

## TITLE 471

## NEBRASKA MEDICAL ASSISTANCE PROGRAM SERVICES

### CHAPTER 47

### TELEHEALTH

**001. SCOPE AND AUTHORITY.** The regulations govern the services provided under Nebraska's Medicaid program as defined by Nebraska Revised Statute (Neb. Rev. Stat.) §§ 68-901 et seq.

**002. DEFINITIONS.** The following definitions apply to this chapter:

**002.01 DISTANT SITE.** The site at which the health care practitioner delivering the service is located at the time the service is provided via telehealth.

**002.02 ESTABLISHED PATIENT.** An established patient refers to a beneficiary who has received professional services, including services via telehealth, from the provider or another provider of the same specialty who belongs to the same group practice within the past three years.

**002.03 ORIGINATING SITE.** The site at which the client is located at the time the service is provided via telehealth.

**002.04 STORE-AND-FORWARD.** 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 which is then reported back to the referring provider.

**002.05 TELEHEALTH.** The use of telecommunications and information technology to electronically exchange medical information from one site to another at different physical locations, whether synchronously or asynchronously, in order to aid a health care practitioner in the diagnosis or treatment of a client. Telehealth encompasses telemedicine, store-and-forward, and telemonitoring. The term also includes audio-only services for the delivery of individual behavioral health services for an established client when appropriate, and crisis management and intervention for an established client as allowed by federal law.

**002.06 TELEHEALTH CONSULTATION.** Any contact between a client and a health care practitioner relating to the health care diagnosis or treatment of such client through telehealth. For the purposes of telehealth services, a consultation includes any service delivered through telehealth.

**002.07 TELEMEDICINE.** The use of two-way, real-time interactive audiovisual technology by a health care practitioner at a distant site to deliver services to a client at an originating site.

002.08 TELEMONITORING. The remote monitoring of a client'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 in order to make treatment recommendations. This requires the use of a device that is defined by the federal Food and Drug Administration as a medical device.

### **003. SERVICE REQUIREMENTS.**

003.01 GENERAL SERVICE REQUIREMENTS. All services provided via telehealth must be medically necessary, clinically appropriate, and in compliance with any applicable requirements within Title 471 of the Nebraska Administrative Code (NAC).

003.01(A) SERVICE CODE DEFINITIONS. All services provided via telehealth must meet the applicable service code definitions for coverage.

003.01(B) FEE SCHEDULE. Payment for services provided via telehealth is made according to the Nebraska Medicaid Practitioner Fee Schedule. Payment for services provided via telehealth is only available for those services specifically indicated as telehealth eligible services in the fee schedule.

003.02 EXCLUDED SERVICES. Services requiring hands-on care or in-person contact between the client and provider are not covered if provided via telehealth.

003.03 SERVICE LIMITATIONS. Services maintain the same limitations whether provided in-person or via telehealth, unless otherwise stated within this chapter.

003.04 TELECOMMUNICATIONS TECHNOLOGY REQUIREMENTS. For services provided via telehealth to be covered, the telecommunications technology utilized must meet the following requirements:

- (A) The technology must provide a secure audiovisual connection between distant and originating sites enough to ensure service parity with in-person delivery;
- (B) The technology must be Health Insurance Portability and Accountability Act of 1996 (HIPAA) compliant; and
- (C) The technology must be sufficient to allow the provider to appropriately complete the service billed to Nebraska Medicaid while adequately maintaining the safety of the client.

003.05 TELEMONITORING REQUIREMENTS. Nebraska Medicaid will reimburse for telemonitoring when all of the following requirements are met:

- (A) The services are from the originating site;
- (B) The client is cognitively capable to operate the equipment or has a willing and able person to assist in the transmission of electronic data;
- (C) The originating site has space for all program equipment and full transmission capability;
- (D) The provider must maintain a client's medical record containing data supporting the medical necessity of the service, all transmissions and subsequent review received from the client, and how the data transmitted from the client is being utilized in the continuous development and implementation of the client's plan of care; and
- (E) The service is otherwise reimbursable by Nebraska Medicaid.

**003.06 AUDIO-ONLY BEHAVIORAL HEALTH SERVICES.** For audio-only services to be covered, they must be individual behavioral health services or crisis management and intervention, clients must have established relationships with their providers, and audio-only services must be clinically appropriate.

**003.06(A) BEHAVIORAL HEALTH SERVICES FOR CHILDREN.** For each client who is a child who is receiving behavioral health services via telehealth, the following protections must be in place:

- (i) An appropriately trained staff member or employee familiar with the child's treatment plan or familiar with the child must be immediately available in person to the child receiving a telehealth behavioral consultation 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. The medical record must document the waiver; and
- (ii) In cases in which there is a threat that the child may harm himself or herself or others before an initial telehealth consultation the health practitioner must work with the child and his or her parent or guardian to develop a safety plan. Such plan must 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 consultation. 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.

**003.07 OUT-OF-STATE SERVICES.** Services provided via telehealth to clients out-of-state are covered if the services meet the regulatory requirements for payment for services provided outside Nebraska.

#### **004. PROVIDER REQUIREMENTS.**

**004.01 APPLICABLE LAWS.** Providers delivering services via telehealth must follow all applicable state and federal laws and regulations governing their practice and the services they provide.

