

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.

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

4 **SECTION 1. AMENDMENT.** Section 26.1-36-09.15 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **26.1-36-09.15. Coverage of telehealth services.**

7 1. As used in this section:

8 a. "Behavioral health" has the same meaning as provided under section 50-06-01.

9 b. "Distant site" means a site at which a health care provider or health care facility is  
10 located while providing medical services by means of telehealth.

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

13 c. "Health benefit plan" has the same meaning as provided under section  
14 26.1-36.3-01.

15 d. "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.e.e.~~ "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.g.~~ "~~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.h.~~ "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.i.~~ "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~~health benefit plan that  
22 provides health benefits coverage unless that ~~policy~~health benefit plan provides  
23 coverage for ~~medically necessary~~ health services delivered by means of telehealth  
24 which is the same as the coverage for covered medically necessary health services  
25 delivered by in-person means.

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

30 b. An insurer may establish criteria a health care provider is required to meet to  
31 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~~health benefit plan that  
20           provides behavioral health benefits coverage ~~for behavioral health~~unless that  
21           ~~policy~~health benefit plan provides the same ~~coverage and~~rate of reimbursement ~~for~~  
22           ~~medically necessary health services~~ for behavioral health services delivered by means  
23           of telehealth ~~which is the same~~ as the ~~coverage and~~rate of reimbursement for covered  
24           ~~medically necessary~~ behavioral health services delivered 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 the rate of reimbursement  
29           based solely on the technology and equipment used by the health care provider  
30           to deliver the behavioral health ~~care~~ services or consultation through telehealth, if

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

3           **~~e.b.~~**   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.c.~~**   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~~health benefit plan to provide coverage for health services that are not  
24                          medically necessary, subject to the terms and conditions of the ~~policy~~health  
25                          benefit plan;

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

29                  c.   A ~~policy~~health benefit plan to reimburse a health care provider or health care  
30                          facility for expenses for health services delivered by means of telehealth if the

- 1 | ~~policy~~health benefit plan would not reimburse that health care provider or health  
2 | care facility if the health services had been delivered by in-person means; or  
3 | d. A health care provider to be physically present with a patient at the originating  
4 | site unless the health care provider who is delivering health services by means of  
5 | telehealth determines the presence of a health care provider is necessary.