North Dakota Legislative Council
Prepared for the Health Care Committee
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TELEHEALTH STUDY - BACKGROUND MEMORANDUM

INTRODUCTION

House Concurrent Resolution No. 3014 (2021) directs the Legislative Management to study solutions to provider and end-user barrier to access to and utilization of telehealth services in this state.

HISTORY

North Dakota Legislation

Insurance Coverage

Legislation addressing health insurance coverage of telehealth generally addresses coverage parity or payment parity. Coverage parity, also known as service parity, occurs when the law requires health services covered for in-person visits be the same as those covered for health services provided by telehealth visits. Payment parity provides for equal insurance reimbursement for in-person and telehealth visits. The Kaiser Family Foundation reports as of fall 2019, 41 states and the District of Columbia had laws covering health insurance reimbursement for telehealth. In approximately one-half of the states, coverage parity is codified and in fewer than one-half of the states payment parity is codified. Telemedicine typically is reimbursed at lower than equivalent in-person care; however, in response to Coronavirus (COVID-19), more states are enacting payment parity legislation.

North Dakota Century Code (NDCC) Section 26.1-36-09.15, which was enacted in 2017, provides for health insurance coverage parity for telehealth services. The 2017 legislation was an expansion under NDCC Section 54-03-28 of the 2015 legislation that provided for telemedicine coverage under the state's Public Employees Retirement System health benefits coverage. As introduced, House Bill No. 1038 (2015) may have provided for coverage parity and payment parity; however, as enacted, the bill clearly was limited to coverage parity.

Senate Bill No. 2179 (2021), as introduced, would have provided for payment parity for telehealth services. As amended by the Senate, the bill would have provided for a Legislative Management study of telehealth. The amendments passed by the House would have provided for a telehealth payment parity pilot project. Ultimately, the bill failed to pass in the House.

House Bill No. 1465 (2021) amends NDCC Section 26.1-36-09.15, codifying several of the provisions of Governor Doug Burgum's Executive Order 2020-05.1. Specifically, the bill defines the term "secure connection", provides the term "telehealth" includes audio-only telephone for the purpose of an e-visit or a virtual check-in, and defines the terms "e-visit" and "virtual check-in."

Occupations and Professions

Several occupational boards have adopted rules and are subject to law addressing telehealth as it relates to scope of practice and standard of care.

- NDCC Chapter 43-17 addresses the practice of telemedicine by physicians, and North Dakota Administrative Code (NDAC) Title 50 addresses the practice of telemedicine by physicians;
- NDCC Chapter 43-26.1 addresses the practice of telehealth by physical therapists, and NDAC Title 61.5 addresses the practice of physical therapy by telehealth; and
- House Bill No. 1151 (2021) enacts law relating to the telehealth in the practice of dentistry, and NDAC Title 20 addresses the practice of dentistry by telehealth.

North Dakota Legislative Studies

Over the past several interims, telehealth has been studied or addressed by Legislative Management interim committees.

2019-20 Health Care Committee

The Health Care Committee studied health care delivery in the state, with a focus on rural needs. The committee received testimony indicating the state is heavily wired, and technology connects rural communities not only to tertiary hospitals, but to the world. Technology allows rural clinics to have electronic medical records or electronic health records, telemedicine, and telepharmacy. As part of this study, the committee received testimony regarding the use of telehealth in schools. A telehealth school nurse program provided through eCARE provides nurse extender services, primary school nurse services, and behavioral health services to schools. The committee received testimony that although state law does not hinder nurses from performing telehealth, improvements in behavioral health provider licensure requirements could help facilitate telehealth services.

The committee received a report on goals to reduce the incidence of diabetes in the state, improve diabetes care, and control complications associated with diabetes. One action item provided many schools are ill-equipped without onsite school nurses or access to telehealth school nursing for children with Type 1 diabetes requiring insulin. Ensuring all schools have access during the entire school day to nurses through telehealth to assist children with insulin dose calculation would be a cost-effective approach for delivering care.

