

**SENATE BILL NO. 2160**

Introduced by

Senators Lee, Hogan, K. Roers

Representatives Dobervich, Porter, Weisz

1 A BILL ~~for an Act to amend and reenact section 26.1-36-09.15 of the North Dakota Century~~  
2 ~~Code, relating to health insurance coverage of telehealth.~~for an Act to create and enact a new  
3 section to chapter 54-52.1 of the North Dakota Century Code, relating to public employee  
4 telehealth benefits; to provide for a report; to provide for application; to provide an expiration  
5 date; and to declare an emergency.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 ~~— **SECTION 1. AMENDMENT.** Section 26.1-36-09.15 of the North Dakota Century Code is~~  
8 ~~amended and reenacted as follows:~~

9 ~~— **26.1-36-09.15. Coverage of telehealth services.**~~

10 ~~— 1. As used in this section:~~

11 ~~— a. "Distant site" means a site at which a health care provider or health care facility is~~  
12 ~~located while providing medical services by means of telehealth.~~

13 ~~— b. "E-visit" means a face-to-face digital communication initiated by a patient to a~~  
14 ~~provider through the provider's online patient portal.~~

15 ~~— c. "Health care facility" means any office or institution at which health services are~~  
16 ~~provided. The term includes hospitals; clinics; ambulatory surgery centers;~~  
17 ~~outpatient care facilities; nursing homes; nursing, basic, long-term, or assisted~~  
18 ~~living facilities; laboratories; and offices of any health care provider.~~

19 ~~— d.c. "Health care provider" includes an individual licensed under chapter 43-05,~~  
20 ~~43-06, 43-12.1 as a registered nurse or as an advanced practice registered~~  
21 ~~nurse, 43-13, 43-15, 43-17, 43-26.1, 43-28, 43-32, 43-37, 43-40, 43-41, 43-42,~~  
22 ~~43-44, 43-45, 43-47, 43-58, or 43-60.~~

23 ~~— e. "Nonpublic facing product" means a remote communication product that, as a~~  
24 ~~default, allows only the intended parties to participate in the communication.~~

1 ~~f.d.~~ "Originating site" means a site at which a patient is located at the time health  
2 services are provided to the patient by means of telehealth.

3 ~~g.e.~~ "Policy" means an accident and health insurance policy, contract, or evidence of  
4 coverage on a group, individual, blanket, franchise, or association basis.

5 ~~h.~~ "Secure connection" means a connection made using a nonpublic facing remote  
6 communication product that employs end-to-end encryption, and which allows  
7 only an individual and the person with whom the individual is communicating to  
8 see what is transmitted.

9 ~~i.f.~~ "Store and forward technology" means asynchronous electronic information,  
10 imaging, and communication that is transferred, recorded, or otherwise stored in  
11 order to be reviewed at a distant site at a later date by a health care provider or  
12 health care facility without the patient present in real time. The term includes  
13 telehome monitoring and interactive audio, video, and data  
14 communication transfer or transmission of a patient's medical information or data  
15 from an originating site to a distant site for the purpose of diagnostic and  
16 therapeutic assistance in the care of a patient.

17 ~~j.g.~~ "Telehealth":

18 ~~(1)~~ Means the use of interactive audio, video, or other telecommunications  
19 technology that is used by a health care provider or health care facility at a  
20 distant site to deliver health services at an originating site and that is  
21 delivered over a secure connection that complies with the requirements of  
22 state and federal laws delivery of health services or consultations through  
23 the use of real-time two-way interactive audio and visual communications to  
24 provide or support health care delivery and facilitate the assessment,  
25 diagnosis, consultation, treatment, education, and care management of a  
26 patient's health care.

27 ~~(2)~~ Includes the use of electronic media for consultation relating to the health-  
28 care diagnosis or treatment of a patient in real time or through the use of  
29 store-and-forward technology application of secure video conferencing,  
30 store-and-forward technology, and synchronous interactions between a

