

SESSION OF 2018

**THIRD CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2028**

As Agreed to April 27, 2018

Brief*

Senate Sub. for HB 2028 would establish the Kansas Telemedicine Act (Act). The bill would also provide for coverage of speech-language pathologist and audiologist services *via* telehealth under the Kansas Medical Assistance Program (KMAP), if such services would be covered under KMAP when delivered *via* in-person contact.

Naming of Act [New Section 1]

Sections 1 through 7 would be known and cited as the Kansas Telemedicine Act. The naming of the Act would take effect on and after January 1, 2019.

Definitions [New Section 2]

The bill would establish definitions for the following terms under the Act:

- “Distant site”—a site at which a healthcare provider is located while providing healthcare services by means of telemedicine;
- “Healthcare provider”—a physician, licensed physician assistant, licensed advanced practice

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

registered nurse, or a person licensed, registered, certified, or otherwise authorized to practice by the Behavioral Sciences Regulatory Board (BSRB);

- “Originating site”—a site at which a patient is located at the time healthcare services are provided by means of telemedicine;
- “Physician”—a person licensed to practice medicine and surgery by the Board of Healing Arts (BOHA); and
- “Telemedicine,” including “telehealth”—the delivery of healthcare services or consultations while the patient is at an originating site and the healthcare provider is at a distant site. Telemedicine would be provided by means of real-time two-way interactive audio, visual, or audio-visual communications, including the application of secure video conferencing or store-and-forward technology, to provide or support healthcare delivery that facilitates the assessment, diagnosis, consultation, treatment, education, and care management of a patient’s healthcare. The term does not include communication between healthcare providers consisting solely of a telephone voice-only conversation, e-mail, or facsimile transmission, or between a physician and a patient consisting solely of an e-mail or facsimile transmission.

Effective Date

This section would take effect on and after January 1, 2019.

Privacy and Confidentiality, Establishment of a Provider-Patient Relationship, Standards of Practice, and Follow-up [New Section 3]

Requirements for Patient Privacy

The bill would specify the same requirements for patient privacy and confidentiality under the Health Insurance Portability and Accountability Act of 1996 and 42 CFR § 2.13 (related to confidentiality restrictions and safeguards), as applicable, applying to healthcare services delivered *via* in-person visits would also apply to healthcare visits delivered *via* telemedicine. Nothing in this section would supersede the provisions of any state law relating to the confidentiality, privacy, security, or privileged status of protected health information.

Establishment of the Provider-Patient Relationship

The bill would authorize telemedicine to be used to establish a valid provider-patient relationship.

Standards of Practice

The bill would require the same standards of practice and conduct that apply to healthcare services delivered *via* in-person visits would apply to healthcare services delivered *via* telemedicine.

Follow-up Care

The bill would require a person authorized by law to provide and who provides telemedicine services to a patient to provide the patient with guidance on appropriate follow-up care.

Reporting of Services

If the patient consents and has a primary care or other treating physician, the person providing telemedicine services would be required to send a report to the primary care or other treating physician of the treatment and services rendered to the patient within three business days of the telemedicine encounter. A person licensed, registered, certified, or otherwise authorized to practice by the BSRB would not be required to comply with this reporting requirement.

Effective Date

This section would take effect on and after January 1, 2019.

Application to Policies, Contracts, and Kansas Medical Assistance Program [New Section 4]

Issued for Delivery, Amended, or Renewed On or After January 1, 2019

The provisions of this section would apply to any individual or group health insurance policy, medical service plan, contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society, or health maintenance organization that provides coverage for accident and health services delivered, issued for delivery, amended, or renewed on or after January 1, 2019. The Act would also apply to KMAP.

Prohibitions

The bill would prohibit the aforementioned policies, plans, contracts, and KMAP from excluding an otherwise

covered healthcare service from coverage solely because the service was provided through telemedicine rather than in-person contact or based upon the lack of a commercial office for the practice of medicine, when such service is delivered by a healthcare provider. The bill would also prohibit such groups from requiring a covered individual to use telemedicine or in lieu of receiving in-person healthcare service or consultation from an in-network provider.

Medically Necessary Coverage

However, these groups would not be prohibited from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the covered individual's health benefits plan.

