucky or of the United States, or of any crime involving moral turpitude which is a misdemeanor under the laws of this or another state;*
- (4) *Been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, or KRS 530.064(1)(a) or 531.310, or been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the licensee;*
- (5) *Become addicted to a controlled substance;*
- (6) *Become a chronic or persistent alcoholic;*
- (7) *Been unable or is unable to practice applied behavior analysis according to acceptable and prevailing standards of care by reason of mental or physical illness or other condition, including but not limited to physical deterioration that adversely affects cognitive, motor, or perceptive skills, or by reason of an extended absence from the active practice of applied behavior analysis;*
- (8) *Engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof; or*
- (9) *Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his profession.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *A person applying for a license as a licensed behavior analyst shall apply to the board upon such form and in such manner as the board shall prescribe and shall furnish evidence to the board that such person:*
 - (a) *Has met the education requirements of the Board Certified Behavior Analyst (BCBA)® standards, has passed the Board Certified Behavior Analyst (BCBA)® examination, and is credentialed as a behavior analyst by the certification board;*
 - (b) *Maintains active status and fulfills all requirements for renewal and recertification with the certification board as a Board Certified Behavior Analyst (BCBA)®;*
 - (c) *Conducts his or her professional activities in accordance with accepted standards as required by administrative regulations promulgated by the board in accordance with subsection (1) of Section 5 of this Act; and*
 - (d) *Complies with all applicable administrative regulations promulgated by the board.*
- (2) *A person applying for a license as a licensed assistant behavior analyst shall make application to the board upon such form and in such manner as the board shall prescribe by administrative regulation and shall furnish evidence to the board that such person:*
 - (a) *Has met the education requirements of the Board Certified Assistant Behavior Analyst (BCaBA)® standards, has passed the BCaBA® examination, and is credentialed as an assistant behavior analyst by the certification board;*
 - (b) *Maintains active status and fulfills all requirements for renewal and recertification with the certification board as a Board Certified Assistant Behavior Analyst®;*
 - (c) *Conducts his or her professional activities in accordance with accepted standards as required by administrative regulations promulgated by the board in accordance with subsection (1) of Section 5 of this Act;*
 - (d) *Complies with all applicable administrative regulations promulgated by the board; and*
 - (e) *Is supervised by a certified behavior analyst in a manner consistent with the certification board requirements for supervision of Board Certified Assistant Behavior Analysts®.*

- (3) *A person applying for a temporary license to complete his or her experience requirement shall make application to the board upon such form and in such manner as the board shall prescribe by administrative regulation and shall furnish evidence to the board that he or she:*
- (a) *Has met the coursework requirements for a Board Certified Behavior Analyst® or Board Certified Assistant Behavior Analyst® and will begin accumulating experience as required by the certification board; and*
 - (b) *Will comply with the provisions of this chapter and the requirements of the certification board during the period of temporary licensure.*
- (4) *If the certification board ceases certification of practitioners of applied behavior analysis, the board shall:*
- (a) *Approve a successor entity to the certification board; or*
 - (b) *Establish a certification process by administrative regulation and approve an examination for behavior analysts and assistant behavior analysts and establish standards for acceptable performance.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

The board shall issue a license to a person who holds a valid license or certificate from another state, who meets the requirements specified in Section 8 of this Act, any licensing requirements contained in administrative regulation promulgated by the board, and who has no imposed or pending disciplinary actions.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

Any licensee or employer of a licensee having actual or direct knowledge of facts shall report to the board a behavior analyst or assistant behavior analyst who:

