

SENATE BILL No. 246

By Committee on Ways and Means

2-13

1 AN ACT concerning health and healthcare; relating to telemedicine;
2 defining in-state and interstate practitioners under the Kansas
3 telemedicine act; requiring certain insurance coverage of in-state
4 telemedicine services; providing for certain standards of care;
5 establishing the Kansas telehealth advisory committee; amending
6 K.S.A. 40-2,210, 40-2,211, 40-2,212 and 40-2,213 and repealing the
7 existing sections.
8

9 *Be it enacted by the Legislature of the State of Kansas:*

10 New Section 1. (a) There is hereby established the Kansas telehealth
11 advisory committee.

12 (b) The committee shall advise and make recommendations regarding
13 telemedicine quality care practices. Such recommendations and any
14 resource materials developed by the committee shall recommend
15 evidence-based practices for the use and future of telemedicine in Kansas.
16 On or before the first day of each regular session of the legislature, the
17 committee shall provide information to the Kansas legislature on
18 telemedicine usage data in Kansas.

19 (c) The committee shall consist of the following 22 voting members
20 and three non-voting members:

21 (1) Two members of the senate appointed by the president of the
22 senate, including one member from the senate standing committee on
23 public health and welfare, or any successor committee, and one member
24 from the senate standing committee on financial institutions and insurance,
25 or any successor committee;

26 (2) two members of the house of representatives appointed by the
27 speaker of the house of representatives, including one member from the
28 house of representatives standing committee on health and human
29 services, or any successor committee, and one member from the house of
30 representatives standing committee on insurance and pensions, or any
31 successor committee;

32 (3) one member of the senate appointed by the minority leader of the
33 senate;

34 (4) one member of the house of representatives appointed by the
35 minority leader of the house of representatives;

36 (5) two members who are physicians, including one member

1 appointed by the Kansas academy of family physicians and one member
2 appointed by the Kansas medical society. The two members appointed
3 under this paragraph shall include one member from an urban area and one
4 member from a rural area;

5 (6) one member who is a physician appointed by the Kansas chapter
6 of the American academy of pediatrics;

7 (7) two members who are hospital administrators appointed by the
8 Kansas hospital association. The two members appointed under this
9 paragraph shall include one member from an urban area and one member
10 from a rural area;

11 (8) two members who are behavioral health professionals, including
12 one member appointed by the association of community mental health
13 centers of Kansas and one member appointed by the Kansas association of
14 addiction support professionals. The two members appointed under this
15 paragraph shall include one member from an urban area and one member
16 from a rural area;

17 (9) one member who is a healthcare professional whose primary area
18 of focus is nursing appointed by the Kansas state nurses association;

19 (10) one member who is a healthcare professional whose primary
20 area of focus is treating individuals with developmental disabilities
21 appointed by interhab;

22 (11) one member appointed by leading age Kansas;

23 (12) one member who is a business community representative
24 appointed by the Kansas chamber of commerce;

25 (13) one member who is a community representative appointed by
26 Kansas farm bureau;

27 (14) one member who is an insurance industry representative
28 appointed by blue cross blue shield of Kansas;

29 (15) one member who is a physician representing an interstate
30 telemedicine practitioner appointed by aetna;

31 (16) one member appointed by the heartland telehealth resource
32 center;

33 (17) one member appointed by the Kansas bankers association;

34 (18) one non-voting member appointed by the state medicaid
35 director;

36 (19) one non-voting member appointed by the insurance
37 commissioner; and

38 (20) one non-voting member appointed by the state board of healing
39 arts.

40 (d) Initial members of the committee shall be appointed within 90
41 days after the effective date of this section. Any member appointed to fill a
42 vacancy in the membership of the committee shall be appointed in the
43 manner provided for the original appointment of the member who vacated.

1 (e) The president of the senate shall select one member of the
 2 committee who is a member of the senate, and the speaker of the house of
 3 representatives shall select one member of the committee who is a member
 4 of the house of representatives, both to serve as co-chairpersons of the
 5 committee.

6 (f) The committee shall meet not fewer than four times per year upon
 7 the call of either co-chairperson. The co-chairpersons shall call the first
 8 meeting of the committee on or before October 1, 2023. A majority of the
 9 voting members of the committee constitutes a quorum. Any action by the
 10 committee shall be by motion adopted by a majority of the voting
 11 members present when there is a quorum.

