

SHB 1196 - H AMD 89

By Representative Riccelli

ADOPTED AS AMENDED 02/24/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 41.05.700 and 2020 c 92 s 2 are each amended to
4 read as follows:

5 (1)(a) A health plan offered to employees, school employees, and
6 their covered dependents under this chapter issued or renewed on or
7 after January 1, 2017, shall reimburse a provider for a health care
8 service provided to a covered person through telemedicine or store
9 and forward technology if:

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

12 (ii) The health care service is medically necessary;

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

17 (iv) The health care service is determined to be safely and
18 effectively provided through telemedicine or store and forward
19 technology according to generally accepted health care practices and
20 standards, and the technology used to provide the health care service
21 meets the standards required by state and federal laws governing the
22 privacy and security of protected health information; and

23 (v) Beginning January 1, 2023, for audio-only telemedicine, the
24 covered person has an established relationship with the provider.

25 (b)(i) Except as provided in (b)(ii) of this subsection, a health
26 plan offered to employees, school employees, and their covered
27 dependents under this chapter issued or renewed on or after January
28 1, 2021, shall reimburse a provider for a health care service
29 provided to a covered person through telemedicine (~~at~~) the same
30 (~~rate as~~) amount of compensation the carrier would pay the provider
31 if the health care service was provided in person by the provider.

1 (ii) Hospitals, hospital systems, telemedicine companies, and
2 provider groups consisting of eleven or more providers may elect to
3 negotiate (~~(a reimbursement rate)~~) an amount of compensation for
4 telemedicine services that differs from the (~~(reimbursement rate)~~)
5 amount of compensation for in-person services.

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

9 (2) For purposes of this section, reimbursement of store and
10 forward technology is available only for those covered services
11 specified in the negotiated agreement between the health plan and
12 health care provider.

13 (3) An originating site for a telemedicine health care service
14 subject to subsection (1) of this section includes a:

15 (a) Hospital;

16 (b) Rural health clinic;

17 (c) Federally qualified health center;

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

19 (e) (~~(Community mental health center)~~) Licensed or certified
20 behavioral health agency;

21 (f) Skilled nursing facility;

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

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

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

33 (5) The plan may not distinguish between originating sites that
34 are rural and urban in providing the coverage required in subsection
35 (1) of this section.

36 (6) The plan may subject coverage of a telemedicine or store and
37 forward technology health service under subsection (1) of this
38 section to all terms and conditions of the plan including, but not
39 limited to, utilization review, prior authorization, deductible,

1 copayment, or coinsurance requirements that are applicable to
2 coverage of a comparable health care service provided in person.

3 (7) This section does not require the plan to reimburse:

4 (a) An originating site for professional fees;

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

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

9 (8) If a provider intends to bill a patient or the patient's
10 health plan for an audio-only telemedicine service, the provider must
11 obtain patient consent for the billing in advance of the service
12 being delivered. The authority may submit information on any
13 potential violations of this subsection to the appropriate
14 disciplining authority, as defined in RCW 18.130.020.

15 (9) For purposes of this section:

16 (a) (i) "Audio-only telemedicine" means the delivery of health
17 care services through the use of audio-only telephone technology,
18 permitting real-time communication between the patient at the
19 originating site and the provider, for the purpose of diagnosis,
20 consultation, or treatment.

21 (ii) For purposes of this section only, "audio-only telemedicine"
22 does not include:

23 (A) The use of facsimile or email; or

24 (B) The delivery of health care services that are customarily
25 delivered by audio-only telephone technology and customarily not
26 billed as separate services by the provider, such as the sharing of
27 laboratory results.

28 (b) "Distant site" means the site at which a physician or other
29 licensed provider, delivering a professional service, is physically
30 located at the time the service is provided through telemedicine;

31 ~~((b))~~ (c) "Established relationship" means the covered person
32 has had at least one in-person appointment within the past year with
33 the provider providing audio-only telemedicine or with a provider
34 employed at the same clinic as the provider providing audio-only
35 telemedicine or the covered person was referred to the provider
36 providing audio-only telemedicine by another provider who has had at
37 least one in-person appointment with the covered person within the
38 past year and has provided relevant medical information to the
39 provider providing audio-only telemedicine.