- 1 ~~patient located at an originating site and a health care provider located at a~~  
2 ~~distant site.~~
- 3 ~~(3) Includes audio-only communication between a health care provider and a~~  
4 ~~patient as authorized under this section.~~
- 5 ~~(4) Does not include the use of electronic mail, facsimile transmissions, or~~  
6 ~~audio-only telephone unless for the purpose of e-visits or a virtual~~  
7 ~~check-in communication between health care providers which consists solely~~  
8 ~~of a telephone conversation, electronic mail, or facsimile transmission.~~
- 9 ~~(5) Does not include communication between a health care provider and a~~  
10 ~~patient which consists solely of an electronic mail or facsimile transmission.~~
- 11 ~~(6) Does not include telemonitoring services.~~
- 12 ~~k. "Virtual check-in" means a brief communication via telephone or other~~  
13 ~~telecommunications device to decide whether an office visit or other service is~~  
14 ~~needed~~
- 15 ~~h. "Telemonitoring services" means the remote monitoring of clinical data related to~~  
16 ~~the patient's vital signs or biometric data by a monitoring device or equipment~~  
17 ~~that transmits the data electronically to a health care provider for analysis.~~  
18 ~~Telemonitoring is intended to collect a patient's health-related data for the~~  
19 ~~purpose of assisting a health care provider in assessing and monitoring the~~  
20 ~~patient's medical condition or status.~~
- 21 ~~2. An insurer may not deliver, issue, execute, or renew a policy that provides health~~  
22 ~~benefits coverage unless that policy provides coverage for medically necessary health~~  
23 ~~services delivered by means of telehealth which is the same as the coverage for~~  
24 ~~covered medically necessary health services delivered by in-person means.~~
- 25 ~~a. This subsection does not require a health care provider to provide telehealth~~  
26 ~~services if the provider determines the delivery of a health service through~~  
27 ~~telehealth is not appropriate or if a patient chooses not to receive a health care~~  
28 ~~service through telehealth.~~
- 29 ~~b. An insurer may establish criteria a health care provider is required to meet to~~  
30 ~~demonstrate safety or efficacy of delivering a health care service through~~

1 ~~telehealth if the insurer does not already reimburse other health care providers~~  
2 ~~for delivery of that health service through telehealth.~~

3 ~~c. An insurer may establish reasonable medical management techniques if a~~  
4 ~~particular technique is not unduly burdensome or unreasonable for a particular~~  
5 ~~health service.~~

6 ~~d. An insurer may require documentation or billing practices designed to protect the~~  
7 ~~health insurer or patient from fraudulent claims if the practices are not unduly~~  
8 ~~burdensome or unreasonable for a particular health service.~~

9 ~~e. This section does not require coverage of an audio-only communication unless~~  
10 ~~the communication was a scheduled appointment and the standard of care for~~  
11 ~~that service can be met through the use of audio-only communication.~~

12 ~~f. An insurer may not require a patient to pay a fee to download a specific~~  
13 ~~communication technology or application.~~

14 ~~3. Payment or reimbursement of expenses for covered health services delivered by~~  
15 ~~means of telehealth under this section subsection 2 may be established through~~  
16 ~~negotiations conducted by the insurer with the health services providers in the same~~  
17 ~~manner as the insurer establishes payment or reimbursement of expenses for covered~~  
18 ~~health services that are delivered by in-person means.~~

19 ~~4. An insurer may not deliver, issue, execute, or renew a policy that provides health~~  
20 ~~benefits coverage for behavioral health unless that policy provides the same coverage~~  
21 ~~and reimbursement for medically necessary health services for behavioral health~~  
22 ~~services delivered by means of telehealth which is the same as the coverage and~~  
23 ~~reimbursement for covered medically necessary behavioral health services delivered~~  
24 ~~by in-person means.~~

25 ~~a. Under this subsection, an insurer may not deny or limit reimbursement based~~  
26 ~~solely on a health care provider delivering the service or consultation through~~  
27 ~~telehealth instead of through in-person means.~~

28 ~~b. Under this subsection, an insurer may not deny or limit reimbursement based~~  
29 ~~solely on the technology and equipment used by the health care provider to~~  
30 ~~deliver the health care services or consultation through telehealth, if the~~

1 ~~technology and equipment used by the health care provider meets the~~  
2 ~~requirements of this section and is appropriate for the health service.~~

3 ~~c. This subsection does not prohibit a health insurer and health care provider from~~  
4 ~~entering a contract that includes a value-based reimbursement arrangement for~~  
5 ~~the delivery of covered health services that may include services delivered~~  
6 ~~through telehealth, and the arrangement does not constitute a violation of this~~  
7 ~~section.~~

8 ~~d. Under this subsection, notwithstanding subsection 2, behavioral health services~~  
9 ~~delivered through telehealth are covered regardless of whether provided by~~  
10 ~~means of audio-only communication and regardless of whether provided as part~~  
11 ~~of a scheduled appointment if the communication was initiated by the patient~~  
12 ~~while in an emergency or crisis situation and a scheduled appointment was not~~  
13 ~~possible due to the need for an immediate response.~~

