

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5385

66th Legislature
2020 Regular Session

Passed by the Senate March 9, 2020
Yeas 47 Nays 1

President of the Senate

Passed by the House March 5, 2020
Yeas 94 Nays 3

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5385** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5385

AS AMENDED BY THE HOUSE

Passed Legislature - 2020 Regular Session

State of Washington

66th Legislature

2019 Regular Session

By Senate Health & Long Term Care (originally sponsored by Senators Becker, Cleveland, Braun, O'Ban, Wilson, L., Brown, Warnick, Zeiger, Bailey, and Van De Wege)

READ FIRST TIME 02/22/19.

1 AN ACT Relating to reimbursing for telemedicine services at the
2 same rate as in person; amending RCW 48.43.735, 41.05.700, 74.09.325,
3 and 28B.20.830; and declaring an emergency.

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

5 **Sec. 1.** RCW 48.43.735 and 2017 c 219 s 1 are each amended to
6 read as follows:

7 (1) (a) For health plans issued or renewed on or after January 1,
8 2017, a health carrier shall reimburse a provider for a health care
9 service provided to a covered person through telemedicine or store
10 and forward technology if:

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

13 ~~((b))~~ (ii) The health care service is medically necessary;

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

18 ~~((d))~~ (iv) The health care service is determined to be safely
19 and effectively provided through telemedicine or store and forward
20 technology according to generally accepted health care practices and
21 standards, and the technology used to provide the health care service

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

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

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

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

15 ~~(2) ((a) If the service is provided through store and forward~~
16 ~~technology there must be an associated office visit between the~~
17 ~~covered person and the referring health care provider. Nothing in~~
18 ~~this section prohibits the use of telemedicine for the associated~~
19 ~~office visit.~~

20 ~~(b))~~ 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 carrier and
23 the 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) Community mental health center;

31 (f) Skilled nursing facility;

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

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

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

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

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

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

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

14 (a) An originating site for professional fees;

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

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

19 (8) For purposes of this section:

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

23 (b) "Health care service" has the same meaning as in RCW
24 48.43.005;

25 (c) "Hospital" means a facility licensed under chapter 70.41,
26 71.12, or 72.23 RCW;

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

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

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

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

1 treatment. For purposes of this section only, "telemedicine" does not
2 include the use of audio-only telephone, facsimile, or email.

3 **Sec. 2.** RCW 41.05.700 and 2018 c 260 s 30 are each amended to
4 read as follows:

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

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

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

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

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

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

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

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

36 ~~(2) ((a) If the service is provided through store and forward~~
37 ~~technology there must be an associated office visit between the~~
38 ~~covered person and the referring health care provider. Nothing in~~

1 ~~this section prohibits the use of telemedicine for the associated~~
2 ~~office visit.~~

3 ~~(b))~~) For purposes of this section, reimbursement of store and
4 forward technology is available only for those covered services
5 specified in the negotiated agreement between the health plan and
6 health care provider.

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

9 (a) Hospital;

10 (b) Rural health clinic;

11 (c) Federally qualified health center;

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

13 (e) Community mental health center;

14 (f) Skilled nursing facility;

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

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

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

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

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

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

36 (a) An originating site for professional fees;

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

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

1 (8) For purposes of this section:

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

5 (b) "Health care service" has the same meaning as in RCW
6 48.43.005;

7 (c) "Hospital" means a facility licensed under chapter 70.41,
8 71.12, or 72.23 RCW;

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

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

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

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

24 **Sec. 3.** RCW 74.09.325 and 2017 c 219 s 3 are each amended to
25 read as follows:

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

31 ~~((a))~~ (i) The medicaid managed care plan in which the covered
32 person is enrolled provides coverage of the health care service when
33 provided in person by the provider;

34 ~~((b))~~ (ii) The health care service is medically necessary;

35 ~~((c))~~ (iii) The health care service is a service recognized as
36 an essential health benefit under section 1302(b) of the federal
37 patient protection and affordable care act in effect on January 1,
38 2015; and

1 ~~((d))~~ (iv) The health care service is determined to be safely
2 and effectively provided through telemedicine or store and forward
3 technology according to generally accepted health care practices and
4 standards, and the technology used to provide the health care service
5 meets the standards required by state and federal laws governing the
6 privacy and security of protected health information.

7 (b)(i) Except as provided in (b)(ii) of this subsection, upon
8 initiation or renewal of a contract with the Washington state health
9 care authority to administer a medicaid managed care plan, a managed
10 health care system shall reimburse a provider for a health care
11 service provided to a covered person through telemedicine at the same
12 rate as if the health care service was provided in person by the
13 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 for telemedicine services that differs
17 from the reimbursement rate for in-person services.

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

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

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

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

- 32 (a) Hospital;
- 33 (b) Rural health clinic;
- 34 (c) Federally qualified health center;
- 35 (d) Physician's or other health care provider's office;
- 36 (e) Community mental health center;
- 37 (f) Skilled nursing facility;
- 38 (g) Home or any location determined by the individual receiving
- 39 the service; or

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

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

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

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

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

22 (a) An originating site for professional fees;

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

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

27 (8) For purposes of this section:

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

31 (b) "Health care service" has the same meaning as in RCW
32 48.43.005;

33 (c) "Hospital" means a facility licensed under chapter 70.41,
34 71.12, or 72.23 RCW;

35 (d) "Managed health care system" means any health care
36 organization, including health care providers, insurers, health care
37 service contractors, health maintenance organizations, health
38 insuring organizations, or any combination thereof, that provides
39 directly or by contract health care services covered under this
40 chapter and rendered by licensed providers, on a prepaid capitated

1 basis and that meets the requirements of section 1903(m)(1)(A) of
2 Title XIX of the federal social security act or federal demonstration
3 waivers granted under section 1115(a) of Title XI of the federal
4 social security act;

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

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

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

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

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

26 **Sec. 4.** RCW 28B.20.830 and 2018 c 256 s 1 are each amended to
27 read as follows:

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

37 (2) By July 1, 2016, the collaborative shall be convened. The
38 collaborative shall develop recommendations on improving
39 reimbursement and access to services, including originating site

1 restrictions, provider to provider consultative models, and
2 technologies and models of care not currently reimbursed; identify
3 the existence of telemedicine best practices, guidelines, billing
4 requirements, and fraud prevention developed by recognized medical
5 and telemedicine organizations; and explore other priorities
6 identified by members of the collaborative. After review of existing
7 resources, the collaborative shall explore and make recommendations
8 on whether to create a technical assistance center to support
9 providers in implementing or expanding services delivered through
10 telemedicine technologies.

11 (3) The collaborative must submit an initial progress report by
12 December 1, 2016, with follow-up policy reports including
13 recommendations by December 1, 2017, December 1, 2018, and December
14 1, 2021. The reports shall be shared with the relevant professional
15 associations, governing boards or commissions, and the health care
16 committees of the legislature.

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

19 (a) Utilization;

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

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

24 (d) Ocular services.

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

27 ~~((5))~~ (6) The future of the collaborative shall be reviewed by
28 the legislature with consideration of ongoing technical assistance
29 needs and opportunities. The collaborative terminates December 31,
30 2021.

31 NEW SECTION. Sec. 5. This act is necessary for the immediate
32 preservation of the public peace, health, or safety, or support of
33 the state government and its existing public institutions, and takes
34 effect immediately.

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