12 (g) Staff of the office of revisor of statutes, the legislative research
 13 department and the division of legislative administrative services shall
 14 provide assistance to the committee as may be requested by the co-
 15 chairpersons.

16 (h) Subject to approval by the legislative coordinating council,
 17 legislative members of the committee attending meetings of the committee
 18 shall be paid amounts for expenses, mileage and subsistence as provided in
 19 K.S.A. 75-3223(e), and amendments thereto.

20 (i) This section shall be a part of and supplemental to the Kansas
 21 telemedicine act.

22 Sec. 2. K.S.A. 40-2,210 is hereby amended to read as follows: 40-
 23 2,210. (a) K.S.A. 40-2,210 through 40-2,216, and amendments thereto,
 24 *and section 1, and amendments thereto*, shall be known and may be cited
 25 as the Kansas telemedicine act.

26 ~~(b) This section shall take effect on and after January 1, 2019.~~

27 Sec. 3. K.S.A. 40-2,211 is hereby amended to read as follows: 40-
 28 2,211. ~~(a)~~ For purposes of *the* Kansas telemedicine act:

29 ~~(+)~~(a) "Distant site" means a site ~~at which~~, *including an unlicensed or*
 30 *private location, where* a healthcare provider is located while providing
 31 healthcare services by means of telemedicine.

32 ~~(2)~~(b) "Healthcare provider" means a physician, licensed physician
 33 assistant, licensed advanced practice registered nurse or person licensed,
 34 registered, certified or otherwise authorized to practice by the behavioral
 35 sciences regulatory board.

36 ~~(3)~~(c) "*In-state practitioner*" means any healthcare provider who has
 37 a physical location of practice in the state of Kansas as authorized by the
 38 applicable Kansas licensing and regulatory agency.

39 (d) "*Interstate telehealth practitioner*" means a healthcare provider
 40 who does not have a physical location of practice in the state of Kansas
 41 and provides only telemedicine services to patients in the state of Kansas
 42 pursuant to a telemedicine waiver issued by the state board of healing
 43 arts.

1 (e) "Originating site" means a site at which a patient is located at
2 the time healthcare services are provided by means of telemedicine.

3 ~~(4)(f)~~ "Physician" means a person licensed to practice medicine and
4 surgery by the state board of healing arts.

5 ~~(5)(g)~~ "Telemedicine," including "telehealth," means the delivery of
6 healthcare services or consultations while the patient is at an originating
7 site and the healthcare provider is at a distant site. Telemedicine shall be
8 provided by means of real-time two-way interactive audio, visual, or
9 audio-visual communications, including the application of secure video
10 conferencing, *remote patient monitoring* or store-and-forward technology
11 to provide or support healthcare delivery, that facilitate the assessment,
12 diagnosis, consultation, treatment, education and care management of a
13 patient's healthcare. "Telemedicine" does not include communication
14 between:

15 ~~(A)(1)~~ Healthcare providers that consist solely of a telephone voice-
16 only conversation, an email or facsimile transmission; or

17 ~~(B)(2)~~ a ~~physician~~ *healthcare provider* and a patient that consists
18 solely of an email, *voicemail*, *instant message* or facsimile transmission.

19 ~~(b) This section shall take effect on and after January 1, 2019.~~

20 Sec. 4. K.S.A. 40-2,212 is hereby amended to read as follows: 40-
21 2,212. (a) The same requirements for patient privacy and confidentiality
22 under the health insurance portability and accountability act of 1996 and
23 42 C.F.R. § 2.13, as applicable, that apply to healthcare services delivered
24 via in-person contact shall also apply to healthcare services delivered via
25 telemedicine. Nothing in this section shall supersede the provisions of any
26 state law relating to the confidentiality, privacy, security or privileged
27 status of protected health information.

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

30 (c) *Telemedicine may be used by an in-state practitioner to refer a*
31 *patient to a specialty service healthcare provider to the extent that such*
32 *services are consistent with the standard of care for an in-state*
33 *practitioner.*

34 (d) The same standards of practice and conduct that apply to
35 healthcare services delivered via in-person contact *with a patient* shall also
36 apply to healthcare services delivered via telemedicine.

