

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1196

Chapter 157, Laws of 2021

67th Legislature
2021 Regular Session

AUDIO-ONLY TELEMEDICINE

EFFECTIVE DATE: July 25, 2021

Passed by the House April 15, 2021
Yeas 96 Nays 0

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate April 10, 2021
Yeas 45 Nays 4

DENNY HECK

President of the Senate

Approved May 3, 2021 2:11 PM

JAY INSLEE

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 1196** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 3, 2021

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1196

AS AMENDED BY THE SENATE

Passed Legislature - 2021 Regular Session

State of Washington 67th Legislature 2021 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Riccelli, Callan, Bateman, Ramos, Cody, Ortiz-Self, Duerr, Harris, Leavitt, Bergquist, Shewmake, Fitzgibbon, Macri, Tharinger, Slatter, Davis, Berg, Pollet, Orwall, Harris-Talley, and Frame)

READ FIRST TIME 02/05/21.

1 AN ACT Relating to audio-only telemedicine; amending RCW
2 41.05.700, 48.43.735, 70.41.020, 71.24.335, 74.09.325, 18.130.180,
3 and 28B.20.830; adding a new section to chapter 74.09 RCW; creating
4 new sections; and providing an expiration date.

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

6 **Sec. 1.** RCW 41.05.700 and 2020 c 92 s 2 are each amended to read
7 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 ((and))

20 (iv) The health care service is determined to be safely and
21 effectively provided through telemedicine or store and forward

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

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

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

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

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

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

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

28 (a) Hospital;

29 (b) Rural health clinic;

30 (c) Federally qualified health center;

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

32 (e) ~~((Community mental health center))~~ Licensed or certified
33 behavioral health agency;

34 (f) Skilled nursing facility;

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

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

39 (4) Except for subsection (3)(g) of this section, any originating
40 site under subsection (3) of this section may charge a facility fee

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

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

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

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

17 (a) An originating site for professional fees;

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

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

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

26 (b) If the health care authority has cause to believe that a
27 provider has engaged in a pattern of unresolved violations of this
28 subsection (8), the health care authority may submit information to
29 the appropriate disciplining authority, as defined in RCW 18.130.020,
30 for action. Prior to submitting information to the appropriate
31 disciplining authority, the health care authority may provide the
32 provider with an opportunity to cure the alleged violations or
33 explain why the actions in question did not violate this subsection
34 (8).

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

1 potential violation submitted by the health care authority or
2 initiated directly by an enrollee, the disciplining authority shall
3 notify the health care authority of the results of the review,
4 including whether the violation was substantiated and any enforcement
5 action taken as a result of a finding of a substantiated violation.

6 (9) For purposes of this section:

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

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

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

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

19 (b) "Disciplining authority" has the same meaning as in RCW
20 18.130.020;

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

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

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

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

37 ~~((d))~~ (g) "Originating site" means the physical location of a
38 patient receiving health care services through telemedicine;

39 ~~((e))~~ (h) "Provider" has the same meaning as in RCW 48.43.005;

1 ~~((f))~~ (i) "Store and forward technology" means use of an
2 asynchronous transmission of a covered person's medical information
3 from an originating site to the health care provider at a distant
4 site which results in medical diagnosis and management of the covered
5 person, and does not include the use of audio-only telephone,
6 facsimile, or email; and

7 ~~((g))~~ (j) "Telemedicine" means the delivery of health care
8 services through the use of interactive audio and video technology,
9 permitting real-time communication between the patient at the
10 originating site and the provider, for the purpose of diagnosis,
11 consultation, or treatment. For purposes of this section only,
12 "telemedicine" ~~((does not include the use of))~~ includes audio-only
13 ~~((telephone))~~ telemedicine, but does not include facsimile~~((r))~~ or
14 email.