1 (d) "Health care service" has the same meaning as in RCW
2 48.43.005;

3 ~~((e))~~ (e) "Hospital" means a facility licensed under chapter
4 70.41, 71.12, or 72.23 RCW;

5 ~~((d))~~ (f) "Originating site" means the physical location of a
6 patient receiving health care services through telemedicine;

7 ~~((e))~~ (g) "Provider" has the same meaning as in RCW 48.43.005;

8 ~~((f))~~ (h) "Store and forward technology" means use of an
9 asynchronous transmission of a covered person's medical information
10 from an originating site to the health care provider at a distant
11 site which results in medical diagnosis and management of the covered
12 person, and does not include the use of audio-only telephone,
13 facsimile, or email; and

14 ~~((g))~~ (i) "Telemedicine" means the delivery of health care
15 services through the use of interactive audio and video technology,
16 permitting real-time communication between the patient at the
17 originating site and the provider, for the purpose of diagnosis,
18 consultation, or treatment. For purposes of this section only,
19 "telemedicine" ~~((does not include the use of))~~ includes audio-only
20 ~~((telephone))~~ telemedicine, but does not include facsimile~~((r))~~ or
21 email.

22 **Sec. 2.** RCW 48.43.735 and 2020 c 92 s 1 are each amended to read
23 as follows:

24 (1)(a) For health plans issued or renewed on or after January 1,
25 2017, a health carrier shall reimburse a provider for a health care
26 service provided to a covered person through telemedicine or store
27 and forward technology if:

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

30 (ii) The health care service is medically necessary;

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

35 (iv) The health care service is determined to be safely and
36 effectively provided through telemedicine or store and forward
37 technology according to generally accepted health care practices and
38 standards, and the technology used to provide the health care service

1 meets the standards required by state and federal laws governing the
2 privacy and security of protected health information; and

3 (v) Beginning January 1, 2023, for audio-only telemedicine, the
4 covered person has an established relationship with the provider.

5 (b) (i) Except as provided in (b) (ii) of this subsection, for
6 health plans issued or renewed on or after January 1, 2021, a health
7 carrier shall reimburse a provider for a health care service provided
8 to a covered person through telemedicine (~~(at)~~) the same (~~(rate as)~~)
9 amount of compensation the carrier would pay the provider if the
10 health care service was provided in person by the provider.

11 (ii) Hospitals, hospital systems, telemedicine companies, and
12 provider groups consisting of eleven or more providers may elect to
13 negotiate (~~(a reimbursement rate)~~) an amount of compensation for
14 telemedicine services that differs from the (~~(reimbursement rate)~~)
15 amount of compensation for in-person services.

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

19 (2) For purposes of this section, reimbursement of store and
20 forward technology is available only for those covered services
21 specified in the negotiated agreement between the health carrier and
22 the health care provider.

23 (3) An originating site for a telemedicine health care service
24 subject to subsection (1) of this section includes a:

25 (a) Hospital;

26 (b) Rural health clinic;

27 (c) Federally qualified health center;

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

29 (~~(Community mental health center)~~) Licensed or certified
30 behavioral health agency;

31 (f) Skilled nursing facility;

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

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

36 (4) Except for subsection (3)(g) of this section, any originating
37 site under subsection (3) of this section may charge a facility fee
38 for infrastructure and preparation of the patient. Reimbursement for
39 a facility fee must be subject to a negotiated agreement between the
40 originating site and the health carrier. A distant site or any other

1 site not identified in subsection (3) of this section may not charge
2 a facility fee.

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

6 (6) A health carrier may subject coverage of a telemedicine or
7 store and forward technology health service under subsection (1) of
8 this section to all terms and conditions of the plan in which the
9 covered person is enrolled including, but not limited to, utilization
10 review, prior authorization, deductible, copayment, or coinsurance
11 requirements that are applicable to coverage of a comparable health
12 care service provided in person.

13 (7) This section does not require a health carrier to reimburse:

14 (a) An originating site for professional fees;

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

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

19 (8) If a provider intends to bill a patient or the patient's
20 health plan for an audio-only telemedicine service, the provider must
21 obtain patient consent for the billing in advance of the service
22 being delivered. The insurance commissioner may submit information on
23 any potential violations of this subsection to the appropriate
24 disciplining authority, as defined in RCW 18.130.020.

25 (9) For purposes of this section:

26 (a) (i) "Audio-only telemedicine" means the delivery of health
27 care services through the use of audio-only telephone technology,
28 permitting real-time communication between the patient at the
29 originating site and the provider, for the purpose of diagnosis,
30 consultation, or treatment.

31 (ii) For purposes of this section only, "audio-only telemedicine"
32 does not include:

33 (A) The use of facsimile or email; or

34 (B) The delivery of health care services that are customarily
35 delivered by audio-only telephone technology and customarily not
36 billed as separate services by the provider, such as the sharing of
37 laboratory results.

38 (b) "Distant site" means the site at which a physician or other
39 licensed provider, delivering a professional service, is physically
40 located at the time the service is provided through telemedicine;

1 ~~((b))~~ (c) "Established relationship" means the covered person
2 has had at least one in-person appointment within the past year with
3 the provider providing audio-only telemedicine or with a provider
4 employed at the same clinic as the provider providing audio-only
5 telemedicine or the covered person was referred to the provider
6 providing audio-only telemedicine by another provider who has had at
7 least one in-person appointment with the covered person within the
8 past year and has provided relevant medical information to the
9 provider providing audio-only telemedicine.