37 ~~(d)(e)~~ (1) A ~~person~~ *healthcare provider* authorized by law to provide
38 and who provides telemedicine services to a patient shall provide the
39 patient with guidance on appropriate follow-up care.

40 (2) (A) Except when otherwise prohibited by any other provision of
41 law, when the patient consents *to treatment via telemedicine* and the
42 patient has a primary care *physician* or other treating physician, the ~~person~~
43 *in-state practitioner or interstate telemedicine practitioner* providing

1 telemedicine services shall send within three business days a report to such
2 primary care *physician* or other treating physician of the treatment and
3 services rendered to the patient in the telemedicine encounter.

4 (B) A person licensed, registered, certified or otherwise authorized to
5 practice by the behavioral sciences regulatory board shall not be required
6 to comply with the provisions of subparagraph (A).

7 ~~(e) This section shall take effect on and after January 1, 2019.~~

8 (f) *An in-state practitioner may use audio-only communication with a*
9 *patient who has an existing relationship with an in-state practitioner if:*

10 (1) *An audio-visual telemedicine encounter is not reasonably*
11 *available due to the patient's functional status or lack of technological*
12 *access or telecommunications infrastructure limits, as determined by the*
13 *in-state practitioner; and*

14 (2) *the telemedicine encounter is initiated at the request of the patient*
15 *or authorized by the patient before the telemedicine encounter.*

16 (g) (1) *If the actions described in subparagraphs (A) through (E)*
17 *would be required for the provision of the same healthcare services*
18 *delivered in a manner other than telemedicine, a healthcare provider who*
19 *uses telemedicine shall:*

20 (A) *Establish a healthcare provider-patient relationship prior to*
21 *providing care and treatment to a patient;*

22 (B) *obtain the patient's name and contact information and, to the*
23 *extent reasonably possible, confirmation of the identity of the patient and*
24 *a verbal statement or other data from the patient identifying the patient's*
25 *location;*

26 (C) *disclose the provider's name and licensure, certification or*
27 *registration;*

28 (D) *create and maintain a medical record for the patient consistent*
29 *with the standard of care for maintaining medical records for patients*
30 *treated in an in-person setting; and*

31 (E) *if a prescription order is issued for the patient and subject to the*
32 *consent of the patient, notify the patient's primary care physician, if any, of*
33 *any prescription order issued for the patient.*

34 (2) *The requirements of paragraph (1) shall not apply if the*
35 *healthcare provider:*

36 (A) *Is using an electronic health record system that the patient's*
37 *primary care physician is authorized to access; and*

38 (B) *has established an ongoing provider-patient relationship with the*
39 *patient by providing care and treatment to the patient at least two*
40 *consecutive times via telemedicine services.*

41 (3) *Any medical records required to be created and maintained under*
42 *this subsection shall be created and maintained under the same standards*
43 *of appropriate practice as such standards apply for medical records for*

1 *patients in an in-person setting.*

2 *(h) A healthcare provider may refuse at any time to provide*
3 *healthcare services using telemedicine if, in the healthcare provider's sole*
4 *discretion, the provider believes:*

5 *(1) The health quality may be negatively impacted by providing*
6 *services or items via telemedicine; or*

7 *(2) the healthcare provider would be unable to provide the same*
8 *clinical standards of care as provided in an in-person setting.*

9 *(i) Nothing in the Kansas telemedicine act shall be construed to*
10 *require any individual to use telemedicine or any healthcare provider to*
11 *provide services via telemedicine.*

12 Sec. 5. K.S.A. 40-2,213 is hereby amended to read as follows: 40-
13 2,213. (a) The provisions of this section shall apply to any individual or
14 group health insurance policy, medical service plan, contract, hospital
15 service corporation contract, hospital and medical service corporation
16 contract, fraternal benefit society or health maintenance organization that
17 provides coverage for accident and health services and that is delivered,
18 issued for delivery, amended or renewed on or after ~~January 1, 2019~~ *July*
19 *1, 2023*. The provisions of this section shall also apply to the Kansas
20 medical assistance program.

