



March 4, 2024

Dr. Steve Corsi, Chief Executive Officer
Department of Health and Human Services
Nebraska State Office Building
301 Centennial Mall South
Lincoln, NE 68509

**RE: ATA ACTION COMMENTS ON PROPOSED AMENDMENTS TO TITLE
471 - NEBRASKA MEDICAL ASSISTANCE PROGRAM SERVICES CHAPTER
47 - TELEHEALTH**

Dear Dr. Corsi,

On behalf of ATA Action, I am writing you to submit comments for your consideration regarding proposed amendments to Title 471 Nebraska Medical Assistance Program Services, Chapter 47 Telehealth. ATA Action has several suggestions for how this rule could be improved before it is finalized that we encourage you to consider in the interest of expanding and preserving access to telehealth care for Nebraska Medicaid patients.

ATA Action, the American Telemedicine Association's affiliated trade association focused on advocacy, advances policy to ensure all individuals have permanent access to telehealth services across the care continuum. ATA Action supports the enactment of state and federal telehealth policies to secure telehealth access for all Americans, including those in rural and underserved communities. ATA Action recognizes that telehealth and virtual care have the potential to truly transform the health care delivery system – by improving patient outcomes, enhancing safety and effectiveness of care, addressing health disparities, and reducing costs – if only allowed to flourish.

Our first recommendation is to remove the new definition of telemedicine, given the appropriate telehealth definition already contemplated by this rule language. Indeed, the definition of telehealth provided in the proposed rule, while not identical to, tracks well with the strong definition of telehealth included in Nebraska insurance statute.¹ However, the term telemedicine does not appear in this code section, nor anywhere else in Nebraska Statute, and is more restrictive than the telehealth definition - only including two-way, real-time interactive audiovisual modalities. Not only will this create confusion for providers and administrators, but it is also unnecessary given that the term telemedicine is not used outside its definition in the proposed rule, other than being included in the broader definition of telehealth.

Second, ATA Action has concerns with the proposed amendments to the telecommunications technology requirements for Medicaid coverage. Current department rules states that “The technology used meets industry standards.” This aligns with the technology neutral definition included in the proposed rule, allowing providers to use any telehealth modality to treat the patient's condition while ensuring that Medicaid will provide reimbursement. Therefore, it is curious to see the proposed new language states

¹ Nebraska Revised Statute 44-312. <https://nebraskalegislature.gov/laws/statutes.php?statute=44-312>



Telehealth Policy to Transform Healthcare

“The technology must provide a secure audiovisual connection between distant and originating sites enough to ensure service parity with in-person delivery.” Limiting to “audiovisual” would seem to exclude audio-only and asynchronous modalities. Adopting this technology requirement for Medicaid coverage would restrict patient and provider choice and have the greatest impact upon older patients and those in rural or underserved communities who may face difficulties accessing or using audiovisual technologies. This change could also interrupt continuity of care for patients who are currently accessing, and being reimbursed by Medicaid, for care using asynchronous or audio only modalities.

This change also has the potential to create further confusion for providers and patients as the technology requirements for services provided via telehealth to be covered must include audiovisual connection, but the Department is also proposing to allow for reimbursement for telemonitoring, which rarely includes an audiovisual connection, and continued audio-only coverage of behavioral health care. ATA Action believes that licensed practitioners should be able to utilize the full range of available telehealth technologies while delivering virtual care, so long as the technologies being used are appropriate to meet the standard of care for the condition presented by the patient.

Finally, while ATA Action does have the above concerns with this proposed rule, we want to express our support for the overall rule language. The definition of telehealth is modality inclusive and will promote patient and provider choice - if the concerns above are addressed. The rule also ensures that audio-only behavioral health will continue to be covered by Medicaid, despite the limitations for other patient needs. ATA Action is also appreciative of the additions of telemonitoring, telehealth consultations and store-and-forward in the proposed draft rule. Finally, ATA Action is in supportive of the provisions which will allow properly licensed, and Medicaid registered out-of-state telehealth providers to serve Nebraska Medicaid patients, helping to address provider shortages and further expanding patient choice.

Thank you for this opportunity to comment. We encourage you and your colleagues not to move forward with these rules until changes have been made to address the concerns we raised above. Please let us know if there is anything that we can do to assist you in your efforts to adopt practical telehealth policy in Nebraska. If you have any questions or would like to engage in additional discussion regarding the telehealth industry’s perspective, please contact me at kzebley@ataaction.org.

Kind regards,

A handwritten signature in black ink, appearing to read "Kyle Zebley".

Kyle Zebley
Executive Director
ATA Action

ATA ACTION

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