

2014

STATE OF NEBRASKA

**STATUTES RELATING TO
NEBRASKA TELEHEALTH ACT**

Department of Health & Human Services



N E B R A S K A

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NEBRASKA TELEHEALTH ACT

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STATUTES PERTAINING TO THE NEBRASKA TELEHEALTH ACT

71-8501. Act, how cited. Sections 71-8501 to 71-8508 shall be known and may be cited as the Nebraska Telehealth Act.

Source: Laws 1999, LB 559, § 1. Effective date August 28, 1999.

71-8502. Legislative findings. The Legislature finds that:

(1) Access to health care facilities and health care practitioners is critically important to the citizens of Nebraska;

(2) Access to a continuum of health care services is restricted in some medically underserved areas of Nebraska, and many health care practitioners in such areas are isolated from mentors, colleagues, and information resources necessary to support them personally and professionally;

(3) The use of telecommunications technology to deliver health care services can reduce health care costs, improve health care quality, improve access to health care, and enhance the economic health of communities in medically underserved areas of Nebraska; and

(4) The full potential of delivering health care services through telehealth cannot be realized without the assurance of payment for such services and the resolution of existing legal and policy barriers to such payment.

Source: Laws 1999, LB 559, § 2. Effective date August 28, 1999.

71-8503. Terms, defined. 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) 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. Telehealth includes services originating from a patient's home or any other location where such patient is located, 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 telemonitoring;

(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.

Source: Laws 1999, LB 559, § 3; Laws 2007, LB296, § 695; Laws 2014, LB1076, § 1. Effective Date: July 18, 2014.

71-8504. Act; how construed. The Nebraska Telehealth Act does not: (1) Alter the scope of practice of any health care practitioner; (2) authorize the delivery of health care services in a setting or manner not otherwise authorized by law; or (3) limit a patient's right to choose in-person contact with a health care practitioner for the delivery of health care services for which telehealth is available.

Source: Laws 1999, LB 559, § 4. Effective date August 28, 1999.

71-8505. Written statement; requirements. (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 an initial 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 his or her designee. Such signed statement shall become a part of the patient's medical record.

(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 required by subsection (2) of this section, such statement shall be signed 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 required by subsection (2) of this section and the patient's legally authorized representative is unavailable.

Source: Laws 1999, LB 559, § 5. Effective date August 28, 1999.

71-8506. Medical assistance program; reimbursement; requirements. (1) In-person contact between a health care practitioner and a patient shall not be required under the medical assistance program established pursuant to the Medical Assistance Act and Title XXI of the federal Social Security Act, as amended, for health care services delivered through telehealth that are otherwise eligible for reimbursement under such program and federal act. Such services shall be subject to reimbursement policies developed pursuant to such program and federal act. This section also applies to managed care plans which contract with the department pursuant to the Medical Assistance Act only to the extent that:

(a) Health care services delivered through telehealth are covered by and reimbursed under the medicaid fee-for-service program; and

(b) Managed care contracts with managed care plans are amended to add coverage of health care services delivered through telehealth and any appropriate capitation rate adjustments are incorporated.

(2) The reimbursement rate for a telehealth consultation shall, as a minimum, be set at the same rate as the medical assistance program rate for a comparable in-person consultation, and the rate shall not depend on the distance between the health care practitioner and the patient.

(3) The department shall establish rates for transmission cost reimbursement for telehealth consultations, considering, to the extent applicable, reductions in travel costs by health care practitioners and patients to deliver or to access health care services and such other factors as the department deems relevant. Such rates shall include reimbursement for all two-way, real-time, interactive communications, unless provided by an Internet service provider, between the patient and the physician or health care practitioner at the distant site which comply with the federal Health Insurance Portability and Accountability Act of 1996 and rules and regulations adopted thereunder and with regulations relating to encryption adopted by the federal Centers for Medicare and Medicaid Services and which satisfy federal requirements relating to efficiency, economy, and quality of care.

