

Senate Substitute for HOUSE BILL No. 2028

AN ACT concerning health and healthcare; relating to the practice of telemedicine; Kansas medical assistance program; enacting the Kansas telemedicine act; amending K.S.A. 2017 Supp. 40-2,103 and 40-19c09 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) Sections 1 through 7, and amendments thereto, shall be known and may be cited as the Kansas telemedicine act.

(b) This section shall take effect on and after January 1, 2019.

New Sec. 2. (a) For purposes of Kansas telemedicine act:

(1) "Distant site" means a site at which a healthcare provider is located while providing healthcare services by means of telemedicine.

(2) "Healthcare provider" means a physician, licensed physician assistant, licensed advanced practice registered nurse or person licensed, registered, certified or otherwise authorized to practice by the behavioral sciences regulatory board.

(3) "Originating site" means a site at which a patient is located at the time healthcare services are provided by means of telemedicine.

(4) "Physician" means a person licensed to practice medicine and surgery by the state board of healing arts.

(5) "Telemedicine," including "telehealth," means 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 shall 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 facilitate the assessment, diagnosis, consultation, treatment, education and care management of a patient's healthcare. "Telemedicine" does not include communication between:

(A) Healthcare providers that consist solely of a telephone voice-only conversation, email or facsimile transmission; or

(B) a physician and a patient that consists solely of an email or facsimile transmission.

(b) This section shall take effect on and after January 1, 2019.

New Sec. 3. (a) The same requirements for patient privacy and confidentiality under the health insurance portability and accountability act of 1996 and 42 C.F.R. § 2.13, as applicable, that apply to healthcare services delivered via in-person contact shall also apply to healthcare services delivered via telemedicine. Nothing in this section shall supersede the provisions of any state law relating to the confidentiality, privacy, security or privileged status of protected health information.

(b) Telemedicine may be used to establish a valid provider-patient relationship.

(c) The same standards of practice and conduct that apply to healthcare services delivered via in-person contact shall also apply to healthcare services delivered via telemedicine.

(d) (1) A person authorized by law to provide and who provides telemedicine services to a patient shall provide the patient with guidance on appropriate follow-up care.

(2) (A) Except when otherwise prohibited by any other provision of law, when the patient consents and the patient has a primary care or other treating physician, the person providing telemedicine services shall send within three business days a report to such primary care or other treating physician of the treatment and services rendered to the patient in the telemedicine encounter.

(B) A person licensed, registered, certified or otherwise authorized to practice by the behavioral sciences regulatory board shall not be required to comply with the provisions of subparagraph (A).

(e) This section shall take effect on and after January 1, 2019.

New Sec. 4. (a) The provisions of this section shall 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 and that is delivered, issued for delivery, amended or renewed on or after January 1, 2019. The provisions of this section shall also apply to the Kansas medical assistance program.

(b) No individual or group health insurance policy, medical service plan, contract, hospital service corporation contract, hospital and medical

service corporation contract, fraternal benefit society, health maintenance organization or the Kansas medical assistance program shall exclude an otherwise covered healthcare service from coverage solely because such service is 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.

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

(d) Payment or reimbursement of covered healthcare services delivered through telemedicine may be established by an insurance company, nonprofit health service corporation, nonprofit medical and hospital service corporation or health maintenance organization in the same manner as payment or reimbursement for covered services that are delivered via in-person contact are established.

(e) Nothing in this section shall be construed to:

(1) Prohibit an 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 telemedicine or the Kansas medical assistance program 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;

(2) mandate coverage for a healthcare service delivered via telemedicine if such healthcare service is not already a covered healthcare service, when delivered by a healthcare provider subject to the terms and conditions of the covered individual's health benefits plan; or

(3) allow an 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 telemedicine or the Kansas medical assistance program to require a covered individual to use telemedicine or in lieu of receiving an in-person healthcare service or consultation from an in-network provider.

(f) The provisions of K.S.A. 40-2248 and 40-2249a, and amendments thereto, shall not apply to this section.

(g) This section shall take effect on and after January 1, 2019.

New Sec. 5. (a) The state board of healing arts, following consultation with the state board of pharmacy and the board of nursing, shall adopt rules and regulations relating to the prescribing of drugs, including controlled substances, via telemedicine. Such rules and regulations shall be adopted by December 31, 2018.

(b) The state board of healing arts shall adopt such rules and regulations as may be necessary to effectuate the provisions of Kansas telemedicine act. Such rules and regulation, shall be adopted by December 31, 2018.