14 ~~5. Coverage under this section may be subject to deductible, coinsurance, and~~  
15 ~~copayment provisions that are no different from the provisions for in-person means.~~  
16 ~~Coverage under this section may be subject to prior authorization if prior authorization~~  
17 ~~is required before the delivery of the same health care service by in-person means. An~~  
18 ~~insurer may require utilization review for health services delivered through telehealth if~~  
19 ~~the utilization review is conducted in the same manner and uses the same clinical~~  
20 ~~review criteria as a utilization review for the same services delivered through in-person~~  
21 ~~means.~~

22 ~~5.6. This section does not require:~~

23 ~~a. A policy to provide coverage for health services that are not medically necessary,~~  
24 ~~subject to the terms and conditions of the policy;~~

25 ~~b. A policy to provide coverage for health services delivered by means of telehealth~~  
26 ~~if the policy would not provide coverage for the health services if delivered by~~  
27 ~~in-person means;~~

28 ~~c. A policy to reimburse a health care provider or health care facility for expenses~~  
29 ~~for health services delivered by means of telehealth if the policy would not~~  
30 ~~reimburse that health care provider or health care facility if the health services~~  
31 ~~had been delivered by in-person means; or~~

~~d. A health care provider to be physically present with a patient at the originating site unless the health care provider who is delivering health services by means of telehealth determines the presence of a health care provider is necessary.~~

**SECTION 1.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

**Coverage of telehealth services.**

1. As used in this section:

- a. "Behavioral health" has the same meaning as provided under section 50-06-01.
- b. "Distant site" means a site at which a health care provider or health care facility is located while providing medical services by means of telehealth.
- c. "Health care facility" means any office or institution at which health services are provided. The term includes hospitals; clinics; ambulatory surgery centers; outpatient care facilities; nursing homes; nursing, basic, long-term, or assisted living facilities; laboratories; and offices of any health care provider.
- d. "Health care provider" includes an individual licensed under chapter 43-05, 43-06, 43-12.1 as a registered nurse or as an advanced practice registered nurse, 43-13, 43-15, 43-17, 43-26.1, 43-28, 43-32, 43-37, 43-40, 43-41, 43-42, 43-44, 43-45, 43-47, 43-58, or 43-60.
- e. "Originating site" means a site at which a patient is located at the time health services are provided to the patient by means of telehealth.
- f. "Store-and-forward technology" means asynchronous electronic transfer or transmission of a patient's medical information or data from an originating site to a distant site for the purpose of diagnostic and therapeutic assistance in the care of a patient.
- g. "Telehealth":
  - (1) Means the delivery of health services or consultations through the use of real-time two-way interactive audio and visual communications to provide or support health care delivery and facilitate the assessment, diagnosis, consultation, treatment, education, and care management of a patient's health care.

1 (2) Includes the application of secure video conferencing, store-and-forward  
2 technology, and synchronous interactions between a patient located at an  
3 originating site and a health care provider located at a distant site.

4 (3) Includes audio-only communication between a health care provider and a  
5 patient as authorized under this section.

6 (4) Does not include communication between health care providers which  
7 consists solely of a telephone conversation, electronic mail, or facsimile  
8 transmission.

9 (5) Does not include communication between a health care provider and a  
10 patient which consists solely of an electronic mail or facsimile transmission.

11 (6) Includes telemonitoring services if the:

12 (a) Telemonitoring services are medically appropriate based on the  
13 patient's medical condition or status;

14 (b) Patient is cognitively and physically capable of operating the  
15 monitoring device or equipment, or the patient has a caregiver who is  
16 willing and able to assist with the monitoring device or equipment; and

17 (c) Patient resides in a setting suitable for telemonitoring services and not  
18 in a setting that has health care staff on site.

19 h. "Telemonitoring services" means the remote monitoring of clinical data related to  
20 the patient's vital signs or biometric data by a monitoring device or equipment  
21 that transmits the data electronically to a health care provider for analysis.

22 Telemonitoring is intended to collect a patient's health-related data for the  
23 purpose of assisting a health care provider in assessing and monitoring the  
24 patient's medical condition or status.

25 2. The board shall provide health insurance benefits coverage that provides coverage for  
26 health services delivered by means of telehealth which is the same as the coverage  
27 for covered medically necessary health services delivered by in-person means.