10 (d) "Health care service" has the same meaning as in RCW
11 48.43.005;

12 ~~((e))~~ (e) "Hospital" means a facility licensed under chapter
13 70.41, 71.12, or 72.23 RCW;

14 ~~((d))~~ (f) "Originating site" means the physical location of a
15 patient receiving health care services through telemedicine;

16 ~~((e))~~ (g) "Provider" has the same meaning as in RCW 48.43.005;

17 ~~((f))~~ (h) "Store and forward technology" means use of an
18 asynchronous transmission of a covered person's medical information
19 from an originating site to the health care provider at a distant
20 site which results in medical diagnosis and management of the covered
21 person, and does not include the use of audio-only telephone,
22 facsimile, or email; and

23 ~~((g))~~ (i) "Telemedicine" means the delivery of health care
24 services through the use of interactive audio and video technology,
25 permitting real-time communication between the patient at the
26 originating site and the provider, for the purpose of diagnosis,
27 consultation, or treatment. For purposes of this section only,
28 "telemedicine" ~~((does not include the use of))~~ includes audio-only
29 ~~((telephone))~~ telemedicine, but does not include facsimile~~((r))~~ or
30 email.

31 (9) The commissioner may adopt any rules necessary to implement
32 this section.

33 **Sec. 3.** RCW 70.41.020 and 2016 c 226 s 1 are each amended to
34 read as follows:

35 Unless the context clearly indicates otherwise, the following
36 terms, whenever used in this chapter, shall be deemed to have the
37 following meanings:

38 (1) "Aftercare" means the assistance provided by a lay caregiver
39 to a patient under this chapter after the patient's discharge from a

1 hospital. The assistance may include, but is not limited to,
2 assistance with activities of daily living, wound care, medication
3 assistance, and the operation of medical equipment. "Aftercare"
4 includes assistance only for conditions that were present at the time
5 of the patient's discharge from the hospital. "Aftercare" does not
6 include:

7 (a) Assistance related to conditions for which the patient did
8 not receive medical care, treatment, or observation in the hospital;
9 or

10 (b) Tasks the performance of which requires licensure as a health
11 care provider.

12 (2) (a) "Audio-only telemedicine" means the delivery of health
13 care services through the use of audio-only telephone technology,
14 permitting real-time communication between the patient at the
15 originating site and the provider, for the purpose of diagnosis,
16 consultation, or treatment.

17 (b) "Audio-only telemedicine" does not include:

18 (i) The use of facsimile or email; or

19 (ii) The delivery of health care services that are customarily
20 delivered by audio-only telephone technology and customarily not
21 billed as separate services by the provider, such as the sharing of
22 laboratory results.

23 (3) "Department" means the Washington state department of health.

24 ~~((3))~~ (4) "Discharge" means a patient's release from a hospital
25 following the patient's admission to the hospital.

26 ~~((4))~~ (5) "Distant site" means the site at which a physician or
27 other licensed provider, delivering a professional service, is
28 physically located at the time the service is provided through
29 telemedicine.

30 ~~((5))~~ (6) "Emergency care to victims of sexual assault" means
31 medical examinations, procedures, and services provided by a hospital
32 emergency room to a victim of sexual assault following an alleged
33 sexual assault.

34 ~~((6))~~ (7) "Emergency contraception" means any health care
35 treatment approved by the food and drug administration that prevents
36 pregnancy, including but not limited to administering two increased
37 doses of certain oral contraceptive pills within seventy-two hours of
38 sexual contact.

39 ~~((7))~~ (8) "Hospital" means any institution, place, building, or
40 agency which provides accommodations, facilities and services over a

1 continuous period of twenty-four hours or more, for observation,
2 diagnosis, or care, of two or more individuals not related to the
3 operator who are suffering from illness, injury, deformity, or
4 abnormality, or from any other condition for which obstetrical,
5 medical, or surgical services would be appropriate for care or
6 diagnosis. "Hospital" as used in this chapter does not include
7 hotels, or similar places furnishing only food and lodging, or simply
8 domiciliary care; nor does it include clinics, or physician's offices
9 where patients are not regularly kept as bed patients for twenty-four
10 hours or more; nor does it include nursing homes, as defined and
11 which come within the scope of chapter 18.51 RCW; nor does it include
12 birthing centers, which come within the scope of chapter 18.46 RCW;
13 nor does it include psychiatric hospitals, which come within the
14 scope of chapter 71.12 RCW; nor any other hospital, or institution
15 specifically intended for use in the diagnosis and care of those
16 suffering from mental illness, intellectual disability, convulsive
17 disorders, or other abnormal mental condition. Furthermore, nothing
18 in this chapter or the rules adopted pursuant thereto shall be
19 construed as authorizing the supervision, regulation, or control of
20 the remedial care or treatment of residents or patients in any
21 hospital conducted for those who rely primarily upon treatment by
22 prayer or spiritual means in accordance with the creed or tenets of
23 any well recognized church or religious denominations.