Medical Record

The insured's medical record would serve to satisfy all documentation for the reimbursement of all telemedicine healthcare services, and no additional documentation outside the medical record would be required.

Payment or Reimbursement

The bill would authorize an insurance company, nonprofit health service corporation, nonprofit medical and hospital service corporation, or health maintenance organization to establish payment or reimbursement of covered healthcare services delivered through telemedicine in the same manner as payment or reimbursement for covered services delivered *via* in-person contact.

No Mandate of Coverage

The bill would not mandate coverage for a healthcare service delivered *via* telemedicine, if such service is not already a covered service when delivered by a healthcare provider, and subject to the terms and conditions of the covered individual's health benefits plan.

Impact Report and State Employee Group Pilot Project Statutes Not Applicable

The bill would specify KSA 40-2248 (related to mandated health benefits and impact report) and KSA 40-2249a (related to state employee group pilot project) would not apply to this section.

Effective Date

This section would take effect on and after January 1, 2019.

Rules and Regulations [New Section 5]

BOHA

The bill would require the BOHA, following consultation with the State Board of Pharmacy and the Board of Nursing, to adopt rules and regulations by December 31, 2018, relating to the prescribing of drugs, including controlled substances, *via* telemedicine.

Additionally, the BOHA would be required to adopt rules and regulations necessary to effectuate provisions of the Act by December 31, 2018.

BSRB

The BSRB would be required to adopt rules and regulations as necessary to effectuate provisions of the Act by December 31, 2018.

Effective Date

This section would take effect upon publication in the statute book.

Prohibition on Delivery of Abortion Procedures via Telemedicine [New Section 6]

The bill would state nothing in the Act would be construed to authorize the delivery of any abortion procedure *via* telemedicine.

Severability and Non-severability Clause [New Section 7]

The bill would state if any provision of the Act, or the application thereof to any person or circumstance, is held invalid or unconstitutional by court order, then the remainder of the Act and application of such provision would not be affected. Additionally, it would be conclusively presumed the Legislature would have enacted the remainder of the Act without the invalid or unconstitutional provision. Further, the provision of the bill related to abortion is expressly declared to be non-severable; if the abortion language is held invalid or unconstitutional by court order, the entire Act would be affected.

Coverage of Speech-Language Pathology and Audiology Services [New Section 8]

Coverage Requirement under KMAP

On and after January 1, 2019, the Kansas Department of Health and Environment (KDHE) and any managed care organization providing state Medicaid services under KMAP would be required to provide coverage for speech-language pathology services and audiology services by means of telehealth, as defined in the Act, when provided by a licensed speech-language pathologist or audiologist licensed by the Kansas Department for Aging and Disability Services if such services would be covered by KMAP when delivered *via* in-person contact.

Implementation and Administration by KDHE

KDHE would be required to implement and administer this section consistent with applicable federal laws and regulations. KDHE would be required to submit to the Centers for Medicare and Medicaid Services (CMS) any state Medicaid plan amendment, waiver request, or other approval request necessary to implement this section.

Rules and Regulations

KDHE would be required to adopt rules and regulations necessary to implement and administer this section by December 31, 2018.

Impact Report

On or before January 13, 2020, KDHE would be required to prepare an impact report that assesses the social and financial effects of the coverage mandated under this

section for speech-language pathology and audiology services, including the impacts listed in KSA 40-2249(a) and (b) relating to social and financial impacts of mandated health benefits. KDHE would be required to submit such report to the Legislature, the House Committee on Health and Human Services, the House Committee on Insurance, the Senate Committee on Public Health and Welfare, and the Senate Committee on Financial Institutions and Insurance.

Effective Date

This section would take effect upon publication in the statute book.

Application of the Act to Insurance Policies [Section 9]

The bill would specify the requirements of the Act would apply to all insurance policies, subscriber contracts, or certificates of insurance delivered, renewed, or issued for delivery within or outside of Kansas, or used within the state by or for an individual who resides or is employed in the state.

Corporations Under the Nonprofit Medical and Hospital Service Corporation Act [Section 10]

The bill would specify corporations organized under the Nonprofit Medical and Hospital Service Corporation Act would be subject to the provisions of the Act.

Effective Date

The bill would take effect upon publication in the statute book, unless otherwise noted.