28 a. This subsection does not require a health care provider to provide telehealth  
29 services if the provider determines the delivery of a health service through  
30 telehealth is not appropriate or if a patient chooses not to receive a health care  
31 service through telehealth.

1           b. The coverage may provide criteria a health care provider is required to meet to  
2           demonstrate safety or efficacy of delivering a health care service through  
3           telehealth if the coverage does not already reimburse other health care providers  
4           for delivery of that health service through telehealth.

5           c. The coverage may provide reasonable medical management techniques if a  
6           particular technique is not unduly burdensome or unreasonable for a particular  
7           health service.

8           d. The coverage may require documentation or billing practices designed to protect  
9           the insurer or patient from fraudulent claims if the practices are not unduly  
10           burdensome or unreasonable for a particular health service.

11           e. This section does not require coverage of an audio-only communication unless  
12           the communication was a scheduled appointment and the standard of care for  
13           that service can be met through the use of audio-only communication.

14           f. The coverage may not require a patient to pay a fee to download a specific  
15           communication technology or application.

16           3. Payment or reimbursement of expenses for covered health services delivered by  
17           means of telehealth under subsection 2 may be established through negotiations with  
18           the health services providers in the same manner as the coverage establishes  
19           payment or reimbursement of expenses for covered health services that are delivered  
20           by in-person means.

21           4. The coverage must provide the same rate of reimbursement for behavioral health  
22           services delivered by means of telehealth as the rate of reimbursement for the same  
23           behavioral health services delivered by in-person means.

24           a. Under this subsection, the coverage may not deny or limit the rate of  
25           reimbursement based solely on the technology and equipment used by the health  
26           care provider to deliver the behavioral health services or consultation through  
27           telehealth, if the technology and equipment used by the behavioral health  
28           provider meets the requirements of this section and is appropriate for the health  
29           service.

30           b. This subsection does not prohibit a value-based reimbursement arrangement for  
31           the delivery of covered health services that may include services delivered

1 through telehealth, and the arrangement does not constitute a violation of this  
2 section.

3 c. Under this subsection, notwithstanding subsection 2, behavioral health services  
4 delivered through telehealth are covered regardless of whether provided by  
5 means of audio-only communication and regardless of whether provided as part  
6 of a scheduled appointment if the communication was initiated by the patient  
7 while in an emergency or crisis situation and a scheduled appointment was not  
8 possible due to the need for an immediate response.

9 5. Coverage under this section may be subject to deductible, coinsurance, and  
10 copayment provisions that are no different from the provisions for in-person means.  
11 Coverage under this section may be subject to prior authorization if prior authorization  
12 is required before the delivery of the same health care service by in-person means.  
13 Coverage may include utilization review for health services delivered through  
14 telehealth if the utilization review is conducted in the same manner and uses the same  
15 clinical review criteria as a utilization review for the same services delivered through  
16 in-person means.

17 6. This section does not require:

18 a. Coverage for health services that are not medically necessary, subject to the  
19 terms and conditions of the health benefits coverage;

20 b. Coverage for health services delivered by means of telehealth if the coverage  
21 would not provide coverage for the health services if delivered by in-person  
22 means;

23 c. Reimbursement of a health care provider or health care facility for expenses for  
24 health services delivered by means of telehealth if the coverage would not  
25 reimburse that health care provider or health care facility if the health services  
26 had been delivered by in-person means; or

27 d. A health care provider to be physically present with a patient at the originating  
28 site unless the health care provider who is delivering health services by means of  
29 telehealth determines the presence of a health care provider is necessary.

1 | **SECTION 2. APPLICATION.** This Act applies to public employees retirement system health  
2 benefits coverage that begins after June 30, 2023, and which does not extend past June 30,  
3 2025.

4 | **SECTION 3. PUBLIC EMPLOYEES RETIREMENT SYSTEM - EXPANDED TELEHEALTH**  
5 **COVERAGE - REPORT.** Pursuant to section 54-03-28, the public employees retirement system  
6 shall prepare and submit for introduction a bill to the sixty-ninth legislative assembly to repeal  
7 the expiration date for this Act and to extend the coverage of expanded telehealth coverage to  
8 all group and individual health insurance policies. The public employees retirement system shall  
9 append a report to the bill regarding the effect of the expanded telehealth benefits requirement  
10 on the system's health insurance programs, information on the utilization and costs relating to  
11 the coverage, and a recommendation regarding whether the coverage should be continued.

12 | **SECTION 4. EXPIRATION DATE.** This Act is effective through July 31, 2025, and after that  
13 date is ineffective.

14 | **SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.