

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2160

Introduced by

Senators Lee, Hogan, K. Roers

Representatives Dobervich, Porter, Weisz

1 A BILL for an Act to create and enact a new section to chapter 54-52.1 of the North Dakota
2 Century Code, relating to public employee telehealth benefits; to provide for a report; to provide
3 for application; to provide an expiration date; and to declare an emergency.

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

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

7 **Coverage of telehealth services.**

8 1. As used in this section:

- 9 a. "Behavioral health" has the same meaning as provided under section 50-06-01.
10 b. "Distant site" means a site at which a health care provider or health care facility is
11 located while providing medical services by means of telehealth.
12 c. "Health care facility" means any office or institution at which health services are
13 provided. The term includes hospitals; clinics; ambulatory surgery centers;
14 outpatient care facilities; nursing homes; nursing, basic, long-term, or assisted
15 living facilities; laboratories; and offices of any health care provider.
16 d. "Health care provider" includes an individual licensed under chapter 43-05,
17 43-06, 43-12.1 as a registered nurse or as an advanced practice registered
18 nurse, 43-13, 43-15, 43-17, 43-26.1, 43-28, 43-32, 43-37, 43-40, 43-41, 43-42,
19 43-44, 43-45, 43-47, 43-58, or 43-60.
20 e. "Originating site" means a site at which a patient is located at the time health
21 services are provided to the patient by means of telehealth.
22 f. "Store-and-forward technology" means asynchronous electronic transfer or
23 transmission of a patient's medical information or data from an originating site to

1 a distant site for the purpose of diagnostic and therapeutic assistance in the care
2 of a patient.

3 g. "Telehealth":

4 (1) Means the delivery of health services or consultations through the use of
5 real-time two-way interactive audio and visual communications to provide or
6 support health care delivery and facilitate the assessment, diagnosis,
7 consultation, treatment, education, and care management of a patient's
8 health care.

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

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

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

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

19 (6) Includes telemonitoring services if the:

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

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

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

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

30 Telemonitoring is intended to collect a patient's health-related data for the

1 purpose of assisting a health care provider in assessing and monitoring the
2 patient's medical condition or status.

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

6 a. This subsection does not require a health care provider to provide telehealth
7 services if the provider determines the delivery of a health service through
8 telehealth is not appropriate or if a patient chooses not to receive a health care
9 service through telehealth.

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

14 c. The coverage may provide reasonable medical management techniques if a
15 particular technique is not unduly burdensome or unreasonable for a particular
16 health service.

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

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

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

25 3. Payment or reimbursement of expenses for covered health services delivered by
26 means of telehealth under subsection 2 may be established through negotiations with
27 the health services providers in the same manner as the coverage establishes
28 payment or reimbursement of expenses for covered health services that are delivered
29 by in-person means.

- 1 4. The coverage must provide the same rate of reimbursement for behavioral health
2 services delivered by means of telehealth as the rate of reimbursement for the same
3 behavioral health services delivered by in-person means.
- 4 a. Under this subsection, the coverage may not deny or limit the rate of
5 reimbursement based solely on the technology and equipment used by the health
6 care provider to deliver the behavioral health services or consultation through
7 telehealth, if the technology and equipment used by the behavioral health
8 provider meets the requirements of this section and is appropriate for the health
9 service.
- 10 b. This subsection does not prohibit a value-based reimbursement arrangement for
11 the delivery of covered health services that may include services delivered
12 through telehealth, and the arrangement does not constitute a violation of this
13 section.
- 14 c. Under this subsection, notwithstanding subsection 2, behavioral health services
15 delivered through telehealth are covered regardless of whether provided by
16 means of audio-only communication and regardless of whether provided as part
17 of a scheduled appointment if the communication was initiated by the patient
18 while in an emergency or crisis situation and a scheduled appointment was not
19 possible due to the need for an immediate response.
- 20 5. Coverage under this section may be subject to deductible, coinsurance, and
21 copayment provisions that are no different from the provisions for in-person means.
22 Coverage under this section may be subject to prior authorization if prior authorization
23 is required before the delivery of the same health care service by in-person means.
24 Coverage may include utilization review for health services delivered through
25 telehealth if the utilization review is conducted in the same manner and uses the same
26 clinical review criteria as a utilization review for the same services delivered through
27 in-person means.
- 28 6. This section does not require:
- 29 a. Coverage for health services that are not medically necessary, subject to the
30 terms and conditions of the health benefits coverage;

- 1 b. Coverage for health services delivered by means of telehealth if the coverage
2 would not provide coverage for the health services if delivered by in-person
3 means;
4 c. Reimbursement of a health care provider or health care facility for expenses for
5 health services delivered by means of telehealth if the coverage would not
6 reimburse that health care provider or health care facility if the health services
7 had been delivered by in-person means; or
8 d. A health care provider to be physically present with a patient at the originating
9 site unless the health care provider who is delivering health services by means of
10 telehealth determines the presence of a health care provider is necessary.

11 **SECTION 2. APPLICATION.** This Act applies to public employees retirement system health
12 benefits coverage that begins after June 30, 2023, and which does not extend past June 30,
13 2025.

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

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

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