SESSION OF 2021

SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE BILL NO. 238

As Amended by Senate Committee of the Whole

Brief*

Sub. for SB 238, as amended, would establish certification and funding processes for certified community behavioral health clinics (CCBHCs) and prescribe the powers, duties, and functions of the Kansas Department for Aging and Disability Services (KDADS) and the Kansas Department of Health and Environment (KDHE) with regard to CCBHCs. The bill would also authorize a licensed out-of-state physician with a telemedicine waiver issued by the State Board of Healing Arts (BOHA) to practice telemedicine in Kansas. The bill would also amend the disciplinary authority of the Behavioral Sciences Regulatory Board (BSRB) and modify licensure and temporary permit requirements of professional counselors, social workers, marriage and family therapists, addiction counselors, psychologists, and master's level psychologists.

The bill would also make technical amendments.

KDADS Responsibilities for CCBHC Certification (New Section 1)

The bill would require KDADS to establish a process to certify and fund CCBHCs.

The bill would require KDADS to certify as a CCBHC any community mental health center (CMHC) licensed by KDADS that provides the following services: crisis services;

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*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

screening, assessment, and diagnosis, including risk assessment; person-centered treatment planning; outpatient mental health and substance use services; primary care screening and monitoring of key indicators of health risks; targeted case management; psychiatric rehabilitation services; peer support and family supports; medication-assisted treatment; assertive community treatment; and community-based mental health care for military service members and veterans.

KDHE Responsibilities

The bill would require KDHE to establish a prospective payment system (PPS) under the Kansas Medical Assistance Program to fund CCBHCs. Daily or monthly rate payments would be allowed in the PPS.

The bill would require KDHE to submit to the Centers for Medicare and Medicaid Services (CMS) any approval request necessary to implement the PPS for CCBHCs.

Rules and Regulation Authority

The bill would authorize KDADS and KDHE to adopt rules and regulations as necessary to implement and administer provisions related to CCBHCs.

Date of Implementation

The bill would require KDADS and KDHE to implement the CCBHC certification and funding processes and the PPS by January 1, 2022.

Out-of-state Telemedicine Practice (New Section 2)

The bill would authorize a physician holding a license issued by the applicable licensing agency of another state or who otherwise meets the requirements of the bill to practice

telemedicine to treat patients located in Kansas if the physician receives a telemedicine waiver issued by the BOHA. The bill would require the BOHA to issue the waiver within 15 days from receipt of a complete application, if the physician:

- Submits a complete application, which may include an affidavit from an authorized third party that the applicant meets the requirements, in a manner determined by the BOHA, and pays a fee not to exceed $100; and

- Holds an unrestricted license to practice medicine and surgery in another state or meets the qualifications required under Kansas law for a license to practice medicine and surgery and is not the subject of any investigation or disciplinary action by the applicable licensing agency.

The bill would require a physician to practice telemedicine in accordance with the bill to conduct an appropriate assessment and evaluation of a patient's current condition and document an appropriate medical indication for any prescription issued.

The bill would not supersede or affect the provisions of KSA 65-4a10 (Performance of abortions restricted to a physician licensed to practice medicine in Kansas) or KSA 2020 Supp. 40-2,210 *et seq*. (Kansas Telemedicine Act).

Rules and Regulations for Telemedicine Waivers

The bill would require any person who receives a telemedicine waiver to be subject to all rules and regulations pertaining to the practice of the licensed profession in Kansas and be considered a licensee for the purposes of the professional practice acts administered by the BOHA. The bill would also require any waiver issued to expire on the date established, unless renewed by the BOHA upon receipt of payment of an annual renewal fee not to exceed $100 and

evidence that the applicant continues to meet the qualifications of the bill. The bill would not prohibit a licensing agency from denying a waiver application if the licensing body determines granting the application may endanger the health and safety of the public.

Out-of-state Authorizations

The bill would authorize:

- A physician holding a license issued by the applicable licensing agency of another state to provide, without limitation, consultation through remote technology to a physician licensed in Kansas; and

- An applicable health care licensing agency of this state to adopt procedures consistent with this section to allow other health care professionals licensed and regulated by the licensing agency to practice telemedicine within the profession's scope of practice by Kansas law as deemed by the licensing agency to be consistent with ensuring patient safety.

