

# Report of the Special Committee on Health to the 2018 Kansas Legislature

**CHAIRPERSON:** Representative Daniel Hawkins

**VICE-CHAIRPERSON:** Senator Vicki Schmidt

**OTHER MEMBERS:** Senators Barbara Bollier and Laura Kelly; Representatives Susan Concannon, Jim Kelly, and Monica Murnan

## STUDY TOPIC

### *Study Telehealth and Telemedicine and Consider 2017 Legislation*

The Committee is directed to:

- Study the subjects of telehealth and telemedicine in order to increase and improve health care access for all Kansans;
- Review and consider 2017 HB 2206, which addresses coverage of telemedicine in health insurance policies and contracts; and
- Review and consider 2017 HB 2254, which addresses the practice and delivery of telehealth services by certain providers.

# Special Committee on Health

## REPORT

### Conclusions and Recommendations

The Committee notes the importance of keeping the patient first when crafting telemedicine legislation.

The Committee does not recommend the 2017 telemedicine legislation currently residing in the House Committee on Health and Human Services (HB 2206 and HB 2254).

The Committee recommends the introduction of comprehensive telemedicine legislation by the parties, to begin in the House, early in the 2018 Legislative Session.

*Proposed Legislation:* None.

### BACKGROUND

The Legislative Coordinating Council (LCC) in 2017 appointed a Special Committee on Health (Committee), comprised of seven members. The LCC tasked the Committee with the following:

- Study the subjects of telehealth and telemedicine in order to increase and improve health care access for all Kansans;
- Review and consider 2017 HB 2206, which addresses coverage of telemedicine in health insurance policies and contracts; and
- Review and consider 2017 HB 2254, which addresses the practice and delivery of telehealth services by certain providers.

The Committee was granted two meeting days by the LCC and met on October 19 and 20, 2017, at the Statehouse.

### COMMITTEE ACTIVITIES

The Committee held all-day meetings on October 19 and 20, 2017, at the Statehouse. During these meetings, the Committee viewed demonstrations of telemedicine technologies; heard testimony from individuals, organizations, and providers; and participated in a roundtable discussion with select stakeholders.

#### Demonstrations of Telemedicine Technologies

On October 19, 2017, representatives of Teladoc, FreeState Healthcare (FreeState), and HCA Healthcare, Inc. (HCA), provided individual demonstrations of telemedicine technologies. The three entities noted technology is not the issue for providing care through telemedicine. However, FreeState and HCA representatives expressed the primary roadblock for providing telemedicine services is reimbursement for those services.

**Teladoc.** Representatives of Teladoc provided the Committee with information and demonstrated Teladoc's technology for delivering telemedicine services. The representatives noted Teladoc had approximately 75 percent of the total telemedicine business nationally in 2016; Teladoc covers 187,000 Kansans and saved the State

approximately \$4.6 million in 2016; the company specializes in simple non-emergent care, such as sinusitis, upper respiratory infections, influenza, poison ivy, and urinary tract infections; approximately 70 percent of Teladoc physicians who are Kansas board-certified live in Kansas; Teladoc is not direct-to-consumer and is available only as a benefit through an employer, health plan, union, or hospital system; pill shopping is not plausible because Teladoc physicians do not and cannot prescribe controlled drugs or lifestyle drugs through the Teladoc system; and Teladoc has a limited Medicaid footprint in Kansas.

**FreeState.** Representatives of FreeState provided the Committee with information and demonstrated FreeState's technology for delivering telemedicine services. The representatives stated FreeState is a Kansas-based company and has utilized telemedicine for three years; telemedicine is cost-effective and provides access to care to people who would not otherwise receive health care, such as those living in rural areas; and it would cost approximately \$800,000 total to put the FreeState telemedicine technology in every critical access hospital in Kansas. A representative expressed frustration with reimbursement for provided services. He noted Medicare and the State's Medicaid program, KanCare, do pay for these telemedicine services, but FreeState struggles to be reimbursed by private insurers.

**HCA.** Representatives of HCA provided the Committee with information on HCA's telemedicine services and demonstrated its technology platform, described as a robot. The representatives noted reimbursement is the major roadblock for providing care through telemedicine; discussed the positive impact of HCA's telestroke program; described the licensing and credentialing requirements for physicians participating as a telemedicine provider; and noted each telemedicine model, such as how the room is set up is based on the health system or organization.

### **Study of Telemedicine – Presentations from Individuals, Providers, and Organizations**

Over the course of the two-day meeting, the Committee heard from a variety of interested

parties concerning the delivery of telemedicine in Kansas. Common topics are described in detail below.

**Medicaid reimbursement for school-based services.** Representatives of the Kansas Speech-Language-Hearing Association and Kansas Association of Special Education Administrators School Based Tele-Therapy State Task Force, Kansas Association of Special Education Administrators, and PresenceLearning articulated the need for fiscal parity for Medicaid reimbursement of school-based services. The representatives noted 26 states and the District of Columbia have included schools as Medicaid reimbursable locations for telemedicine services. Additionally, there is a shortage of speech therapists in schools, and permitting Medicaid reimbursement for telemedicine services could alleviate those shortages.

