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**SUBSTITUTE SENATE BILL 5175**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** Senate Health Care (originally sponsored by Senators Becker, Frockt, Angel, Rivers, Cleveland, Dammeier, Keiser, Fain, Parlette, Darneille, Pedersen, Habib, Kohl-Welles, and Mullet)

READ FIRST TIME 02/06/15.

1 AN ACT Relating to telemedicine; amending RCW 70.41.020 and  
2 70.41.230; adding a new section to chapter 41.05 RCW; adding a new  
3 section to chapter 48.43 RCW; adding a new section to chapter 74.09  
4 RCW; creating new sections; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
7 recognize the application of telemedicine as a reimbursable service  
8 by which an individual receives medical services from a health care  
9 provider without in-person contact with the provider. It is also the  
10 intent of the legislature to reduce the compliance requirements on  
11 hospitals when granting privileges or associations to telemedicine  
12 physicians.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.05  
14 RCW to read as follows:

15 (1) A health plan offered to employees and their covered  
16 dependents under this chapter issued or renewed on or after the  
17 effective date of this section shall reimburse a provider for a  
18 health care service provided to a covered person through telemedicine  
19 or store and forward technology if:

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

3 (b) The health care service is medically necessary; and

4 (c) The health care service is a service recognized as an  
5 essential health benefit under section 1302(b) of the federal patient  
6 protection and affordable care act in effect on the effective date of  
7 this section.

8 (2)(a) If the service is provided through store and forward  
9 technology there must be an associated office visit between the  
10 covered person and the referring health care provider. Nothing in  
11 this section prohibits the use of telemedicine for the associated  
12 office visit.

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

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

19 (a) Hospital;

20 (b) Rural health clinic;

21 (c) Federally qualified health center;

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

23 (e) Community mental health center;

24 (f) Skilled nursing facility; or

25 (g) Renal dialysis center, except an independent renal dialysis  
26 center.

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

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

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

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

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

4 (a) An originating site for professional fees;

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

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

9 (9) For purposes of this section:

10 (a) "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) "Health care service" has the same meaning as in RCW  
14 48.43.005;

15 (c) "Hospital" means a facility licensed under chapter 70.41,  
16 71.12, or 72.23 RCW;

17 (d) "Originating site" means the physical location of a patient  
18 receiving health care services through telemedicine;

19 (e) "Provider" has the same meaning as in RCW 48.43.005;

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

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

32 NEW SECTION. **Sec. 3.** A new section is added to chapter 48.43  
33 RCW to read as follows:

34 (1) For health plans issued or renewed on or after the effective  
35 date of this section, a health carrier shall reimburse a provider for  
36 a health care service provided to a covered person through  
37 telemedicine store and forward technology if:

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

1 (b) The health care service is medically necessary; and

2 (c) The health care service is a service recognized as an  
3 essential health benefit under section 1302(b) of the federal patient  
4 protection and affordable care act in effect on the effective date of  
5 this section.

6 (2)(a) If the service is provided through store and forward  
7 technology there must be an associated office visit between the  
8 covered person and the referring health care provider. Nothing in  
9 this section prohibits the use of telemedicine for the associated  
10 office visit.

11 (b) 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;

22 (f) Skilled nursing facility; or

23 (g) Renal dialysis center, except an independent renal dialysis  
24 center.

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

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

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

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

2 (a) An originating site for professional fees;

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

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

7 (8) For purposes of this section:

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

11 (b) "Health care service" has the same meaning as in RCW  
12 48.43.005;

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

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

17 (e) "Provider" has the same meaning as in RCW 48.43.005;

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

24 (g) "Telemedicine" means the delivery of health care services  
25 through the use of interactive audio and video 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. For purposes of this section only, "telemedicine" does not  
29 include the use of audio-only telephone, facsimile, or email.