Definition of Telemedicine

The bill would define "telemedicine" to mean the delivery of health care services by a health care provider while the patient is at a different physical location.

Clinical Professional Counselor Licensure (Section 3)

The bill would amend the licensure requirements to become a clinical professional counselor to:

- Reduce from 350 to 280 the minimum number of hours of direct client contact or additional

postgraduate supervised experience as determined by the BSRB;

- Reduce from 4,000 to 3,000 the minimum number of hours of supervised professional experience;
- Reduce from 150 to 100 the minimum number of hours of face-to-face clinical supervision as defined by the BSRB in rules and regulations;
- Require no less than 50 of the face-to-face clinical supervision hours to include individual supervision, although the BSRB could waive:
    - The requirement such supervision be face-to-face upon finding extenuating circumstances; and
    - Half of the required hours for an individual who has a doctoral degree in professional counseling or a BSRB-approved related field and who completes half of the required hours in one or more years of supervised professional experience;
- Specify a temporary license may be issued after the applicant pays the temporary license fee; and
- Increase from 6 to 12 the number of months after issuance a temporary license would expire, absent extenuating circumstances approved by the BSRB.

Clinical Social Work Licensure (Section 7)

The bill would amend requirements to become a licensed specialist clinical social worker to:

- Remove the requirement an individual complete 350 hours of direct clinical contact or additional postgraduate supervised experience as determined by the BSRB;

- Specify the 100 hours of clinical supervision would be face-to-face, as defined by the BSRB in rules and regulations; and

- Require the 100 hours of face-to-face clinical supervision to include no less than 50 hours of individual supervision, although the BSRB could waive the requirement such supervision be face-to-face upon finding extenuating circumstances.

Clinical Marriage and Family Therapist Licensure (Section 10)

The bill would amend the licensure requirements to become a clinical marriage and family therapist to:

- Reduce from 4,000 to 3,000 the number of hours of supervised professional experience;

- Reduce from 150 to 100 the minimum number of hours of clinical supervision and specify such hours be face-to-face, as defined by the BSRB in rules and regulations; and

- Require the face-to-face clinical supervision hours include no less than 50 hours of individual supervision, although the BSRB could waive:
    - The requirement such supervision be face-to-face upon finding extenuating circumstances; and
    - Half of the required hours for an individual who has a doctoral degree in marriage and family therapy or a BSRB-approved related field and who completes half of the required hours in one or more years of supervised professional experience.

Clinical Addiction Counselor Licensure (Section 14)

The bill would amend the licensure requirements to become a clinical addiction counselor to:

- Reduce from 4,000 to 3,000 the minimum number of hours of supervised professional experience;
- Reduce from 150 to 100 the minimum number of hours of clinical supervision and specify such hours be face-to-face, as defined by the BSRB in rules and regulations;
- Require the face-to-face clinical supervision hours to include no less than 50 hours of individual supervision, although the BSRB could waive:
    - The requirement such supervision be face-to-face upon finding extenuating circumstances; and
    - Half of the required hours for an individual who has a doctoral degree in addiction counseling or a BSRB-approved related field and who completes half of the required hours in one or more years of supervised professional experience.

Clinical Psychotherapist Licensure (Section 19)

The bill would amend the licensure requirements to become a clinical psychotherapist to:

- Reduce from 4,000 to 3,000 the minimum number of hours of supervised professional experience;
- Reduce from 150 to 100 the minimum number of hours of clinical supervision and specify such hours be face-to-face, as defined by the BSRB in rules and regulations; and

- Require the face-to-face clinical supervision hours include no less than 50 hours of individual supervision, although the BSRB could waive the requirement such supervision be face-to-face upon finding extenuating circumstances.

Temporary Permits (Sections 4, 8, 11, 15, 17, and 20)

The bill would amend the requirements for professional counselors, clinical social workers, clinical marriage and family therapists, clinical addiction counselors, psychologists, and clinical master's level psychologists licensed in another jurisdiction to practice in Kansas under a temporary permit to:

- Require individuals to have practiced in their jurisdiction for at least two years immediately preceding the application, except clinical social workers must only have practiced in their jurisdiction, without the two-year requirement;

- Increase from 15 to 30 the maximum number of days per year the individual could practice in Kansas; and

- Require the individual to provide quarterly reports to the BSRB detailing the total days of practice in Kansas.

