

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1821

67th Legislature
2022 Regular Session

Passed by the House March 9, 2022
Yeas 96 Nays 0

**Speaker of the House of
Representatives**

Passed by the Senate March 8, 2022
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1821** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1821

AS AMENDED BY THE SENATE

Passed Legislature - 2022 Regular Session

State of Washington 67th Legislature 2022 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Schmick, Riccelli, Cody, and Graham)

READ FIRST TIME 01/27/22.

1 AN ACT Relating to the definition of established relationship for
2 purposes of audio-only telemedicine; amending RCW 41.05.700,
3 48.43.735, and 74.09.325; reenacting and amending RCW 71.24.335; and
4 creating a new section.

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

6 **Sec. 1.** RCW 41.05.700 and 2021 c 157 s 1 are each amended to
7 read as follows:

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

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

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

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

19 (iv) The health care service is determined to be safely and
20 effectively provided through telemedicine or store and forward
21 technology according to generally accepted health care practices and

1 standards, and the technology used to provide the health care service
2 meets the standards required by state and federal laws governing the
3 privacy and security of protected health information; and

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

6 (b) (i) Except as provided in (b) (ii) of this subsection, a health
7 plan offered to employees, school employees, and their covered
8 dependents under this chapter issued or renewed on or after January
9 1, 2021, shall reimburse a provider for a health care service
10 provided to a covered person through telemedicine the same amount of
11 compensation the carrier would pay the provider if the health care
12 service was provided in person by the provider.

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

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

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

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

26 (a) Hospital;

27 (b) Rural health clinic;

28 (c) Federally qualified health center;

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

30 (e) Licensed or certified 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 plan. A distant site, a hospital that

1 is an originating site for audio-only telemedicine, or any other site
2 not identified in subsection (3) of this section may not charge a
3 facility fee.

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

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

13 (7) This section does not require the plan 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)(a) 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.

23 (b) If the health care authority has cause to believe that a
24 provider has engaged in a pattern of unresolved violations of this
25 subsection (8), the health care authority may submit information to
26 the appropriate disciplining authority, as defined in RCW 18.130.020,
27 for action. Prior to submitting information to the appropriate
28 disciplining authority, the health care authority may provide the
29 provider with an opportunity to cure the alleged violations or
30 explain why the actions in question did not violate this subsection
31 (8).

32 (c) If the provider has engaged in a pattern of unresolved
33 violations of this subsection (8), the appropriate disciplining
34 authority may levy a fine or cost recovery upon the provider in an
35 amount not to exceed the applicable statutory amount per violation
36 and take other action as permitted under the authority of the
37 disciplining authority. Upon completion of its review of any
38 potential violation submitted by the health care authority or
39 initiated directly by an enrollee, the disciplining authority shall
40 notify the health care authority of the results of the review,

1 including whether the violation was substantiated and any enforcement
2 action taken as a result of a finding of a substantiated violation.

3 (9) For purposes of this section:

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

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

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

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

16 (b) "Disciplining authority" has the same meaning as in RCW
17 18.130.020;

18 (c) "Distant site" means the site at which a physician or other
19 licensed provider, delivering a professional service, is physically
20 located at the time the service is provided through telemedicine;

21 (d) "Established relationship" means the provider providing
22 audio-only telemedicine has access to sufficient health records to
23 ensure safe, effective, and appropriate care services and:

24 (i) For health care services included in the essential health
25 benefits category of mental health and substance use disorder
26 services, including behavioral health treatment:

27 (A) The covered person has had, within the past three years, at
28 least one in-person appointment ((within the past year)), or at least
29 one real-time interactive appointment using both audio and video
30 technology, with the provider providing audio-only telemedicine or
31 with a provider employed at the same medical group, at the same
32 clinic, or by the same integrated delivery system operated by a
33 carrier licensed under chapter 48.44 or 48.46 RCW as the provider
34 providing audio-only telemedicine; or ((the))

35 (B) The covered person was referred to the provider providing
36 audio-only telemedicine by another provider who has had, within the
37 past three years, at least one in-person appointment, or at least one
38 real-time interactive appointment using both audio and video
39 technology, with the covered person ((within the past year)) and has

1 provided relevant medical information to the provider providing
2 audio-only telemedicine;

3 (ii) For any other health care service:

4 (A) The covered person has had, within the past two years, at
5 least one in-person appointment, or, until January 1, 2024, at least
6 one real-time interactive appointment using both audio and video
7 technology, with the provider providing audio-only telemedicine or
8 with a provider employed at the same medical group, at the same
9 clinic, or by the same integrated delivery system operated by a
10 carrier licensed under chapter 48.44 or 48.46 RCW as the provider
11 providing audio-only telemedicine; or

12 (B) The covered person was referred to the provider providing
13 audio-only telemedicine by another provider who has had, within the
14 past two years, at least one in-person appointment, or, until January
15 1, 2024, at least one real-time interactive appointment using both
16 audio and video technology, with the covered person and has provided
17 relevant medical information to the provider providing audio-only
18 telemedicine;

19 (e) "Health care service" has the same meaning as in RCW
20 48.43.005;

21 (f) "Hospital" means a facility licensed under chapter 70.41,
22 71.12, or 72.23 RCW;

23 (g) "Originating site" means the physical location of a patient
24 receiving health care services through telemedicine;

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

26 (i) "Store and forward technology" means use of an asynchronous
27 transmission of a covered person's medical information from an
28 originating site to the health care provider at a distant site which
29 results in medical diagnosis and management of the covered person,
30 and does not include the use of audio-only telephone, facsimile, or
31 email; and

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

38 **Sec. 2.** RCW 48.43.735 and 2021 c 157 s 2 are each amended to
39 read as follows:

1 (1) (a) For health plans issued or renewed on or after January 1,
2 2017, a health carrier shall reimburse a provider for a health care
3 service provided to a covered person through telemedicine or store
4 and forward technology if:

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

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

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

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

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

19 (b) (i) Except as provided in (b) (ii) of this subsection, for
20 health plans issued or renewed on or after January 1, 2021, a health
21 carrier shall reimburse a provider for a health care service provided
22 to a covered person through telemedicine the same amount of
23 compensation the carrier would pay the provider if the health care
24 service was provided in person by the provider.

25 (ii) Hospitals, hospital systems, telemedicine companies, and
26 provider groups consisting of eleven or more providers may elect to
27 negotiate an amount of compensation for telemedicine services that
28 differs from the amount of compensation for in-person services.

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

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

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

38 (a) Hospital;

39 (b) Rural health clinic;

40 (c) Federally qualified health center;

- 1 (d) Physician's or other health care provider's office;
- 2 (e) Licensed or certified behavioral health agency;
- 3 (f) Skilled nursing facility;
- 4 (g) Home or any location determined by the individual receiving
- 5 the service; or
- 6 (h) Renal dialysis center, except an independent renal dialysis
- 7 center.

8 (4) Except for subsection (3)(g) of this section, any originating
9 site under subsection (3) of this section may charge a facility fee
10 for infrastructure and preparation of the patient. Reimbursement for
11 a facility fee must be subject to a negotiated agreement between the
12 originating site and the health carrier. A distant site, a hospital
13 that is an originating site for audio-only telemedicine, or any other
14 site not identified in subsection (3) of this section may not charge
15 a facility fee.

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

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

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

27 (a) An originating site for professional fees;

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

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

32 (8)(a) If a provider intends to bill a patient or the patient's
33 health plan for an audio-only telemedicine service, the provider must
34 obtain patient consent for the billing in advance of the service
35 being delivered.

36 (b) If the commissioner has cause to believe that a provider has
37 engaged in a pattern of unresolved violations of this subsection (8),
38 the commissioner may submit information to the appropriate
39 disciplining authority, as defined in RCW 18.130.020, for action.
40 Prior to submitting information to the appropriate disciplining

1 authority, the commissioner may provide the provider with an
2 opportunity to cure the alleged violations or explain why the actions
3 in question did not violate this subsection (8).

4 (c) If the provider has engaged in a pattern of unresolved
5 violations of this subsection (8), the appropriate disciplining
6 authority may levy a fine or cost recovery upon the provider in an
7 amount not to exceed the applicable statutory amount per violation
8 and take other action as permitted under the authority of the
9 disciplining authority. Upon completion of its review of any
10 potential violation submitted by the commissioner or initiated
11 directly by an enrollee, the disciplining authority shall notify the
12 commissioner of the results of the review, including whether the
13 violation was substantiated and any enforcement action taken as a
14 result of a finding of a substantiated violation.