Conference Committee Action

The third Conference Committee agreed to insert the provisions of HB 2674, as amended by the House Committee on Health and Human Services, into Senate Sub. for HB 2028, and to adopt the provisions agreed to by the first Conference Committee, except those provisions relating to the removal of the severability and non-severability clause, as noted below. The third Conference Committee further agreed to insert the severability and non-severability provisions of HB 2674, as amended by the House Committee on Health and Human Services and passed by the House, into Senate Sub. for HB 2028. [Note: The original contents of Senate Sub. for HB 2028, as amended by the Senate Committee of the Whole, were inserted into SB 217 by the Conference Committee.]

The third Conference Committee agreed to include the following amendments also agreed to by the first Conference Committee:

- Delete the definitions for “BSRB,” “BOHA,” and “licensed mental healthcare professional”;
- Amend the definition of “healthcare provider” to add licensed physician assistant and licensed advanced practice registered nurse, and replace the term “licensed mental healthcare professional” with “a person licensed, registered, certified, or otherwise authorized to practice by the BSRB”;
- Replace references to “physician or licensed mental healthcare professional” with “healthcare provider,” as defined by the Conference Committee;
- Eliminate the use of acronyms;
- Clarify the effective dates of specific sections of the bill;

- Add language clarifying that nothing in Section 3 would supersede the provisions of any state law relating to the confidentiality, privacy, security, or privileged status of protected health information;
- Modify the standards of practice and conduct to apply broadly to any person providing telehealth services authorized by law;
- Amend the 72-hour notification requirement for a provider providing telemedicine to report to a primary care or other treating physician to require the notification be sent within 3 business days and clarify that a person licensed, registered, certified, or otherwise authorized to practice by the BSRB would not be required to comply with this reporting requirement;
- Add provisions requiring coverage for speech-language pathology services and audiology services under KMAP by means of telehealth if such services would be covered by KMAP when delivered *via* in-person contact;
- Require KDHE to implement and administer the provision of speech-language pathology and audiology services *via* telehealth under KMAP consistent with federal law and to submit any state Medicaid plan amendment, waiver request, or other approval request to CMS as needed for implementation;
- Require KDHE to adopt rules and regulations necessary to implement the provision of speech-language pathology and audiology services under KMAP *via* telehealth by December 31, 2018;
- Require KDHE to prepare and provide an impact report regarding the mandated speech-language pathology and audiology services *via* telemedicine under KMAP to the Legislature and select standing

committees of the House of Representatives and the Senate; and

- Change the title to reflect amendments made to the contents of the bill.

[*Note:* A second Conference Committee was appointed, resulting in an agree to disagree, and a third Conference Committee was appointed.]

Background

The bill contains provisions of HB 2674, as amended by the House Committee on Health and Human Services and as further amended by the third Conference Committee. [*Note:* The original contents of HB 2028 regarding the licensure of mental health technicians, as recommended by the House Committee, were inserted into and enacted in 2017 HB 2025. The contents of Senate Sub. for HB 2028, as amended by the Senate Committee of the Whole, which contained only the contents of SB 451 (updates to statutory references relating to the Kansas Department for Aging and Disability Services and the Kansas Department for Children and Families in accordance with 2012 Executive Reorganization Order No. 41), were inserted into SB 217 by the first Conference Committee. The Dental Therapy Act (SB 312, as amended by the Senate Committee on Public Health and Welfare) inserted by the Senate Committee into Senate Sub. for HB 2674 was not retained by the first or third Conference Committees. The House Committee held a hearing but did not take further action on HB 2512, which contains telemedicine provisions; information on it is included below only for historical purposes.]

HB 2674 (Kansas Telemedicine Act)

The House Committee on Health and Human Services held hearings on two telemedicine bills: HB 2512 and HB

2674. The House Committee did not take action on HB 2512, but referenced the testimony of HB 2512 during the hearing on HB 2674. Background information on both bills follows.

HB 2674 was introduced by the House Committee on Taxation at the request of Representative Hawkins. The bill was referred to the House Committee on Health and Human Services. The House Committee received written-only testimony during the February 12, 2018, hearing. [Note: The House Committee held two days of hearings on the original telemedicine bill, HB 2512. See the section below labeled “HB 2512” for additional information.]