- (1) *Has been convicted of a felony that involved any act that bears directly on the qualifications or ability of the applicant or licensee to practice behavior analysis;*
- (2) *Is suspected of fraud or deceit in procuring or attempting to procure a license to practice behavior analysis or of negligently performing actions that justify action against a behavior analyst's or assistant behavior analyst's license as identified in subsection (2) of Section 11 of this Act;*
- (3) *Has had a license to practice as a behavior analyst or assistant behavior analyst denied, limited, suspended, probated, or revoked in another jurisdiction on grounds sufficient to cause a license or certificate to be denied, limited, suspended, probated, or revoked in this Commonwealth; or*
- (4) *Is practicing behavior analysis without a current active license issued by the board.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *The board, after due notice and an opportunity for an administrative hearing conducted in accordance with KRS Chapter 13B, may take any one (1) or a combination of the following actions against any applied behavior analyst or applied assistant behavior analyst licensee or applicant:*
 - (a) *Refuse to license or certify any applicant;*
 - (b) *Refuse to renew the license or certificate of any person;*
 - (c) *Suspend or revoke or place on probation the license or certificate of any person;*
 - (d) *Impose restrictions on the scope of practice of any person;*
 - (e) *Issue an administrative reprimand to any person;*
 - (f) *Issue a private admonishment to any person; and*
 - (g) *Impose fines for violations of this chapter, not to exceed two thousand five hundred dollars (\$2,500).*
- (2) *The following acts by a licensee may be considered cause for disciplinary action:*
 - (a) *Indulgence in excessive use of alcoholic beverages or abusive use of controlled substances that impairs the licensee's ability to practice applied behavior analysis;*
 - (b) *Engaging in, permitting, or attempting to engage in or permit the performance of substandard patient care by himself or herself or by persons working under his or her supervision due to a*

deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established;

- (c) *Having engaged in or attempted to engage in a course of lewd or immoral conduct with any person while that person is a patient or client of the behavior analyst or assistant behavior analyst;*
 - (d) *Having sexual contact, as defined by KRS 510.010(7), without the consent of both parties, with an employee or coworker of the licensee;*
 - (e) *Sexually harassing an employee or coworker of the licensee;*
 - (f) *Conviction of a felony or misdemeanor in the courts of this state or any other state, territory, or country which affects his or her ability to continue to practice competently and safely on the public. "Conviction," as used in this paragraph, shall include a finding or verdict of guilt, an admission of guilt, or a plea of nolo contendere;*
 - (g) *Obtaining or attempting to obtain a license by fraud or material misrepresentation or making any other false statement to the board;*
 - (h) *Engaging in fraud or material deception in the delivery of professional services, including reimbursement, or in advertising services in a false or misleading manner;*
 - (i) *Evidence of gross negligence or gross incompetence in his or her practice of behavior analysis;*
 - (j) *Documentation of being declared mentally disabled by a court of competent jurisdiction and not thereafter having had his or her rights restored;*
 - (k) *Failing or refusing to obey any lawful order or administrative regulation of the board;*
 - (l) *Promoting for personal gain an unnecessary device, treatment, procedure, or service, or directing or requiring a patient to purchase a device, treatment, procedure, or service from a facility or business in which he or she has a financial interest; and*
 - (m) *Being impaired by reason of a mental, physical, or other condition that impedes his or her ability to practice competently.*
- (3) *A private admonishment shall not be subject to disclosure to the public under KRS 61.878(1)(l). A private admonishment shall not constitute disciplinary action but may be used by the board for statistical purposes or in subsequent disciplinary action against the same licensee or applicant.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *The board may, within three (3) years, reinstate a license which has lapsed, upon payment of the prescribed renewal fee and, in addition, the payment of a reinstatement fee to be established by the board by administrative regulation.*
- (2) *The board may reinstate a license which has been lapsed for more than three (3) years, upon showing that the applicant is certified and upon payment of a reinstatement fee.*
- (3) *The board may reinstate a license which has been suspended or revoked under Section 11 of this Act if, after a hearing conducted in accordance with KRS Chapter 13B, the board determines that the applicant is able to practice his or her profession with reasonable competency and is able to maintain the ethical code and standards of practice promulgated by administrative regulation. As a condition of reinstatement, the board may impose reasonable restrictions under which the licensee shall practice.*
- (4) *Any person aggrieved by a final order of the board denying, suspending, or revoking his or her license may appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *All fees received by the board and collected under Sections 6 and 9 of this Act, the administrative regulations promulgated in accordance with Section 8 of this Act, and all penalties assessed in accordance with Section 11 or 15 of this Act shall be deposited in the State Treasury and credited to a trust and agency fund to be used by the board in defraying the costs and expenses of the board's administration of this chapter. Notwithstanding KRS 45.229, no part of this fund shall revert to the general fund of the Commonwealth.*

