

Rural Emergency Hospital Act, Innovation Grant; CCBHCs; Telemedicine Waivers for Out-of-State Physicians; Licensure, Temporary Permits, and Regulatory Requirements; Senate Sub. for HB 2208

Senate Sub. for HB 2208 enacts the Rural Emergency Hospital Act (Act) and creates a category of licensure to enable certain Kansas hospitals to receive federal health care reimbursement as rural emergency hospitals; establishes certification for certified community behavioral health clinics (CCBHCs); authorizes licensed out-of-state physicians with telemedicine waivers to practice telemedicine in Kansas; and modifies licensure, temporary permit, and regulatory requirements on the Behavioral Sciences Regulatory Board (BSRB) and its licensees.

Rural hospitals. The bill establishes the Rural Hospital Innovation Grant Program (Program) and the Rural Hospital Innovation Grant Fund (Fund). The bill requires a rural hospital to exhaust all opportunities for federal moneys available to the hospital for transitional assistance, including, but not limited to, any federal moneys related to COVID-19 relief that may be used for such purposes, before a Rural Hospital Innovation Grant may be awarded. Additionally, the bill requires the Director of the Budget to certify and determine on June 15, 2021, the unencumbered federal funds received by the State that may be used to award the grants. An aggregate amount equal to \$10.0 million in available special revenue bonds is to be transferred to the Fund on July 1, 2021. If the aggregate certified special revenue funds are less than \$10.0 million, the bill requires the difference between \$10.0 million and the amount certified to be transferred from the State General Fund (SGF) to the Fund on July 1, 2021. The bill requires benefits coverage for services provided by rural emergency hospitals if covered when performed by a general hospital or critical access hospital. The bill defines applicable terms, including “rural emergency hospital,” in the Act, and references the definition in the Kansas Medical Facilities Survey and Construction Act.

Certified Community Behavioral Health Clinics. The bill establishes certification for CCBHCs and prescribes the powers, duties, and functions of the Kansas Department for Aging and Disability Services (KDADS) with regard to CCBHCs.

Boards and licensure. The bill authorizes a licensed out-of-state physician with a telemedicine waiver issued by the State Board of Healing Arts (BOHA) to practice telemedicine in Kansas. The bill also amends the disciplinary authority of the BSRB and modifies licensure and temporary permit requirements of professional counselors, social workers, marriage and family therapists, addiction counselors, psychologists, and master’s level psychologists.

The bill takes effect upon publication in the *Kansas Register*.

Rural Emergency Hospital Act (New Sections 1-8)

The bill establishes eligibility and application requirements for licensure as a rural emergency hospital and requires the Secretary of Health and Environment (Secretary) to adopt rules and regulations establishing minimum standards for the establishment and operations of rural emergency hospitals in accordance with the Act. Further, the bill requires the Secretary, in formulating rules and regulations under the Kansas Medical Facilities Survey and Construction

Act, to give due consideration to the requirements for receiving federal reimbursement for the particular type of medical care facility.

Definitions (New Sections 3 and 9 [Amending the Kansas Medical Facilities Survey and Construction Act])

The bill defines multiple terms, including the following:

- “Rural emergency hospital” means an establishment that:
 - Meets the eligibility requirements described in Section 4;
 - Provides rural emergency hospital services;
 - Provides rural emergency hospital services in the facility 24 hours per day by maintaining an emergency medical department that is staffed 24 hours per day, 7 days per week, with a physician, nurse practitioner, clinical nurse specialist, or physician assistant;
 - Has a transfer agreement with a level I or level II trauma center; and
 - Meets such other requirements as the Kansas Department of Health and Environment (KDHE) finds necessary in the interest of the health and safety of individuals who are provided rural emergency hospital services and to implement state licensure that satisfies requirements for reimbursement by federal health care programs as a rural emergency hospital; and
- “Rural emergency hospital services” means the following services, provided by a rural emergency hospital, that do not require in excess of an annual per-patient average of 24 hours in the rural emergency hospital:
 - Emergency department services and observation care; and
 - At the election of the rural emergency hospital, for services provided on an outpatient basis, other medical and health services as specified in regulations adopted by the U.S. Secretary of Health and Human Services and authorized by KDHE.

