

SESSION OF 2018

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2674

As Amended by House Committee on Health
and Human Services

Brief*

HB 2674, as amended, would establish the Kansas Telemedicine Act (Act). Descriptions of specific bill provisions follow.

Definitions [New Section 2]

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

- “BSRB”—the Behavioral Sciences Regulatory Board;
- “BOHA”—the State Board of Healing Arts;
- “Distant site”—a site at which a healthcare provider is located while providing healthcare services by means of telemedicine;
- “Healthcare provider”—a licensed mental healthcare professional or a physician;
- “Licensed mental healthcare professional”—an individual licensed by the BSRB and who is acting within the scope of the individual’s professional licensure act and held to the standards of professional conduct as set forth by the BSRB;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- “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 BOHA and who is acting within the scope of the Healing Arts Act and held to the standards of professional conduct as set forth by the BOHA; and
- “Telemedicine,” including “telehealth”—the delivery of healthcare services or consultations while the patient is at an originating site and the physician or licensed mental healthcare professional 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 conferences or store-and-forward technology, to provide or support healthcare delivery that facilitate the assessment, diagnosis, consultation, treatment, education, and care management of a patient’s healthcare. The term does not include communication between licensed healthcare providers consisting solely of a telephone conversation, e-mail, or facsimile transmission; or a physician and a patient consisting solely of an e-mail or facsimile transmission.

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.

Establishment of the Provider-Patient Relationship

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

Standards of Practice

Any healthcare provider delivering healthcare services *via* telemedicine would be held to the same standards of practice and conduct as required for in-person contact, as determined by the BOHA and BSRB for their respective licensees.

Follow-up Care and Reporting of Services

The bill would require a healthcare provider providing telemedicine services to a patient to provide the patient with guidance on appropriate follow-up care. If the patient consents and has a primary care or other treating physician, the provider would be required to report to the primary care or other treating physician the treatment and services rendered to the patient within 72 hours of the telemedicine encounter.

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 issued for delivery, amended, or renewed on or after January 1, 2019. The Act would also apply to the Kansas Medical Assistance Program (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 or an advanced practice registered nurse or a physician assistant. 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 or advanced practice registered nurse or a physician assistant, 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.

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.

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.

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.

Application of the Act to Insurance Policies [Section 8]

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 9]

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 from and after January 1, 2019, and its publication in the statute book.

Background

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

The bill 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 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, Kansas Medical Society, and Teladoc. The written-only proponents generally stated the

bill is a compromise between several stakeholders. Additionally, 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 New Section 6 related to abortion; and include a non-severability clause related to the abortion language.

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

The bill 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.

During the February 1, 2018, 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, Kansas Hospital Association, Kansas Medical Society, and Teladoc. The proponents generally stated the bill would provide greater access to care to Kansans, 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.

During the February 5, 2018, 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*.