24 ~~((8))~~ (9) "Lay caregiver" means any individual designated as
25 such by a patient under this chapter who provides aftercare
26 assistance to a patient in the patient's residence. "Lay caregiver"
27 does not include a long-term care worker as defined in RCW
28 74.39A.009.

29 ~~((9))~~ (10) "Originating site" means the physical location of a
30 patient receiving health care services through telemedicine.

31 ~~((10))~~ (11) "Person" means any individual, firm, partnership,
32 corporation, company, association, or joint stock association, and
33 the legal successor thereof.

34 ~~((11))~~ (12) "Secretary" means the secretary of health.

35 ~~((12))~~ (13) "Sexual assault" has the same meaning as in RCW
36 70.125.030.

37 ~~((13))~~ (14) "Telemedicine" means the delivery of health care
38 services through the use of interactive audio and video technology,
39 permitting real-time communication between the patient at the
40 originating site and the provider, for the purpose of diagnosis,

1 consultation, or treatment. "Telemedicine" (~~does not include the use~~
2 ~~of~~) includes audio-only (~~telephone~~) telemedicine, but does not
3 include facsimile(~~r~~) or email.

4 (~~(14)~~) (15) "Victim of sexual assault" means a person who
5 alleges or is alleged to have been sexually assaulted and who
6 presents as a patient.

7 **Sec. 4.** RCW 71.24.335 and 2019 c 325 s 1019 are each amended to
8 read as follows:

9 (1) Upon initiation or renewal of a contract with the authority,
10 behavioral health administrative services organizations and managed
11 care organizations shall reimburse a provider for a behavioral health
12 service provided to a covered person who is under eighteen years old
13 through telemedicine or store and forward technology if:

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

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

19 (c) Beginning January 1, 2023, for audio-only telemedicine, the
20 covered person has an established relationship with the provider.

21 (2)(a) If the service is provided through store and forward
22 technology there must be an associated visit between the covered
23 person and the referring provider. Nothing in this section prohibits
24 the use of telemedicine for the associated office visit.

25 (b) For purposes of this section, reimbursement of store and
26 forward technology is available only for those services specified in
27 the negotiated agreement between the behavioral health administrative
28 services organization, or managed care organization, and the
29 provider.

30 (3) An originating site for a telemedicine behavioral health
31 service subject to subsection (1) of this section means an
32 originating site as defined in rule by the department or the health
33 care authority.

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

1 identified in subsection (3) of this section may not charge a
2 facility fee.

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

7 (6) Behavioral health administrative services organizations and
8 managed care organizations may subject coverage of a telemedicine or
9 store and forward technology behavioral health service under
10 subsection (1) of this section to all terms and conditions of the
11 behavioral health administrative services organization or managed
12 care organization in which the covered person is enrolled, including,
13 but not limited to, utilization review, prior authorization,
14 deductible, copayment, or coinsurance requirements that are
15 applicable to coverage of a comparable behavioral health care service
16 provided in person.

17 (7) This section does not require a behavioral health
18 administrative services organization or a managed care organization
19 to reimburse:

20 (a) An originating site for professional fees;

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

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

25 (8) If a provider intends to bill a patient, a behavioral health
26 administrative services organization, or a managed care organization
27 for an audio-only telemedicine service, the provider must obtain
28 patient consent for the billing in advance of the service being
29 delivered. The authority may submit information on any potential
30 violations of this subsection to the appropriate disciplining
31 authority, as defined in RCW 18.130.020.

32 (9) For purposes of this section:

33 (a) (i) "Audio-only telemedicine" means the delivery of health
34 care services through the use of audio-only telephone technology,
35 permitting real-time communication between the patient at the
36 originating site and the provider, for the purpose of diagnosis,
37 consultation, or treatment.

38 (ii) For purposes of this section only, "audio-only telemedicine"
39 does not include:

40 (A) The use of facsimile or email; or

1 (B) The delivery of health care services that are customarily
2 delivered by audio-only telephone technology and customarily not
3 billed as separate services by the provider, such as the sharing of
4 laboratory results.

5 (b) "Distant site" means the site at which a physician or other
6 licensed provider, delivering a professional service, is physically
7 located at the time the service is provided through telemedicine;

8 ~~((b))~~ (c) "Established relationship" means the covered person
9 has had at least one in-person appointment within the past year with
10 the provider providing audio-only telemedicine or with a provider
11 employed at the same clinic as the provider providing audio-only
12 telemedicine or the covered person was referred to the provider
13 providing audio-only telemedicine by another provider who has had at
14 least one in-person appointment with the covered person within the
15 past year and has provided relevant medical information to the
16 provider providing audio-only telemedicine.