Source: Laws 1999, LB 559, § 6; Laws 2006, LB 1248, § 82; Laws 2013, LB556, § 6; Laws 2014, LB1076, § 2. Effective Date: July 18, 2014.

71-8507. Health care facility; duties. A health care facility licensed under the Health Care Facility Licensure Act that receives reimbursement under the Nebraska Telehealth Act for telehealth consultations shall establish quality of care protocols and patient confidentiality guidelines to ensure that such consultations meet the requirements of the act and acceptable patient care standards.

Source: Laws 1999, LB 559, § 7; Laws 2000, LB 819, § 147. Operative date January 1, 2001.

71-8508. Rules and regulations. The department shall adopt and promulgate rules and regulations to carry out the Nebraska Telehealth Act, including, but not limited to, rules and regulations to: (1) Ensure the provision of appropriate care to patients; (2) prevent fraud and abuse; and (3) establish necessary methods and procedures.

Source: Laws 1999, LB 559, § 8; Laws 2014, LB1076, § 3. Effective Date: July 18, 2014.

STATUTES PERTAINING TO CHILDREN'S BEHAVIORAL HEALTH

71-8509. Telehealth services for children's behavioral health; rules and regulations; terms, defined. (1) The Department of Health and Human Services shall adopt and promulgate rules and regulations providing for telehealth services for children's behavioral health. Such rules and regulations relate specifically to children's behavioral health and are in addition to the Nebraska Telehealth Act.

For purposes of sections 71-8509 to 71-8512, child means a person under nineteen years of age.

(2) The rules and regulations required pursuant to subsection (1) of this section shall include, but not be limited to:

(a) An appropriately trained staff member or employee familiar with the child's treatment plan or familiar with the child shall be immediately available in person to the child receiving a telehealth behavioral health service in order to attend to any urgent situation or emergency that may occur during provision of such service. This requirement may be waived by the child's parent or legal guardian;

(b) In cases in which there is a threat that the child may harm himself or herself or others, before an initial telehealth service the health care practitioner shall work with the child and his or her parent or guardian to develop a safety plan. Such plan shall document actions the child, the health care practitioner, and the parent or guardian will take in the event of an emergency or urgent situation occurring during or after the telehealth session. Such plan may include having a staff member or employee familiar with the child's treatment plan immediately available in person to the child, if such measures are deemed necessary by the team developing the safety plan; and

(c) Services provided by means of telecommunications technology, other than telehealth behavioral health

services received by a child, are not covered if the child has access to a comparable service within thirty miles of his or her place of residence.

Source: Laws 2013, LB556, § 1. Effective Date: September 6, 2013.

71-8510. Behavioral health screenings; legislative intent; optional screening. It is the intent of the Legislature that behavioral health screenings be offered by physicians at the time of childhood physicals. The physician shall explain that such screening is optional. The results of behavioral health screenings and any related documents shall not be included in the child's school record and shall not be provided to the child's school or to any other person or entity without the express consent of the child's parent or legal guardian.

Source: Laws 2013, LB556, § 2. Effective Date: September 6, 2013.

71-8511. Behavioral Health Education Center; duties. The Behavioral Health Education Center created pursuant to section 71-830 shall provide education and training for educators on children's behavioral health in the areas of the state served by the Behavioral Health Screening and Referral Pilot Program created pursuant to section 71-8512.

Source: Laws 2013, LB556, § 3. Effective Date: September 6, 2013.

71-8512. Behavioral Health Screening and Referral Pilot Program; created by University of Nebraska Medical Center; clinics; selection; collection of data; evaluation; termination of section. (1) The University of Nebraska Medical Center shall create the Behavioral Health Screening and Referral Pilot Program. The pilot program shall utilize a strategy of screening and behavioral health intervention in coordination with the regional behavioral health authorities established pursuant to section 71-808 in which the clinics identified under subsection (2) of this section are located. It is the intent of the Legislature that the pilot program demonstrate a method of addressing the unmet emotional or behavioral health needs of children that can be replicated statewide. Under the pilot program, behavioral health screening will be offered: (a) In primary care providers' offices during examinations under the early and periodic screening, diagnosis, and treatment services program pursuant to 42 U.S.C. 1396d(r), as such section existed on January 1, 2013; or (b) upon request from parents or legal guardians who have concerns about a child's behavioral health.

