

## **Kansas Telemedicine Act; Senate Sub. for HB 2028**

**Senate Sub. for HB 2028** establishes the Kansas Telemedicine Act (Act). The bill also provides for coverage of speech-language pathologist and audiologist services *via* telehealth under the Kansas Medical Assistance Program (KMAP), if such services are covered under KMAP when delivered *via* in-person contact.

### ***Naming of Act***

Sections 1 through 7 are to be known and cited as the Kansas Telemedicine Act. The naming of the Act takes effect on and after January 1, 2019.

### ***Definitions***

The bill establishes definitions for the following terms under the Act:

- “Distant site” means a site at which a healthcare provider is located while providing healthcare services by means of telemedicine;
- “Healthcare provider” means a physician, licensed physician assistant, licensed advanced practice registered nurse, or a person licensed, registered, certified, or otherwise authorized to practice by the Behavioral Sciences Regulatory Board (BSRB);
- “Originating site” means a site at which a patient is located at the time healthcare services are provided by means of telemedicine;
- “Physician” means a person licensed to practice medicine and surgery by the Board of Healing Arts (BOHA); and
- “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 is to 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 facilitates the assessment, diagnosis, consultation, treatment, education, and care management of a patient’s healthcare. The term does not include communication between healthcare providers consisting solely of a telephone voice-only conversation, e-mail, or facsimile transmission, or between a physician and a patient consisting solely of an e-mail or facsimile transmission.

### ***Effective Date***

This section takes effect on and after January 1, 2019.

## ***Privacy and Confidentiality, Establishment of a Provider-Patient Relationship, Standards of Practice, and Follow-up***

### ***Requirements for Patient Privacy***

The bill specifies the same requirements for patient privacy and confidentiality under the Health Insurance Portability and Accountability Act of 1996 and 42 CFR § 2.13 (related to confidentiality restrictions and safeguards), as applicable, applying to healthcare services delivered *via* in-person visits also apply to healthcare visits delivered *via* telemedicine. Nothing in this section supersedes the provisions of any state law relating to the confidentiality, privacy, security, or privileged status of protected health information.

### ***Establishment of the Provider-Patient Relationship***

The bill authorizes telemedicine to be used to establish a valid provider-patient relationship.

### ***Standards of Practice***

The bill requires the same standards of practice and conduct that apply to healthcare services delivered *via* in-person visits apply to healthcare services delivered *via* telemedicine.

### ***Follow-up Care***

The bill requires a person authorized by law to provide and who provides telemedicine services to a patient to provide the patient with guidance on appropriate follow-up care.

### ***Reporting of Services***

If the patient consents and has a primary care or other treating physician, the person providing telemedicine services is required to send a report to the primary care or other treating physician of the treatment and services rendered to the patient within three business days of the telemedicine encounter. A person licensed, registered, certified, or otherwise authorized to practice by the BSRB is not required to comply with this reporting requirement.

### ***Effective Date***

This section takes effect on and after January 1, 2019.

## ***Application to Policies, Contracts, and KMAP***

*Issued for Delivery, Amended, or Renewed On or After January 1, 2019*

The provisions of this section 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 delivered, issued for delivery, amended, or renewed on or after January 1, 2019. The Act also applies to KMAP.

### *Prohibitions*

The bill prohibits the aforementioned policies, plans, contracts, and KMAP from excluding an otherwise covered healthcare service from coverage solely because the 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. The bill also prohibits such groups from requiring a covered individual to use telemedicine or in lieu of receiving in-person healthcare service or consultation from an in-network provider.

### *Medically Necessary Coverage*

These groups shall not be prohibited 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.

### *Medical Record*

The insured's medical record serves to satisfy all documentation for the reimbursement of all telemedicine healthcare services, and no additional documentation outside the medical record is required.

