

As Amended by House Committee

Session of 2018

HOUSE BILL No. 2674

By Committee on Taxation

2-7

1 AN ACT concerning health and healthcare; relating to the practice of
2 telemedicine; certain state licensing agencies; establishing coverage
3 parity between in-person and telemedicine-delivered healthcare
4 services and providers; enacting the Kansas telemedicine act;
5 definitions; rules and regulations; amending K.S.A. 2017 Supp. 40-
6 2,103 and 40-19c09 and repealing the existing sections.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 New Section 1. Sections 1 through ~~5~~ 7, and amendments thereto,
10 shall be known and may be cited as the Kansas telemedicine act.

11 New Sec. 2. For purposes of Kansas telemedicine act:

12 (a) "BSRB" means the behavioral sciences regulatory board.

13 (b) "BOHA" means the state board of healing arts.

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

16 (d) "Healthcare provider" means a licensed mental healthcare
17 professional or a physician.

18 (e) "Licensed mental healthcare professional" means an individual
19 licensed by the BSRB and who is acting within the scope of the
20 individual's professional licensure act and held to the standards of
21 professional conduct as set forth by the BSRB.

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

24 (g) "Physician" means a person licensed to practice medicine and
25 surgery by the BOHA and who is acting within the scope of the healing
26 arts act and held to the standards of professional conduct as set forth by the
27 BOHA.

28 (h) "Telemedicine," including "telehealth," means the delivery of
29 healthcare services or consultations while the patient is at an originating
30 site and the physician or licensed mental healthcare professional is at a
31 distant site. Telemedicine shall be provided by means of real-time two-way
32 interactive audio, visual, or audio-visual communications, including the
33 application of secure video conferencing or store-and-forward technology
34 to provide or support healthcare delivery, that facilitate the assessment,
35 diagnosis, consultation, treatment, education and care management of a
36 patient's healthcare. "Telemedicine" does not include communication

1 between:

2 (1) Licensed healthcare providers that consist solely of a telephone
3 conversation, email or facsimile transmission; or

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

6 New Sec. 3. (a) The same requirements for patient privacy and
7 confidentiality under the health insurance portability and accountability act
8 of 1996 and 42 C.F.R. § 2.13, as applicable, that apply to healthcare
9 services delivered via in-person visits shall also apply to healthcare
10 services delivered via telemedicine.

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

13 (c) Any healthcare provider delivering healthcare services via
14 telemedicine in this state shall be held to the same standards of practice
15 and conduct as are required for the delivery of healthcare services via in-
16 person contact, as determined by the BOHA and the BSRB for their
17 respective licensees.

18 (d) A healthcare provider who provides telemedicine services to a
19 patient shall provide the patient with guidance on appropriate follow-up
20 care. Additionally, if the patient consents and the patient has a primary care
21 or other treating physician, the provider shall provide, within 72 hours, a
22 report to such primary care or other treating physician of the treatment and
23 services rendered to the patient in the telemedicine encounter.

24 New Sec. 4. (a) The provisions of this section shall apply to any
25 individual or group health insurance policy, medical service plan, contract,
26 hospital service corporation contract, hospital and medical service
27 corporation contract, fraternal benefit society or health maintenance
28 organization that provides coverage for accident and health services and
29 that is delivered, issued for delivery, amended or renewed on or after
30 January 1, 2019. The provisions of this section shall also apply to the
31 Kansas program of medical assistance.

32 (b) No individual or group health insurance policy, medical service
33 plan, contract, hospital service corporation contract, hospital and medical
34 service corporation contract, fraternal benefit society, health maintenance
35 organization or the Kansas program for medical assistance shall exclude an
36 otherwise covered healthcare service from coverage solely because such
37 service is provided through telemedicine, rather than in-person contact or
38 based upon the lack of a commercial office for the practice of medicine,
39 when such service is delivered by:

40 (1) A healthcare provider; or

41 (2) an advanced practice registered nurse or a physician assistant.

42 (c) The insured's medical record shall serve to satisfy all
43 documentation for the reimbursement of all telemedicine healthcare

1 services, and no additional documentation outside of the medical record
2 shall be required.