17 (d) "Hospital" means a facility licensed under chapter 70.41,
18 71.12, or 72.23 RCW;

19 ~~((e))~~ (e) "Originating site" means the physical location of a
20 patient receiving behavioral health services through telemedicine;

21 ~~((d))~~ (f) "Provider" has the same meaning as in RCW 48.43.005;

22 ~~((e))~~ (g) "Store and forward technology" means use of an
23 asynchronous transmission of a covered person's medical or behavioral
24 health information from an originating site to the provider at a
25 distant site which results in medical or behavioral health diagnosis
26 and management of the covered person, and does not include the use of
27 audio-only telephone, facsimile, or email; and

28 ~~((f))~~ (h) "Telemedicine" means the delivery of health care or
29 behavioral health services through the use of interactive audio and
30 video technology, permitting real-time communication between the
31 patient at the originating site and the provider, for the purpose of
32 diagnosis, consultation, or treatment. For purposes of this section
33 only, "telemedicine" ~~((does not include the use of))~~ includes audio-
34 only ~~((telephone))~~ telemedicine, but does not include facsimile~~((r))~~
35 or email.

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

38 **Sec. 5.** RCW 74.09.325 and 2020 c 92 s 3 are each amended to read
39 as follows:

1 (1) (a) Upon initiation or renewal of a contract with the
2 Washington state health care authority to administer a medicaid
3 managed care plan, a managed health care system shall reimburse a
4 provider for a health care service provided to a covered person
5 through telemedicine or store and forward technology if:

6 (i) The medicaid managed care plan in which the covered person is
7 enrolled provides coverage of the health care service when provided
8 in person by the provider;

9 (ii) The health care service is medically necessary;

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

14 (iv) The health care service is determined to be safely and
15 effectively provided through telemedicine or store and forward
16 technology according to generally accepted health care practices and
17 standards, and the technology used to provide the health care service
18 meets the standards required by state and federal laws governing the
19 privacy and security of protected health information; and

20 (v) Beginning January 1, 2023, for audio-only telemedicine, the
21 covered person has an established relationship with the provider.

22 (b) (i) Except as provided in (b) (ii) of this subsection, upon
23 initiation or renewal of a contract with the Washington state health
24 care authority to administer a medicaid managed care plan, a managed
25 health care system shall reimburse a provider for a health care
26 service provided to a covered person through telemedicine (~~at~~) the
27 same (~~rate as~~) amount of compensation the managed health care
28 system would pay the provider if the health care service was provided
29 in person by the provider.

30 (ii) Hospitals, hospital systems, telemedicine companies, and
31 provider groups consisting of eleven or more providers may elect to
32 negotiate (~~a reimbursement rate~~) an amount of compensation for
33 telemedicine services that differs from the (~~reimbursement rate~~)
34 amount of compensation for in-person services.

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

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

1 (2) For purposes of this section, reimbursement of store and
2 forward technology is available only for those services specified in
3 the negotiated agreement between the managed health care system and
4 health care provider.

5 (3) An originating site for a telemedicine health care service
6 subject to subsection (1) of this section includes a:

7 (a) Hospital;

8 (b) Rural health clinic;

9 (c) Federally qualified health center;

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

11 (e) (~~Community mental health center~~) Licensed or certified
12 behavioral health agency;

13 (f) Skilled nursing facility;

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

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

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

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

28 (6) A managed health care system may subject coverage of a
29 telemedicine or store and forward technology health service under
30 subsection (1) of this section to all terms and conditions of the
31 plan in which the covered person is enrolled including, but not
32 limited to, utilization review, prior authorization, deductible,
33 copayment, or coinsurance requirements that are applicable to
34 coverage of a comparable health care service provided in person.

35 (7) This section does not require a managed health care system to
36 reimburse:

37 (a) An originating site for professional fees;

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

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

3 (8) If a provider intends to bill a patient or a managed health
4 care system for an audio-only telemedicine service, the provider must
5 obtain patient consent for the billing in advance of the service
6 being delivered. The authority may submit information on any
7 potential violations of this subsection to the appropriate
8 disciplining authority, as defined in RCW 18.130.020.

9 (9) For purposes of this section:

10 (a)(i) "Audio-only telemedicine" means the delivery of health
11 care services through the use of audio-only telephone technology,
12 permitting real-time communication between the patient at the
13 originating site and the provider, for the purpose of diagnosis,
14 consultation, or treatment.