- (2) *The board may employ personnel and may purchase such materials and supplies as it may deem necessary for the proper discharge of its duties.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *A treating behavior analyst or assistant behavior analyst who provides or facilitates the use of telehealth, shall ensure:*
- (a) *That the informed consent of the patient, or another appropriate person with authority to make the health-care treatment decision for the patient, is obtained before services are provided through telehealth; and*
 - (b) *That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.*
- (2) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:*
- (a) *Prevent abuse and fraud through the use of telehealth services;*
 - (b) *Prevent fee-splitting through the use of telehealth services; and*
 - (c) *Utilize telehealth in the provision of applied behavior analysis and in the provision of continuing education.*
- (3) *For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.*

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

Any person who violates subsection (1) of Section 2 of this Act shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation.

➔SECTION 16. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

As used in this section and Sections 17 and 18 of this Act, unless the context requires otherwise:

- (1) *"Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior;*
- (2) *"Autism services provider" means any licensed person, entity, or group that provides treatment of autism spectrum disorders;*
- (3) *"Autism spectrum disorders" means a physical, mental, or cognitive illness or disorder which includes any of the pervasive developmental disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders ("DSM") published by the American Psychiatric Association, including Autistic Disorder, Asperger's Disorder, and Pervasive Developmental Disorder Not Otherwise Specified;*
- (4) *"Diagnosis of autism spectrum disorders" means medically necessary assessments, evaluations, or tests to diagnose whether an individual has any of the autism spectrum disorders, including testing tools which shall be appropriate to the presenting characteristics and age of the individual and be empirically validated for autism spectrum disorders to provide evidence that meets the criteria for autism spectrum disorder in the most recent diagnostic and statistical Manual of Mental Disorders published by the American Psychiatric Association;*
- (5) *"Habilitative or rehabilitative care" means professional counseling and guidance services, therapy, and treatment programs, including applied behavior analysis, that are necessary to develop, maintain, and restore, to the maximum extent practicable, the functioning of an individual;*
- (6) *"Medical care" means services provided by a licensed physician, an advanced registered nurse practitioner, or other licensed health care provider;*

- (7) *"Pharmacy care" means medically necessary medications prescribed by a licensed physician or other health-care practitioner with prescribing authority, if covered by the plan, and any medically necessary health-related services to determine the need or effectiveness of the medications;*
- (8) *"Psychiatric care" means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices;*
- (9) *"Psychological care" means direct or consultative services provided by an individual licensed by the Kentucky Board of Examiners of Psychology or by the appropriate licensing agency in the state in which the individual practices;*
- (10) *"Therapeutic care" means services provided by licensed speech therapists, occupational therapists, or physical therapists; and*
- (11) *"Treatment for autism spectrum disorders" includes the following care for an individual diagnosed with any of the autism spectrum disorders:*
 - (a) *Medical care;*
 - (b) *Habilitative or rehabilitative care;*
 - (c) *Pharmacy care, if covered by the plan;*
 - (d) *Psychiatric care;*
 - (e) *Psychological care;*
 - (f) *Therapeutic care; and*
 - (g) *Applied behavior analysis prescribed or ordered by a licensed health or allied health professional.*