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

17 (1)(a) For health plans issued or renewed on or after January 1,
18 2017, a health carrier shall reimburse a provider for a health care
19 service provided to a covered person through telemedicine or store
20 and forward technology if:

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

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

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

28 (iv) The health care service is determined to be safely and
29 effectively provided through telemedicine or store and forward
30 technology according to generally accepted health care practices and
31 standards, and the technology used to provide the health care service
32 meets the standards required by state and federal laws governing the
33 privacy and security of protected health information; and

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

36 (b)(i) Except as provided in (b)(ii) of this subsection, for
37 health plans issued or renewed on or after January 1, 2021, a health
38 carrier shall reimburse a provider for a health care service provided
39 to a covered person through telemedicine ~~((at))~~ the same ~~((rate as))~~

1 amount of compensation the carrier would pay the provider if the
2 health care service was provided in person by the provider.

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

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

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

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

- 17 (a) Hospital;
- 18 (b) Rural health clinic;
- 19 (c) Federally qualified health center;
- 20 (d) Physician's or other health care provider's office;
- 21 (e) (~~Community mental health center~~) Licensed or certified
22 behavioral health agency;
- 23 (f) Skilled nursing facility;
- 24 (g) Home or any location determined by the individual receiving
25 the service; or
- 26 (h) Renal dialysis center, except an independent renal dialysis
27 center.

28 (4) Except for subsection (3)(g) of this section, any originating
29 site under subsection (3) of this section may charge a facility fee
30 for infrastructure and preparation of the patient. Reimbursement for
31 a facility fee must be subject to a negotiated agreement between the
32 originating site and the health carrier. A distant site, a hospital
33 that is an originating site for audio-only telemedicine, or any other
34 site not identified in subsection (3) of this section may not charge
35 a facility fee.

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

39 (6) A health carrier may subject coverage of a telemedicine or
40 store and forward technology health service under subsection (1) of

1 this section to all terms and conditions of the plan in which the
2 covered person is enrolled including, but not limited to, utilization
3 review, prior authorization, deductible, copayment, or coinsurance
4 requirements that are applicable to coverage of a comparable health
5 care service provided in person.

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

7 (a) An originating site for professional fees;

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

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

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

16 (b) If the commissioner has cause to believe that a provider has
17 engaged in a pattern of unresolved violations of this subsection (8),
18 the commissioner may submit information to the appropriate
19 disciplining authority, as defined in RCW 18.130.020, for action.
20 Prior to submitting information to the appropriate disciplining
21 authority, the commissioner may provide the provider with an
22 opportunity to cure the alleged violations or explain why the actions
23 in question did not violate this subsection (8).

24 (c) If the provider has engaged in a pattern of unresolved
25 violations of this subsection (8), the appropriate disciplining
26 authority may levy a fine or cost recovery upon the provider in an
27 amount not to exceed the applicable statutory amount per violation
28 and take other action as permitted under the authority of the
29 disciplining authority. Upon completion of its review of any
30 potential violation submitted by the commissioner or initiated
31 directly by an enrollee, the disciplining authority shall notify the
32 commissioner of the results of the review, including whether the
33 violation was substantiated and any enforcement action taken as a
34 result of a finding of a substantiated violation.

35 (9) For purposes of this section:

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

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

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

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

8 (b) "Disciplining authority" has the same meaning as in RCW
9 18.130.020;

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

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

22 (e) "Health care service" has the same meaning as in RCW
23 48.43.005;

24 ~~((e))~~ (f) "Hospital" means a facility licensed under chapter
25 70.41, 71.12, or 72.23 RCW;

26 ~~((d))~~ (g) "Originating site" means the physical location of a
27 patient receiving health care services through telemedicine;

28 ~~((e))~~ (h) "Provider" has the same meaning as in RCW 48.43.005;

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

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

1 (~~(telephone)~~) telemedicine, but does not include facsimile(~~(f)~~) or
2 email.

3 (9) The commissioner may adopt any rules necessary to implement
4 this section.