**Reimbursement by private payors.** Representatives from the Kansas Hospital Association (KHA) and FreeState noted there is variance of reimbursement for telemedicine services by commercial insurance carriers.

**Necessity of consistent, clear telemedicine definitions.** Several representatives noted the importance of comprehensive telemedicine policy so regulatory boards and law enforcement can protect Kansans from bad actors. A representative of the Governor's Behavioral Health Services Planning Council shared her experience with setting up a telemedicine practice without clear legal guidance on telemedicine practices in Kansas and noted mental health professionals and agencies need legislatively defined telemedicine terms and parameters to develop telemedicine structures and business plans.

**Maintaining an active license and insurance requirements for telemedicine providers.** A representative of the Health Care Stabilization Fund Board of Governors (HCSF) noted telemedicine providers should be required to maintain an active Kansas license and comply with the Health Care Provider Insurance Availability Act.

**Telemedicine provides health care to rural areas.** A representative of the Kansas Association

for the Medically Underserved (KAMU) noted telemedicine creates new access to specialty and other providers within the medical home and community and is an important solution to the health care provider shortage in rural Kansas. A physician with the Community Health Center of Southeast Kansas expressed the importance of telemedicine in rural areas. A representative of the Kansas Physical Therapy Association noted physical therapy has been successful in providing telemedicine services to veterans through the Veterans' Administration and is utilized in rural areas. Additionally, a representative of Heartland Community Health Center noted telemedicine helps leverage psychiatry resources in Kansas.

**Additional benefits of telemedicine.** A representative of Via Christi Health noted telemedicine allows struggling rural hospitals to have the benefit of keeping patients local, which captures ancillary services, improves the rural recruitment process, and allows for comprehensive care at a lower cost. A representative of the Kansas Health Care Association and Kansas Center for Assisted Living noted telemedicine decreases the rate of re-hospitalizations for the assisted living and nursing home population. A representative of Wilson Medical Center shared that telemedicine has allowed her to take a weekend off now and then.

**Coverage parity.** The parties agreed that comprehensive legislation should include coverage parity. Coverage parity prevents the denial of claims for covered services because telemedicine was used in lieu of an in-person encounter. The representatives noted there are 34 states and the District of Columbia with telemedicine coverage parity laws. Representatives noted parity provides for consumer protection and creates a level of assurance to the health care provider.

**Payment parity.** Although most parties agree that telemedicine is a useful tool, there was disagreement on how to pay for these services. Blue Cross and Blue Shield of Kansas (BCBSKS) and Aetna remarked that insurers typically provide telemedicine benefits on their own, and the State should not mandate coverage of these services. The Aetna representative noted Aetna's opposition to payment parity mandates, and mentioned there are no mandates requiring every doctor or hospital to be paid the same. The Aetna representative also

stated payment parity stifles innovation and cost savings, and decreases the willingness of employers and insurers to fully implement telemedicine services. The representative of Blue Cross and Blue Shield of Kansas City (Blue KC) noted payment parity is a slippery slope and payment parity could have the unintended consequence of passing costs on to consumers.

**October 19 testimony.** Representatives of the following organizations testified before the Committee on October 19, 2017: American Telemedicine Association (ATA); BCBSKS; Children's Mercy Hospital; Community Health Center of Southeast Kansas; Health Care Stabilization Fund; Heartland Community Health Center; KAMU; Kansas Health Care Association/Kansas Center for Assisted Living; Kansas Heart and Stroke Collaborative; Kansas Medical Society (KMS); Kansas Speech-Language-Hearing Association and Kansas Association of Special Education Administrators School Based Tele-Therapy State Task Force; Kansas Association of Special Education Administrators; Kansas State Board of Healing Arts; PresenceLearning; Teladoc; and Zipnosis.

**October 19 written-only testimony.** Representatives of the following organizations provided written-only testimony on October 19, 2017: AARP Kansas; Hospice Services and Palliative Care of Northwest Kansas, Inc.; Kansas Academy of Family Physicians; Kansas Academy of Nutrition and Dietetics; Kansas Association of Osteopathic Medicine; Kansas Oral Health Connections; Kansas Public Health Association, Inc.; Kansas Speech-Language-Hearing Association; and Kansas State Board of Pharmacy.

**October 20 testimony.** Representatives of the following organizations testified before the Committee on October 20, 2017: Aetna; Blue KC; Cardinal Health; Eagle Telemedicine; Ellsworth County Medical Center; Governor's Behavioral Health Services Planning Council; Kansas Association of Masters in Psychology; KHA; Kansas Physical Therapy Association; Kansas State Alliance of YMCAs; Southeast Kansas Mental Health Center; Sunflower Telemedicine; Susan B. Allen Memorial Hospital; University of Kansas Medical Center for Telemedicine and Telehealth (KUCTT); Via Christi Health; Wilson

Medical Center; and Wright Psychological Services.

### **October 20 written-only testimony.**

Representatives of the following organizations provided written-only testimony on October 20, 2017: Heartland Telehealth Resource Center; Hospital District #6, Harper County; Kearny County Hospital; and Newton Medical Center.