➔SECTION 17. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A large group health benefit plan shall provide coverage of an individual between the ages of one (1) through twenty-one (21) years of age, as required by subsection (2) of this section, for the diagnosis and treatment of autism spectrum disorders. To the extent that the diagnosis and treatment of autism spectrum disorders are not already covered by a health insurance policy, coverage under this section shall be included in health benefit plans that are delivered, executed, issued, amended, adjusted, or renewed within the state on or after thirty (30) days after the effective date of this Act. An insurer shall not terminate coverage, or refuse to deliver, execute, issue, amend, adjust, or renew coverage, to an individual solely because the individual is diagnosed with or has received treatment for any of the autism spectrum disorders.*
- (2) *Coverage under this section shall be subject to a maximum annual benefit per covered individual as follows:*
 - (a) *For individuals between the ages of one (1) through their seventh birthday, the maximum annual benefit shall be fifty thousand dollars (\$50,000) per individual;*
 - (b) *For individuals between the ages of seven (7) through twenty-one (21), the maximum benefit shall be one thousand dollars (\$1,000), per month per individual; and*
 - (c) *These limits shall not apply to other health conditions of the individual and services for the individual not related to the treatment of an autism spectrum disorder.*
- (3) *Coverage under this section shall not be subject to any limits on the number of visits an individual may make to an autism services provider.*
- (4) *Coverage under this section may be subject to copayment, deductible, and coinsurance provisions of a health benefit plan that are no less favorable than those that apply to other medical services covered by the health benefit plan.*
- (5) *This section shall not be construed as limiting benefits that are otherwise available to an individual under a health benefit plan.*
- (6) *Except for inpatient services, if an individual is receiving treatment for autism spectrum disorders:*

- (a) *An insurer shall have the right to request a utilization review of that treatment not more than once every twelve (12) months, unless the insurer and the individual's licensed physician, licensed psychologist, or licensed psychological practitioner agree that a more frequent review is necessary. The cost of obtaining any review shall be borne by the insurer;*
 - (b) *Upon request of the reimbursing insurer, an autism services provider shall furnish medical records, clinical notes, or other necessary data that substantiate that initial or continued treatment or services that are medically necessary and are resulting in improved clinical status;*
 - (c) *When treatment is anticipated to require continued services to achieve demonstrable progress, the insurer may request a treatment plan consisting of diagnosis, proposed treatment by type, frequency, anticipated duration of treatment, anticipated outcomes stated as goals, and the frequency by which the treatment plan will be updated; and*
 - (d) *The treatment plan shall contain specific cognitive, social, communicative, self-care, or behavioral goals that are clearly defined, directly observed, and continually measured and that address the characteristics of the autism spectrum disorder.*
- (7) *This section shall not be construed as requiring coverage for treatment of autism spectrum disorders for individuals covered under an individual or small group health benefit plan, except as provided by Section 18 of this Act.*
- (8) *Nothing in this section and Sections 16 and 18 of this Act shall be construed as limiting, replacing, or otherwise affecting any obligation to provide services to an individual under an individualized service plan or other publicly funded program. Nothing in this Act shall be construed as requiring a health benefit plan to provide benefits for services that are included in an individualized family service plan, an individualized education program, an individualized service plan, or other publicly funded programs. The coverage mandated in this Act shall be in addition to any services which an individual is entitled to receive under any such publicly funded programs.*
- (9) *No reimbursement is required under this section for services, supplies, or equipment:*
- (a) *For which the insured has no legal obligation to pay in the absence of this or like coverage;*
 - (b) *Provided to the insured by a publicly funded program;*
 - (c) *Performed by a relative of an insured for which, in the absence of any health benefits coverage, no charge would be made; and*
 - (d) *For services provided by persons who are not licensed as required by law.*

➔Section 18. KRS 304.17A-143 is amended to read as follows:

- (1) All health benefit plans *in the individual and small group market* shall provide coverage, including *pharmacy care, if covered by the plan, psychiatric care, psychological care, therapeutic care, ~~respite~~, applied behavior analysis, as defined in subsection (1) of Section 16 of this Act, habilitative and rehabilitative care,* for the treatment of autism *spectrum disorders, as defined in subsection (3) of Section 16 of this Act, of an individual~~[a child]~~* covered under the policy.
 - (2) Coverage for autism *spectrum disorders* shall be subject to a *one thousand dollar (\$1,000)~~[five hundred dollar (\$500)]~~* maximum benefit per month, per covered *individual~~[child]~~*. This limit shall not apply to other health conditions of the *individual~~[child]~~* and services for the *individual~~[child]~~* not related to the treatment of *an autism spectrum disorder*.
 - (3) As used in this section, "autism *spectrum disorder*" means *a physical, mental, or cognitive illness or disorder which includes any of the pervasive developmental disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders ("DSM"), published by the American Psychiatric Association, including Autistic disorder, Asperger's disorder, and Pervasive Developmental disorder Not Otherwise Specified~~;~~*
- (a) ~~A total of six (6) or more items from subparagraphs 1., 2., and 3. of this paragraph, with at least two (2) from subparagraph 1. and one (1) each from subparagraphs 2. and 3.:~~
- 1. ~~Qualitative impairment in social interaction, as manifested by at least two (2) of the following:~~