State Policy (New Section 2)

The bill outlines how the Kansas Legislature seeks to address the provision and regulation of a structured and integrated system of health care services. The bill declares the State’s policy is to create a category of licensure to enable certain hospitals to receive federal health care reimbursement as rural emergency hospitals, and the implementation of the Act facilitates that policy.

Eligibility for Licensure (New Section 4)

The bill provides that a facility is eligible to apply for a rural emergency hospital license, if the facility, as of December 27, 2020, is a:

- Licensed critical access hospital;
- General hospital with not more than 50 licensed beds located in a county in a rural area as defined in Section 1886(d)(2)(D) of the federal Social Security Act; or
- General hospital with not more than 50 licensed beds that is deemed as being located in a rural area pursuant to Section 1886(d)(8)(E) of the Social Security Act.

The bill requires a facility applying for licensure as a rural emergency hospital to include the following with the licensure application:

- An action plan for initiating rural emergency hospital services, including a detailed transition plan listing the specific services the facility will retain, modify, add, and discontinue;
- A description of services the facility intends to provide on an outpatient basis; and
- Such other information as required by rules and regulations adopted by KDHE.

The bill outlines additional prohibitions and requirements for rural emergency hospital licensure as follows:

- Inpatient beds are prohibited, except a distinct unit that is part of the hospital and licensed as a skilled nursing facility may provide post-hospital extended care services;
- A rural emergency hospital is allowed to own and operate an entity that provides ambulance services; and
- A licensed general hospital or critical access hospital that applies for and receives licensure as a rural emergency hospital and elects to operate as a rural emergency hospital retains its original license as a general hospital or critical access hospital. The original license remains inactive while the rural emergency hospital license is in effect.

Authority to Enter into Contracts for Federal Reimbursement (New Section 5)

The bill authorizes all rural emergency hospitals, including city, county, hospital district, or other governmental or quasi-governmental hospitals, to enter into any contracts required to be eligible for federal reimbursement as a rural emergency hospital.

Protections Provided (New Section 6)

The bill provides, in addition to the limited liability protections provided in KSA 65-4909 when acting in good faith and without malice, that entities engaging in activities and entering into contracts required to meet the requirements for licensure as a rural emergency hospital, and officers, agents, representatives, employees, and directors of such entities, are considered to be acting pursuant to clearly expressed state policy as established in the Act under the supervision of the State. Such entities are not subject to state or federal antitrust laws while acting in this manner.

Rules and Regulations Authority (New Section 7)

The bill requires the Secretary to adopt rules and regulations establishing minimum standards for the establishment, operation, and licensure of rural emergency hospitals in accordance with the Act.

Required Service Coverage (New Section 8)

The bill requires benefits for services performed by a rural emergency hospital to be covered if such services are covered under the following policies, contracts, or coverage, if performed by a general hospital:

- Each individual and group policy of accident and sickness insurance;
- Each contract issued by a health maintenance organization; and
- All coverage maintained by an entity authorized under KSA 40-2222 (those entities providing coverage in Kansas for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, that are presumed to be subject to the jurisdiction of the Commissioner of Insurance, unless the entities fall under the listed exemptions) or by a municipal group-funded pool authorized under KSA 12-2618.

Rural Hospital Innovation Grant Program and Fund (New Section 11)

Definitions

The bill defines the following terms:

- “Eligible county” means a county in Kansas other than Douglas, Johnson, Sedgwick, Shawnee, or Wyandotte county;
- “Hospital” means the same as in KSA 65-425, in the Kansas Medical Facilities Survey and Construction Act; and
- “Transitional assistance” means any assistance related to changing a hospital’s current health care delivery model to a model more appropriate for the community the hospital serves, including, but not limited to:
 - Conducting a market study of health care services needed and provided in the community;
 - Acquiring and implementing new technological tools and infrastructure, including, but not limited to, telemedicine delivery methods; and
 - Acquiring the services of appropriate personnel, including, but not limited to, additional medical residents or individuals trained to be needed health care professionals.

