

## LEGISLATIVE BILL 400

Approved by the Governor April 21, 2021

Introduced by Arch, 14.

A BILL FOR AN ACT relating to telehealth; to amend sections 71-8503 and 71-8505, Reissue Revised Statutes of Nebraska, and sections 44-312 and 44-7,107, Revised Statutes Cumulative Supplement, 2020; to redefine a term; to change requirements for insurers and telehealth consultations under the medical assistance program; and to repeal the original sections. Be it enacted by the people of the State of Nebraska,

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

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

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

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

(iii) Telehealth also includes audio-only services for the delivery of individual behavioral health services for an established patient, when appropriate, or crisis management and intervention for an established patient as allowed by federal law; and

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

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

(3) The description shall include:

(a) A description of services included in telehealth and telemonitoring coverage, including, but not limited to, any coverage for transmission costs;

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

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

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

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

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

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

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

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

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

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

(b) An insurer shall reimburse a health care provider for asynchronous

review by a dermatologist delivered through telehealth at a rate negotiated between the provider and the insurer.

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

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

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

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

71-8503 For purposes of the Nebraska Telehealth Act:

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

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

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

(b) Telehealth includes (i) services originating from a patient's home or any other location where such patient is located, (ii) asynchronous services involving the acquisition and storage of medical information at one site that is then forwarded to or retrieved by a health care practitioner at another site for medical evaluation, and (iii) telemonitoring. ~~;~~

(c) Telehealth also includes audio-only services for the delivery of individual behavioral health services for an established patient, when appropriate, or crisis management and intervention for an established patient as allowed by federal law;

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

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

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

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

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

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

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

(d) A statement that dissemination of any patient identifiable images or information from the telehealth consultation to researchers or other entities shall not occur without the written consent of the patient.

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

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

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

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