Written-only proponent testimony was submitted by representatives of Blue Cross and Blue Shield of Kansas, Inc.; Kansas Academy of Family Physicians; Kansas Academy of Physician Assistants; Kansas Chiropractic Association; Kansas Clinical Improvement Collaborative, LLC; Kansas Hospital Association (KHA); Kansas Medical Society (KMS); and Teladoc. The written-only proponents generally stated the bill is a compromise among several stakeholders. Additionally, the proponents stated, the bill clearly outlines the criteria for the delivery of healthcare services *via* telemedicine and provides a mechanism for thousands of Kansans to receive medical care, especially in rural communities.

Written-only neutral testimony was provided by representatives of the Kansas Association of School Boards, Kansas Association of Special Education Administrators, Kansas Speech-Language-Hearing Association, and United School Administrators–Kansas. The written-only neutral representatives generally asked for updates to the definition of “healthcare provider.”

The House Committee amended the bill to specify nothing in the Act would be construed to authorize the delivery of an abortion procedure *via* telemedicine, include a severability clause for all portions of the Act except for the provision related to abortion, and include a non-severability

clause related to the abortion language. [Note: The first Conference Committee did not retain these amendments, and the third Conference Committee retained the amendments.]

In the Senate Committee on Health and Public Welfare hearing, proponent testimony was provided by representatives of Association of Community Mental Health Centers of Kansas, Inc.; Blue Cross and Blue Shield of Kansas, Inc.; FreeState Connect; Kansas Advanced Practice Nurses Association; KHA; KMS; St. Francis Community Services; and Teladoc.

Written-only proponent testimony was provided by representatives of AARP Kansas; Behavioral Health Association of Kansas; Kansas Clinical Improvement Collaborative, LLC; and Kansas Metro Business Healthcare Coalition.

Neutral testimony was provided by representatives of Kansans for Life, Kansas Chiropractic Association, and Kansas Speech-Language-Hearing Association.

Written-only neutral testimony was provided by representatives of the Kansas Academy of Family Physicians, Kansas Dental Association, Kansas Optometric Association, Kansas Physical Therapy Association, and Kansas State Alliance of YMCAs.

Opponent testimony was provided by a representative of Planned Parenthood.

Written-only opponent testimony was provided by a representative of Trust Women, Inc., and Trust Women Clinics, Inc.

The Senate Committee amended the bill to make the following changes:

- Insert the contents of SB 312, as amended by the Senate Committee [*Note:* The Conference Committees did not retain this amendment.];
- Eliminate the use of acronyms [*Note:* The Conference Committees retained this amendment.];
- Replace references to “healthcare provider” and “licensed mental healthcare provider” to refer to specific categories of practitioners [*Note:* The Conference Committees did not retain this amendment.];
- Remove definitions of “BSRB,” “BOHA,” “healthcare provider,” “licensed mental healthcare provider,” and “physician” [*Note:* The Conference Committees retained the amendments regarding the “BSRB,” “BOHA,” and “licensed mental healthcare provider,” but did not retain the amendments for “healthcare provider” and “physician.”];
- Modify the standards of practice and conduct to apply broadly to any person providing telehealth services authorized by law [*Note:* The Conference Committees retained this amendment.];
- Remove the 72-hour notification requirement for a provider providing telemedicine to report to the primary care or other treating physician [*Note:* The Conference Committees did not retain this amendment.];
- Insert a one-year pilot project in the State Health Care Benefits Program for non-physician and non-physician assistant licensees of the BOHA, dentists, dental hygienists, dental therapists, speech-language pathologists, and audiologists and exclude such requirements for certain providers if services are provided in a school setting and if they are reimbursable by Medicaid

[*Note*: The Conference Committees did not retain this amendment.];

- Remove the severability and non-severability clause [*Note*: The first Conference Committee retained this amendment, and the third Conference Committee did not.]; and
- Clarify dental therapists would be able to dispense and administer certain medications as prescribed by a licensed dentist only, not a healthcare provider [*Note*: The Conference Committees did not retain dental therapy provisions from SB 312, including this amendment.].

The amended contents were inserted into Senate Sub. for HB 2674.