(c) The behavioral sciences regulatory board shall adopt such rules and regulations as may be necessary to effectuate the provisions of Kansas telemedicine act. Such rules and regulations shall be adopted by December 31, 2018.

New Sec. 6. Nothing in the Kansas telemedicine act shall be construed to authorize the delivery of any abortion procedure via telemedicine.

New Sec. 7. If any provision of the Kansas telemedicine act, or the application thereof to any person or circumstance, is held invalid or unconstitutional by court order, then the remainder of the Kansas telemedicine act and the application of such provision to other persons or circumstances shall not be affected thereby and it shall be conclusively presumed that the legislature would have enacted the remainder of the Kansas telemedicine act without such invalid or unconstitutional provision, except that the provisions of section 6, and amendments thereto, are expressly declared to be nonseverable.

New Sec. 8. (a) On and after January 1, 2019, the department of health and environment and any managed care organization providing state medicaid services under the Kansas medical assistance program shall provide coverage for speech-language pathology services and audiology

services provided by a speech-language pathologist or audiologist licensed by the Kansas department for aging and disability services by means of telehealth, as defined in section 2, and amendments thereto, if such services would be covered by the Kansas medical assistance program when delivered via in-person contact.

(b) The department of health and environment shall implement and administer this section consistent with applicable federal laws and regulations and shall submit to the United States centers for medicare and medicaid services any state medicaid plan amendment, waiver request or other approval request necessary to implement this section.

(c) The department of health and environment shall adopt rules and regulations as may be necessary to implement and administer this section. Such rules and regulations shall be adopted on or before December 31, 2018.

(d) On or before January 13, 2020, the department of health and environment shall prepare an impact report that assesses the social and financial effects of the coverage mandated by this section, including the impacts listed in K.S.A. 40-2249(a) and (b), and amendments thereto, and shall submit such report to the legislature and the house of representatives standing committee on health and human services, the house of representatives standing committee on insurance, the senate standing committee on public health and welfare and the senate standing committee on financial institutions and insurance.

Sec. 9. K.S.A. 2017 Supp. 40-2,103 is hereby amended to read as follows: 40-2,103. The requirements of K.S.A. 40-2,100, 40-2,101, 40-2,102, 40-2,104, 40-2,105, 40-2,114, 40-2,160, 40-2,165 through 40-2,170, ~~inclusive~~, 40-2250, K.S.A. 2017 Supp. 40-2,105a, 40-2,105b, 40-2,184, 40-2,190 ~~and~~, 40-2,194, ~~and sections 1 through 7~~, and amendments thereto, shall apply to all insurance policies, subscriber contracts or certificates of insurance delivered, renewed or issued for delivery within or outside of this state or used within this state by or for an individual who resides or is employed in this state.

Sec. 10. K.S.A. 2017 Supp. 40-19c09 is hereby amended to read as follows: 40-19c09. (a) Corporations organized under the nonprofit medical and hospital service corporation act shall be subject to the provisions of the Kansas general corporation code, articles ~~60 to through 74, inclusive~~, of chapter 17 of the Kansas Statutes Annotated, and amendments thereto, applicable to nonprofit corporations, to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, 40-229, 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-2,100, 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-2,105, 40-2,116, 40-2,117, 40-2,125, 40-2,153, 40-2,154, 40-2,160, 40-2,161, 40-2,163 through 40-2,170, ~~inclusive~~, 40-2a01 et seq., 40-2111 ~~to through~~ 40-2116, ~~inclusive~~, 40-2215 ~~to through~~ 40-2220, ~~inclusive~~, 40-2221a, 40-2221b, 40-2229, 40-2230, 40-2250, 40-2251, 40-2253, 40-2254, 40-2401 ~~to through~~ 40-2421, ~~inclusive~~, and 40-3301 ~~to through~~ 40-3313; ~~inclusive~~, and K.S.A. 2017 Supp. 40-2,105a, 40-2,105b, 40-2,184, 40-2,190 ~~and~~, 40-2,194 ~~and sections 1 through 7~~, and amendments thereto, except as the context otherwise requires, and shall not be subject to any other provisions of the insurance code except as expressly provided in this act.

(b) No policy, agreement, contract or certificate issued by a corporation to which this section applies shall contain a provision which excludes, limits or otherwise restricts coverage because medicaid benefits as permitted by title XIX of the social security act of 1965 are or may be available for the same accident or illness.

(c) Violation of subsection (b) shall be subject to the penalties prescribed by K.S.A. 40-2407 and 40-2411, and amendments thereto.

Sec. 11. K.S.A. 2017 Supp. 40-2,103 and 40-19c09 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.