### **Roundtable Discussion**

The Committee was joined by the following participants in a roundtable discussion on telemedicine: Chad Austin, Senior Vice President Government Relations, KHA; Larrie Ann Brown, Legislative Counsel, Teladoc; Rachelle Colombo, Director of Government Affairs, KMS; Denise Cyzman, Executive Director, KAMU; Coni Fries, Vice President of Government Relations, Blue KC; Mike Michael, Director, State Employee Health Plan; Sunee Mickle, Director of Government Relations, BCBSKS; Dr. Eve-Lynn Nelson, Director, KUCTT; Mike Randol, Director of Health Care Finance, Kansas Department of Health and Environment (KDHE); Clark Shultz, Assistant Commissioner, Kansas Insurance Department; Latoya Thomas, Director of the State Policy Resource Center, ATA; Claudia Tucker, Vice President of Government Affairs, Teladoc; Charles Wheelen, Executive Director, HCSF; Andrew Wiens, Policy Director, Office of Kansas Lieutenant Governor; Keith Wisdom, Kansas-Nebraska Market President, Aetna; Dr. Shawna Wright, Governor's Behavioral Health Services Planning Council, Rural and Frontier Subcommittee; and Dr. Elisha Yaghmai, FreeState.

### ***Topics Discussed and Issues Identified***

#### ***Topic #1 – Definitions of Telemedicine and Telehealth:***

- The stakeholders discussed the importance of a broad, flexible definition for telemedicine. The ATA representative noted ATA uses both telemedicine and telehealth interchangeably, and is defined as “health care services provided from one location to another location through the use of telecommunications.” The ATA representative noted ATA leaves the definition broad and does not include the

provider, patient, technology, sites of care, or location of the provider in the definition. A Teladoc representative stated a broad definition is important because technology and innovation is faster than the legislative process. The Aetna representative stated a broad definition, flexible with regulations, would make the most sense for legislation.

- A discussion was spurred involving the necessity of interactive two-way audio or visual technologies. The BCBSKS representative stated it is the position of BCBSKS that telemedicine services should be delivered through the Health Insurance Portability and Accountability Act compliant two-way audio or visual technologies, while a Teladoc representative noted this framework would disenfranchise 500,000 Kansans. The ATA representative concluded that requiring an interactive component would be a step backward, and explained the use of asynchronous “store-and-forward” capabilities.

#### ***Topic #2 – Legislation:***

- The Chairperson noted there are currently two bills residing in the House Committee on Health and Human Services (HB 2206 and HB 2254). He stated he would prefer for a single bill to be drafted, and regulations would likely have to be adopted by related agencies. He then asked the roundtable participants their views on the 2017 telemedicine legislation.
- The KMS representative asked that any new legislation prohibit an insurer from excluding an otherwise covered health care service from coverage solely because the service is provided through telemedicine or telehealth rather than in-person contact to ensure broader access to telemedicine.
- The KMS representative also discussed 2017 HB 2254 specifically and requested portions relevant to a physician's scope of

practice and ensuring the standard of care is the same and informed consent be included in legislation.

- The KMS representative further stated KMS would prefer the reimbursement provision of 2017 HB 2206 be retained in new legislation. The KMS representative also requested provisions related to medical history, jointly developed rules and regulations with the State Board of Pharmacy concerning controlled substances and prescribing through telemedicine, and references to follow-up care and continuity of care be included.
- The ATA representative encouraged State officials to not create two competing standards for health care professionals.
- A Committee member requested the Office of Revisor of Statutes include language in legislation requiring rules and regulations to be adopted by required agencies by a date certain.

### *Topic #3 – Coverage and Reimbursement Parity:*

- On this topic, the parties discussed both coverage and reimbursement parity (reimbursement parity is also known as payment parity, and these terms are used interchangeably).
- The Aetna representative expressed a broad definition of telemedicine would give the most flexibility and suggested that regulating payment would be difficult if the legislation is broad.
- The Chairperson stated coverage parity would be included in the legislation, but suggested bill language would likely state the payor and provider would negotiate the reimbursement rate.

- The FreeState representative noted concern with not including reimbursement parity in legislation and stated Medicaid and Medicare have 100 percent payment parity and those models should be utilized.
- The ATA representative noted, in the last four to five years, states have strayed away from legislating reimbursement parity.
- The KDHE representative stated KDHE does not pay a different amount for an in-person visit versus a telemedicine visit.
- Participants discussed facility fees and provider fees. The KHA representative requested clarification on if the pieces of 2017 legislation would cover both facility and provider fees. The KAMU representative noted current policy is vague, especially related to originating sites, and payment parity would provide necessary clarity.

### **CONCLUSIONS AND RECOMMENDATIONS**

Following discussion, the Committee made the following recommendations:

- The Committee notes the importance of keeping the patient first when crafting legislation;
- The Committee does not recommend the 2017 telemedicine legislation currently residing in the House Committee on Health and Human Services (HB 2206 and HB 2254); and
- The Committee recommends the introduction of comprehensive telemedicine legislation by the parties, to begin in the House, early in the 2018 Legislative Session.