2019-20 Human Services Committee

The Human Services Committee studied the implementation of the recommendations of the Human Services Research Institute's study of North Dakota's behavioral health system, including consideration of options for improving access and the availability for behavioral health care. The committee received information regarding the use of telehealth to provide behavioral health services. A study was conducted in 2017 by the University of North Dakota School of Medicine and Health Sciences Center for Rural Health to determine the extent to which telehealth was used to provide behavioral health services. The study determined at least 10 facilities in the state provided telehealth services for behavioral health and 44 facilities received telehealth services. Most respondents reported providing or receiving services for adults rather than children and adolescents.

The Abound Counseling program administered by Lutheran Social Services of North Dakota used telehealth to provide remote services to individuals in their homes or at partnership locations. Partnerships have been established with school districts, human service centers, and churches to house telehealth equipment. There were 27 partner telehealth locations providing services and 4 additional locations were pending.

Representatives of the State Hospital testified telehealth improves the patient experience by reducing the need to travel, and telehealth can be more cost-effective. The regional human service centers provide more than 700 telebehavioral health services per month. The Department of Human Services was expanding behavioral health emergency services by offering emergency telehealth options through critical access hospitals and mobile crisis response teams.

Representatives of the North Dakota Hospital Association stressed the critical role of hospitals across the state in providing mental health and substance use disorder services. Hospital emergency departments often are the primary source of acute care services for people with mental illness and substance abuse issues. Some hospitals have embedded behavioral health specialists within the primary care practice. Many of the state's hospitals also are using telehealth to provide behavioral health services.

Representatives of the Department of Veterans' Affairs reviewed behavioral health services available for veterans at the Fargo Veterans' Affairs clinic and at eight community-based outreach clinics. Services are provided by psychiatrists, psychologists, advanced practice registered nurses, social workers, and licensed professional mental health counselors. Veteran centers are located in Bismarck, Fargo, Grand Forks, and Minot, and provide community-based counseling services. The centers provide a wide range of social and psychological services to eligible veterans, active duty service members, and their families. Counseling services also are provided through telehealth to veterans in rural areas of the state.

2017-18 Health Services Committee

The Health Services Committee studied state and federal laws and regulations relating to the care and treatment of individuals with developmental disabilities or behavioral health needs. The committee received testimony from the University of North Dakota School of Medicine and Health Sciences Center for Rural Health, which developed a report of available telehealth services for behavioral health.

2015-16 Human Services Committee

The Human Services Committee requested and received approval from the Chairman of the Legislative Management to contract with a consultant to assist with the study of family caregiver supports and services. The study included identifying ways telehealth may address the needs of rural family caregivers and their care recipients.

The stakeholder recommendations included adding reimbursement requirements by third-party payers for telehealth which existed for physicians.

2013-14 Health Care Reform Review Committee

The Health Care Reform Review Committee studied the immediate needs and challenges of the North Dakota health care delivery system. The committee recommended House Bill No. 2038 (2015), which required the Public Employees Retirement System Board provide health benefits coverage under a policy that provides coverage for health services delivered by means of telehealth, which is the same as the policy coverage for health services delivered by in-person means. The mandate was limited to the Public Employees Retirement System Board and expired in 2 years. As enacted, the bill provided for coverage parity, but not payment parity.

North Dakota Executive Order

In response to the declared state of emergency related to the COVID-19 pandemic, on March 20, 2020, Governor Burgum issued Executive Order 2020-05.1. This order included the following provision addressing telehealth services:

> For purposes of expanding health care and behavioral health services across the State, certain statutory and regulatory requirements must be suspended as follows:
>
> a. The "secured connection" provision of NDCC § 26.1-36-09.15 (1)(g)(1) is hereby expanded to include the guidance issued by CMS on March 17, 2020.
>
> b. The "audio-only" provision of NDCC § 26.1-36-09.15 (1)(g)(3) is hereby suspended. Telehealth services shall be provided as defined by NDCC § 26.1-36-09.15 (1)(g)(1) and (2) to include audio-only telehealth services.
>
> c. Insurance carriers shall cover virtual check-ins and e-visits for established patients in accordance with the guidance issued by CMS on March 17, 2020.
>
> d. The provisions of NDCC § 26.1-36-09.15 (4) are hereby suspended. Insurance carriers shall not subject telehealth coverage, including virtual check-ins and e-visits for established patients, to deductible, coinsurance, copayment or other cost sharing provisions.
>
> e. No insurance carriers shall impose any specific requirements on the technologies used to deliver telehealth, virtual check-in and e-visit services (including any limitations on audio-only or live video technologies) that are inconsistent with these requirements.
>
> f. The North Dakota Insurance Commissioner may issue guidance on the implementations of these requirements.

This executive order remained in effect until the expiration of the state's declared state of emergency which occurred on April 30, 2021.

Federal Activities

Before the COVID-19 pandemic, Medicare coverage of telehealth services under traditional Medicare was limited. However, in response to the COVID-19 pandemic, the federal Centers for Medicare and Medicaid Services (CMS) issued guidelines and a related fact sheet (Appendix A) to broaden access to Medicare telehealth services so beneficiaries would be able to receive a wider range of services from providers without having to travel to health care facilities. These broadened telehealth services remain in effect during the federal public health emergency, which was most recently renewed in April 2021. The Kaiser Family Foundation states the Biden Administration reports the public health emergency is expected to remain in place for the duration of 2021.

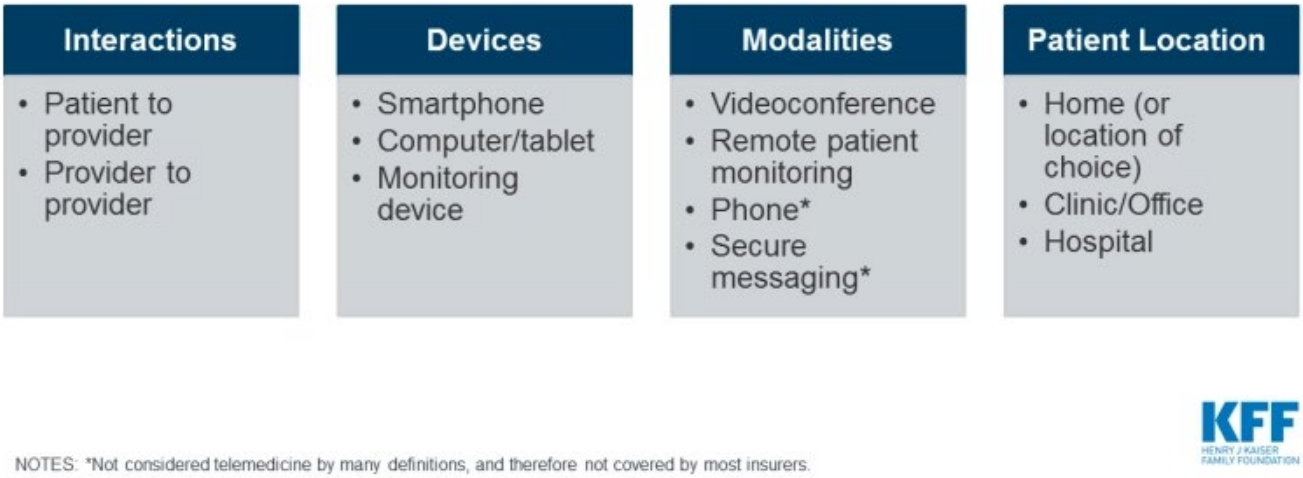
The COVID-19-related changes to Medicare include:

- Which traditional Medicare beneficiaries can receive telehealth services and where;
- What technologies traditional Medicare beneficiaries can use to access telehealth services;
- What type of providers can get reimbursed by Medicare for telehealth visits;
- What services traditional Medicare beneficiaries can receive through telehealth;
- Additional services, other than telehealth, which are delivered virtually and covered by traditional Medicare;
- How Medicare pays for telehealth services;
- What traditional Medicare beneficiaries pay for telehealth services;

- How telehealth is covered under Medicare for beneficiaries and providers participating in alternative payment modes; and
- How coverage of telehealth services differs in Medicare Advantage plans.