15 (ii) For purposes of this section only, "audio-only telemedicine"
16 does not include:

17 (A) The use of facsimile or email; or

18 (B) The delivery of health care services that are customarily
19 delivered by audio-only telephone technology and customarily not
20 billed as separate services by the provider, such as the sharing of
21 laboratory results.

22 (b) "Distant site" means the site at which a physician or other
23 licensed provider, delivering a professional service, is physically
24 located at the time the service is provided through telemedicine;

25 ~~((b))~~ (c) "Established relationship" means the covered person
26 has had at least one in-person appointment within the past year with
27 the provider providing audio-only telemedicine or with a provider
28 employed at the same clinic as the provider providing audio-only
29 telemedicine or the covered person was referred to the provider
30 providing audio-only telemedicine by another provider who has had at
31 least one in-person appointment with the covered person within the
32 past year and has provided relevant medical information to the
33 provider providing audio-only telemedicine.

34 (d) "Health care service" has the same meaning as in RCW
35 48.43.005;

36 ~~((e))~~ (e) "Hospital" means a facility licensed under chapter
37 70.41, 71.12, or 72.23 RCW;

38 ~~((d))~~ (f) "Managed health care system" means any health care
39 organization, including health care providers, insurers, health care
40 service contractors, health maintenance organizations, health

1 insuring organizations, or any combination thereof, that provides
2 directly or by contract health care services covered under this
3 chapter and rendered by licensed providers, on a prepaid capitated
4 basis and that meets the requirements of section 1903(m)(1)(A) of
5 Title XIX of the federal social security act or federal demonstration
6 waivers granted under section 1115(a) of Title XI of the federal
7 social security act;

8 ~~((e))~~ (g) "Originating site" means the physical location of a
9 patient receiving health care services through telemedicine;

10 ~~((f))~~ (h) "Provider" has the same meaning as in RCW 48.43.005;

11 ~~((g))~~ (i) "Store and forward technology" means use of an
12 asynchronous transmission of a covered person's medical information
13 from an originating site to the health care provider at a distant
14 site which results in medical diagnosis and management of the covered
15 person, and does not include the use of audio-only telephone,
16 facsimile, or email; and

17 ~~((h))~~ (j) "Telemedicine" means the delivery of health care
18 services through the use of interactive audio and video technology,
19 permitting real-time communication between the patient at the
20 originating site and the provider, for the purpose of diagnosis,
21 consultation, or treatment. For purposes of this section only,
22 "telemedicine" ~~((does not include the use of))~~ includes audio-only
23 ~~((telephone))~~ telemedicine, but does not include facsimile~~((r))~~ or
24 email.

25 ~~((9) To measure the impact on access to care for underserved
26 communities and costs to the state and the medicaid managed health
27 care system for reimbursement of telemedicine services, the
28 Washington state health care authority, using existing data and
29 resources, shall provide a report to the appropriate policy and
30 fiscal committees of the legislature no later than December 31,
31 2018.))~~

32 NEW SECTION. **Sec. 6.** A new section is added to chapter 74.09
33 RCW to read as follows:

34 (1) The authority shall adopt rules regarding medicaid fee-for-
35 service reimbursement for services delivered through audio-only
36 telemedicine. Except as provided in subsection (2) of this section,
37 the rules must establish a manner of reimbursement for audio-only
38 telemedicine that is consistent with RCW 74.09.325.

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

4 (3)(a) For purposes of this section, "audio-only telemedicine"
5 means the delivery of health care services through the use of audio-
6 only telephone technology, permitting real-time communication between
7 a patient at the originating site and the provider, for the purpose
8 of diagnosis, consultation, or treatment.

9 (b) For purposes of this section only, "audio-only telemedicine"
10 does not include:

11 (i) The use of facsimile or email; or

12 (ii) The delivery of health care services that are customarily
13 delivered by audio-only telephone technology and customarily not
14 billed as separate services by the provider, such as the sharing of
15 laboratory results.

16 **Sec. 7.** RCW 18.130.180 and 2020 c 187 s 2 are each amended to
17 read as follows:

18 The following conduct, acts, or conditions constitute
19 unprofessional conduct for any license holder under the jurisdiction
20 of this chapter:

21 (1) The commission of any act involving moral turpitude,
22 dishonesty, or corruption relating to the practice of the person's
23 profession, whether the act constitutes a crime or not. If the act
24 constitutes a crime, conviction in a criminal proceeding is not a
25 condition precedent to disciplinary action. Upon such a conviction,
26 however, the judgment and sentence is conclusive evidence at the
27 ensuing disciplinary hearing of the guilt of the license holder of
28 the crime described in the indictment or information, and of the
29 person's violation of the statute on which it is based. For the
30 purposes of this section, conviction includes all instances in which
31 a plea of guilty or nolo contendere is the basis for the conviction
32 and all proceedings in which the sentence has been deferred or
33 suspended. Nothing in this section abrogates rights guaranteed under
34 chapter 9.96A RCW;

