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To: Telehealth Working Group of the Special Committee on Kansas Mental Health Modernization and Reform

From: Leighann Thone, Research Analyst

Re: Kansas Telemedicine Act (2018 Senate Sub. for HB 2028) and 2021 Senate Sub. for HB 2208

This memorandum provides information on the Kansas Telemedicine Act (2018 Senate Sub. for HB 2028). Information is also provided on Senate Sub. for HB 2208, which enacted the Rural Emergency Hospital Act.

Kansas Telemedicine Act

Senate Sub. for HB 2028 (2018) established the Kansas Telemedicine Act. The bill also provided 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. The bill took effect on January 1, 2019.

HB 2028 was introduced on January 11, 2017, at the request of the Board of Nursing (Board). As introduced, the bill would have amended the Mental Health Technicians' Licensure Act by removing the requirement the Board conduct mental health technician examinations and by deleting the corresponding fees set forth in the statutory fee schedule. The bill would have required fees for an examination prescribed by the Board for a licensed mental health technician be paid directly to the examination service by the individual taking the examination or reexamination. Additionally, the bill would have modified some language in the description of services included in the definition of the practice of mental health technology.

Legislative Background

The House Committee on Health and Human Services held a hearing on HB 2028 on January 17, 2017. A representative of the Board provided proponent testimony. There was no neutral or opponent testimony. The committee report recommended the bill pass. The House Committee of the Whole recommended the bill be passed on January 26, 2017, and the House passed the bill on final action on January 30, 2017.

HB 2028 was received in the Senate on January 30, 2017. The bill was referred to the Senate Committee on Public Health and Welfare, and a hearing was held on March 8, 2017. A representative from the Board provided proponent testimony. There was no neutral or opponent testimony.

The Senate Committee removed the contents of HB 2028, which were inserted into 2017 HB 2025 and subsequently enacted.

On March 26, 2018, the Senate Committee on Public Health and Welfare recommended that HB 2028 be amended by substituting a new bill, to be designated as Senate Sub. for HB 2028, and inserted the contents of 2018 SB 451, as introduced, and adopted a substitute bill.

SB 451 was introduced in the Senate Committee on Ways and Means at the request of Senator Schmidt and was referred to the Senate Committee on Public Health and Welfare. SB 451 would have updated statutory references related to the Kansas Department for Aging and Disability Services (KDADS) and the Kansas Department for Children and Families in accordance with 2012 Executive Reorganization Order No. 41. The bill would have made conforming and technical amendments to law. In the Senate Committee hearing, a Committee Revisor provided an overview of the bill and stated the bill was technical in nature. No other testimony was provided.

Senate Sub. for HB 2208 was passed as amended by the Senate Committee of the Whole on March 29, 2018.

On April 2, 2018, the House nonconcurred with the Senate amendments to Senate Sub. for HB 2208 and requested a Conference Committee be appointed. Upon consideration by the House of the Conference Committee Report, a motion was made to not adopt the report. The motion prevailed, and a second Conference Committee was appointed, which resulted in an agree to disagree. A third Conference Committee was appointed, which agreed to insert the provisions of 2018 HB 2674, as amended by the House Committee on Health and Human Services, into Senate Sub. for HB 2028, and to adopt the provisions agreed to by the first Conference Committee, except those provisions relating to the removal of the severability and non-severability clause, as noted below.

The third Conference Committee further agreed to insert the severability and non-severability provisions of HB 2674, as amended by the House Committee on Health and Human Services and passed by the House, into Senate Sub. for HB 2028. The legislative history of HB 2674 is provided below. [Note: The original contents of Senate Sub. for HB 2028, as amended by the Senate Committee of the Whole, were inserted into 2018 SB 217 by the Conference Committee.]

The third Conference Committee agreed to include amendments also agreed to by the first Conference Committee. Specific to telehealth, the amendments included:

- Add language clarifying that nothing in Section 3 would supersede the provisions of any state law relating to the confidentiality, privacy, security, or privileged status of protected health information;
- Modify the standards of practice and conduct to apply broadly to any person providing telehealth services authorized by law;
- Amend the 72-hour notification requirement for a provider providing telemedicine to report to a primary care or other treating physician to require the notification be sent within 3 business days and clarify that a person licensed, registered, certified, or otherwise authorized to practice by the Behavioral Sciences

Regulatory Board (BSRB) would not be required to comply with this reporting requirement;