According to the fiscal note prepared by the Division of the Budget on HB 2674, as introduced, the BOHA estimates enactment of the bill would increase expenditures by \$21,220 from the Healing Arts Fee Fund (including \$420 to publish rules and regulations in the *Kansas Register* and \$20,800 to hire temporary administrative staff to assist in the development of new rules and regulations). BOHA indicates the total cost would be divided equally between FY 2018 and FY 2019 (\$10,610 for each year). BOHA indicates enactment of HB 2674 could also create additional costs related to an increased number of reports and complaints and subsequent investigations, disciplinary cases, and associated operational expenses; however, an estimate of these costs cannot be determined. BSRB indicates enactment of the bill would incur expenses to publish rules and regulations in the *Kansas Register*, but the cost would be negligible. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2019 Governor's Budget Report*.

HB 2512

HB 2512 was introduced by the House Committee on Health and Human Services at the request of Representative Kelly. The House Committee held two hearings on the bill. Proponent testimony was heard by the House Committee on February 1, 2018, and opponent and neutral testimony was heard by the House Committee on February 5, 2018.

On February 1, 2018, in House Committee hearing, proponent testimony was provided by representatives of the Association of Community Mental Health Centers of Kansas, Inc.; Blue Cross and Blue Shield of Kansas, Inc.; Blue Cross and Blue Shield of Kansas City; Kansas Academy of Family Physicians; Kansas Advanced Practice Nurses Association; Kansas Clinical Improvement Collaborative, LLC; KHA; KMS; and Teladoc. The proponents generally stated the bill would provide Kansans greater access to care, especially those residing in rural communities.

Written-only proponent testimony was provided by representatives of AARP Kansas, American Association for Marriage and Family Therapy, Kansas Association of Masters in Psychology, Kansas Center for Assisted Living, Kansas Counseling Association, Kansas Health Care Association, Kansas State Alliance of YMCAs, March of Dimes, and the Rural and Frontier Subcommittee of the Governor's Behavioral Health Services Planning Council.

On February 5, 2018, in the House Committee hearing, opponent and neutral testimony was provided. Opponent testimony was provided by representatives of Planned Parenthood; South Wind Women's Center; Trust Women, Inc.; and Trust Women Clinics, Inc. The opponents generally stated concern with the abortion language specified in Section 6 of the bill.

Written-only opponent testimony was provided by representatives of the American Civil Liberties Union of

Kansas, Kansas Coordinating Council on Early Childhood Developmental Services, and MainStream Coalition.

Neutral testimony was provided by representatives of Behavioral Health Association of Kansas, Guardian Group, LLC; Kansas Association for the Medically Underserved; Kansas Association of School Boards; Kansas Association of Special Education Administrators; Kansas Chiropractic Association; Kansas Speech-Language-Hearing Association; Kansas Speech-Language-Hearing Association and Kansas Association of Special Education Administrators School Based Tele-Therapy State Task Force; Kansas Physical Therapy Association; and United School Administrators–Kansas. Several representatives providing neutral testimony generally expressed support for telemedicine legislation, but asked for clarifications regarding healthcare providers and reimbursement practices. The representative of Behavioral Health Association of Kansas requested a reference to federal confidentiality requirements.

Written-only neutral testimony was provided by Heartland Telehealth Resource Center, Kansans for Life, Kansas Optometric Association, LeadingAge Kansas, PresenceLearning, and Tiny-k Alliance. In written-only testimony, a representative of Kansans for Life requested a provision prohibiting abortion *via* telemedicine and a non-severability clause.

According to the fiscal note prepared by the Division of the Budget on HB 2512, the BOHA estimates enactment of the bill would increase expenditures by \$21,220 from the Healing Arts Fee Fund (including \$420 to publish rules and regulations in the *Kansas Register* and \$20,800 to hire temporary administrative staff to assist in the development of new rules and regulations). BOHA indicates the total cost would be divided equally between FY 2018 and FY 2019 (\$10,610 for each year). BOHA indicates enactment of HB 2512 could also create additional costs related to an increased number of reports and complaints and subsequent investigations, disciplinary cases, and associated operational

expenses; however, an estimate of these costs cannot be determined. BSRB indicates enactment of the bill would increase expenditures from the Behavioral Sciences Regulatory Board Fee Fund by approximately \$250 in FY 2019 to publish rules and regulations in the *Kansas Register*. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2019 Governor's Budget Report*.

Kansas Telemedicine Act; insurance coverage parity; Medicaid

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