(2) Three clinics shall be selected to serve as sites for the pilot program, including at least one rural and one urban clinic. Selected clinics shall have child psychologists integrated in the pediatric practice of the clinics. Parents or legal guardians of children participating in the pilot program shall be offered routine mental and behavioral health screening for their child during required physical examinations or at the request of a parent or legal guardian. Behavioral health screening shall be administered by clinic staff and interpreted by the psychiatrist, psychiatric nurse practitioner, psychologist, or licensed mental health practitioner and the child's primary care physician.

(3) Children identified through such screenings as being at risk may be referred for further evaluation and diagnosis as indicated. If intervention is required, the primary care medical team, including the psychologist and the primary care physician, shall develop a treatment plan collaboratively with the parent or legal guardian and any other individuals identified by the parent or legal guardian. If appropriate, the child shall receive behavioral therapy, medication, or combination therapy within the primary care practice setting.

(4) Consultation via telephone or telehealth with faculty and staff of the departments of Child and Adolescent Psychiatry, Psychiatric Nursing, and Developmental Pediatrics, and the Munroe-Meyer Institute Psychology Department, of the University of Nebraska Medical Center shall be available to the primary care practice and the children as needed to manage the care of children with mental or behavioral health issues that require more specialized care than can be provided by the primary care practice.

(5) Data on the pilot program shall be collected and evaluated by the Interdisciplinary Center for Program Evaluation at the Munroe-Meyer Institute of the University of Nebraska Medical Center. Evaluation of the pilot program shall include, but not be limited to:

- (a) The number of referrals for behavioral health screening under the pilot program;
- (b) Whether each referral is initiated by a parent, a school, or a physician;
- (c) The number of children and adolescents recommended for further psychological assessment after screening for a possible behavioral health disorder;
- (d) The number and type of further psychological assessments of children and adolescents recommended and conducted;
- (e) The number and type of behavioral health disorders in children and adolescents diagnosed as a result of a further psychological assessment following a behavioral health screening under the pilot program;
- (f) The number and types of referrals of children and adolescents for behavioral health treatment from primary care medical practitioners;
- (g) The number of children and adolescents successfully treated for a behavioral health disorder based upon

patient reports, parent ratings, and academic records;

(h) The number and type of referrals of children and adolescents to psychiatric backup services at the University of Nebraska Medical Center;

(i) The number of children and adolescents diagnosed with a behavioral health disorder who are successfully managed or treated through psychiatric backup services from the University of Nebraska Medical Center;

(j) The number and types of medications, consultations, or prescriptions ordered by psychiatric nurse practitioners for children and adolescents;

(k) The number of referrals of children and adolescents for severe behavioral health disorders and consultations to child psychiatrists, developmental pediatricians, or psychologists specializing in treatment of adolescents;

(l) The number of children and adolescents referred to psychiatric hospitals or emergency departments of acute care hospitals for treatment for dangerous or suicidal behavior;

(m) The number of children and adolescents prescribed psychotropic medications and the types of such psychotropic medications; and

(n) Data collection on program costs and financial impact as related to capacity for replication in other primary care practices. Primary program costs include physician and psychologist time for conducting screenings, family interviews, further testing, and specialist consulting costs relating to consulting services by psychiatric nurses, developmental pediatricians, and psychologists. Treatment or medications paid by private insurance, the medical assistance program, or the State Children's Health Insurance Program shall not be included in program costs pursuant to this subdivision.

(6) This section terminates two years after September 6, 2013.

Source: Laws 2013, LB556, § 4. Effective Date: September 6, 2013. Termination Date: September 6, 2015.