Rural Hospital Innovation Grant Program

The bill establishes the Program, administered by the Secretary, for the purpose of strengthening and improving the health care system and increasing access to health care services in eligible counties, helping communities in those counties achieve and maintain optimal health by providing transitional assistance to hospitals. The Secretary may award a Rural Hospital Innovation Grant (grant) to a county that applies in accordance with the provisions of the bill.

The board of county commissioners of an eligible county, or the board’s designee, may apply to the Secretary for a grant in the form and manner determined by the Secretary. The bill requires the application to include:

- A description of the hospital for which the money would be expended, including the name and location of the hospital;
- The amount of money requested;
- A description of the needs of the hospital, the type of transitional assistance the grant would fund, and how the grant would support the hospital in meeting its needs;
- A certification the hospital has exhausted all opportunities for federal moneys available to such hospital for transitional assistance purposes, including, but not limited to, any federal moneys related to COVID-19 relief that may be used for such purposes; and
- Any other information the Secretary deems necessary.

The bill requires, before grant moneys are awarded, the Secretary to enter into a written agreement with the county, requiring the county to:

- Expend the grant moneys to provide transitional assistance to a hospital, as approved by the Secretary;
- Report to the Secretary within one year after the grant moneys are awarded, detailing the effect of the grant on the health and other outcomes in the county and affected community;
- Repay all awarded grant moneys to the Secretary if the county fails to satisfy any term or condition of the grant agreement; and
- Any other terms and conditions the Secretary deems necessary.

The bill prohibits the awarding of a grant unless the hospital has exhausted all opportunities for federal moneys available to such hospital for transitional purposes, including, but not limited to, any federal moneys related to COVID-19 relief that may be used for such purposes.

The bill allows any eligible county to enter into memorandums of understanding and other necessary agreements with private stakeholders and other eligible counties.

Private Stakeholders

The bill allows the Secretary to award a grant only if the state moneys to be awarded in the grant have been matched by private stakeholders, including hospital foundations or other organizations, on a basis of \$2 of private stakeholder moneys for every \$1 of state moneys.

Under the bill, the Secretary may receive moneys by bequest, donation, or gift to fulfill the public-private match of moneys required by the bill. Any received moneys are remitted to the State Treasurer and deposited in the State Treasury to the credit of the Fund.

The bill allows a private stakeholder to certify to the Secretary that an amount of money is dedicated to the Program, but allows the certified dedicated moneys to remain with the private stakeholder until the grant is awarded. The bill requires the Secretary to count such moneys to fulfill the public-private match required by the bill.

In addition, the bill allows a private stakeholder to specify a certain county to receive a grant using the private stakeholder's moneys. If the Secretary does not award a grant to the specified county in the same fiscal year as the request, the bill requires the Secretary to return the amount of contributed moneys to the private stakeholder, and the certification lapses.

Rural Hospital Innovation Grant Fund; Appropriation

The bill establishes the Fund, administered by the Secretary. The bill requires moneys credited to the Fund to be used only for purposes related to the Program, and all expenditures

from the Fund to be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports pursuant to vouchers approved by the Secretary, or the Secretary's designee.

The bill provides, notwithstanding the provisions of Chapter 1 of the 2020 Special Session Laws of Kansas or any other provision of law to the contrary, on June 15, 2021, the Director of the Budget shall determine the amount of moneys received by the State that are identified as moneys from the federal government for aid to the State of Kansas for coronavirus relief as appropriated in the acts listed below; that are eligible to be used for the purpose of awarding grants under this section; that may be expended at the discretion of the State in compliance with the U.S. Office of Management and Budget's uniform administrative requirements, cost principles, and audit requirements for federal awards; and that are unencumbered. The acts specified are:

- The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136), the federal Coronavirus Preparedness and Response Supplemental Appropriation Act (Public Law 116-123), the federal Families First Coronavirus Response Act (Public Law 116-127), and the federal Paycheck Protection Program and Health Care Enhancement Act (Public Law 116-139);
- The federal Consolidated Appropriations Act, 2021 (Public Law 116-260);
- The American Rescue Plan Act of 2021 (Public Law 117-2); and
- Any other federal law that appropriated moneys to the State for aid for coronavirus relief.