- Add provisions requiring coverage for speech-language pathology services and audiology services under KMAP by means of telehealth if such services would be covered by KMAP when delivered via in-person contact;
- Require Kansas Department of Health and Environment (KDHE) to implement and administer the provision of speech-language pathology and audiology services via telehealth under KMAP consistent with federal law and to submit any state Medicaid plan amendment, waiver request, or other approval request to the Centers for Medicare and Medicaid Services as needed for implementation;
- Require KDHE to adopt rules and regulations necessary to implement the provision of speech-language pathology and audiology services under KMAP via telehealth by December 31, 2018;
- Require KDHE to prepare and provide an impact report regarding the mandated speech-language pathology and audiology services via telemedicine under KMAP to the Legislature and select standing committees of the House of Representatives and the Senate; and
- Change the title to reflect amendments made to the contents of the bill.

The Conference Committee Report was adopted by the House and Senate on April 30, 2018. The bill was engrossed on May 1, 2018, and enrolled and presented to the Governor on May 4, 2018. The Kansas Telemedicine Act was approved by the Governor on May 12, 2018.

Introduced Kansas Telemedicine Act Legislation: 2018 HB 2674 and 2018 HB 2512

Senate Sub. for HB 2028 contains provisions of HB 2674, as amended by the House Committee on Health and Human Services and as further amended by the third Conference Committee. The House Committee on Health and Human Services 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. Background information on both bills follows.

2018 HB 2674 (Kansas Telemedicine Act)

HB 2674 was introduced by the House Committee on Taxation at the request of Representative Hawkins on February 7, 2018, as the Kansas Telemedicine Act, relating to the practice of telemedicine and establishing coverage parity between in-person and telemedicine-delivered health care services and providers. The bill outlined the criteria for the delivery of health care services via telemedicine and provided a mechanism for Kansans to receive medical care, particularly in rural communities.

The House Committee on Health and Human Services held a hearing on February 12, 2018, and received written-only testimony. Written-only proponent testimony was submitted by representatives from Blue Cross and Blue Shield of Kansas, Kansas Academy of Family

Physicians, Kansas Academy of Physician Assistants, Kansas Chiropractic Association, Kansas Clinical Improvement Collaborative, Kansas Hospital Association (KHA), Kansas Medical Society (KMS), and Teladoc. The written-only proponents generally stated the bill is a compromise between several stakeholders. Additionally, the proponents stated, the bill clearly outlines the criteria for the delivery of health care services via telemedicine and provides a mechanism for thousands of Kansans to receive medical care, especially in rural communities.

Written-only neutral testimony was submitted by representatives from the Kansas Association of School Boards, Kansas Association of Special Education Administrators, Kansas Speech-Language-Hearing Association, and United School Administrators—Kansas. The written-only neutral representatives generally asked for updates to the definition of “healthcare provider.”

There was no opponent testimony.

The House Committee amended the bill to specify nothing in the Act would be construed to authorize the delivery of an abortion procedure via telemedicine, include a severability clause for all portions of the Act except for New Section 6 related to abortion, and include a non-severability clause related to the abortion language. [Note: The first Conference Committee did not retain these amendments, and the third Conference Committee retained the amendments.]

The House Committee recommended the bill be passed as amended. The House passed the bill as amended on February 22, 2018.

The bill was received and introduced in the Senate on February 28, 2018. The bill was referred to the Senate Committee on Public Health and Welfare.

In the Senate Committee hearing, proponent testimony was provided by representatives of Association of Community Mental Health Centers of Kansas, Inc.; Blue Cross and Blue Shield of Kansas, Inc.; FreeState Connect; Kansas Advanced Practice Nurses Association; KHA; KMS; St. Francis Community Services; and Teladoc.

Written-only proponent testimony was provided by representatives of AARP Kansas; Behavioral Health Association of Kansas; Kansas Clinical Care Collaborative; and Kansas Metro Business Healthcare Coalition.

Neutral testimony was provided by representatives of Kansans for Life, Kansas Chiropractic Association, and Kansas Speech-Language-Hearing Association.

Written-only neutral testimony was provided by representatives of the Kansas Academy of Family Physicians, Kansas Dental Association, Kansas Optometric Association, Kansas Physical Therapy Association, and Kansas State Alliance of YMCAs.

Opponent testimony was provided by a representative of Planned Parenthood.

Written-only opponent testimony was provided by a representative of Trust Women, Inc., and Trust Women Clinics, Inc.