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

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

10 (1) Prohibit an individual or group health insurance policy, medical
11 service plan, contract, hospital service corporation contract, hospital and
12 medical service corporation contract, fraternal benefit society or health
13 maintenance organization that provides coverage for telemedicine or the
14 Kansas program of medical assistance from providing coverage for only
15 those services that are medically necessary, subject to the terms and
16 conditions of the covered individual's health benefits plan;

17 (2) mandate coverage for a healthcare service delivered via
18 telemedicine if such healthcare service is not already a covered healthcare
19 service, when delivered by:

20 (A) A healthcare provider; or

21 (B) an advanced practice registered nurse or a physician assistant and
22 subject to the terms and conditions of the covered individual's health
23 benefits plan; or

24 (3) allow an individual or group health insurance policy, medical
25 service plan, contract, hospital service corporation contract, hospital and
26 medical service corporation contract, fraternal benefit society or health
27 maintenance organization that provides coverage for telemedicine or the
28 Kansas program of medical assistance to require a covered individual to
29 use telemedicine or in lieu of receiving an in-person healthcare service or
30 consultation from an in-network provider.

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

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

38 (b) The BOHA shall adopt such rules and regulations as may be
39 necessary to effectuate the provisions of Kansas telemedicine act. Such
40 rules and regulation shall be adopted by December 31, 2018.

41 (c) The BSRB shall adopt such rules and regulations as may be
42 necessary to effectuate the provisions of Kansas telemedicine act. Such
43 rules and regulations shall be adopted by December 31, 2018.

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

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

13 ~~Sec. 6.~~ **8.** K.S.A. 2017 Supp. 40-2,103 is hereby amended to read as
14 follows: 40-2,103. The requirements of K.S.A. 40-2,100, 40-2,101, 40-
15 2,102, 40-2,104, 40-2,105, 40-2,114, 40-2,160, 40-2,165 through 40-2,170,
16 ~~inclusive,~~ 40-2250, K.S.A. 2017 Supp. 40-2,105a, 40-2,105b, 40-2,184,
17 40-2,190 ~~and,~~ 40-2,194, *and sections 1 through 5 7,* and amendments
18 thereto, shall apply to all insurance policies, subscriber contracts or
19 certificates of insurance delivered, renewed or issued for delivery within or
20 outside of this state or used within this state by or for an individual who
21 resides or is employed in this state.

22 ~~Sec. 7.~~ **9.** K.S.A. 2017 Supp. 40-19c09 is hereby amended to read as
23 follows: 40-19c09. (a) Corporations organized under the nonprofit medical
24 and hospital service corporation act shall be subject to the provisions of
25 the Kansas general corporation code, articles ~~60 to through 74,~~ ~~inclusive,~~
26 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto,
27 applicable to nonprofit corporations, to the provisions of K.S.A. 40-214,
28 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, 40-229,
29 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250,
30 40-251, 40-252, 40-2,100, 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-
31 2,105, 40-2,116, 40-2,117, 40-2,125, 40-2,153, 40-2,154, 40-2,160, 40-
32 2,161, 40-2,163 through 40-2,170, ~~inclusive,~~ 40-2a01 et seq., 40-2111 ~~to~~
33 *through* 40-2116, ~~inclusive,~~ 40-2215 ~~to through~~ 40-2220, ~~inclusive,~~ 40-
34 2221a, 40-2221b, 40-2229, 40-2230, 40-2250, 40-2251, 40-2253, 40-2254,
35 40-2401 ~~to through~~ 40-2421, ~~inclusive,~~ and 40-3301 ~~to through~~ 40-3313;
36 ~~inclusive,~~ K.S.A. 2017 Supp. 40-2,105a, 40-2,105b, 40-2,184, 40-2,190
37 ~~and,~~ 40-2,194, *and sections 1 through 5 7,* and amendments thereto, except
38 as the context otherwise requires, and shall not be subject to any other
39 provisions of the insurance code except as expressly provided in this act.

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

1 available for the same accident or illness.

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

4 ~~Sec.-8.~~ **10.** K.S.A. 2017 Supp. 40-2,103 and 40-19c09 are hereby
5 repealed.

6 ~~Sec.-9.~~ **11.** This act shall take effect and be in force from and after
7 January 1, 2019, and its publication in the statute book.