30 NEW SECTION. **Sec. 4.** A new section is added to chapter 74.09  
31 RCW to read as follows:

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

37 (a) The medicaid managed care plan in which the covered person is  
38 enrolled provides coverage of the health care service when provided  
39 in person by the provider;

1 (b) The health care service is medically necessary; and

2 (c) The health care service is a service recognized as an  
3 essential health benefit under section 1302(b) of the federal patient  
4 protection and affordable care act in effect on the effective date of  
5 this section.

6 (2)(a) If the service is provided through store and forward  
7 technology there must be an associated visit between the covered  
8 person and the referring health care provider. Nothing in this  
9 section prohibits the use of telemedicine for the associated office  
10 visit.

11 (b) For purposes of this section, reimbursement of store and  
12 forward technology is available only for those services specified in  
13 the negotiated agreement between the managed health care system and  
14 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;

22 (f) Skilled nursing facility; or

23 (g) Renal dialysis center, except an independent renal dialysis  
24 center.

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

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

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

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

3 (a) An originating site for professional fees;

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

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

8 (8) For purposes of this section:

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

12 (b) "Health care service" has the same meaning as in RCW  
13 48.43.005;

14 (c) "Hospital" means a facility licensed under chapter 70.41,  
15 71.12, or 72.23 RCW;

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

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

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

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

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

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

7 **Sec. 5.** RCW 70.41.020 and 2010 c 94 s 17 are each amended to  
8 read as follows:

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

12 (1) "Department" means the Washington state department of health.

13 (2) "Emergency care to victims of sexual assault" means medical  
14 examinations, procedures, and services provided by a hospital  
15 emergency room to a victim of sexual assault following an alleged  
16 sexual assault.

17 (3) "Emergency contraception" means any health care treatment  
18 approved by the food and drug administration that prevents pregnancy,  
19 including but not limited to administering two increased doses of  
20 certain oral contraceptive pills within seventy-two hours of sexual  
21 contact.

22 (4) "Hospital" means any institution, place, building, or agency  
23 which provides accommodations, facilities and services over a  
24 continuous period of twenty-four hours or more, for observation,  
25 diagnosis, or care, of two or more individuals not related to the  
26 operator who are suffering from illness, injury, deformity, or  
27 abnormality, or from any other condition for which obstetrical,  
28 medical, or surgical services would be appropriate for care or  
29 diagnosis. "Hospital" as used in this chapter does not include  
30 hotels, or similar places furnishing only food and lodging, or simply  
31 domiciliary care; nor does it include clinics, or physician's offices  
32 where patients are not regularly kept as bed patients for twenty-four  
33 hours or more; nor does it include nursing homes, as defined and  
34 which come within the scope of chapter 18.51 RCW; nor does it include  
35 birthing centers, which come within the scope of chapter 18.46 RCW;  
36 nor does it include psychiatric hospitals, which come within the  
37 scope of chapter 71.12 RCW; nor any other hospital, or institution  
38 specifically intended for use in the diagnosis and care of those  
39 suffering from mental illness, intellectual disability, convulsive



1 disorders, or other abnormal mental condition. Furthermore, nothing  
2 in this chapter or the rules adopted pursuant thereto shall be  
3 construed as authorizing the supervision, regulation, or control of  
4 the remedial care or treatment of residents or patients in any  
5 hospital conducted for those who rely primarily upon treatment by  
6 prayer or spiritual means in accordance with the creed or tenets of  
7 any well recognized church or religious denominations.

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

11 (6) "Secretary" means the secretary of health.

12 (7) "Sexual assault" has the same meaning as in RCW 70.125.030.

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

16 (9) "Distant site" means the site at which a physician or other  
17 licensed provider, delivering a professional service, is physically  
18 located at the time the service is provided through telemedicine.

19 (10) "Originating site" means the physical location of a patient  
20 receiving health care services through telemedicine.