The Senate Committee amended the bill to make the following changes:

- Insert the contents of 2018 SB 312, as amended by the Senate Committee [Note: The Conference Committees did not retain this amendment.];
- Eliminate the use of acronyms [Note: The Conference Committees retained this amendment.];
- Replace references to “healthcare provider” and “licensed mental healthcare provider” to refer to specific categories of practitioners [Note: The Conference Committees did not retain this amendment.];
- Remove definitions of “BSRB,” “Board of Healing Arts” (BOHA), “healthcare provider,” “licensed mental healthcare provider,” and “physician” [Note: The Conference Committees retained the amendments regarding the “BSRB,” “BOHA,” and “licensed mental healthcare provider,” but did not retain the amendments for “healthcare provider” and “physician.”];
- Modify the standards of practice and conduct to apply broadly to any person providing telehealth services authorized by law [Note: The Conference Committees retained this amendment.];
- Remove the 72-hour notification requirement for a provider providing telemedicine to report to the primary care or other treating physician [Note: The Conference Committees did not retain this amendment.];
- Insert a one-year pilot project in the State Health Care Benefits Program for non-physician and non-physician assistant licensees of the BOHA, dentists, dental hygienists, dental therapists, speech-language pathologists, and audiologists and exclude such requirements for certain providers if services are provided in a school setting and if they are reimbursable by Medicaid [Note: The Conference Committees did not retain this amendment.];
- Remove the severability and non-severability clause [Note: The first Conference Committee retained this amendment, and the third Conference Committee did not.]; and
- Clarify dental therapists would be able to dispense and administer certain medications as prescribed by a licensed dentist only, not a health care provider [Note: The Conference Committees did not retain dental therapy provisions from SB 312, including this amendment.].

Of the amendments made by the Senate Committee, only the amendments modifying the standards of practice and conduct to apply broadly to any person providing telehealth services authorized by law and the removal of the 72-hour notification requirement for a provider providing telemedicine to report to the primary care or other treating physician were specific to telemedicine.

The amended contents were inserted into 2018 Senate Sub. for HB 2674.

2018 HB 2512

HB 2512 was introduced by the House Committee on Health and Human Services at the request of Representative Kelly. The House Committee held two hearings on the bill. Proponent testimony was heard by the House Committee on February 1, 2018, and opponent and neutral testimony was heard by the House Committee on February 5, 2018.

On February 1, 2018, in the House Committee hearing, proponent testimony was provided by representatives of the Association of Community Mental Health Centers of Kansas, Inc.; Blue Cross and Blue Shield of Kansas, Inc.; Blue Cross and Blue Shield of Kansas City; Kansas Academy of Family Physicians; Kansas Advanced Practice Nurses Association; Kansas Clinical Improvement Collaborative, LLC; KHA; KMS; and Teladoc. The proponents generally stated the bill would provide Kansans greater access to care, especially those residing in rural communities.

Written-only proponent testimony was provided by representatives of AARP Kansas, American Association for Marriage and Family Therapy, Kansas Association of Masters in Psychology, Kansas Center for Assisted Living, Kansas Counseling Association, Kansas Health Care Association, Kansas State Alliance of YMCAs, March of Dimes, and the Rural and Frontier Subcommittee of the Governor's Behavioral Health Services Planning Council.

On February 5, 2018, in the House Committee hearing, opponent and neutral testimony was provided. Opponent testimony was provided by representatives of Planned Parenthood; South Wind Women's Center; Trust Women, Inc.; and Trust Women Clinics, Inc. The opponents generally stated concern with the abortion language specified in Section 6 of the bill.

Written-only opponent testimony was provided by representatives of the American Civil Liberties Union of Kansas, Kansas Coordinating Council on Early Childhood Developmental Services, and MainStream Coalition.

Neutral testimony was provided by representatives of Behavioral Health Association of Kansas, Guardian Group, LLC; Kansas Association for the Medically Underserved; Kansas Association of School Boards; Kansas Association of Special Education Administrators; Kansas Chiropractic Association; Kansas Speech-Language-Hearing Association; Kansas Speech-Language-Hearing Association and Kansas Association of Special Education Administrators School Based Tele-Therapy State Task Force; Kansas Physical Therapy Association; and United School Administrators–Kansas. Several representatives providing neutral testimony generally expressed support for telemedicine legislation, but asked for clarifications regarding health care providers and reimbursement practices. The representative of Behavioral Health Association of Kansas requested a reference to federal confidentiality requirements.