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 technology, permitting
18 real-time communication between the patient at the originating site
19 and the provider, for the purpose of diagnosis, consultation, or
20 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 technology and customarily not billed as
26 separate services by the provider, such as the sharing of laboratory
27 results;

28 (b) "Disciplining authority" has the same meaning as in RCW
29 18.130.020;

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

33 (d) "Established relationship" means the provider providing
34 audio-only telemedicine has access to sufficient health records to
35 ensure safe, effective, and appropriate care services and:

36 (i) For health care services included in the essential health
37 benefits category of mental health and substance use disorder
38 services, including behavioral health treatment:

39 (A) The covered person has had, within the past three years, at
40 least one in-person appointment (~~(within the past year)~~), or at least

1 one real-time interactive appointment using both audio and video
2 technology, with the provider providing audio-only telemedicine or
3 with a provider employed at the same medical group, at the same
4 clinic, or by the same integrated delivery system operated by a
5 carrier licensed under chapter 48.44 or 48.46 RCW as the provider
6 providing audio-only telemedicine; or ((the))

7 (B) The covered person was referred to the provider providing
8 audio-only telemedicine by another provider who has had, within the
9 past three years, at least one in-person appointment, or at least one
10 real-time interactive appointment using both audio and video
11 technology, with the covered person ((within the past year)) and has
12 provided relevant medical information to the provider providing
13 audio-only telemedicine;

14 (ii) For any other health care service:

15 (A) The covered person has had, within the past two years, at
16 least one in-person appointment, or, until January 1, 2024, at least
17 one real-time interactive appointment using both audio and video
18 technology, with the provider providing audio-only telemedicine or
19 with a provider employed at the same medical group, at the same
20 clinic, or by the same integrated delivery system operated by a
21 carrier licensed under chapter 48.44 or 48.46 RCW as the provider
22 providing audio-only telemedicine; or

23 (B) The covered person was referred to the provider providing
24 audio-only telemedicine by another provider who has had, within the
25 past two years, at least one in-person appointment, or, until January
26 1, 2024, at least one real-time interactive appointment using both
27 audio and video technology, with the covered person and has provided
28 relevant medical information to the provider providing audio-only
29 telemedicine;

30 (e) "Health care service" has the same meaning as in RCW
31 48.43.005;

32 (f) "Hospital" means a facility licensed under chapter 70.41,
33 71.12, or 72.23 RCW;

34 (g) "Originating site" means the physical location of a patient
35 receiving health care services through telemedicine;

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

37 (i) "Store and forward technology" means use of an asynchronous
38 transmission of a covered person's medical information from an
39 originating site to the health care provider at a distant site which
40 results in medical diagnosis and management of the covered person,

1 and does not include the use of audio-only telephone, facsimile, or
2 email; and

3 (j) "Telemedicine" means the delivery of health care services
4 through the use of interactive audio and video technology, permitting
5 real-time communication between the patient at the originating site
6 and the provider, for the purpose of diagnosis, consultation, or
7 treatment. For purposes of this section only, "telemedicine" includes
8 audio-only telemedicine, but does not include facsimile or email.

9 ~~((9) — [(10)])~~ (10) The commissioner may adopt any rules
10 necessary to implement this section.

11 **Sec. 3.** RCW 71.24.335 and 2021 c 157 s 4 and 2021 c 100 s 1 are
12 each reenacted and amended to read as follows:

13 (1) Upon initiation or renewal of a contract with the authority,
14 behavioral health administrative services organizations and managed
15 care organizations shall reimburse a provider for a behavioral health
16 service provided to a covered person through telemedicine or store
17 and forward technology if:

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

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

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

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

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

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

38 (4) Any originating site, other than a home, under subsection (3)
39 of this section may charge a facility fee for infrastructure and

1 preparation of the patient. Reimbursement must be subject to a
2 negotiated agreement between the originating site and the behavioral
3 health administrative services organization, or managed care
4 organization, as applicable. A distant site, a hospital that is an
5 originating site for audio-only telemedicine, or any other site not
6 identified in subsection (3) of this section may not charge a
7 facility fee.

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

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

22 (7) This section does not require a behavioral health
23 administrative services organization or a managed care organization
24 to reimburse:

25 (a) An originating site for professional fees;

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

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

30 (8)(a) If a provider intends to bill a patient, a behavioral
31 health administrative services organization, or a managed care
32 organization for an audio-only telemedicine service, the provider
33 must obtain patient consent for the billing in advance of the service
34 being delivered.