**004.02 GENERAL PROVIDER REQUIREMENTS.** Providers of services delivered via telehealth must comply with all applicable provider participation requirements under 471 NAC Chapters 2 and 3. In the event that provider participation requirements in 471 NAC Chapters 2 or 3 conflict with requirements outlined in this chapter, the requirements herein shall govern:

- (A) Providers must ensure that services can be safely and effectively delivered using telehealth;
- (B) Providers must consider a beneficiary's behavioral, physical, and cognitive abilities to participate in services provided using telehealth;
- (C) The beneficiary's safety must be carefully considered for the complexity of the services provided;
- (D) In situations where a caregiver or facilitator is necessary to assist with the delivery of services via telehealth their ability to assist and safety must also be considered;
- (E) Beneficiaries are not required to seek services through telehealth and must be allowed to access in-person services, if the beneficiary requests; and
- (F) Providers must ensure that beneficiary privacy and confidentiality is protected to the best of their ability.

**004.03 TECHNOLOGY PROFICIENCY AND RESPONSIBILITY.** To deliver services via telehealth, providers must be proficient in the use of applicable telehealth technologies. Providers are responsible for ensuring that the telecommunications technology requirements within this chapter are met when delivering services via telehealth.

**004.04 INFORMED CONSENT.** Before an initial telehealth consultation, the provider must provide the client the following written information, which must be acknowledged by the client in writing or via email:

- (i) Alternative options are available, including in-person services. These alternatives are specifically listed on the client's informed consent statement. The client must be aware of their right to refuse the telehealth consultation;
- (ii) All existing laws and protections for services received in-person also apply to telehealth, including:
  - (1) Confidentiality of information;
  - (2) Access to medical records and information resulting from the telehealth consultation; and
  - (3) Dissemination of client identifiable information, which cannot occur without written consent;
- (iii) The need for the client to utilize a private location as their originating site to preserve confidentiality;
- (iv) Whether the telehealth consultation will be or will not be recorded;
- (v) The identification of all the parties who will be present at each telehealth consultation, and a statement indicating that the client has the right to exclude anyone from either the originating or the distant site; and
- (vi) The written consent form becomes a part of the client's medical record, and a copy must be provided to the client or the client's authorized representative.

**004.04(A) VERBAL CONSENT.** Clients may provide verbal rather than written consent during initial telehealth consultations. The client must confirm that they understand the information contained in the written consent form. A signed statement must be collected from the client within ten days of the service being provided and added to the client's medical record.

**004.04(B) LEGALLY AUTHORIZED REPRESENTATIVE.** If the client is unable to provide consent, then it must be obtained verbally or in writing from the client's legally authorized representative.

**004.04(C) EXCEPTION FOR EMERGENCY SITUATIONS.** Informed consent is not required if, because of a medical emergency, a client or their authorized representative are unable to provide written or verbal consent prior to the delivery of a service via telehealth.

**004.05 PROVIDER REQUIREMENTS FOR OUT-OF-STATE SERVICES.** For services delivered via telehealth to Nebraska Medicaid clients when the provider or the client, or both, is located outside of Nebraska, providers must be enrolled with Nebraska Medicaid and appropriately licensed.

## **005. ORIGINATING AND DISTANT SITE REQUIREMENTS.**

**005.01 ORIGINATING SITES.** Originating sites must provide a place where the client's right to receive confidential and private services is protected.

005.01(A) GEOGRAPHIC RESTRICTIONS. There are no geographic restrictions dictating where an originating site may be located.

005.01(B) TECHNOLOGICAL COMPATABILITY. Originating sites must be compatible with the telecommunications technology necessary for services to be provided via telehealth.

005.02 DISTANT SITES HEALTH CARE FACILITIES. To receive reimbursement, health care facilities must have quality of care protocols and patient confidentiality guidelines consistent with the requirements under this chapter.

## **006. DOCUMENTATION REQUIREMENTS.**

006.01 MEDICAL RECORD. The medical record for telehealth services must follow all applicable statutes and regulations on documentation. The use of telehealth technology must be documented in the same medical record, and must include the following telehealth information:

- (A) Documentation of which site initiated the call;
- (B) Documentation of the telecommunication technology utilized;
- (C) The time the service began and ended;
- (D) Assurance that services provided via telehealth meet applicable service definitions; and
- (E) Documentation of informed consent.

## **007. BILLING.**

007.01 FEE SCHEDULE INDICATORS. Services allowed to be delivered via telehealth are distinguished on the Nebraska Medicaid Fee Schedule using the coding indicated therein.

007.02 MINIMUM STANDARD. Services provided via telehealth must be reimbursed at the equivalent rate for the comparable in-person service and without regard to the distance between the originating and distant sites.

007.03 ORIGINATING SITE FEE. The originating site fee is paid to the health care facility hosting the client for telehealth services at a rate set forth in the Nebraska Medicaid Fee Schedule or under arrangement with the managed care organization (MCO).

007.04 TELEMONITORING PER DIEM RATE. Telemonitoring is paid at a daily per diem rate set by Nebraska Medicaid and includes the following:

- (i) Provider review and interpretation of client data;
- (ii) Equipment and all supplies, accessories, and services necessary for proper functioning and effective use of the equipment;
- (iii) Medically necessary visits to the home by a provider; and
- (iv) Training on the use of equipment and completion of necessary medical records.

007.04(A) FIXED PAYMENT. No additional or separate payment beyond the fixed payment is allowable.

007.05 OUT-OF-STATE TELEHEALTH SERVICES. Out-of-state telehealth services are covered when the Nebraska client is located at an originating site in another state, whether or not the provider's distant site is located in or out of Nebraska, if the telehealth services are

appropriately provided in accordance with this chapter and otherwise meet any applicable requirements within Title 471 of the Nebraska Administrative Code (NAC).