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**SENATE BILL 5325**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Muzzall, Cleveland, Dozier, Frockt, Keiser, Randall, Rivers, and Robinson

AN ACT Relating to audio-only telemedicine; adding a new section to chapter 41.05 RCW; adding a new section to chapter 48.43 RCW; adding a new section to chapter 71.24 RCW; and adding new sections to chapter 74.09 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 41.05 RCW to read as follows:

(1)(a) A health plan offered to employees, school employees, and their covered dependents under this chapter issued or renewed on or after January 1, 2022, shall reimburse a provider for a health care service provided to a covered person through audio-only telemedicine if:

(i) The plan provides coverage of the health care service when provided in person by the provider;

(ii) The health care service is medically necessary;

(iii) The health care service is a service recognized as an essential health benefit under section 1302(b) of the federal patient protection and affordable care act in effect on January 1, 2015;

(iv) The health care service is determined to be safely and effectively provided through audio-only telemedicine according to generally accepted health care practices and standards, and the technology used to provide the health care service meets the standards required by state and federal laws governing the privacy and security of protected health information; and

(v) The covered person has an established relationship with the provider.

(b)(i) Except as provided in (b)(ii) of this subsection, a health plan offered to employees, school employees, and their covered dependents under this chapter shall reimburse a provider for a health care service provided to a covered person through audio-only telemedicine at the same rate as if the health care service was provided in person by the provider.

(ii) Hospitals, hospital systems, telemedicine companies, and provider groups consisting of 11 or more providers may elect to negotiate a reimbursement rate for audio-only telemedicine services that differs from the reimbursement rate for in-person services.

(iii) For purposes of this subsection (1)(b), the number of providers in a provider group refers to all providers within the group, regardless of a provider's location.

(2) An originating site for an audio-only telemedicine health care service subject to subsection (1) of this section includes a:

(a) Hospital;

(b) Rural health clinic;

(c) Federally qualified health center;

(d) Physician's or other health care provider's office;

(e) Licensed or certified behavioral health agency;

(f) Skilled nursing facility;

(g) Home or any location determined by the individual receiving the service; or

(h) Renal dialysis center, except an independent renal dialysis center.

(3) Except for subsection (2)(g) of this section, any originating site under subsection (2) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement for a facility fee must be subject to a negotiated agreement between the originating site and the health plan. A distant site or any other site not identified in subsection (2) of this section may not charge a facility fee.

(4) A plan may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.

(5) A plan may subject coverage of an audio-only telemedicine health service under subsection (1) of this section to all terms and conditions of the plan in which the covered person is enrolled including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable health care service provided in person.

(6) This section does not require a plan to reimburse:

(a) An originating site for professional fees;

(b) A provider for a health care service that is not a covered benefit under the plan; or

(c) An originating site or health care provider when the site or provider is not a contracted provider under the plan.

(7) For purposes of this section:

(a) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only telephone technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "audio-only telemedicine" does not include the use of facsimile or email.

(b) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through audio-only telemedicine.

(c) "Established relationship" means the covered person has had at least one in-person appointment within the past year with the provider providing audio-only telemedicine or the covered person was referred to the provider providing audio-only telemedicine by another provider who has had at least one in-person appointment with the covered person within the past year and has provided relevant medical information to the provider providing audio-only telemedicine.

(d) "Health care service" has the same meaning as in RCW 48.43.005.

(e) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW.

(f) "Originating site" means the physical location of a patient receiving health care services through audio-only telemedicine.

(g) "Provider" has the same meaning as in RCW 48.43.005.

NEW SECTION. **Sec.**  A new section is added to chapter 48.43 RCW to read as follows:

(1)(a) For health plans issued or renewed on or after January 1, 2022, a health carrier shall reimburse a provider for a health care service provided to a covered person through audio-only telemedicine if:

(i) The plan provides coverage of the health care service when provided in person by the provider;

(ii) The health care service is medically necessary;

(iii) The health care service is a service recognized as an essential health benefit under section 1302(b) of the federal patient protection and affordable care act in effect on January 1, 2015;

(iv) The health care service is determined to be safely and effectively provided through audio-only telemedicine according to generally accepted health care practices and standards, and the technology used to provide the health care service meets the standards required by state and federal laws governing the privacy and security of protected health information; and

(v) The covered person has an established relationship with the provider.