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

27 **Sec. 6.** RCW 70.41.230 and 2013 c 301 s 3 are each amended to  
28 read as follows:

29 (1) Except as provided in subsection (3) of this section, prior  
30 to granting or renewing clinical privileges or association of any  
31 physician or hiring a physician, a hospital or facility approved  
32 pursuant to this chapter shall request from the physician and the  
33 physician shall provide the following information:

34 (a) The name of any hospital or facility with or at which the  
35 physician had or has any association, employment, privileges, or  
36 practice during the prior five years: PROVIDED, That the hospital may  
37 request additional information going back further than five years,  
38 and the physician shall use his or her best efforts to comply with  
39 such a request for additional information;

1 (b) Whether the physician has ever been or is in the process of  
2 being denied, revoked, terminated, suspended, restricted, reduced,  
3 limited, sanctioned, placed on probation, monitored, or not renewed  
4 for any professional activity listed in (b)(i) through (x) of this  
5 subsection, or has ever voluntarily or involuntarily relinquished,  
6 withdrawn, or failed to proceed with an application for any  
7 professional activity listed in (b)(i) through (x) of this subsection  
8 in order to avoid an adverse action or to preclude an investigation  
9 or while under investigation relating to professional competence or  
10 conduct:

11 (i) License to practice any profession in any jurisdiction;

12 (ii) Other professional registration or certification in any  
13 jurisdiction;

14 (iii) Specialty or subspecialty board certification;

15 (iv) Membership on any hospital medical staff;

16 (v) Clinical privileges at any facility, including hospitals,  
17 ambulatory surgical centers, or skilled nursing facilities;

18 (vi) Medicare, medicaid, the food and drug administration, the  
19 national institute of health (office of human research protection),  
20 governmental, national, or international regulatory agency, or any  
21 public program;

22 (vii) Professional society membership or fellowship;

23 (viii) Participation or membership in a health maintenance  
24 organization, preferred provider organization, independent practice  
25 association, physician-hospital organization, or other entity;

26 (ix) Academic appointment;

27 (x) Authority to prescribe controlled substances (drug  
28 enforcement agency or other authority);

29 (c) Any pending professional medical misconduct proceedings or  
30 any pending medical malpractice actions in this state or another  
31 state, the substance of the allegations in the proceedings or  
32 actions, and any additional information concerning the proceedings or  
33 actions as the physician deems appropriate;

34 (d) The substance of the findings in the actions or proceedings  
35 and any additional information concerning the actions or proceedings  
36 as the physician deems appropriate;

37 (e) A waiver by the physician of any confidentiality provisions  
38 concerning the information required to be provided to hospitals  
39 pursuant to this subsection; and

1 (f) A verification by the physician that the information provided  
2 by the physician is accurate and complete.

3 (2) Except as provided in subsection (3) of this section, prior  
4 to granting privileges or association to any physician or hiring a  
5 physician, a hospital or facility approved pursuant to this chapter  
6 shall request from any hospital with or at which the physician had or  
7 has privileges, was associated, or was employed, during the preceding  
8 five years, the following information concerning the physician:

9 (a) Any pending professional medical misconduct proceedings or  
10 any pending medical malpractice actions, in this state or another  
11 state;

12 (b) Any judgment or settlement of a medical malpractice action  
13 and any finding of professional misconduct in this state or another  
14 state by a licensing or disciplinary board; and

15 (c) Any information required to be reported by hospitals pursuant  
16 to RCW 18.71.0195.