21 (b) No individual or group health insurance policy, medical service
22 plan, contract, hospital service corporation contract, hospital and medical
23 service corporation contract, fraternal benefit society, health maintenance
24 organization or the Kansas medical assistance program shall:

25 *(1) Exclude an otherwise covered healthcare service from coverage*
26 *solely because such service is provided through telemedicine, rather than*
27 *in-person contact, or based upon the lack of a commercial office for the*
28 *practice of medicine, when such service is delivered by a healthcare*
29 *provider; or*

30 *(2) require the use of any specific information technology application*
31 *by any in-state practitioner.*

32 *(c) The ~~insured's~~ covered individual's medical record shall serve to*
33 *satisfy all documentation for the reimbursement of all telemedicine*
34 *healthcare services, and no additional documentation outside of the*
35 *medical record shall be required.*

36 *(d) Payment or reimbursement of covered healthcare services*
37 *delivered through telemedicine ~~may~~ by an in-state practitioner shall be*
38 *established by an insurance company, nonprofit health service corporation,*
39 *nonprofit medical and hospital service corporation or health maintenance*
40 *organization in the same manner as payment or reimbursement for covered*
41 *services that are delivered via in-person contact ~~are~~ is established.*

42 *(e) An individual or group health insurance policy, medical service*
43 *plan, contract, hospital service corporation contract, hospital and medical*

1 *service corporation contract, fraternal benefit society or health*
2 *maintenance organization that provides coverage for accident and health*
3 *services and the Kansas medical assistance program shall provide*
4 *payment and reimbursement for telemedicine services provided by an in-*
5 *state practitioner under the same criteria that the policy provides for*
6 *payment and reimbursement for the same or similar healthcare services*
7 *delivered in person by an in-state practitioner.*

8 *(f) Coverage and payment for telemedicine services provided by an*
9 *in-state practitioner shall not be subject to any dollar limit, deductible or*
10 *coinsurance requirement that is less favorable to a covered individual than*
11 *the dollar limit, deductible or coinsurance requirement that applies to the*
12 *same healthcare services delivered to a covered individual in person by an*
13 *in-state practitioner.*

14 *(g) Any coverage limit or annual or lifetime aggregate dollar limit*
15 *that applies to telemedicine services provided by an in-state practitioner*
16 *shall be the same such limit that applies to all items and services provided*
17 *by an in-state practitioner covered under the policy.*

18 *(h) An interstate telehealth practitioner shall not be affected by in-*
19 *state practitioner reimbursement rates established under Kansas law. The*
20 *provisions of subsections (d) through (g) shall not apply to items or*
21 *services provided by an interstate telemedicine practitioner.*

22 *(i) Nothing in this section shall be construed to:*

23 *(1) Prohibit an individual or group health insurance policy, medical*
24 *service plan, contract, hospital service corporation contract, hospital and*
25 *medical service corporation contract, fraternal benefit society or health*
26 *maintenance organization that provides coverage for telemedicine or the*
27 *Kansas medical assistance program from providing coverage for only*
28 *those services that are medically necessary, subject to the terms and*
29 *conditions of the covered individual's health benefits plan;*

30 *(2) mandate coverage for a healthcare service delivered via*
31 *telemedicine if such healthcare service is not already a covered healthcare*
32 *service, when delivered by a healthcare provider subject to the terms and*
33 *conditions of the covered individual's health benefits plan; or*

34 *(3) allow an individual or group health insurance policy, medical*
35 *service plan, contract, hospital service corporation contract, hospital and*
36 *medical service corporation contract, fraternal benefit society or health*
37 *maintenance organization that provides coverage for telemedicine or the*
38 *Kansas medical assistance program to require a covered individual to use*
39 *telemedicine or in lieu of receiving an in-person healthcare service or*
40 *consultation from an in-network provider.*

41 ~~(j)~~ *The provisions of K.S.A. 40-2248 and 40-2249a, and*
42 *amendments thereto, shall not apply to this section.*

43 ~~(g) This section shall take effect on and after January 1, 2019.~~

1 Sec. 6. K.S.A. 40-2,210, 40-2,211, 40-2,212 and 40-2,213 are hereby
2 repealed.

3 Sec. 7. This act shall take effect and be in force from and after its
4 publication in the Kansas register.