The bill would also specify the temporary practice permit would expire one year after issuance, and the BSRB could extend the permit for no more than one additional year upon the individual's written application no later than 30 days before the permit's expiration and under emergency circumstances, as defined by the BSRB. The bill would provide that any extended permit would authorize the individual to practice in Kansas for an additional 30 days during the additional year and require the individual to provide quarterly reports to the BSRB detailing the total days of practice in Kansas.

Board License Refusal and Revocation Authorities (Sections 6, 9, 12, 16, 18, and 21)

The bill would amend the reasons the BSRB may refuse to issue, renew, reinstate, condition, limit, revoke, or suspend a professional counseling, social work, marriage and family therapy, addiction counseling, psychology, or master's level psychology license or censure or impose a fee on such licensee to:

- Remove reference to specific professions and specify the condition whether the individual has had any professional registration, license, or certificate revoked, suspended, or limited, or has had other disciplinary action taken, or an application for registration, license, or certification denied, by the proper regulatory authority of another state, a territory, District of Columbia, or another country;

- Add the District of Columbia as another location where a substantiated finding of abuse and neglect would result in an individual being listed on a child abuse registry or an adult protective services registry, except the District of Columbia is not included with regard to psychologists; and

- Add the condition whether the individual has violated any lawful order or directive of the BSRB.

Clinical Supervisor Application Fee (Sections 5 and 13)

The bill would authorize the BSRB to establish, by rules and regulations approved by the BSRB, a maximum $50 fee for an application for approval as a BSRB-approved clinical supervisor of professional counselors or marriage and family therapists.

Background

SB 238, as introduced, would have amended the disciplinary authority of BSRB and modified licensure and temporary permit requirements of several professions. The Senate Committee on Public Health and Welfare recommended a substitute bill that incorporates the provisions of SB 238 as amended by the Senate Committee and the provisions of SB 138 (CCBHC certification and funding).

Senate Committee on Public Health and Welfare

SB 138 Hearing

In the Senate Committee hearing on SB 138 on February 23, 2021, representatives of the Association of Community Mental Health Centers of Kansas, COMCARE, Four County Mental Health Center, Johnson County Mental Health Center, the Kansas Mental Health Coalition, and the Kansas Sheriffs Association provided **proponent** testimony. The proponents generally stated the CCBHC model would provide a comprehensive range of mental health and substance use disorder 24-hour crisis care services and receive an enhanced Medicaid reimbursement rate based on the anticipated costs of expanding services to meet the needs of these complex populations. The proponents noted the state's shortage of mental health professionals, which is further challenged by being surrounded on all four borders by states that have either expanded Medicaid, implemented the CCBHC model, or both, which provides those states with additional resources and the ability to recruit away already scarce Kansas behavioral health professionals. The proponents also noted an increased demand for services and stagnant reimbursement rates and stated the CCBHC model would provide an integrated and sustainably financed model for care delivery. The Four County Mental Health Center representative noted the success of its CCBHC "look alike" program funded through a CCBHC-expansion grant from the

federal Substance Abuse and Mental Health Services Administration and its goal to become a CCBHC by the end of the two-year grant cycle.

Neutral testimony was provided by a representative of KDHE. The KDHE representative stated concerns with implementing the CCBHC model by July 1, 2021, and indicated, ideally, 18 months would be needed for implementation. The representative stated the CCBHC model was discussed at a high level during the 2020 Special Committee on Mental Health Modernization and Reform, but establishing the program would be more complex. The representative stated CMS had requested 18 months to review and approve any Section 1115 waiver amendments or substantial state plan amendments. The PPS planning and rate setting process would involve the completion of multiple steps, including assessing the impact of the CCBHC model on Section 1115 waiver budget neutrality and addressing any budget neutrality concerns, and a unique PPS rate would need to be developed for each CCBHC based on each facility's cost. Written-only neutral testimony was provided by KDADS.

No other testimony was provided.

SB 238 Hearing

In the Senate Committee hearing on SB 238 on February 24, 2021, a representative of the BSRB; representatives of the Association of Community Mental Health Centers of Kansas, the Children's Alliance of Kansas, the Community Health Center of Southeast Kansas, the Kansas Chapter of the National Association of Social Workers, and the Washburn University Social Work Department; and a retired clinical social worker testified as **proponents**. The BSRB representative stated lowering hourly requirements for the professions enumerated in the bill would make it easier to earn a clinical license in Kansas while still protecting the public. The BSRB representative stated the amendments to temporary out-of-state permits, which have

been in higher demand during the COVID-19 pandemic, would allow individuals to receive services for longer periods of time. The other proponents stated the adjustments to the requirements for direct service hours would allow for telehealth services, and the hour requirement reductions would help Kansas retain social work students and address workforce shortages.

