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MEMORANDUM

To: Healthcare Stabilization Fund Oversight Committee
From: Office of Revisor of Statutes
Date: November 15, 2021
Subject: 2021 Legislative Session Changes to the Practice of Telemedicine

Senate Bill 283

SB 283 amended K.S.A. 48-963 to allow an out-of-state physician to treat Kansas patients via telemedicine if such physician holds a temporary emergency license granted by the state board of healing arts, pursuant to authorization in K.S.A. 48-965. Prior to this amendment, a physician could practice in this manner after advising the state board of healing arts, rather than requiring a temporary emergency license. The board of healing arts can extend these emergency licensure provisions to other healthcare professions regulated by the board, if necessary to address the impacts of COVID-19 and consistent with patient safety.

Subsection (c)(2) requires physicians practicing telemedicine under this section to conduct an appropriate assessment and evaluation of the patient and document the medical indications for any prescriptions issued. This is a continuation of law enacted during the 2020 Special Session of the Legislature.

K.S.A. 48-965 was amended by SB 283 to allow an applicant to practice in Kansas pursuant to an emergency licensure issued by state board of healing arts upon submission of a non-resident healthcare provider certification form to the Kansas healthcare stabilization fund and without paying the surcharge required by K.S.A. 40-3404.

The provisions of SB 283 relating to the practice of telemedicine by out-of-state practitioners extended and further amended provisions passed in SB 14, the provisions of which would have expired on March 31, 2021. The current version of these statutes are attached to this memorandum.

The changes made to K.S.A. 48-963 and 48-965 were signed into law on April 1, 2021 and are set to expire March 31, 2022.

Senate Substitute for House Bill 2208

Section 10 of HB 2208 allows an out-of-state physician to treat Kansas patients via telemedicine upon receipt of a telemedicine waiver issued by the state board of healing arts. The board is required to issue such waiver within 15 days of receiving an application if the physician: (1)

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Submits a completed application and pays the required fee to the board of healing arts; (2) holds an unrestricted license to practice medicine and surgery in another state and is not subject by their licensing agency to any investigation or disciplinary action.

Any person practicing telemedicine under this waiver is subject to the same rules and regulations that apply to the practice of the licensed profession and are required to conduct appropriate assessments and document medical indications for any prescriptions issued.

Subsection (g) allows other healthcare licensing agencies in this state to adopt procedures to allow other licensed and regulated healthcare professionals to practice telemedicine within in the scope of their respective practice.

One key distinguishing factor between S. Sub for HB 2208 and those in SB 283 is that the provisions in this section are not tied to the COVID-19 pandemic and are not set to expire.

HB 2208 was passed into law and will be codified at K.S.A. 2021 Supp. 65-28,135. The current version of this statute it attached to this memorandum.

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48-963. Same; physicians and other healthcare professionals; use of telemedicine authorized; limitations and requirements; abortion statutes not affected; expiration of section. (a) A physician may issue a prescription for or order the administration of medication, including a controlled substance, for a patient without conducting an in-person examination of such patient.

(b) A physician under quarantine, including self-imposed quarantine, may practice telemedicine.

(c) (1) A physician holding a license issued by the applicable licensing agency of another state may practice telemedicine to treat patients located in the state of Kansas, if such out-of-state physician holds a temporary emergency license granted pursuant to K.S.A. 2021 Supp. 48-965, and amendments thereto.

(2) The state board of healing arts may extend the provisions of this subsection to other healthcare professionals licensed and regulated by the board as deemed necessary by the board to address the impacts of COVID-19 and consistent with ensuring patient safety.

(d) A physician practicing telemedicine in accordance with this section shall conduct an appropriate assessment and evaluation of the patient's current condition and document the appropriate medical indication for any prescription issued.

(e) Nothing in this section shall supersede or otherwise affect the provisions of K.S.A. 65-4a10, and amendments thereto, or K.S.A. 40-2,215, and amendments thereto.

(f) As used in this section:

(1) "Physician" means a person licensed to practice medicine and surgery.

(2) "Telemedicine" means the delivery of healthcare services by a healthcare provider while the patient is at a different physical location.

(g) This section shall expire on March 31, 2022.

48-965. Same; healing arts temporary emergency licenses; issuance by state board of healing arts; requirements and purpose; expiration of section. (a) Notwithstanding any statute to the contrary, the state board of healing arts may grant a temporary emergency license to practice any profession licensed, certified, registered or regulated by the board to an applicant with qualifications the board deems sufficient to protect public safety and welfare within the scope of professional practice authorized by the temporary emergency license for the purpose of preparing for, responding to or mitigating any effect of COVID-19.

(b) Notwithstanding any statute to the contrary, an applicant may practice in Kansas pursuant to a temporary emergency license upon submission of a non-resident healthcare provider certification form to the Kansas healthcare stabilization fund and without paying the surcharge required by K.S.A. 40-3404, and amendments thereto.

(c) This section shall expire on March 31, 2022.

65-28,135. Telemedicine; out-of-state physician practice; requirements and limitations; waiver application and fee; other healthcare professionals. (a) Notwithstanding any other provision of law, a physician holding a license issued by the applicable licensing agency of another state or who otherwise meets the requirements of this section may practice telemedicine to treat patients located in the state of Kansas, if such physician receives a telemedicine waiver issued by the state board of healing arts. The state board of healing arts shall issue such a waiver within 15 days from receipt of a complete application, if the physician:

(1) Submits a complete application that may include evidence in the form of an affidavit from an authorized third party that the applicant meets the requirements of this section in a manner determined by the state board of healing arts and pays a fee not to exceed \$100; and

(2) 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.

(b) A physician practicing telemedicine in accordance with this subsection shall conduct an appropriate assessment and evaluation of the patient's current condition and document the appropriate medical indication for any prescription issued.

(c) Nothing in this section shall supersede or otherwise affect the provisions of K.S.A. 65-4a10, and amendments thereto, or K.S.A. 40-2,210 et seq., and amendments thereto.

(d) Any person who receives a telemedicine waiver under the provisions of this section shall be subject to all rules and regulations pertaining to the practice of the licensed profession in this state and shall be considered a licensee for the purposes of the professional practice acts administered by the state board of healing arts.

(e) A waiver issued under this section shall expire on the date of expiration established by the state board of healing arts unless renewed in the manner established by the state board of healing arts, including payment of an annual renewal fee not to exceed \$100 and evidence that the applicant continues to meet the qualifications described in this section.

(f) Notwithstanding any other provision of law to the contrary, a physician holding a license issued by the applicable licensing agency of another state may provide, without limitation, consultation through remote technology to a physician licensed in the state of Kansas.

(g) An applicable healthcare licensing agency of this state may adopt procedures consistent with this section to allow other healthcare professionals licensed and regulated by such licensing agency to practice telemedicine within the scope of practice defined by Kansas law for such healthcare profession as deemed by such licensing agency to be consistent with ensuring patient safety.

(h) Nothing in this section shall be construed to prohibit a licensing agency from denying an application for a waiver under this section if the licensing body determines that granting the application may endanger the health and safety of the public.

(i) As used in this subsection, "telemedicine" means the delivery of healthcare services by a healthcare provider while the patient is at a different physical location.