- a. ~~Marked impairment in the use of multiple nonverbal behaviors such as eye to eye gaze, facial expression, body postures, and gestures to regulate social interaction;~~
 - b. ~~Failure to develop peer relationships appropriate to developmental level;~~
 - c. ~~A lack of spontaneous seeking to share enjoyment, interests, or achievement with other people; or~~
 - d. ~~Lack of social or emotional reciprocity.~~
2. ~~Qualitative impairments in communication as manifested by at least one (1) of the following:~~
- a. ~~Delay in, or total lack of, the development of spoken language;~~
 - b. ~~In individuals with adequate speech, marked impairment in the ability to imitate or sustain a conversation with others;~~
 - c. ~~Stereotyped and repetitive use of language or idiosyncratic language; or~~
 - d. ~~Lack of varied, spontaneous make believe play or social imitative play appropriate to developmental levels.~~
3. ~~Restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by at least one (1) of the following:~~
- a. ~~Encompassing preoccupation with one (1) or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus;~~
 - b. ~~Apparently inflexible adherence to specific, nonfunctional routines or rituals;~~
 - c. ~~Stereotyped and repetitive motor mannerisms; or~~
 - d. ~~Persistent preoccupation with parts of objects;~~
- (b) ~~Delays or abnormal functioning in at least one (1) of the following areas, with onset prior to age three (3) years:~~
- 1. ~~Social interaction;~~
 - 2. ~~Language as used in social communication; or~~
 - 3. ~~Symbolic or imaginative play; and~~
- (c) ~~The disturbance is not better accounted for by Rett's Disorders of Childhood Disintegrative Disorder}.~~
- (4) As used in this section, "*individual*~~[child]~~" means a person *one (1)*~~{two (2)}~~ through twenty-one (21) years of age.

➔ Section 19. KRS 18A.225 is amended to read as follows:

- (1) (a) The term "employee" for purposes of this section means:
- 1. Any person, including an elected public official, who is regularly employed by any department, office, board, agency, or branch of state government; or by a public postsecondary educational institution; or by any city, urban-county, charter county, county, or consolidated local government, whose legislative body has opted to participate in the state-sponsored health insurance program pursuant to KRS 79.080; and who is either a contributing member to any one (1) of the retirement systems administered by the state, including but not limited to the Kentucky Retirement Systems, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, or the Judicial Retirement Plan; or is receiving a contractual contribution from the state toward a retirement plan; or, in the case of a public postsecondary education institution, is an individual participating in an optional retirement plan authorized by KRS 161.567;
 - 2. Any certified or classified employee of a local board of education;
 - 3. Any elected member of a local board of education;
 - 4. Any person who is a present or future recipient of a retirement allowance from the Kentucky Retirement Systems, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan,

the Judicial Retirement Plan, or the Kentucky Community and Technical College System's optional retirement plan authorized by KRS 161.567, except that a person who is receiving a retirement allowance and who is age sixty-five (65) or older shall not be included, with the exception of persons covered under KRS 61.702(4)(c), unless he or she is actively employed pursuant to subparagraph 1. of this paragraph; and

