AN ACT concerning health and healthcare; relating to the practice of telemedicine; certain state licensing agencies; establishing coverage parity between in-person and telemedicine-delivered healthcare services and providers; enacting the Kansas telemedicine act; definitions; rules and regulations; 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. Sections 1 through 5, and amendments thereto, shall be known and may be cited as the Kansas telemedicine act.

New Sec. 2. For purposes of Kansas telemedicine act:
(a) "BSRB" means the behavioral sciences regulatory board.
(b) "BOHA" means the state board of healing arts.
(c) "Distant site" means a site at which a healthcare provider is located while providing healthcare services by means of telemedicine.
(d) "Healthcare provider" means a licensed mental healthcare professional or a physician.
(e) "Licensed mental healthcare professional" means 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.
(f) "Originating site" means a site at which a patient is located at the time healthcare services are provided by means of telemedicine.
(g) "Physician" means 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.
(h) "Telemedicine," including "telehealth," means 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 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:

(1) Licensed healthcare providers that consist solely of a telephone conversation, email or facsimile transmission; or
(2) a physician and a patient that consists solely of an email or facsimile transmission.

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 visits shall also apply to healthcare services delivered via telemedicine.

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

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

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

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 program of medical assistance.

(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 program for medical assistance 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:

(1) A healthcare provider; or
(2) an advanced practice registered nurse or a physician assistant.

(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 program of medical assistance 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;
   - An advanced practice registered nurse or a physician assistant and subject to the terms and conditions of the covered individual's health benefits plan;

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 program of medical assistance 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.

New Sec. 5. (a) The BOHA, 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 BOHA 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 BSRB 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.
Sec. 6. 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, 40-2,165 through 40-2,170, inclusive, 40-2,2250, 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 5, 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.


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

Sec. 9. This act shall take effect and be in force from and after January 1, 2019, and its publication in the statute book.