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

7 Unless the context clearly indicates otherwise, the following
8 terms, whenever used in this chapter, shall be deemed to have the
9 following meanings:

10 (1) "Aftercare" means the assistance provided by a lay caregiver
11 to a patient under this chapter after the patient's discharge from a
12 hospital. The assistance may include, but is not limited to,
13 assistance with activities of daily living, wound care, medication
14 assistance, and the operation of medical equipment. "Aftercare"
15 includes assistance only for conditions that were present at the time
16 of the patient's discharge from the hospital. "Aftercare" does not
17 include:

18 (a) Assistance related to conditions for which the patient did
19 not receive medical care, treatment, or observation in the hospital;
20 or

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

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

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

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

30 (ii) The delivery of health care services that are customarily
31 delivered by audio-only technology and customarily not billed as
32 separate services by the provider, such as the sharing of laboratory
33 results.

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

35 (~~(3)~~) (4) "Discharge" means a patient's release from a hospital
36 following the patient's admission to the hospital.

37 (~~(4)~~) (5) "Distant site" means the site at which a physician or
38 other licensed provider, delivering a professional service, is

1 physically located at the time the service is provided through
2 telemedicine.

3 ~~((5))~~ (6) "Emergency care to victims of sexual assault" means
4 medical examinations, procedures, and services provided by a hospital
5 emergency room to a victim of sexual assault following an alleged
6 sexual assault.

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

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

37 ~~((8))~~ (9) "Lay caregiver" means any individual designated as
38 such by a patient under this chapter who provides aftercare
39 assistance to a patient in the patient's residence. "Lay caregiver"

1 does not include a long-term care worker as defined in RCW
2 74.39A.009.

3 ~~((9))~~ (10) "Originating site" means the physical location of a
4 patient receiving health care services through telemedicine.

5 ~~((10))~~ (11) "Person" means any individual, firm, partnership,
6 corporation, company, association, or joint stock association, and
7 the legal successor thereof.

8 ~~((11))~~ (12) "Secretary" means the secretary of health.

9 ~~((12))~~ (13) "Sexual assault" has the same meaning as in RCW
10 70.125.030.

11 ~~((13))~~ (14) "Telemedicine" means the delivery of health care
12 services through the use of interactive audio and video technology,
13 permitting real-time communication between the patient at the
14 originating site and the provider, for the purpose of diagnosis,
15 consultation, or treatment. "Telemedicine" ~~((does not include the use~~
16 ~~of))~~ includes audio-only ~~((telephone))~~ telemedicine, but does not
17 include facsimile~~((r))~~ or email.

18 ~~((14))~~ (15) "Victim of sexual assault" means a person who
19 alleges or is alleged to have been sexually assaulted and who
20 presents as a patient.

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

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

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

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

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

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

1 (b) 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 behavioral health administrative
4 services organization, or managed care organization, and the
5 provider.

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

10 (4) Any originating site, other than a home, under subsection (3)
11 of this section may charge a facility fee for infrastructure and
12 preparation of the patient. Reimbursement must be subject to a
13 negotiated agreement between the originating site and the behavioral
14 health administrative services organization, or managed care
15 organization, as applicable. A distant site, a hospital that is an
16 originating site for audio-only telemedicine, or any other site not
17 identified in subsection (3) of this section may not charge a
18 facility fee.

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

23 (6) Behavioral health administrative services organizations and
24 managed care organizations may subject coverage of a telemedicine or
25 store and forward technology behavioral health service under
26 subsection (1) of this section to all terms and conditions of the
27 behavioral health administrative services organization or managed
28 care organization in which the covered person is enrolled, including,
29 but not limited to, utilization review, prior authorization,
30 deductible, copayment, or coinsurance requirements that are
31 applicable to coverage of a comparable behavioral health care service
32 provided in person.

33 (7) This section does not require a behavioral health
34 administrative services organization or a managed care organization
35 to reimburse:

36 (a) An originating site for professional fees;

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

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

1 (8)(a) If a provider intends to bill a patient, a behavioral
2 health administrative services organization, or a managed care
3 organization for an audio-only telemedicine service, the provider
4 must obtain patient consent for the billing in advance of the service
5 being delivered.