Of the moneys identified above, the bill requires the Director of the Budget to determine an aggregate amount equal to \$10.0 million available in special revenue funds, or if such identified moneys are less than \$10.0 million, determine the maximum amount available. The bill requires the Director of the Budget to certify the amount determined from each fund to the Director of Accounts and Reports. At the same time the certification is transmitted, the Director of the Budget is required to transmit a copy of such certification to the Director of Legislative Research.

The bill requires, on July 1, 2021, or as soon as the moneys are available, the Director of Accounts and Reports to transfer an aggregate amount equal to the certified amount determined by the Director of the Budget from the funds to the Fund. If the aggregate amount of moneys certified is less than \$10.0 million, the Director of Accounts and Reports is required to transfer from the SGF to the Fund the difference between the \$10.0 million and the amount certified.

Rules and Regulations

The Secretary is required to adopt rules and regulations as necessary to implement the Program.

Reporting Requirements

The bill requires, on or before October 1 of each year, a county to prepare and submit a report to the Secretary on each grant awarded, describing the amount and purposes of any grant moneys, the fulfillment of the terms and conditions of the grant agreement, and the transitional assistance upon which the moneys have been spent.

The bill also requires, on or before February 1 of each year, the Secretary to compile the information received and submit a report to the Governor and Legislature, including the received information and a description of and reasoning for any grant applications that were denied.

Sunset

The Program sunsets July 1, 2025, at which time:

- All moneys in the Fund are transferred to the SGF;
- All liabilities of the Fund are transferred to and imposed on the SGF; and
- The Fund is abolished.

Kansas Medical Facilities Survey and Construction Act (Sections 12 and 13)

The bill defines “rural emergency hospital” in Section 12 by referencing the definition in Section 2 of the bill.

Rules and Regulations (Section 13)

The bill amends the Kansas Medical Facilities Survey and Construction Act by adding that, in formulating rules and regulations with respect to different types of medical care facilities to be licensed under such act, KDHE is required to give due consideration to the requirements for the receipt of medical reimbursement for the type of medical facility. The bill also provides that a rural emergency hospital be deemed to satisfy the rules and regulations requirements for a hospital consisting of more than one establishment if the rural emergency hospital meets its licensing requirements established by the licensing agency.

KDADS Responsibilities for CCBHC Certification (New Section 9)

The bill requires KDADS to establish a process to certify CCBHCs.

The bill requires KDADS to certify as a CCBHC any community mental health center (CMHC) licensed by KDADS that provides the following services: crisis services; screening, assessment, and diagnosis, including risk assessment; person-centered treatment planning; outpatient mental health and substance use services; primary care screening and monitoring of key indicators of health risks; targeted case management; psychiatric rehabilitation services; peer support and family supports; medication-assisted treatment; assertive community treatment; and community-based mental health care for military service members and veterans.

KDHE Responsibilities

The bill requires KDHE to establish a prospective payment system (PPS) under the Kansas Medical Assistance Program to fund CCBHCs on or before May 1, 2022. Daily or monthly rate payments are allowed in the PPS.

The bill requires KDHE to submit to the U.S. Centers for Medicare and Medicaid Services any approval request necessary to implement the PPS.

KDADS Rules and Regulation Authority

The bill authorizes KDADS to adopt rules and regulations as necessary to implement and administer provisions related to CCBHCs.

Implementation Schedule

The bill establishes a staggered implementation schedule for CCBHC certification and requires KDADS, subject to certification applications, to certify:

- Six facilities currently receiving grants to operate as CCBHCs by no later than May 1, 2022;
- Three additional facilities by no later than July 1, 2022;
- Nine additional facilities by no later than July 1, 2023; and
- Eight additional facilities by no later than July 1, 2024.