35 (2) Misrepresentation or concealment of a material fact in
36 obtaining a license or in reinstatement thereof;

37 (3) All advertising which is false, fraudulent, or misleading;

38 (4) Incompetence, negligence, or malpractice which results in
39 injury to a patient or which creates an unreasonable risk that a

1 patient may be harmed. The use of a nontraditional treatment by
2 itself shall not constitute unprofessional conduct, provided that it
3 does not result in injury to a patient or create an unreasonable risk
4 that a patient may be harmed;

5 (5) Suspension, revocation, or restriction of the individual's
6 license to practice any health care profession by competent authority
7 in any state, federal, or foreign jurisdiction, a certified copy of
8 the order, stipulation, or agreement being conclusive evidence of the
9 revocation, suspension, or restriction;

10 (6) Except when authorized by RCW 18.130.345, the possession,
11 use, prescription for use, or distribution of controlled substances
12 or legend drugs in any way other than for legitimate or therapeutic
13 purposes, diversion of controlled substances or legend drugs, the
14 violation of any drug law, or prescribing controlled substances for
15 oneself;

16 (7) Violation of any state or federal statute or administrative
17 rule regulating the profession in question, including any statute or
18 rule defining or establishing standards of patient care or
19 professional conduct or practice;

20 (8) Failure to cooperate with the disciplining authority by:

21 (a) Not furnishing any papers, documents, records, or other
22 items;

23 (b) Not furnishing in writing a full and complete explanation
24 covering the matter contained in the complaint filed with the
25 disciplining authority;

26 (c) Not responding to subpoenas issued by the disciplining
27 authority, whether or not the recipient of the subpoena is the
28 accused in the proceeding; or

29 (d) Not providing reasonable and timely access for authorized
30 representatives of the disciplining authority seeking to perform
31 practice reviews at facilities utilized by the license holder;

32 (9) Failure to comply with an order issued by the disciplining
33 authority or a stipulation for informal disposition entered into with
34 the disciplining authority;

35 (10) Aiding or abetting an unlicensed person to practice when a
36 license is required;

37 (11) Violations of rules established by any health agency;

38 (12) Practice beyond the scope of practice as defined by law or
39 rule;

1 (13) Misrepresentation or fraud in any aspect of the conduct of
2 the business or profession;

3 (14) Failure to adequately supervise auxiliary staff to the
4 extent that the consumer's health or safety is at risk;

5 (15) Engaging in a profession involving contact with the public
6 while suffering from a contagious or infectious disease involving
7 serious risk to public health;

8 (16) Promotion for personal gain of any unnecessary or
9 inefficacious drug, device, treatment, procedure, or service;

10 (17) Conviction of any gross misdemeanor or felony relating to
11 the practice of the person's profession. For the purposes of this
12 subsection, conviction includes all instances in which a plea of
13 guilty or nolo contendere is the basis for conviction and all
14 proceedings in which the sentence has been deferred or suspended.
15 Nothing in this section abrogates rights guaranteed under chapter
16 9.96A RCW;

17 (18) The procuring, or aiding or abetting in procuring, a
18 criminal abortion;

19 (19) The offering, undertaking, or agreeing to cure or treat
20 disease by a secret method, procedure, treatment, or medicine, or the
21 treating, operating, or prescribing for any health condition by a
22 method, means, or procedure which the licensee refuses to divulge
23 upon demand of the disciplining authority;

24 (20) The willful betrayal of a practitioner-patient privilege as
25 recognized by law;

26 (21) Violation of chapter 19.68 RCW, RCW 41.05.700(8),
27 48.43.735(8), 71.24.335(8), or 74.09.325(8), or a pattern of
28 violations of RCW 48.49.020 or 48.49.030;

29 (22) Interference with an investigation or disciplinary
30 proceeding by willful misrepresentation of facts before the
31 disciplining authority or its authorized representative, or by the
32 use of threats or harassment against any patient or witness to
33 prevent them from providing evidence in a disciplinary proceeding or
34 any other legal action, or by the use of financial inducements to any
35 patient or witness to prevent or attempt to prevent him or her from
36 providing evidence in a disciplinary proceeding;

37 (23) Current misuse of:

38 (a) Alcohol;

39 (b) Controlled substances; or

40 (c) Legend drugs;

1 (24) Abuse of a client or patient or sexual contact with a client
2 or patient;

3 (25) Acceptance of more than a nominal gratuity, hospitality, or
4 subsidy offered by a representative or vendor of medical or health-
5 related products or services intended for patients, in contemplation
6 of a sale or for use in research publishable in professional
7 journals, where a conflict of interest is presented, as defined by
8 rules of the disciplining authority, in consultation with the
9 department, based on recognized professional ethical standards;

10 (26) Violation of RCW 18.130.420;

11 (27) Performing conversion therapy on a patient under age
12 eighteen;

13 (28) Violation of RCW 18.130.430.