BACKGROUND

According to the Kaiser Family Foundation, while multiple definitions of telemedicine or telehealth exist, it commonly is defined as the remote provision of health care services using technology to exchange information for the diagnosis, treatment, and prevention of disease. Telemedicine can facilitate a broad range of interactions using different devices and modalities.



Benefits

There are perceived benefits to using telehealth which may be especially relevant in rural states such as North Dakota. The National Conference of State Legislatures reports that "[b]y improving access to lower-cost primary and specialty care, telehealth can provide timely, accessible care in lower-cost environments and help reduce expensive emergency room (ER) visits. Aside from primary care settings, telehealth is also used in a variety of specialty areas such as behavioral and oral health." In addition, "[t]elehealth also allows for consultation between providers, which can build capacity among practitioners in rural areas, where recruiting and retaining providers remains challenging. It also can allow providers to offer care in various settings, using the full extent of their education and training within their scopes of practice, with remote supervision or other support." Although there may be perceived benefits to telehealth, the National Conference of State Legislatures recognizes much of the research on the effectiveness of telehealth is evolving.

Barriers

Internet Service Access

A reliable and affordable Internet connection for both the patient and the provider is necessary for many telehealth platforms. In its 2019 report *North Dakota Broadband Plan* (Appendix B), the Information Technology Department reports that although the state has a large land area and a small population, the state is ranked high for Internet access and overall infrastructure. The Information Technology Department report specifies goals and opportunities to grow and support the state's broadband capacity and infrastructure.

Electronic Device Access

Americans are connected to the world of digital information via smartphones and other mobile devices. These devices can be utilized by patients in participating in telehealth. The Pew Research Center reports (Appendix C) 85 percent of Americans own a smartphone, and although cell phone ownership crosses a wide range of demographic groups, smartphone ownership varies based on age, household income, and education. A person is less likely to own a smartphone as the age of the person increases, the income of the household decreases, and the person's residence becomes more rural.

Reimbursement

The Kaiser Family Foundation reports as of fall 2019, 41 states and the District of Columbia have laws governing reimbursement for telemedicine services in fully insured private plans. In approximately one-half of the states, including North Dakota, the law provides for "service parity," which provides the plan must cover telemedicine

services if it covers the service in-person. Fewer states require "payment parity," which provides telemedicine services must be reimbursed at the same rate as equivalent in-person services.

Unlike a fully insured plan, which must comply with both state and federal laws, a self-insured health plan is regulated by federal law. These plans may choose whether to cover telemedicine services. The Kaiser Family Foundation reports the majority of large-employer plans, including self-insured plans, cover some telemedicine services.

Regulations

Typically, a provider must be licensed in the state the patient receiving services is located. Each state addresses these situations based on state law. However, multiple states participate in licensure compacts, allowing providers of participating states to practice in other compact states.

STUDY APPROACH

In conducting the study the committee may wish to consult with:

- The Department of Human Services to receive information regarding Medicaid coverage of telehealth and the use of telehealth for behavioral health services;
- The State Department of Health to receive information regarding how social determinants of health may be affected by telehealth;
- The Indian Affairs Commission to receive information regarding the use of telehealth in Indian Country;
- The Information Technology Department to receive information regarding telehealth infrastructure;
- The Insurance Department to receive information regarding telehealth coverage and reimbursement rates;
- Health insurance carriers to receive information regarding telehealth utilization, barriers, coverage, and reimbursement rates;
- Health care providers; and
- Health care consumers.

ATTACH:3