The bill authorizes KDADS to certify CCBHCs, including portions of the specified facility numbers, in advance of the above-cited deadlines.

Out-of-state Telemedicine Practice (New Section 10)

The bill authorizes a physician holding a license issued by the applicable licensing agency of another state or who otherwise meets the requirements of the bill to practice telemedicine to treat patients located in Kansas if the physician receives a telemedicine waiver issued by the BOHA. The bill requires the BOHA to issue the waiver within 15 days from receipt of a complete application, if the physician:

- Submits a complete application, which may include an affidavit from an authorized third party that the applicant meets the requirements, in a manner determined by the BOHA, and pays a fee not to exceed \$100; and
- 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.

The bill requires a physician to practice telemedicine in accordance with the bill to conduct an appropriate assessment and evaluation of a patient's current condition and document an appropriate medical indication for any prescription issued.

The bill does not supersede or affect the provisions of KSA 65-4a10 (Performance of abortions restricted to a physician licensed to practice medicine in Kansas) or KSA 2020 Supp. 40-2,210 *et seq.* (Kansas Telemedicine Act).

Rules and Regulations for Telemedicine Waivers

The bill requires any person who receives a telemedicine waiver to be subject to all rules and regulations pertaining to the practice of the licensed profession in Kansas and be considered a licensee for the purposes of the professional practice acts administered by the BOHA. The bill also requires any waiver issued to expire on the date established, unless renewed by the BOHA upon receipt of payment of an annual renewal fee not to exceed \$100 and evidence the applicant continues to meet the qualifications of the bill. The bill does not prohibit a licensing agency from denying a waiver application if the licensing body determines granting the application may endanger the health and safety of the public.

Out-of-state Authorizations

The bill authorizes:

- A physician holding a license issued by the applicable licensing agency of another state to provide, without limitation, consultation through remote technology to a physician licensed in Kansas; and
- An applicable health care licensing agency of this state to adopt procedures consistent with this section to allow other health care professionals licensed and regulated by the licensing agency to practice telemedicine within the profession's scope of practice by Kansas law as deemed by the licensing agency to be consistent with ensuring patient safety.

Definition of Telemedicine

The bill defines "telemedicine" to mean the delivery of health care services by a health care provider while the patient is at a different physical location.

Clinical Professional Counselor Licensure (Section 14)

The bill amends the licensure requirements to become a clinical professional counselor to:

- Reduce from 350 to 280 the minimum number of hours of direct client contact or additional postgraduate supervised experience as determined by the BSRB;
- Reduce from 4,000 to 3,000 the minimum number of hours of supervised professional experience;
- Reduce from 150 to 100 the minimum number of hours of face-to-face clinical supervision as defined by the BSRB in rules and regulations;
- Require no less than 50 of the face-to-face clinical supervision hours to include individual supervision, although the BSRB may waive:
 - The requirement such supervision be face-to-face upon finding extenuating circumstances; and
 - Half of the required hours for an individual who has a doctoral degree in professional counseling or a BSRB-approved related field and who completes half of the required hours in one or more years of supervised professional experience;
- Specify a temporary license may be issued after the applicant pays the temporary license fee; and
- Increase from 6 to 12 the number of months after issuance a temporary license shall expire, absent extenuating circumstances approved by the BSRB.

Clinical Social Work Licensure (Section 18)

The bill amends requirements to become a licensed specialist clinical social worker to:

- Remove the requirement an individual complete 350 hours of direct clinical contact or additional postgraduate supervised experience as determined by the BSRB;
- Specify the 100 hours of clinical supervision are face to face, as defined by the BSRB in rules and regulations; and
- Require the 100 hours of face-to-face clinical supervision to include no less than 50 hours of individual supervision, although the BSRB may waive the requirement such supervision be face to face upon finding extenuating circumstances.

