

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 400

Introduced by Arch, 14.

Read first time January 14, 2021

Committee:

1 A BILL FOR AN ACT relating to telehealth; to amend sections 71-8503 and
2 71-8505, Reissue Revised Statutes of Nebraska, and sections 44-312
3 and 44-7,107, Revised Statutes Cumulative Supplement, 2020; to
4 redefine a term; to change requirements for insurers and telehealth
5 consultations under the medical assistance program; and to repeal
6 the original sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-312, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 44-312 (1) For purposes of this section:

4 (a)(i) ~~(a)~~ Telehealth means the use of medical information
5 electronically exchanged from one site to another, whether synchronously
6 or asynchronously, to aid a health care provider in the diagnosis or
7 treatment of a patient.

8 (ii) Telehealth includes (A) services originating from a patient's
9 home or any other location where such patient is located, (B)
10 asynchronous services involving the acquisition and storage of medical
11 information at one site that is then forwarded to or retrieved by a
12 health care provider at another site for medical evaluation, and (C)
13 telemonitoring. ~~;~~ ~~and~~

14 (iii) Telehealth also includes audio-only services for the delivery
15 of behavioral health services; and

16 (b) Telemonitoring means the remote monitoring of a patient's vital
17 signs, biometric data, or subjective data by a monitoring device which
18 transmits such data electronically to a health care provider for analysis
19 and storage.

20 (2) Any insurer offering (a) any individual or group sickness and
21 accident insurance policy, certificate, or subscriber contract delivered,
22 issued for delivery, or renewed in this state, (b) any hospital, medical,
23 or surgical expense-incurred policy, except for policies that provide
24 coverage for a specified disease or other limited-benefit coverage, or
25 (c) any self-funded employee benefit plan to the extent not preempted by
26 federal law, shall provide upon request to a policyholder, certificate
27 holder, or health care provider a description of the telehealth and
28 telemonitoring services covered under the relevant policy, certificate,
29 contract, or plan.

30 (3) The description shall include:

31 (a) A description of services included in telehealth and

1 telemonitoring coverage, including, but not limited to, any coverage for
2 transmission costs;

3 (b) Exclusions or limitations for telehealth and telemonitoring
4 coverage, including, but not limited to, any limitation on coverage for
5 transmission costs; and

6 (c) Requirements for the licensing status of health care providers
7 providing telehealth and telemonitoring services. ~~;~~ and

8 ~~(d) Requirements for demonstrating compliance with the signed~~
9 ~~written statement requirement in section 71-8505.~~

10 Sec. 2. Section 44-7,107, Revised Statutes Cumulative Supplement,
11 2020, is amended to read:

12 44-7,107 (1) For purposes of this section:

13 (a) Asynchronous review means the acquisition and storage of medical
14 information at one site that is then forwarded to or retrieved by a
15 health care provider at another site for medical evaluation;

16 (b) Dermatologist means a board-certified physician who is trained
17 to evaluate and treat individuals with benign and malignant disorders of
18 the skin, hair, nails, and adjacent mucous membranes with a
19 specialization in the diagnosis and treatment of skin cancers, melanomas,
20 moles, and other tumors of the skin along with surgical techniques used
21 in dermatology and interpretation of skin biopsies; and

22 (c) Telehealth has the same meaning as in section 44-312.

23 (2) Any insurer offering (a) any individual or group sickness and
24 accident insurance policy, certificate, or subscriber contract delivered,
25 issued for delivery, or renewed in this state, (b) any hospital, medical,
26 or surgical expense-incurred policy, or (c) any self-funded employee
27 benefit plan to the extent not preempted by federal law, shall not
28 exclude, in any policy, certificate, contract, or plan offered or renewed
29 on or after August 24, 2017, a service from coverage solely because the
30 service is delivered through telehealth, including services originating
31 from any location where the patient is located, and is not provided

1 through in-person consultation or contact between a licensed health care
2 provider and a patient.

3 (3)(a) Any insurer offering any policy, certificate, contract, or
4 plan described in subsection (2) of this section for which coverage of
5 benefits begins on or after January 1, 2021, shall not exclude from
6 coverage telehealth services provided by a dermatologist solely because
7 the service is delivered asynchronously.