14 NEW SECTION. **Sec. 8.** (1) The insurance commissioner, in
15 collaboration with the Washington state telehealth collaborative and
16 the health care authority, shall study and make recommendations
17 regarding:

18 (a) Preliminary utilization trends for audio-only telemedicine;

19 (b) Qualitative data from health carriers, including medicaid
20 managed care organizations, on the burden of compliance and
21 enforcement requirements for audio-only telemedicine;

22 (c) Preliminary information regarding whether requiring
23 reimbursement for audio-only telemedicine has affected the incidence
24 of fraud;

25 (d) Proposed methods to measure the impact of audio-only
26 telemedicine on access to health care services for historically
27 underserved communities and geographic areas;

28 (e) In consultation with the department of labor and industries,
29 the extent to which telemedicine reimbursement requirements should be
30 extended to industrial insurance and other programs administered by
31 the department of labor and industries;

32 (f) An evaluation of the relative costs to providers and
33 facilities of providing audio-only telemedicine services as compared
34 to audio-video telemedicine services and in-person services; and

35 (g) Any other issues the insurance commissioner deems
36 appropriate.

37 (2) The insurance commissioner must report his or her findings
38 and recommendations to the appropriate committees of the legislature
39 by November 15, 2023.

1 (3) This section expires January 1, 2024.

2 **Sec. 9.** RCW 28B.20.830 and 2020 c 92 s 4 are each amended to
3 read as follows:

4 (1) The collaborative for the advancement of telemedicine is
5 created to enhance the understanding and use of health services
6 provided through telemedicine and other similar models in Washington
7 state. The collaborative shall be hosted by the University of
8 Washington telehealth services and shall be comprised of one member
9 from each of the two largest caucuses of the senate and the house of
10 representatives, and representatives from the academic community,
11 hospitals, clinics, and health care providers in primary care and
12 specialty practices, carriers, and other interested parties.

13 (2) By July 1, 2016, the collaborative shall be convened. The
14 collaborative shall develop recommendations on improving
15 reimbursement and access to services, including originating site
16 restrictions, provider to provider consultative models, and
17 technologies and models of care not currently reimbursed; identify
18 the existence of telemedicine best practices, guidelines, billing
19 requirements, and fraud prevention developed by recognized medical
20 and telemedicine organizations; and explore other priorities
21 identified by members of the collaborative. After review of existing
22 resources, the collaborative shall explore and make recommendations
23 on whether to create a technical assistance center to support
24 providers in implementing or expanding services delivered through
25 telemedicine technologies.

26 (3) The collaborative must submit an initial progress report by
27 December 1, 2016, with follow-up policy reports including
28 recommendations by December 1, 2017, December 1, 2018, and December
29 1, 2021. The reports shall be shared with the relevant professional
30 associations, governing boards or commissions, and the health care
31 committees of the legislature.

32 (4) The collaborative shall study store and forward technology,
33 with a focus on:

34 (a) Utilization;

35 (b) Whether store and forward technology should be paid for at
36 parity with in-person services;

37 (c) The potential for store and forward technology to improve
38 rural health outcomes in Washington state; and

39 (d) Ocular services.

1 (5) The meetings of the board shall be open public meetings, with
2 meeting summaries available on a web page.

3 (6) The future of the collaborative shall be reviewed by the
4 legislature with consideration of ongoing technical assistance needs
5 and opportunities. The collaborative terminates December 31, ((2021))
6 2023.

7 NEW SECTION. **Sec. 10.** If any part of this act is found to be in
8 conflict with federal requirements that are a prescribed condition to
9 the allocation of federal funds to the state, the conflicting part of
10 this act is inoperative solely to the extent of the conflict and with
11 respect to the agencies directly affected, and this finding does not
12 affect the operation of the remainder of this act in its application
13 to the agencies concerned. Rules adopted under this act must meet
14 federal requirements that are a necessary condition to the receipt of
15 federal funds by the state."

16 Correct the title.

EFFECT: Requires a provider to obtain a patient's consent to
billing prior to delivering an audio-only telemedicine service for
which the provider intends to bill. Makes a violation of the consent
requirement unprofessional conduct under the Uniform Disciplinary
Act. Expands the definition of "established relationship" to include
situations where the patient has been treated in the past year by a
provider in the same clinic. Removes from the definition of audio-
only telemedicine the delivery of health care services that are
customarily delivered by audio-only telephone technology and
customarily not billed as separate services by the provider, such as
the sharing of laboratory results. Extends the termination date for
the Telemedicine Collaborative from December 31, 2021, to December
31, 2023.

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