5. Any eligible dependents and beneficiaries of participating employees and retirees who are entitled to participate in the state-sponsored health insurance program;
 - (b) The term "health benefit plan" for the purposes of this section means a health benefit plan as defined in KRS 304.17A-005;
 - (c) The term "insurer" for the purposes of this section means an insurer as defined in KRS 304.17A-005; and
 - (d) The term "managed care plan" for the purposes of this section means a managed care plan as defined in KRS 304.17A-500.
- (2) (a) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary of the Personnel Cabinet, shall procure, in compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090, from one (1) or more insurers authorized to do business in this state, a group health benefit plan that may include but not be limited to health maintenance organization (HMO), preferred provider organization (PPO), point of service (POS), and exclusive provider organization (EPO) benefit plans encompassing all or any class or classes of employees. With the exception of employers governed by the provisions of KRS Chapters 16, 18A, and 151B, all employers of any class of employees or former employees shall enter into a contract with the Personnel Cabinet prior to including that group in the state health insurance group. The contracts shall include but not be limited to designating the entity responsible for filing any federal forms, adoption of policies required for proper plan administration, acceptance of the contractual provisions with health insurance carriers or third-party administrators, and adoption of the payment and reimbursement methods necessary for efficient administration of the health insurance program. Health insurance coverage provided to state employees under this section shall, at a minimum, contain the same benefits as provided under Kentucky Kare Standard as of January 1, 1994, and shall include a mail-order drug option as provided in subsection (13) of this section. All employees and other persons for whom the health care coverage is provided or made available shall annually be given an option to elect health care coverage through a self-funded plan offered by the Commonwealth or, if a self-funded plan is not available, from a list of coverage options determined by the competitive bid process under the provisions of KRS 45A.080, 45A.085, and 45A.090 and made available during annual open enrollment.
 - (b) The policy or policies shall be approved by the executive director of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws.
 - (c) Any carrier bidding to offer health care coverage to employees shall agree to provide coverage to all members of the state group, including active employees and retirees and their eligible covered dependents and beneficiaries, within the county or counties specified in its bid. Except as provided in subsection ~~(19)~~~~(18)~~ of this section, any carrier bidding to offer health care coverage to employees shall also agree to rate all employees as a single entity, except for those retirees whose former employers insure their active employees outside the state-sponsored health insurance program.
 - (d) Any carrier bidding to offer health care coverage to employees shall agree to provide enrollment, claims, and utilization data to the Commonwealth in a format specified by the Personnel Cabinet with the understanding that the data shall be owned by the Commonwealth; to provide data in an electronic form and within a time frame specified by the Personnel Cabinet; and to be subject to penalties for noncompliance with data reporting requirements as specified by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions to protect the confidentiality of each individual employee; however, confidentiality assertions shall not relieve a carrier from the requirement of providing stipulated data to the Commonwealth.
 - (e) The Personnel Cabinet shall develop the necessary techniques and capabilities for timely analysis of data received from carriers and, to the extent possible, provide in the request-for-proposal specifics relating to data requirements, electronic reporting, and penalties for noncompliance. The Commonwealth shall own the enrollment, claims, and utilization data provided by each carrier and shall

develop methods to protect the confidentiality of the individual. The Personnel Cabinet shall include in the October annual report submitted pursuant to the provisions of KRS 18A.226 to the Governor, the General Assembly, and the Chief Justice of the Supreme Court, an analysis of the financial stability of the program, which shall include but not be limited to loss ratios, methods of risk adjustment, measurements of carrier quality of service, prescription coverage and cost management, and statutorily required mandates. If state self-insurance was available as a carrier option, the report also shall provide a detailed financial analysis of the self-insurance fund including but not limited to loss ratios, reserves, and reinsurance agreements.