8 (b) An insurer shall reimburse a health care provider for
9 asynchronous review by a dermatologist delivered through telehealth at a
10 rate negotiated between the provider and the insurer.

11 (c) It is not a violation of this subsection for an insurer to
12 include a deductible, copayment, or coinsurance requirement for a health
13 care service provided through telehealth if such costs do not exceed
14 those included for the same services provided through in-person contact.

15 (4) Nothing in this section shall be construed to require an insurer
16 to provide coverage for services that are not medically necessary.

17 (5) This section does not apply to any policy, certificate,
18 contract, or plan that provides coverage for a specified disease or other
19 limited-benefit coverage.

20 Sec. 3. Section 71-8503, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 71-8503 For purposes of the Nebraska Telehealth Act:

23 (1) Department means the Department of Health and Human Services;

24 (2) Health care practitioner means a Nebraska medicaid-enrolled
25 provider who is licensed, registered, or certified to practice in this
26 state by the department;

27 (3)(a) ~~(3)~~ Telehealth means the use of medical information
28 electronically exchanged from one site to another, whether synchronously
29 or asynchronously, to aid a health care practitioner in the diagnosis or
30 treatment of a patient.

31 (b) Telehealth includes (i) services originating from a patient's

1 home or any other location where such patient is located, (ii)
2 asynchronous services involving the acquisition and storage of medical
3 information at one site that is then forwarded to or retrieved by a
4 health care practitioner at another site for medical evaluation, and
5 (iii) telemonitoring. †

6 (c) Telehealth also includes audio-only services for the delivery of
7 behavioral health services;

8 (4) Telehealth consultation means any contact between a patient and
9 a health care practitioner relating to the health care diagnosis or
10 treatment of such patient through telehealth; and

11 (5) Telemonitoring means the remote monitoring of a patient's vital
12 signs, biometric data, or subjective data by a monitoring device which
13 transmits such data electronically to a health care practitioner for
14 analysis and storage.

15 Sec. 4. Section 71-8505, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 71-8505 (1) Prior to an initial telehealth consultation under
18 section 71-8506, a health care practitioner who delivers a health care
19 service to a patient through telehealth shall ensure that the following
20 written information is provided to the patient:

21 (a) A statement that the patient retains the option to refuse the
22 telehealth consultation at any time without affecting the patient's right
23 to future care or treatment and without risking the loss or withdrawal of
24 any program benefits to which the patient would otherwise be entitled;

25 (b) A statement that all existing confidentiality protections shall
26 apply to the telehealth consultation;

27 (c) A statement that the patient shall have access to all medical
28 information resulting from the telehealth consultation as provided by law
29 for patient access to his or her medical records; and

30 (d) A statement that dissemination of any patient identifiable
31 images or information from the telehealth consultation to researchers or

1 other entities shall not occur without the written consent of the
2 patient.

3 (2) The patient shall sign a ~~written~~ statement prior to or during an
4 initial telehealth consultation, or give verbal consent during the
5 telehealth consultation, indicating that the patient understands the
6 written information provided pursuant to subsection (1) of this section
7 and that this information has been discussed with the health care
8 practitioner or the practitioner's ~~his or her~~ designee. ~~The~~ ~~Such~~ signed
9 statement may be collected by paper or electronic signature and shall
10 become a part of the patient's medical record. If the patient gives
11 verbal consent during the initial telehealth consultation, the signed
12 statement shall be collected within ten days after such telehealth
13 consultation.

14 (3) If the patient is a minor or is incapacitated or mentally
15 incompetent such that he or she is unable to sign the ~~written~~ statement
16 or give verbal consent as required by subsection (2) of this section,
17 such statement shall be signed, or such verbal consent given, by the
18 patient's legally authorized representative.

19 (4) This section shall not apply in an emergency situation in which
20 the patient is unable to sign the ~~written~~ statement or give verbal
21 consent as required by subsection (2) of this section and the patient's
22 legally authorized representative is unavailable.

23 Sec. 5. Original sections 71-8503 and 71-8505, Reissue Revised
24 Statutes of Nebraska, and sections 44-312 and 44-7,107, Revised Statutes
25 Cumulative Supplement, 2020, are repealed.