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F-6 Recent Telemedicine Legislation in Kansas

Telemedicine legislation was introduced during the 2017 and 2018 Legislative Sessions. This article discusses the legislative history of those bills and provides summary information on the Kansas Telemedicine Act (Act), KSA 2018 Supp. 40-2,210 *et seq.*, and other provisions enacted in 2018 Senate Sub. for HB 2028.

Recent Telemedicine-related Legislation

During the 2017 Legislative Session, two pieces of telemedicine-related legislation were introduced and referred to the House Committee on Health and Human Services (House Committee), HB 2206 and HB 2254. Hearings were held on these bills, but no action was taken at that time. The Legislative Coordinating Council, in 2017, appointed a Special Committee on Health, which was tasked with studying the subjects of telehealth and telemedicine in order to increase and improve health care access for all Kansans, and review and consider the two bills.

The Special Committee, in its meetings on October 19 and 20, 2017, viewed demonstrations of telemedicine technologies; heard testimony from individuals, organizations, and providers; and participated in a roundtable discussion with select stakeholders. Following discussion, the Special Committee noted the importance of keeping the patient first when crafting legislation; did not recommend 2017 HB 2206 or 2017 HB 2254; and recommended the introduction of comprehensive telemedicine legislation, to begin in the House, early in the 2018 Legislative Session.

During the 2018 Legislative Session, the House Committee held hearings on two telemedicine bills, HB 2512 and HB 2674. The House Committee did not take action on HB 2512, but referenced the testimony of HB 2512 during the hearing on HB 2674. HB 2674 was amended by both the House Committee and the Senate Committee on Public Health and Welfare, and eventually inserted into Senate Sub. for HB 2028 as the report from the third Conference Committee. Senate Sub. for HB 2028 was approved by the Governor on May 12, 2018.

The majority of the provisions contained in Senate Sub. for HB 2028 will take effect on and after January 1, 2019. The Board of Healing Arts (BOHA) and the Behavioral Sciences Regulatory

Board (BSRB) are required to adopt rules and regulations related to the Act by December 31, 2018.

Additionally, Senate Sub. for HB 2028 provided for coverage of speech-language pathologist and audiologist services *via* telehealth under the Kansas Medical Assistance Program (KMAP), if such services would be covered under KMAP when delivered *via* in-person contact. The Kansas Department of Health and Environment (KDHE) is required to adopt rules and regulations related to coverage of these services by December 31, 2018.

Summary of Provisions Contained in Senate Sub. for HB 2028

Definition of “Telemedicine” and How Services are Provided

The Act defines “telemedicine, including telehealth” as the delivery of healthcare services or consultations while the patient is at an originating site and the healthcare provider is at a distant site. The “distant site” is the site at which a healthcare provider is located while providing healthcare services *via* telemedicine, and the “originating site” is the site at which a patient is located at the time healthcare services are provided.

The Act directs telemedicine services 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. “Telemedicine,” for purposes of the Act, 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.

Standards and Practices Applicable to Telemedicine Services

The Act 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. The Act does not supersede other state law related to the confidentiality, privacy, security, or privileged status of protected health information.

The Act authorizes telemedicine to be used to establish a valid provider-patient relationship and 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. A person authorized by law to provide and who provides telemedicine services to a patient is required to provide the patient with guidance on appropriate follow-up care.

Additionally, 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.

Application of Insurance Policies, Contracts, and KMAP to Telemedicine under the Act

The Act applies 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.

The policies, plans, contracts, and KMAP are prohibited 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 Act 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.

The Act specifies 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. 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.

Additionally, the Act 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. However, the Act 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.

Prohibition on Delivery of Abortion Procedures via Telemedicine

Nothing in the Act is construed to authorize the delivery of any abortion procedure *via* telemedicine.

Severability and Non-severability Clauses

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 Act 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.

Other Provisions Included in Legislation, but Not Part of the Act

The following provisions of 2018 Senate Sub. for HB 2028 are not included in the Act.

Coverage of Speech-Language Pathology and Audiology Services

Coverage Requirement under KMAP

On and after January 1, 2019, 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 the coverage of these services 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 necessary approval request.

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 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

Senate Sub. for HB 2028 amended KSA 2018 Supp. 40-2,103 to specify 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

Senate Sub. for HB 2028 amended KSA 2018 Supp. 40-19c09 to specify corporations organized under the Nonprofit Medical and Hospital Service Corporation Act are subject to the provisions of the Act.

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