- (f) If any agency participating in the state-sponsored employee health insurance program for its active employees terminates participation and there is a state appropriation for the employer's contribution for active employees' health insurance coverage, then neither the agency nor the employees shall receive the state-funded contribution after termination from the state-sponsored employee health insurance program.
 - (g) Any funds in flexible spending accounts that remain after all reimbursements have been processed shall be transferred to the credit of the state-sponsored health insurance plan's appropriation account.
 - (h) Each entity participating in the state-sponsored health insurance program shall provide an amount at least equal to the state contribution rate for the employer portion of the health insurance premium. For any participating entity that used the state payroll system, the employer contribution amount shall be equal to but not greater than the state contribution rate.
- (3) The premiums may be paid by the policyholder:
- (a) Wholly from funds contributed by the employee, by payroll deduction or otherwise;
 - (b) Wholly from funds contributed by any department, board, agency, public postsecondary education institution, or branch of state, city, urban-county, charter county, county, or consolidated local government; or
 - (c) Partly from each, except that any premium due for health care coverage or dental coverage, if any, in excess of the premium amount contributed by any department, board, agency, postsecondary education institution, or branch of state, city, urban-county, charter county, county, or consolidated local government for any other health care coverage shall be paid by the employee.
- (4) If an employee moves his place of residence or employment out of the service area of an insurer offering a managed health care plan, under which he has elected coverage, into either the service area of another managed health care plan or into an area of the Commonwealth not within a managed health care plan service area, the employee shall be given an option, at the time of the move or transfer, to change his or her coverage to another health benefit plan.
- (5) No payment of premium by any department, board, agency, public postsecondary educational institution, or branch of state, city, urban-county, charter county, county, or consolidated local government shall constitute compensation to an insured employee for the purposes of any statute fixing or limiting the compensation of such an employee. Any premium or other expense incurred by any department, board, agency, public postsecondary educational institution, or branch of state, city, urban-county, charter county, county, or consolidated local government shall be considered a proper cost of administration.
- (6) The policy or policies may contain the provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of eligibility, and continuation of insurance or coverage after retirement.
- (7) Group rates under this section shall be made available to the disabled child of an employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.
- (8) The health care contract or contracts for employees shall be entered into for a period of not less than one (1) year.
- (9) The secretary shall appoint thirty-two (32) persons to an Advisory Committee of State Health Insurance Subscribers to advise the secretary or his designee regarding the state-sponsored health insurance program for employees. The secretary shall appoint, from a list of names submitted by appointing authorities, members

representing school districts from each of the seven (7) Supreme Court districts, members representing state government from each of the seven (7) Supreme Court districts, two (2) members representing retirees under age sixty-five (65), one (1) member representing local health departments, two (2) members representing the Kentucky Teachers' Retirement System, and three (3) members at large. The secretary shall also appoint two (2) members from a list of five (5) names submitted by the Kentucky Education Association, two (2) members from a list of five (5) names submitted by the largest state employee organization of nonschool state employees, two (2) members from a list of five (5) names submitted by the Kentucky Association of Counties, two (2) members from a list of five (5) names submitted by the Kentucky League of Cities, and two (2) members from a list of names consisting of five (5) names submitted by each state employee organization that has two thousand (2,000) or more members on state payroll deduction. The advisory committee shall be appointed in January of each year and shall meet quarterly.

- (10) Notwithstanding any other provision of law to the contrary, the policy or policies provided to employees pursuant to this section shall not provide coverage for obtaining or performing an abortion, nor shall any state funds be used for the purpose of obtaining or performing an abortion on behalf of employees or their dependents.
- (11) Interruption of an established treatment regime with maintenance drugs shall be grounds for an insured to appeal a formulary change through the established appeal procedures approved by the Office of Insurance, if the physician supervising the treatment certifies that the change is not in the best interests of the patient.
- (12) Any employee who is eligible for and elects to participate in the state health insurance program as a retiree, or the spouse or beneficiary of a retiree, under any one (1) of the state-sponsored retirement systems shall not be eligible to receive the state health insurance contribution toward health care coverage as a result of any other employment for which there is a public employer contribution. This does not preclude a retiree and an active employee spouse from using both contributions to the extent needed for purchase of one (1) state sponsored health insurance policy for that plan year.
- (13)
 - (a) The policies of health insurance coverage procured under subsection (2) of this section shall include a mail-order drug option for maintenance drugs for state employees. Maintenance drugs may be dispensed by mail order in accordance with Kentucky law.
 - (b) A health insurer shall not discriminate against any retail pharmacy located within the geographic coverage area of the health benefit plan and that meets the terms and conditions for participation established by the insurer, including price, dispensing fee, and copay requirements of a mail-order option. The retail pharmacy shall not be required to dispense by mail.
 - (c) The mail-order option shall not permit the dispensing of a controlled substance classified in Schedule II.
- (14) The policy or policies provided to state employees or their dependents pursuant to this section shall provide coverage for obtaining a hearing aid and acquiring hearing aid-related services for insured individuals under eighteen (18) years of age, subject to a cap of one thousand four hundred dollars (\$1,400) every thirty-six (36) months pursuant to KRS 304.17A-132.
- (15) ***Any policy provided to state employees or their dependents pursuant to this section shall provide coverage for the diagnosis and treatment of autism spectrum disorders consistent with Section 17 of this Act.***
- (16) If a state employee's residence and place of employment are in the same county, and if the hospital located within that county does not offer surgical services, intensive care services, obstetrical services, level II neonatal services, diagnostic cardiac catheterization services, and magnetic resonance imaging services, the employee may select a plan available in a contiguous county that does provide those services, and the state contribution for the plan shall be the amount available in the county where the plan selected is located.
- ~~(17)~~~~(16)~~ If a state employee's residence and place of employment are each located in counties in which the hospitals do not offer surgical services, intensive care services, obstetrical services, level II neonatal services, diagnostic cardiac catheterization services, and magnetic resonance imaging services, the employee may select a plan available in a county contiguous to the county of residence that does provide those services, and the state contribution for the plan shall be the amount available in the county where the plan selected is located.
- ~~(18)~~~~(17)~~ The Personnel Cabinet is encouraged to study whether it is fair and reasonable and in the best interests of the state group to allow any carrier bidding to offer health care coverage under this section to submit bids that may vary county by county or by larger geographic areas.