(b)(i) Except as provided in (b)(ii) of this subsection, the health carrier shall reimburse a provider for a health care service provided to a covered person through audio-only telemedicine at the same rate as if the health care service was provided in person by the provider.

(ii) Hospitals, hospital systems, telemedicine companies, and provider groups consisting of 11 or more providers may elect to negotiate a reimbursement rate for audio-only telemedicine services that differs from the reimbursement rate for in-person services.

(iii) For purposes of this subsection (1)(b), the number of providers in a provider group refers to all providers within the group, regardless of a provider's location.

(2) An originating site for an audio-only telemedicine health care service subject to subsection (1) of this section includes a:

(a) Hospital;

(b) Rural health clinic;

(c) Federally qualified health center;

(d) Physician's or other health care provider's office;

(e) Licensed or certified behavioral health agency;

(f) Skilled nursing facility;

(g) Home or any location determined by the individual receiving the service; or

(h) Renal dialysis center, except an independent renal dialysis center.

(3) Except for subsection (2)(g) of this section, any originating site under subsection (2) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement for a facility fee must be subject to a negotiated agreement between the originating site and the health plan. A distant site or any other site not identified in subsection (2) of this section may not charge a facility fee.

(4) A plan may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.

(5) A plan may subject coverage of an audio-only telemedicine health service under subsection (1) of this section to all terms and conditions of the plan in which the covered person is enrolled including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable health care service provided in person.

(6) This section does not require a plan to reimburse:

(a) An originating site for professional fees;

(b) A provider for a health care service that is not a covered benefit under the plan; or

(c) An originating site or health care provider when the site or provider is not a contracted provider under the plan.

(7) For purposes of this section:

(a) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only telephone technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "audio-only telemedicine" does not include the use of facsimile or email.

(b) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through audio-only telemedicine.

(c) "Established relationship" means the covered person has had at least one in-person appointment within the past year with the provider providing audio-only telemedicine or the covered person was referred to the provider providing audio-only telemedicine by another provider who has had at least one in-person appointment with the covered person within the past year and has provided relevant medical information to the provider providing audio-only telemedicine.

(d) "Health care service" has the same meaning as in RCW 48.43.005.

(e) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW.

(f) "Originating site" means the physical location of a patient receiving health care services through audio-only telemedicine.

(g) "Provider" has the same meaning as in RCW 48.43.005.

NEW SECTION. **Sec.**  A new section is added to chapter 71.24 RCW to read as follows:

(1) Upon initiation or renewal of a contract with the authority, behavioral health administrative services organizations and managed care organizations shall reimburse a provider for a behavioral health service provided to a covered person who is under 18 years old through audio-only telemedicine if:

(a) The behavioral health administrative services organization or managed care organization in which the covered person is enrolled provides coverage of the behavioral health service when provided in person by the provider;

(b) The behavioral health service is medically necessary; and

(c) The covered person has an established relationship with the provider.

(2) An originating site for an audio-only telemedicine behavioral health service subject to subsection (1) of this section means an originating site as defined in rule by the department or the authority.

(3) Any originating site, other than a home, under subsection (2) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement must be subject to a negotiated agreement between the originating site and the behavioral health administrative services organization, or managed care organization, as applicable. A distant site or any other site not identified in subsection (2) of this section may not charge a facility fee.

(4) Behavioral health administrative services organizations and managed care organizations may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.

(5) Behavioral health administrative services organizations and managed care organizations may subject coverage of an audio-only telemedicine behavioral health service under subsection (1) of this section to all terms and conditions of the behavioral health administrative services organization or managed care organization in which the covered person is enrolled including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable behavioral health care service provided in person.

(6) This section does not require a behavioral health administrative services organization or a managed care organization to reimburse:

(a) An originating site for professional fees;

(b) A provider for a behavioral health service that is not a covered benefit; or

(c) An originating site or provider when the site or provider is not a contracted provider.

(7) For purposes of this section:

(a) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only telephone technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "audio-only telemedicine" does not include the use of facsimile or email.

(b) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through audio-only telemedicine.

(c) "Established relationship" means the covered person has had at least one in-person appointment within the past year with the provider providing audio-only telemedicine or the covered person was referred to the provider providing audio-only telemedicine by another provider who has had at least one in-person appointment with the covered person within the past year and has provided relevant medical information to the provider providing audio-only telemedicine.

(d) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW.

(e) "Originating site" means the physical location of a patient receiving behavioral health services through audio-only telemedicine.

(f) "Provider" has the same meaning as in RCW 48.43.005.

