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To: Health Care Stabilization Fund Oversight Committee

From: Melissa Renick, Assistant Director for Research

Re: 2018 Legislation and Law

Relevant 2018 Legislation and Law

Health Care Stabilization Fund Board of Governor's Annual Report

SB 217 [LAW] updates several statutory references in accordance with 2012 Executive Reorganization Order No. 41 (ERO 41) and enacted 2016 SB 449, which updated statutes transferred under ERO 41. Among amendments, the bill replaces the term “mentally retarded and other handicapped persons” in statutes with “individuals with intellectual or other disabilities” in accordance with continuing law and updates statutory references related to the Kansas Department for Aging and Disability Services and the Kansas Department for Children and Families in accordance with ERO 41. The bill also amends language to clarify the annual report of the Kansas Health Care Stabilization Fund Board of Governors will be submitted to the Health Care Stabilization Fund Oversight Committee and requires the reporting of the fund balance at the end of the fiscal year.

SB 217–Section 17 (b)(1)(C):

(C) prepare and publish, on or before October 1 of each year, *a report for submission to the health care stabilization fund oversight committee that includes* a summary of the fund’s activity during the preceding fiscal year, including, but not limited to, the amount collected from surcharges, the highest and lowest surcharges assessed, the amount paid from the fund, the number of judgments paid from the fund, the number of settlements paid from the fund and the ~~amount in the fund~~ *balance* at the end of the fiscal year; and

[Note: Approved by Governor, May 8, 2018.]

Kansas Telemedicine Act

Senate Sub. for HB 2028 [LAW] 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.

[*Note:* Approved by the Governor, May 12, 2018.]

Additional 2018 Legislation

Reinstatement of canceled licenses, State Board of Healing Arts – HB 2503 would have amended the Healing Arts Act to permit the reinstatement of certain licenses issued by the State Board of Healing Arts that had been canceled by the Board. The Board would have been required to provide its licensee with a written notice of cancellation within 15 days from the cancellation for failure to renew. A canceled license could be reinstated retroactively to the date of cancellation if the application for reinstatement and payment of all fees and fines were made within 90 days from the cancellation date and the Board determined the licensee's failure to renew was not intentional or otherwise caused by inexcusable neglect or mistake. [*Note:* The bill was introduced by Representative Jones, and referred to the House Committee on Health and Human Services; the bill died in committee.]

Kansas Code of Civil Procedure, wrongful death – HB 2550 would have clarified the limitations (“caps”) on the types of damages that are permitted to be awarded in wrongful death actions would only apply to judgments based on medical malpractice of a health care provider as defined in KSA 40-3401. [Note: The bill was introduced by the House Committee on Judiciary at the request of Representative Carmichael; the bill was initially referred to the House Committee and later re-referred to the House Committee on Appropriations; the bill died in committee.]

Kansas Telemedicine Act/licensure and regulation of dental therapists – Senate Sub. for HB 2674 would have established the Kansas Telemedicine Act and would have expanded the Dental Practices Act by creating the practice of dental therapy and requiring the Kansas Dental Board to authorize a person to practice as a dental therapist if such person met the qualifications set forth in the bill. [Note: See the Senate Sub. for HB 2028 law summary above for the Kansas Telemedicine Act; Senate Sub. for HB 2674 died on General Orders in the Senate.]

Peer review privilege – HB 2705 would have amended requirements for the health care provider peer review committee to provide that “factual information” is not protected (considered privileged) as part of the peer review process, whether independently discoverable from other sources or not. Factual information would include the names and addresses of persons for whom any peer review committee or officer knows to have direct knowledge of the provisions of health care in question, statements or testimony of witnesses with direct knowledge, incident reports, occurrence reports, memoranda, written or electronic communication, and statements, or similar reports that contain facts concerning a specific situation. [Note: The bill was introduced by the House Committee on Judiciary at the request of Representative Carmichael (on behalf of the Kansas Trial Lawyers Association); the bill was referred to the House Committee and died in committee.]

Business entity, certificate of authorization to practice medicine – HB 2721 would have created new law and amended law pertaining to authorize business entities to engage in the practice of medicine if the entity first obtained a certificate of authorization to practice medicine in Kansas. The bill would have amended the definition of “health care provider” (KSA 2017 Supp. 40-3401) to add “a business entity that holds a certificate of authorization” to the list of authorized health care providers. [Note: The bill was introduced by the House Committee on Health and Human Services at the request of Blue Cross Blue Shield of Kansas City; the bill was referred to the House Committee and died in committee.]