35 (b) If the health care authority has cause to believe that a
36 provider has engaged in a pattern of unresolved violations of this
37 subsection (8), the health care authority may submit information to
38 the appropriate disciplining authority, as defined in RCW 18.130.020,
39 for action. Prior to submitting information to the appropriate
40 disciplining authority, the health care authority may provide the

1 provider with an opportunity to cure the alleged violations or
2 explain why the actions in question did not violate this subsection
3 (8).

4 (c) If the provider has engaged in a pattern of unresolved
5 violations of this subsection (8), the appropriate disciplining
6 authority may levy a fine or cost recovery upon the provider in an
7 amount not to exceed the applicable statutory amount per violation
8 and take other action as permitted under the authority of the
9 disciplining authority. Upon completion of its review of any
10 potential violation submitted by the health care authority or
11 initiated directly by an enrollee, the disciplining authority shall
12 notify the health care authority of the results of the review,
13 including whether the violation was substantiated and any enforcement
14 action taken as a result of a finding of a substantiated violation.

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 technology, permitting
18 real-time communication between the patient at the originating site
19 and the provider, for the purpose of diagnosis, consultation, or
20 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 technology and customarily not billed as
26 separate services by the provider, such as the sharing of laboratory
27 results;

28 (b) "Disciplining authority" has the same meaning as in RCW
29 18.130.020;

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

33 (d) "Established relationship" means the provider providing
34 audio-only telemedicine has access to sufficient health records to
35 ensure safe, effective, and appropriate care services and:

36 (i) The covered person has had, within the past three years, at
37 least one in-person appointment ((within the past year)), or at least
38 one real-time interactive appointment using both audio and video
39 technology, with the provider providing audio-only telemedicine or
40 with a provider employed at the same medical group, at the same

1 clinic, or by the same integrated delivery system operated by a
2 carrier licensed under chapter 48.44 or 48.46 RCW as the provider
3 providing audio-only telemedicine; or ((the))

4 (ii) The covered person was referred to the provider providing
5 audio-only telemedicine by another provider who has had, within the
6 past three years, at least one in-person appointment, or at least one
7 real-time interactive appointment using both audio and video
8 technology, with the covered person ((within the past year)) and has
9 provided relevant medical information to the provider providing
10 audio-only telemedicine;

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

13 (f) "Originating site" means the physical location of a patient
14 receiving behavioral health services through telemedicine;

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

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

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

29 ((~~(9)~~—~~{(10)}~~)) (10) The authority must adopt rules as necessary
30 to implement the provisions of this section.

31 **Sec. 4.** RCW 74.09.325 and 2021 c 157 s 5 are each amended to
32 read as follows:

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

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

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

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

8 (iv) The health care service is determined to be safely and
9 effectively provided through telemedicine or store and forward
10 technology according to generally accepted health care practices and
11 standards, and the technology used to provide the health care service
12 meets the standards required by state and federal laws governing the
13 privacy and security of protected health information; and

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

16 (b) (i) Except as provided in (b) (ii) of this subsection, upon
17 initiation or renewal of a contract with the Washington state health
18 care authority to administer a medicaid managed care plan, a managed
19 health care system shall reimburse a provider for a health care
20 service provided to a covered person through telemedicine the same
21 amount of compensation the managed health care system would pay the
22 provider if the health care service was provided in person by the
23 provider.

24 (ii) Hospitals, hospital systems, telemedicine companies, and
25 provider groups consisting of eleven or more providers may elect to
26 negotiate an amount of compensation for telemedicine services that
27 differs from the amount of compensation for in-person services.

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

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

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

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

39 (a) Hospital;

40 (b) Rural health clinic;

- 1 (c) Federally qualified health center;
- 2 (d) Physician's or other health care provider's office;
- 3 (e) Licensed or certified behavioral health agency;
- 4 (f) Skilled nursing facility;
- 5 (g) Home or any location determined by the individual receiving
- 6 the service; or
- 7 (h) Renal dialysis center, except an independent renal dialysis
- 8 center.

9 (4) Except for subsection (3)(g) of this section, any originating
10 site under subsection (3) of this section may charge a facility fee
11 for infrastructure and preparation of the patient. Reimbursement for
12 a facility fee must be subject to a negotiated agreement between the
13 originating site and the managed health care system. A distant site,
14 a hospital that is an originating site for audio-only telemedicine,
15 or any other site not identified in subsection (3) of this section
16 may not charge a facility fee.

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

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

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

- 29 (a) An originating site for professional fees;
- 30 (b) A provider for a health care service that is not a covered
31 benefit under the plan; or
- 32 (c) An originating site or health care provider when the site or
33 provider is not a contracted provider under the plan.

