SENATE BILL No. 246

By Committee on Ways and Means

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

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

New Section 1. (a) There is hereby established the Kansas telehealth advisory committee.
(b) The committee shall advise and make recommendations regarding telemedicine quality care practices. Such recommendations and any resource materials developed by the committee shall recommend evidence-based practices for the use and future of telemedicine in Kansas.
On or before the first day of each regular session of the legislature, the committee shall provide information to the Kansas legislature on telemedicine usage data in Kansas.
(c) The committee shall consist of the following 22 voting members and three non-voting members:
(1) Two members of the senate appointed by the president of the senate, including one member from the senate standing committee on public health and welfare, or any successor committee, and one member from the senate standing committee on financial institutions and insurance, or any successor committee;
(2) two members of the house of representatives appointed by the speaker of the house of representatives, including one member from the house of representatives standing committee on health and human services, or any successor committee, and one member from the house of representatives standing committee on insurance and pensions, or any successor committee;
(3) one member of the senate appointed by the minority leader of the senate;
(4) one member of the house of representatives appointed by the minority leader of the house of representatives;
(5) two members who are physicians, including one member
appointed by the Kansas academy of family physicians and one member
appointed by the Kansas medical society. The two members appointed
under this paragraph shall include one member from an urban area and one
member from a rural area;

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

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

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

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

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

(11) one member appointed by leading age Kansas;

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

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

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

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

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

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

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

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

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

(d) Initial members of the committee shall be appointed within 90
days after the effective date of this section. Any member appointed to fill a
vacancy in the membership of the committee shall be appointed in the
manner provided for the original appointment of the member who vacated.
(e) The president of the senate shall select one member of the committee who is a member of the senate, and the speaker of the house of representatives shall select one member of the committee who is a member of the house of representatives, both to serve as co-chairpersons of the committee.

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

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

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

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

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

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

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

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

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

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

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

"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 shall be provided by means of real-time two-way interactive audio, visual, or audio-visual communications, including the application of secure video conferencing, remote patient monitoring 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:

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

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

Sec. 4. K.S.A. 40-2,212 is hereby amended to read as follows: 40-2,212. (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 contact shall also apply to healthcare services delivered via telemedicine. Nothing in this section shall supersede the provisions of any state law relating to the confidentiality, privacy, security or privileged status of protected health information.

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

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

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

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

(2) (A) Except when otherwise prohibited by any other provision of law, when the patient consents to treatment via telemedicine and the patient has a primary care physician or other treating physician, the person in-state practitioner or interstate telemedicine practitioner providing
telemedicine services shall send within three business days a report to such
primary care physician or other treating physician of the treatment and
services rendered to the patient in the telemedicine encounter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Any medical records required to be created and maintained under
this subsection shall be created and maintained under the same standards
of appropriate practice as such standards apply for medical records for
patients in an in-person setting.

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

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

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

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

Sec. 5. K.S.A. 40-2,213 is hereby amended to read as follows: 40-2,213. (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 July 1, 2023. The provisions of this section shall also apply to the Kansas medical assistance program.

(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 medical assistance program shall:

(1) 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 a healthcare provider; or

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

(c) The insured's covered individual'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 by an in-state practitioner shall 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 is established.

(e) 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 accident and health
services and the Kansas medical assistance program shall provide
payment and reimbursement for telemedicine services provided by an in-
state practitioner under the same criteria that the policy provides for
payment and reimbursement for the same or similar healthcare services
delivered in person by an in-state practitioner.

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

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

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

(i) 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 medical assistance program 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 subject to the terms and
conditions of the covered individual's health benefits plan; or

(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 medical assistance program 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.

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

(g) This section shall take effect on and after January 1, 2019.
Sec. 6. K.S.A. 40-2,210, 40-2,211, 40-2,212 and 40-2,213 are hereby repealed.

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