



COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
Frankfort, Kentucky

ADVISORY OPINION
2012-04

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance (the "Department") on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader.

TO: ALL HEALTH INSURANCE COMPANIES AUTHORIZED TO TRANSACT
BUSINESS IN THE COMMONWEALTH OF KENTUCKY

FROM: SHARON P. CLARK, COMMISSIONER KENTUCKY DEPARTMENT OF
INSURANCE

RE: COVERAGE FOR TREATMENT OF AUTISM SPECTRUM DISORDERS BY
SUPERVISEES

DATE: MAY 9, 2012

On January 31, 2011, KRS 304.17A-142 went into effect. Among other things, that statute mandated coverage for autism spectrum disorders and established certain limitations on that coverage. Following the enactment of KRS 304.17A-142, the Department has received complaints and inquiries regarding the extent of the statutorily-mandated coverage and the application of the statutorily-prescribed limitations thereon. Specifically, there is a question as to whether insurance companies are required to cover services performed by "supervisees," as that term is defined in KRS 319C.010(10).

KRS 304.17A-142(1) states, in relevant part, that, "[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." Pursuant to KRS 304.17A-141(11)(g), treatment for autism spectrum disorders includes "[A]ppplied behavior analysis prescribed or ordered by a licensed health or allied health professional."

Applied behavior analysis (“ABA”) involves a number of different services, the first being the development of a functional assessment and behavior plan. This is performed by either a Board Certified Behavior Analyst (“BCBA”) or a Board Certified Assistant Behavior Analyst (“BCaBA”). It is through this process that goals are selected, a treatment plan is developed, and behaviors are defined. The BCBA and/or BCaBA are also responsible for the ongoing monitoring of the behavior plan, including graphing data, reviewing progress, and making modifications according to what the data infer about various interventions' effectiveness. The BCBA and/or BCaBA oversee the training of supervisees, parents, teachers, or anyone else who might act as caretakers for the client. The purpose of this observation is to measure the behavior of the supervisee or caretaker to ensure that it is in accordance with the treatment plan. The direct services set forth in the treatment plan may be offered by a BCBA or a BCaBA, but are typically rendered by “supervisees.” The services include discrete trial training, data collection, prompting, fading, and implementing procedures for handling challenging behavior as written by the BCBA. The performance of these direct services by supervisees is an indispensable part of the treatment of autism spectrum disorders.

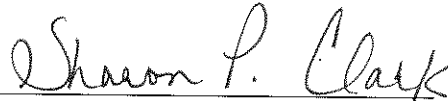
Pursuant to KRS 319C.020(1)(a), “[N]o person shall ... [e]ngage in the practice of applied behavior analysis, assist in the practice of applied behavior analysis, render services designated as applied behavior analysis, or hold himself or herself out as a practitioner of applied behavior analysis in this state, unless licensed under the provisions of this chapter...” However, subsection (2) of that statute carves out certain exceptions to that general rule, including an exemption for “any person who is ... [i]mplementing applied behavior analysis intervention services to an immediate family member *or as a supervisee.*” (Emphasis added). KRS 319C.010(10) defines “supervisee” as “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.” Clearly, Kentucky’s statutes pertaining to ABA and the treatment of autism spectrum disorders contemplate the active involvement of supervisees, provided that they are acting under the extended authority and direction of a BCBA or a BCaBA.

KRS 304.17A-142(9) states, in relevant part, that, “[N]o reimbursement is required under this section ... [f]or services provided by persons who are not licensed as required by law.” This language has been interpreted to exclude coverage for any unlicensed individual, regardless of whether they are required by law to be licensed. To assign this meaning to that subsection is contrary to its plain language and frustrates the statutory purpose of KRS 304.17A-142.

KRS 304.17A-142(9) excludes coverage “for services provided by persons who are not licensed *as required by law.*” (Emphasis added). It is a well-settled principal of statutory construction that, when possible, effect must be given to every word, clause, and sentence of a statute. See *Hampton v. Commonwealth*, 78 S.W.2d 748 (Ky. 1934). By adding the words “as required by law” the intent of the Legislature was to exclude coverage for those individuals who are required by law to be licensed, but are not. To interpret KRS 304.17A-142(9) to exclude coverage for individuals who are not required to be licensed renders the words “as required by law” meaningless. Further, to exclude coverage for supervisees undermines the intent of KRS 304.17A-142, which is to mandate coverage for the diagnosis *and treatment* of autism spectrum disorders. Without the direct services provided by supervisees, the treatment of autism is severely compromised.

Based on the above, the Department interprets KRS 304.17A-142(9) to require coverage for services provided by supervisees, as long as the services are within the scope of a treatment plan developed by a BCBA or a BCaBA and offered under the supervision of a BCBA or a BCaBA. KRS 304.17A-706(2)(a) requires insurers to identify the specific required health claim attachments that set forth the procedure for filing claims with the insurer. In compliance with that statute, all health insurance companies shall provide clear direction and guidance for the submission of claims for diagnosis and treatment of autism spectrum disorders, regardless of whether the claim is submitted by a service provider or the insured.

Please contact the Department's Health and Life Division at (502) 564-6088 with questions about this Advisory Opinion.



Sharon P. Clark, Commissioner
Kentucky Department of Insurance
On this 9th day of May, 2012