34 (8)(a) If a provider intends to bill a patient or a managed
35 health care system for an audio-only telemedicine service, the
36 provider must obtain patient consent for the billing in advance of
37 the service being delivered and comply with all rules created by the
38 authority related to restrictions on billing medicaid recipients. The
39 authority may submit information on any potential violations of this
40 subsection to the appropriate disciplining authority, as defined in

1 RCW 18.130.020(~~(+)~~), or take contractual actions against the
2 provider's agreement for participation in the medicaid program, or
3 both.

4 (b) If the health care authority has cause to believe that a
5 provider has engaged in a pattern of unresolved violations of this
6 subsection (8), the health care authority may submit information to
7 the appropriate disciplining authority for action. Prior to
8 submitting information to the appropriate disciplining authority, the
9 health care authority may provide the provider with an opportunity to
10 cure the alleged violations or explain why the actions in question
11 did not violate this subsection (8).

12 (c) If the provider has engaged in a pattern of unresolved
13 violations of this subsection (8), the appropriate disciplining
14 authority may levy a fine or cost recovery upon the provider in an
15 amount not to exceed the applicable statutory amount per violation
16 and take other action as permitted under the authority of the
17 disciplining authority. Upon completion of its review of any
18 potential violation submitted by the health care authority or
19 initiated directly by an enrollee, the disciplining authority shall
20 notify the health care authority of the results of the review,
21 including whether the violation was substantiated and any enforcement
22 action taken as a result of a finding of a substantiated violation.

23 (9) For purposes of this section:

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

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

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

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

36 (b) "Disciplining authority" has the same meaning as in RCW
37 18.130.020;

38 (c) "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 (d) "Established relationship" means the provider providing
2 audio-only telemedicine has access to sufficient health records to
3 ensure safe, effective, and appropriate care services and:

4 (i) For health care services included in the essential health
5 benefits category of mental health and substance use disorder
6 services, including behavioral health treatment:

7 (A) The covered person has had, within the past three years, at
8 least one in-person appointment (~~within the past year~~), or at least
9 one real-time interactive appointment using both audio and video
10 technology, with the provider providing audio-only telemedicine or
11 with a provider employed at the same medical group, at the same
12 clinic, or by the same integrated delivery system operated by a
13 carrier licensed under chapter 48.44 or 48.46 RCW as the provider
14 providing audio-only telemedicine; or ((the))

15 (B) The covered person was referred to the provider providing
16 audio-only telemedicine by another provider who has had, within the
17 past three years, at least one in-person appointment, or at least one
18 real-time interactive appointment using both audio and video
19 technology, with the covered person (~~within the past year~~) and has
20 provided relevant medical information to the provider providing
21 audio-only telemedicine;

22 (ii) For any other health care service:

23 (A) The covered person has had, within the past two years, at
24 least one in-person appointment, or, until January 1, 2024, at least
25 one real-time interactive appointment using both audio and video
26 technology, with the provider providing audio-only telemedicine or
27 with a provider employed at the same medical group, at the same
28 clinic, or by the same integrated delivery system operated by a
29 carrier licensed under chapter 48.44 or 48.46 RCW as the provider
30 providing audio-only telemedicine; or

31 (B) The covered person was referred to the provider providing
32 audio-only telemedicine by another provider who has had, within the
33 past two years, at least one in-person appointment, or, until January
34 1, 2024, at least one real-time interactive appointment using both
35 audio and video technology, with the covered person and has provided
36 relevant medical information to the provider providing audio-only
37 telemedicine;

38 (e) "Health care service" has the same meaning as in RCW
39 48.43.005;

1 (f) "Hospital" means a facility licensed under chapter 70.41,
2 71.12, or 72.23 RCW;

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

13 (h) "Originating site" means the physical location of a patient
14 receiving health care services through telemedicine;

15 (i) "Provider" has the same meaning as in RCW 48.43.005;

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

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

28 NEW SECTION. **Sec. 5.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 6.** If any part of this act is found to be in
33 conflict with federal requirements that are a prescribed condition to
34 the allocation of federal funds to the state, the conflicting part of
35 this act is inoperative solely to the extent of the conflict and with
36 respect to the agencies directly affected, and this finding does not
37 affect the operation of the remainder of this act in its application
38 to the agencies concerned. Rules adopted under this act must meet

1 federal requirements that are a necessary condition to the receipt of
2 federal funds by the state.

--- **END** ---