Clinical Marriage and Family Therapist Licensure (Section 21)

The bill amends the licensure requirements to become a clinical marriage and family therapist to:

- Reduce from 4,000 to 3,000 the minimum number of hours of supervised professional experience;
- Reduce from 150 to 100 the minimum number of hours of clinical supervision and specify the hours be face to face, as defined by the BSRB in rules and regulations; and
- Require the face-to-face clinical supervision hours include no less than 50 hours of individual supervision, although the BSRB may waive:
 - The requirement such supervision be face to face upon finding extenuating circumstances; and
 - Half of the required hours for an individual who has a doctoral degree in marriage and family therapy or a BSRB-approved related field and who completes half of the required hours in one or more years of supervised professional experience.

Clinical Addiction Counselor Licensure (Section 25)

The bill amends the licensure requirements to become a clinical addiction counselor to:

- Reduce from 4,000 to 3,000 the minimum number of hours of supervised professional experience;
- Reduce from 150 to 100 the minimum number of hours of clinical supervision and specify the hours be face to face, as defined by the BSRB in rules and regulations;
- Require the face-to-face clinical supervision hours to include no less than 50 hours of individual supervision, although the BSRB may waive:
 - The requirement such supervision be face to face upon finding extenuating circumstances; and
 - Half of the required hours for an individual who has a doctoral degree in addiction counseling or a BSRB-approved related field and who completes half of the required hours in one or more years of supervised professional experience.

Clinical Psychotherapist Licensure (Section 30)

The bill amends the licensure requirements to become a clinical psychotherapist to:

- Reduce from 4,000 to 3,000 the minimum number of hours of supervised professional experience;

- Reduce from 150 to 100 the minimum number of hours of clinical supervision and specify the hours be face to face, as defined by the BSRB in rules and regulations; and
- Require the face-to-face clinical supervision hours include no less than 50 hours of individual supervision, although the BSRB may waive the requirement such supervision be face to face upon finding extenuating circumstances.

Temporary Permits (Sections 15, 19, 22, 26, 28, and 31)

The bill amends the requirements for professional counselors, clinical social workers, clinical marriage and family therapists, clinical addiction counselors, psychologists, and clinical master's level psychologists licensed in another jurisdiction to practice in Kansas under a temporary permit to:

- Require individuals to have practiced in their jurisdiction for at least two years immediately preceding the application, except clinical social workers must only have practiced in their jurisdiction, without the two-year requirement;
- Increase from 15 to 30 the maximum number of days per year the individual could practice in Kansas; and
- Require the individual to provide quarterly reports to the BSRB detailing the total days of practice in Kansas.

The bill also specifies the temporary practice permit expires one year after issuance, and the BSRB may extend the permit for no more than one additional year upon the individual's written application no later than 30 days before the permit's expiration and under emergency circumstances, as defined by the BSRB. The bill provides that any extended permit authorizes the individual to practice in Kansas for an additional 30 days during the additional year and requires the individual to provide quarterly reports to the BSRB detailing the total days of practice in Kansas.

Board License Refusal and Revocation Authorities (Sections 17, 20, 23, 27, 29, and 32)

The bill amends the reasons the BSRB may refuse to issue, renew, reinstate, condition, limit, revoke, or suspend a professional counseling, social work, marriage and family therapy, addiction counseling, psychology, or master's level psychology license or censure or impose a fee on such licensee to:

- Remove reference to specific professions and specify the condition whether the individual has had any professional registration, license, or certificate revoked, suspended, or limited, or has had other disciplinary action taken, or an application for registration, license, or certification denied, by the proper regulatory authority of another state, a territory, the District of Columbia, or another country;

- Add the District of Columbia as another location where a substantiated finding of abuse and neglect results in an individual being listed on a child abuse registry or an adult protective services registry, except the District of Columbia is not included with regard to psychologists; and
- Add the condition whether the individual has violated any lawful order or directive of the BSRB.

Clinical Supervisor Application Fee (Sections 16 and 24)

The bill authorizes the BSRB to establish, by rules and regulations approved by the BSRB, a maximum \$50 fee for an application for approval as a BSRB-approved clinical supervisor of professional counselors or marriage and family therapists.