Written-only proponent testimony was provided by AdventHealth Shawnee Mission, the Behavioral Health Association of Kansas,, Cornerstones of Care, the Kansas Counseling Association, and KVC Kansas.

An associate professor of practice at the University of Kansas School of Social Welfare provided neutral testimony. The conferee stated no other state requires social workers to complete a specific number of hours of direct client contact.

Opponent testimony was provided by a representative of the Wyandot Behavioral Health Network. The representative stated the clinical supervision requirements in the bill would create unnecessary burdens for staff.

On February 26, 2021, in its hearing, the Senate Committee recommended the bill as a substitute bill, which was modified from its form as introduced. The Senate Committee amended the bill to:

- Insert new and modified language from SB 207 concerning the practice of telemedicine by out-of-state licensed physicians (new section 2 of the bill, as amended by the Senate Committee);
- Remove the licensure requirements for specialist clinical social workers that individuals complete at least 350 hours of direct client contact or additional postgraduate supervised experience as determined by the BSRB;

- Remove language requiring BSRB approval of clinical supervisors of social workers working toward licensure as a clinical social worker (section 1 of the bill, as introduced);
- Remove language concerning an application fee for BSRB-approved clinical supervisors of social workers (section 9 of the bill, as introduced); and
- Change the implementation date of CCBHC certification and funding to July 1, 2022 (new section 1 of the bill, as amended by the Senate Committee).

Senate Committee of the Whole

The Senate Committee of the Whole made a technical amendment to the bill to clarify KDADS and KDHE would be required to implement the CCBHC certification and funding processes and the PPS by January 1, 2022.

Fiscal Information

SB 238

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the BSRB estimates enactment of the bill would increase annual revenues from a one-time $50 application fee required of new Board-approved clinical supervisors for social workers, professional counselors, and marriage and family therapists by $2,000, of which $1,800 would be remitted to the Behavioral Sciences Regulatory Board Fee Fund and $200, or 10.0 percent, would be remitted to the State General Fund (SGF). The Board indicates the bill would also increase expenditures for additional staff time spent processing licenses, but any costs would be negligible and could be absorbed within existing resources. Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

SB 138

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, although the bill would require a start date of no later than July 1, 2021, CMS recommends at least 18 months to allow for the drafting of a Medicaid state plan amendment or Section 1115 waiver amendment and an impact assessment of the CCBHC program on the state's Section 1115 waiver budget neutrality. This recommendation would make an FY 2022 implementation date highly challenging. However, the fiscal effect is calculated assuming the July 2021 date. KDHE and KDADS estimate the combined cost for the agencies would range from $43.0 million to $74.2 million from all funding sources, including $17.4 million to $29.9 million from the SGF for FY 2022. The expenditures are detailed below.

KDADS estimates administrative costs associated with creation of the CCBHC program would require $1.1 million from the SGF for FY 2022. Included in these costs, the agency estimates it would require an additional 14.0 full-time equivalent positions, at a cost of $616,858 for salaries and benefits. These positions would include those needed to adequately support all certification, rate setting, and monitoring functions. Also, Medicaid support contracts would increase due to system changes that would need to be implemented to account for the new program. KDADS estimates the cost of consultant work to develop and design the program structure would be $37,500, technology system changes and rate setting would be $277,000, and actuarial services would be $150,000.

Medicaid services costs would be projected to range from $40.8 million to $71.9 million from all funding sources, including a range of $16.3 million to $28.8 million from the SGF. It is assumed that over time, 26 CMHCs would eventually transition to CCBHCs. At that point, the agency estimates that the cost would be the projected high end of the range.

Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Behavioral Sciences Regulatory Board; State Board of Healing Arts; telemedicine; licensure; disciplinary action; temporary permits; professional counselors; social workers; marriage and family therapists; addiction counselors; psychologists; physicians; certified community mental health clinics; community mental health centers; certification and funding; prospective payment system; mental health services; substance abuse services; reules and regulations