~~(19)~~~~(18)~~ Notwithstanding any other provision of this section, the bid for proposals for health insurance coverage for calendar year 2004 shall include a bid scenario that reflects the statewide rating structure provided in calendar year 2003 and a bid scenario that allows for a regional rating structure that allows carriers to submit bids that may vary by region for a given product offering as described in this subsection:

- (a) The regional rating bid scenario shall not include a request for bid on a statewide option;
- (b) The Personnel Cabinet shall divide the state into geographical regions which shall be the same as the partnership regions designated by the Department for Medicaid Services for purposes of the Kentucky Health Care Partnership Program established pursuant to 907 KAR 1:705;
- (c) The request for proposal shall require a carrier's bid to include every county within the region or regions for which the bid is submitted and include but not be restricted to a preferred provider organization (PPO) option;
- (d) If the Personnel Cabinet accepts a carrier's bid, the cabinet shall award the carrier all of the counties included in its bid within the region. If the Personnel Cabinet deems the bids submitted in accordance with this subsection to be in the best interests of state employees in a region, the cabinet may award the contract for that region to no more than two (2) carriers; and
- (e) Nothing in this subsection shall prohibit the Personnel Cabinet from including other requirements or criteria in the request for proposal.

~~(20)~~~~(19)~~ Any fully insured health benefit plan or self-insured plan issued or renewed on or after July 12, 2006, to public employees pursuant to this section which provides coverage for services rendered by a physician or osteopath duly licensed under KRS Chapter 311 that are within the scope of practice of an optometrist duly licensed under the provisions of KRS Chapter 320 shall provide the same payment of coverage to optometrists as allowed for those services rendered by physicians or osteopaths.

~~(21)~~~~(20)~~ Any fully insured health benefit plan or self-insured plan issued or renewed on or after July 12, 2006, to public employees pursuant to this section shall comply with the provisions of KRS 304.17A-270 and 304.17A-525.

~~(22)~~~~(21)~~ Any full insured health benefit plan or self insured plan issued or renewed on or after July 12, 2006, to public employees shall comply with KRS 304.17A-600 to 304.17A-633 pertaining to utilization review, KRS 205.593 and 304.17A-700 to 304.17A-730 pertaining to payment of claims, KRS 304.14-135 pertaining to uniform health insurance claim forms, KRS 304.17A-580 and 304.17A-641 pertaining to emergency medical care, KRS 304.99-123, and any administrative regulations promulgated thereunder.

➔Section 20. Sections 16 to 19 of this Act take effect January 1, 2011.

Signed by Governor April 13, 2010.