17 (3) In lieu of the requirements of subsections (1) and (2) of  
18 this section, when granting or renewing privileges or association of  
19 any physician providing telemedicine services, an originating site  
20 hospital may rely on a distant site hospital's decision to grant or  
21 renew clinical privileges or association of the physician if the  
22 originating site hospital obtains reasonable assurances, through a  
23 written agreement with the distant site hospital, that all of the  
24 following provisions are met:

25 (a) The distant site hospital providing the telemedicine services  
26 is a medicare participating hospital;

27 (b) Any physician providing telemedicine services at the distant  
28 site hospital will be fully privileged to provide such services by  
29 the distant site hospital;

30 (c) Any physician providing telemedicine services will hold and  
31 maintain a valid license to perform such services issued or  
32 recognized by the state of Washington; and

33 (d) With respect to any distant site physician who holds current  
34 privileges at the originating site hospital whose patients are  
35 receiving the telemedicine services, the originating site hospital  
36 has evidence of an internal review of the distant site physician's  
37 performance of these privileges and sends the distant site hospital  
38 such performance information for use in the periodic appraisal of the  
39 distant site physician. At a minimum, this information must include  
40 all adverse events, as defined in RCW 70.56.010, that result from the

1 telemedicine services provided by the distant site physician to the  
2 originating site hospital's patients and all complaints the  
3 originating site hospital has received about the distant site  
4 physician.

5 (4) The medical quality assurance commission or the board of  
6 osteopathic medicine and surgery shall be advised within thirty days  
7 of the name of any physician denied staff privileges, association, or  
8 employment on the basis of adverse findings under subsection (1) of  
9 this section.

10 ~~((+4))~~ (5) A hospital or facility that receives a request for  
11 information from another hospital or facility pursuant to subsections  
12 (1) ~~(and—(2))~~ through (3) of this section shall provide such  
13 information concerning the physician in question to the extent such  
14 information is known to the hospital or facility receiving such a  
15 request, including the reasons for suspension, termination, or  
16 curtailment of employment or privileges at the hospital or facility.  
17 A hospital, facility, or other person providing such information in  
18 good faith is not liable in any civil action for the release of such  
19 information.

20 ~~((+5))~~ (6) Information and documents, including complaints and  
21 incident reports, created specifically for, and collected, and  
22 maintained by a quality improvement committee are not subject to  
23 discovery or introduction into evidence in any civil action, and no  
24 person who was in attendance at a meeting of such committee or who  
25 participated in the creation, collection, or maintenance of  
26 information or documents specifically for the committee shall be  
27 permitted or required to testify in any civil action as to the  
28 content of such proceedings or the documents and information prepared  
29 specifically for the committee. This subsection does not preclude:  
30 (a) In any civil action, the discovery of the identity of persons  
31 involved in the medical care that is the basis of the civil action  
32 whose involvement was independent of any quality improvement  
33 activity; (b) in any civil action, the testimony of any person  
34 concerning the facts which form the basis for the institution of such  
35 proceedings of which the person had personal knowledge acquired  
36 independently of such proceedings; (c) in any civil action by a  
37 health care provider regarding the restriction or revocation of that  
38 individual's clinical or staff privileges, introduction into evidence  
39 information collected and maintained by quality improvement  
40 committees regarding such health care provider; (d) in any civil

1 action, disclosure of the fact that staff privileges were terminated  
2 or restricted, including the specific restrictions imposed, if any  
3 and the reasons for the restrictions; or (e) in any civil action,  
4 discovery and introduction into evidence of the patient's medical  
5 records required by regulation of the department of health to be made  
6 regarding the care and treatment received.

7 ~~((+6))~~ (7) Hospitals shall be granted access to information held  
8 by the medical quality assurance commission and the board of  
9 osteopathic medicine and surgery pertinent to decisions of the  
10 hospital regarding credentialing and recredentialing of  
11 practitioners.

12 ~~((+7))~~ (8) Violation of this section shall not be considered  
13 negligence per se.

14 NEW SECTION. **Sec. 7.** Sections 2 through 4 of this act take  
15 effect January 1, 2017.

16 NEW SECTION. **Sec. 8.** The legislature encourages health plans to  
17 adopt the requirements of sections 2 through 4 of this act prior to  
18 January 1, 2017. Therefore, nothing in this act prohibits a plan from  
19 adopting the requirements of sections 2 through 4 of this act prior  
20 to January 1, 2017.

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