### *Payment or Reimbursement*

The bill authorizes an insurance company, nonprofit health service corporation, nonprofit medical and hospital service corporation, or health maintenance organization to establish payment or reimbursement of covered healthcare services delivered through telemedicine in the same manner as payment or reimbursement for covered services delivered *via* in-person contact.

### *No Mandate of Coverage*

The bill does not mandate coverage for a healthcare service delivered *via* telemedicine, if such service is not already a covered service when delivered by a healthcare provider, and subject to the terms and conditions of the covered individual's health benefits plan.

### *Impact Report and State Employee Group Pilot Project Statutes Not Applicable*

The bill specifies KSA 40-2248 (related to mandated health benefits and impact report) and KSA 40-2249a (related to the state employee group pilot project) do not apply to this section.

### *Effective Date*

This section takes effect on and after January 1, 2019.

### ***Rules and Regulations***

#### *BOHA*

The bill requires the BOHA, following consultation with the State Board of Pharmacy and the Board of Nursing, to adopt rules and regulations by December 31, 2018, relating to the prescribing of drugs, including controlled substances, *via* telemedicine.

Additionally, the BOHA is required to adopt rules and regulations necessary to effectuate provisions of the Act by December 31, 2018.

#### *BSRB*

The BSRB is required to adopt rules and regulations as necessary to effectuate provisions of the Act by December 31, 2018.

### ***Prohibition on Delivery of Abortion Procedures via Telemedicine***

The bill states nothing in the Act is construed to authorize the delivery of any abortion procedure *via* telemedicine.

### ***Severability and Non-severability Clauses***

The bill states if any provision of the Act, or the application thereof to any person or circumstance, is held invalid or unconstitutional by court order, the remainder of the Act and application of such provision is not affected. Additionally, it is conclusively presumed the Legislature would have enacted the remainder of the Act without the invalid or unconstitutional provision. Further, the provision of the bill related to abortion is expressly declared to be non-severable. If the abortion language is held invalid or unconstitutional by court order, the entire Act is affected. *[Note: Subsequent portions of the bill are not included in the Kansas Telemedicine Act.]*

## ***Coverage of Speech-Language Pathology and Audiology Services***

### ***Coverage Requirement under KMAP***

On and after January 1, 2019, the Kansas Department of Health and Environment (KDHE) and any managed care organization providing state Medicaid services under KMAP is required to provide coverage for speech-language pathology services and audiology services by means of telehealth, as defined in the Act, when provided by a licensed speech-language pathologist or audiologist licensed by the Kansas Department for Aging and Disability Services if such services are covered by KMAP when delivered *via* in-person contact.

### ***Implementation and Administration by KDHE***

KDHE is required to implement and administer this section consistent with applicable federal laws and regulations. KDHE is required to submit to the Centers for Medicare and Medicaid Services any state Medicaid plan amendment, waiver request, or other approval request necessary to implement this section.

### ***Rules and Regulations***

KDHE is required to adopt rules and regulations necessary to implement and administer this section by December 31, 2018.

### ***Impact Report***

On or before January 13, 2020, KDHE is required to prepare an impact report that assesses the social and financial effects of the coverage mandated under this section for speech-language pathology and audiology services, including the impacts listed in KSA 40-2249(a) and (b) relating to social and financial impacts of mandated health benefits. KDHE is required to submit such report to the Legislature, the House Committee on Health and Human Services, the House Committee on Insurance, the Senate Committee on Public Health and Welfare, and the Senate Committee on Financial Institutions and Insurance.

### ***Application of the Act to Insurance Policies***

The bill specifies the requirements of the Act apply to all insurance policies, subscriber contracts, or certificates of insurance delivered, renewed, or issued for delivery within or outside of Kansas, or used within the state by or for an individual who resides or is employed in the state.

### ***Corporations Under the Nonprofit Medical and Hospital Service Corporation Act***

The bill specifies corporations organized under the Nonprofit Medical and Hospital Service Corporation Act are subject to the provisions of the Act.