6 (b) If the health care authority has cause to believe that a
7 provider has engaged in a pattern of unresolved violations of this
8 subsection (8), the health care authority may submit information to
9 the appropriate disciplining authority, as defined in RCW 18.130.020,
10 for action. Prior to submitting information to the appropriate
11 disciplining authority, the health care authority may provide the
12 provider with an opportunity to cure the alleged violations or
13 explain why the actions in question did not violate this subsection
14 (8).

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

26 (9) For purposes of this section:

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

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

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

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

39 (b) "Disciplining authority" has the same meaning as in RCW
40 18.130.020;

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

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

13 (e) "Hospital" means a facility licensed under chapter 70.41,
14 71.12, or 72.23 RCW;

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

17 ~~((d))~~ (g) "Provider" has the same meaning as in RCW 48.43.005;

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

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

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

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

36 (1)(a) Upon initiation or renewal of a contract with the
37 Washington state health care authority to administer a medicaid
38 managed care plan, a managed health care system shall reimburse a

1 provider for a health care service provided to a covered person
2 through telemedicine or store and forward technology if:

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

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

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

10 (~~and~~)

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

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

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

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

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

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

3 (a) Hospital;

4 (b) Rural health clinic;

5 (c) Federally qualified health center;

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

7 (e) (~~Community mental health center~~) Licensed or certified
8 behavioral health agency;

9 (f) Skilled nursing facility;

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

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

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

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

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

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

34 (a) An originating site for professional fees;

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

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

39 (8) (a) If a provider intends to bill a patient or a managed
40 health care system for an audio-only telemedicine service, the

1 provider must obtain patient consent for the billing in advance of
2 the service being delivered and comply with all rules created by the
3 authority related to restrictions on billing medicaid recipients. The
4 authority may submit information on any potential violations of this
5 subsection to the appropriate disciplining authority, as defined in
6 RCW 18.130.020 or take contractual actions against the provider's
7 agreement for participation in the medicaid program, or both.

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

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

27 (9) For purposes of this section:

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

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

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

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

1 (b) "Disciplining authority" has the same meaning as in RCW
2 18.130.020;

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

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

15 (e) "Health care service" has the same meaning as in RCW
16 48.43.005;

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

19 ~~((d))~~ (g) "Managed health care system" means any health care
20 organization, including health care providers, insurers, health care
21 service contractors, health maintenance organizations, health
22 insuring organizations, or any combination thereof, that provides
23 directly or by contract health care services covered under this
24 chapter and rendered by licensed providers, on a prepaid capitated
25 basis and that meets the requirements of section 1903(m)(1)(A) of
26 Title XIX of the federal social security act or federal demonstration
27 waivers granted under section 1115(a) of Title XI of the federal
28 social security act;

29 ~~((e))~~ (h) "Originating site" means the physical location of a
30 patient receiving health care services through telemedicine;

31 ~~((f))~~ (i) "Provider" has the same meaning as in RCW 48.43.005;

32 ~~((g))~~ (j) "Store and forward technology" means use of an
33 asynchronous transmission of a covered person's medical information
34 from an originating site to the health care provider at a distant
35 site which results in medical diagnosis and management of the covered
36 person, and does not include the use of audio-only telephone,
37 facsimile, or email; and

38 ~~((h))~~ (k) "Telemedicine" means the delivery of health care
39 services through the use of interactive audio and video technology,
40 permitting real-time communication between the patient at the

1 originating site and the provider, for the purpose of diagnosis,
2 consultation, or treatment. For purposes of this section only,
3 "telemedicine" (~~does not include the use of~~) includes audio-only
4 (~~telephone~~) telemedicine, but does not include facsimile(~~(r)~~) or
5 email.