Written-only neutral testimony was provided by Heartland Telehealth Resource Center, Kansans for Life, Kansas Optometric Association, LeadingAge Kansas, PresenceLearning, and Tiny-k Alliance. In written-only testimony, a representative of Kansans for Life requested a provision prohibiting abortion via telemedicine and a nonseverability clause.

The bill died in the House Committee.

Senate Sub. for HB 2208

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

Legislative Background

HB 2208 was introduced on February 3, 2021, at the request of the BSRB and referred to the House Committee on Health and Human Services. A hearing was held on February 11, 2021. Proponent testimony was provided by representatives of the BSRB, Association of Community Mental Health Centers of Kansas, Children's Alliance of Kansas, National Association of Social Workers – Kansas Chapter, and the Washburn University Social Work Department. The BSRB representative stated lowering hourly requirements for the professions enumerated in the bill would make it easier to earn a clinical license in Kansas while still protecting the public. The BSRB representative stated the amendments to temporary out-of-state permits, which have been in higher demand during the COVID-19 pandemic, would allow individuals to receive services for longer periods of time. The other proponents stated the adjustments to the requirements for direct service hours would allow for telehealth services, and the hour requirement reductions would help Kansas retain social work students and address workforce shortages.

Written-only proponent testimony was provided by representatives of KVC Kansas, Behavioral Health Association of Kansas, Johnson County Mental Health, Kansas Counseling Association, and by a marriage and family therapist and a retired clinical social worker.

Neutral testimony was provided by an associate professor of practice from the University of Kansas School of Social Welfare. The conferee stated no other state requires social workers to complete a specific number of hours of direct client contact.

No opponent testimony was provided.

The House Committee amended the bill to:

- Insert new and modified language from 2021 HB 2006 concerning the practice of telemedicine by out-of-state licensed physicians (new section 1 of the bill, as amended by the House Committee);
- Remove the licensure requirements for specialist clinical social workers that individuals complete at least 350 hours of direct client contact or additional postgraduate supervised experience as determined by the BSRB;
- Remove language requiring BSRB approval of clinical supervisors of social workers working toward licensure as a clinical social worker (section 1 of the bill, as introduced); and

- Remove language concerning an application fee for BSRB-approved clinical supervisors of social workers (section 9 of the bill, as introduced).

On February 22, 2021, the Committee Report noted the House Committee's recommendation that the bill be passed as amended. The bill, as amended by the House Committee, was passed by the House on March 3, 2021.

The bill was received and introduced by the Senate on March 4, 2021, and referred to the Senate Committee on Public Health and Welfare. A hearing was held on March 19, 2021. Representatives of Americans for Prosperity and the BSRB provided proponent testimony. Written-only proponent testimony was provided by representatives of the Association of Community Mental Health Centers of Kansas and the Kansas Chapter of the National Association of Social Workers; an associate professor of practice at the University of Kansas School of Social Welfare; and a private citizen.

No other testimony was provided.

The Senate Committee amended HB 2208 to:

- Add the contents of 2021 SB 138 (CCBHCs), including new provisions to:
 - Remove the requirement that KDHE submit to the federal Centers for Medicare and Medicaid Services any approval request necessary to implement such payment system; and
 - Replace the January 1, 2022, deadline for implementation of CCBHC certification with a staggered implementation schedule requiring specific numbers of certifications by set dates, subject to receipt of applications, and allowing KDADS to certify CCBHCs in advance of the deadlines and in portions of the specified numbers; and
- Add the contents of 2021 SB 175 (Rural Emergency Hospital Act), as amended by the Senate Committee on Public Health and Welfare and passed by the Senate.

The Committee recommended a substitute bill be created that incorporates the provisions of HB 2208, as amended by the House Committee on Health and Human Services; 2021 SB 138 (CCBHC certification and funding, including new provisions related to the staggered implementation structure); and 2021 SB 175, as amended by the Senate Committee on Public Health and Welfare (Rural Emergency Hospital Act).

The Senate Committee of the Whole adopted the report and recommended the substitute bill be passed on March 30, 2021. The Senate passed the bill on March 31, 2021.

The House nonconcurred with the amendments, and a Conference Committee was appointed. The Conference Committee added the language of 2021 HB 2174, pertaining to establishing the Rural Hospital Innovation Grant Program (Program) and the Rural Hospital Innovation Grant Fund, with additional amendments, including addressing funding for the Program with federal resources. The Conference Committee report was adopted by both the House and Senate on April 9, 2021. The bill was approved by the Governor on April 22, 2021 and became law on May 6, 2021.