(8) The authority must adopt rules as necessary to implement the provisions of this section.

NEW SECTION. **Sec.**  A new section is added to chapter 74.09 RCW to read as follows:

(1)(a) Upon initiation or renewal of a contract with the authority to administer a medicaid managed care plan, a managed health care system shall reimburse a provider for a health care service provided to a covered person through audio-only telemedicine if:

(i) The medicaid managed care plan provides coverage of the health care service when provided in person by the provider;

(ii) The health care service is medically necessary;

(iii) The health care service is a service recognized as an essential health benefit under section 1302(b) of the federal patient protection and affordable care act in effect on January 1, 2015;

(iv) The health care service is determined to be safely and effectively provided through audio-only telemedicine according to generally accepted health care practices and standards, and the technology used to provide the health care service meets the standards required by state and federal laws governing the privacy and security of protected health information; and

(v) The covered person has an established relationship with the provider.

(b)(i) Except as provided in (b)(ii) and (iv) of this subsection, upon initiation or renewal of a contract with the authority to administer a medicaid managed care plan, a managed health care system shall reimburse a provider for a health care service provided to a covered person through audio-only telemedicine at the same rate as if the health care service was provided in person by the provider.

(ii) Hospitals, hospital systems, telemedicine companies, and provider groups consisting of 11 or more providers may elect to negotiate a reimbursement rate for audio-only telemedicine services that differs from the reimbursement rate for in-person services.

(iii) For purposes of this subsection (1)(b), the number of providers in a provider group refers to all providers within the group, regardless of a provider's location.

(iv) A rural health clinic shall be reimbursed for audio-only telemedicine at the managed care encounter rate.

(2) An originating site for an audio-only telemedicine health care service subject to subsection (1) of this section includes a:

(a) Hospital;

(b) Rural health clinic;

(c) Federally qualified health center;

(d) Physician's or other health care provider's office;

(e) Licensed or certified behavioral health agency;

(f) Skilled nursing facility;

(g) Home or any location determined by the individual receiving the service; or

(h) Renal dialysis center, except an independent renal dialysis center.

(3) Except for subsection (2)(g) of this section, any originating site under subsection (2) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement for a facility fee must be subject to a negotiated agreement between the originating site and the managed health care system. A distant site or any other site not identified in subsection (2) of this section may not charge a facility fee.

(4) A managed health care system may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.

(5) A managed health care system may subject coverage of an audio-only telemedicine health service under subsection (1) of this section to all terms and conditions of the plan in which the covered person is enrolled including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable health care service provided in person.

(6) This section does not require a managed health care system to reimburse:

(a) An originating site for professional fees;

(b) A provider for a health care service that is not a covered benefit under the plan; or

(c) An originating site or health care provider when the site or provider is not a contracted provider under the plan.

(7) For purposes of this section:

(a) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only telephone technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "audio-only telemedicine" does not include the use of facsimile or email.

(b) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through audio-only telemedicine.

(c) "Established relationship" means the covered person has had at least one in-person appointment within the past year with the provider providing audio-only telemedicine or the covered person was referred to the provider providing audio-only telemedicine by another provider who has had at least one in-person appointment with the covered person within the past year and has provided relevant medical information to the provider providing audio-only telemedicine.

(d) "Health care service" has the same meaning as in RCW 48.43.005.

(e) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW.

(f) "Managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, health insuring organizations, or any combination thereof, that provides directly or by contract health care services covered under this chapter and rendered by licensed providers, on a prepaid capitated basis and that meets the requirements of section 1903(m)(1)(A) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act.

(g) "Originating site" means the physical location of a patient receiving health care services through audio-only telemedicine.

(h) "Provider" has the same meaning as in RCW 48.43.005.

NEW SECTION. **Sec.**  A new section is added to chapter 74.09 RCW to read as follows:

(1) The authority shall adopt rules regarding medicaid fee-for-service reimbursement for services delivered through audio-only telemedicine. Except as provided in subsection (2) of this section, the rules must establish a manner of reimbursement for audio-only telemedicine that is consistent with section 4 of this act.

(2) The rules shall require rural health clinics to be reimbursed for audio-only telemedicine at the encounter rate.

(3) For purposes of this section, "audio-only telemedicine" means the delivery of health care services through the use of audio-only telephone technology, permitting real-time communication between a patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "audio-only telemedicine" does not include the use of facsimile or email.

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