6 (~~(9) To measure the impact on access to care for underserved~~
7 ~~communities and costs to the state and the medicaid managed health~~
8 ~~care system for reimbursement of telemedicine services, the~~
9 ~~Washington state health care authority, using existing data and~~
10 ~~resources, shall provide a report to the appropriate policy and~~
11 ~~fiscal committees of the legislature no later than December 31,~~
12 ~~2018.~~)

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

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

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

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

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

- 30 (i) The use of facsimile or email; or
- 31 (ii) The delivery of health care services that are customarily
32 delivered by audio-only technology and customarily not billed as
33 separate services by the provider, such as the sharing of laboratory
34 results.

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

1 The following conduct, acts, or conditions constitute
2 unprofessional conduct for any license holder under the jurisdiction
3 of this chapter:

4 (1) The commission of any act involving moral turpitude,
5 dishonesty, or corruption relating to the practice of the person's
6 profession, whether the act constitutes a crime or not. If the act
7 constitutes a crime, conviction in a criminal proceeding is not a
8 condition precedent to disciplinary action. Upon such a conviction,
9 however, the judgment and sentence is conclusive evidence at the
10 ensuing disciplinary hearing of the guilt of the license holder of
11 the crime described in the indictment or information, and of the
12 person's violation of the statute on which it is based. For the
13 purposes of this section, conviction includes all instances in which
14 a plea of guilty or nolo contendere is the basis for the conviction
15 and all proceedings in which the sentence has been deferred or
16 suspended. Nothing in this section abrogates rights guaranteed under
17 chapter 9.96A RCW;

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

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

21 (4) Incompetence, negligence, or malpractice which results in
22 injury to a patient or which creates an unreasonable risk that a
23 patient may be harmed. The use of a nontraditional treatment by
24 itself shall not constitute unprofessional conduct, provided that it
25 does not result in injury to a patient or create an unreasonable risk
26 that a patient may be harmed;

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

32 (6) Except when authorized by RCW 18.130.345, the possession,
33 use, prescription for use, or distribution of controlled substances
34 or legend drugs in any way other than for legitimate or therapeutic
35 purposes, diversion of controlled substances or legend drugs, the
36 violation of any drug law, or prescribing controlled substances for
37 oneself;

38 (7) Violation of any state or federal statute or administrative
39 rule regulating the profession in question, including any statute or

1 rule defining or establishing standards of patient care or
2 professional conduct or practice;

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

4 (a) Not furnishing any papers, documents, records, or other
5 items;

6 (b) Not furnishing in writing a full and complete explanation
7 covering the matter contained in the complaint filed with the
8 disciplining authority;

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

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

15 (9) Failure to comply with an order issued by the disciplining
16 authority or a stipulation for informal disposition entered into with
17 the disciplining authority;

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

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

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

23 (13) Misrepresentation or fraud in any aspect of the conduct of
24 the business or profession;

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

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

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

32 (17) Conviction of any gross misdemeanor or felony relating to
33 the practice of the person's profession. For the purposes of this
34 subsection, conviction includes all instances in which a plea of
35 guilty or nolo contendere is the basis for conviction and all
36 proceedings in which the sentence has been deferred or suspended.
37 Nothing in this section abrogates rights guaranteed under chapter
38 9.96A RCW;

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

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

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

8 (21) Violation of chapter 19.68 RCW or a pattern of violations of
9 RCW 41.05.700(8), 48.43.735(8), 48.49.020 ((e)), 48.49.030,
10 71.24.335(8), or 74.09.325(8);

11 (22) Interference with an investigation or disciplinary
12 proceeding by willful misrepresentation of facts before the
13 disciplining authority or its authorized representative, or by the
14 use of threats or harassment against any patient or witness to
15 prevent them from providing evidence in a disciplinary proceeding or
16 any other legal action, or by the use of financial inducements to any
17 patient or witness to prevent or attempt to prevent him or her from
18 providing evidence in a disciplinary proceeding;

19 (23) Current misuse of:

20 (a) Alcohol;

21 (b) Controlled substances; or

22 (c) Legend drugs;

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

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

32 (26) Violation of RCW 18.130.420;

33 (27) Performing conversion therapy on a patient under age
34 eighteen;

35 (28) Violation of RCW 18.130.430.

36 NEW SECTION. **Sec. 8.** (1) The insurance commissioner, in
37 collaboration with the Washington state telehealth collaborative and
38 the health care authority, shall study and make recommendations
39 regarding:

- 1 (a) Preliminary utilization trends for audio-only telemedicine;
- 2 (b) Qualitative data from health carriers, including medicaid
3 managed care organizations, on the burden of compliance and
4 enforcement requirements for audio-only telemedicine;
- 5 (c) Preliminary information regarding whether requiring
6 reimbursement for audio-only telemedicine has affected the incidence
7 of fraud;
- 8 (d) Proposed methods to measure the impact of audio-only
9 telemedicine on access to health care services for historically
10 underserved communities and geographic areas;
- 11 (e) An evaluation of the relative costs to providers and
12 facilities of providing audio-only telemedicine services as compared
13 to audio-video telemedicine services and in-person services; and
- 14 (f) Any other issues the insurance commissioner deems
15 appropriate.
- 16 (2) The insurance commissioner must report his or her findings
17 and recommendations to the appropriate committees of the legislature
18 by November 15, 2023.
- 19 (3) This section expires January 1, 2024.

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

22 (1) The collaborative for the advancement of telemedicine is
23 created to enhance the understanding and use of health services
24 provided through telemedicine and other similar models in Washington
25 state. The collaborative shall be hosted by the University of
26 Washington telehealth services and shall be comprised of one member
27 from each of the two largest caucuses of the senate and the house of
28 representatives, and representatives from the academic community,
29 hospitals, clinics, and health care providers in primary care and
30 specialty practices, carriers, and other interested parties.

31 (2) By July 1, 2016, the collaborative shall be convened. The
32 collaborative shall develop recommendations on improving
33 reimbursement and access to services, including originating site
34 restrictions, provider to provider consultative models, and
35 technologies and models of care not currently reimbursed; identify
36 the existence of telemedicine best practices, guidelines, billing
37 requirements, and fraud prevention developed by recognized medical
38 and telemedicine organizations; and explore other priorities
39 identified by members of the collaborative. After review of existing

1 resources, the collaborative shall explore and make recommendations
2 on whether to create a technical assistance center to support
3 providers in implementing or expanding services delivered through
4 telemedicine technologies.

5 (3) The collaborative must submit an initial progress report by
6 December 1, 2016, with follow-up policy reports including
7 recommendations by December 1, 2017, December 1, 2018, and December
8 1, 2021. The reports shall be shared with the relevant professional
9 associations, governing boards or commissions, and the health care
10 committees of the legislature.

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

13 (a) Utilization;

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

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

18 (d) Ocular services.

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

21 (6) The collaborative must study the need for an established
22 patient/provider relationship before providing audio-only
23 telemedicine, including considering what types of services may be
24 provided without an established relationship. By December 1, 2021,
25 the collaborative must submit a report to the legislature on its
26 recommendations regarding the need for an established relationship
27 for audio-only telemedicine.

28 (7) The future of the collaborative shall be reviewed by the
29 legislature with consideration of ongoing technical assistance needs
30 and opportunities. The collaborative terminates December 31, (~~2021~~)
31 2023.

32 NEW SECTION. Sec. 10. 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
39 federal requirements that are a necessary condition to the receipt of

1 federal funds by the state. Nothing in this act alters the
2 requirement for the health care authority to report potential fraud
3 to the medicaid fraud control division of the Washington attorney
4 general's office under 42 C.F.R. 455.21.

Passed by the House April 15, 2021.

Passed by the Senate April 10, 2021.

Approved by the Governor May 3, 2021.

Filed in Office of Secretary of State May 3, 2021.

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