

# HOUSE BILL REPORT

## ESHB 1821

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### As Amended by the Senate

**Title:** An act relating to the definition of established relationship for purposes of audio-only telemedicine.

**Brief Description:** Concerning the definition of established relationship for purposes of audio-only telemedicine.

**Sponsors:** House Committee on Health Care & Wellness (originally sponsored by Representatives Schmick, Riccelli, Cody and Graham).

#### **Brief History:**

##### **Committee Activity:**

Health Care & Wellness: 1/17/22, 1/26/22 [DPS].

##### **Floor Activity:**

Passed House: 2/8/22, 95-0.

Senate Amended.

Passed Senate: 3/1/22, 49-0.

House Refused to Concur.

Senate Receded.

Senate Amended.

Passed Senate: 3/8/22, 49-0.

#### **Brief Summary of Engrossed Substitute Bill**

- Changes the definition of "established relationship" for purposes of reimbursement for audio-only telemedicine.

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### HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Cody, Chair; Bateman, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Bronoske, Davis,

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Harris, Macri, Maycumber, Riccelli, Rude, Simmons, Stonier, Tharinger and Ybarra.

**Staff:** Jim Morishima (786-7191).

**Background:**

Health coverage offered by a health carrier, the Public Employees Benefits Board, the School Employees Benefits Board, a Medicaid managed care plan, or a behavioral health administrative services organization must reimburse providers for health care services provided through telemedicine or store-and-forward technology if:

- the services are covered services;
- the services are medically necessary;
- the services are essential health benefits under the federal Patient Protection and Affordable Care Act;
- the services are determined to be safely and effectively provided through telemedicine or store-and-forward technology according to generally accepted health care practices and standards; and
- the technology meets state and federal standards governing the privacy and security of protected health information.

Additional requirements apply for audio-only telemedicine, including that the provider have an established relationship with the patient. An established relationship exists if the person has had at least one in-person appointment within the past year with the audio-only telemedicine provider or a provider in the same clinic or the covered person was referred by another provider who has had at least one in-person appointment with the person within the past year and has given relevant medical information to the audio-only telemedicine provider. The established relationship requirement takes effect January 1, 2023.

In 2021 the Collaborative for the Advancement of Telemedicine (Collaborative) was directed to study the need for an established relationship for audio-only telemedicine. The Collaborative's recommendations included:

- changing the time period within which the previous appointment took place from one year to three years;
- allowing the previous appointment to take place via audio-video technology;
- allowing the appointment to be with a provider in the same medical group, in addition to the same clinic; and
- adding a requirement that the audio-only telemedicine provider have access to the patient's real-time or electronic medical record.

**Summary of Engrossed Substitute Bill:**

The definition of "established relationship" for purposes of audio-only telemedicine is changed by:

- expanding the period within which a previous appointment took place from one year

- to three years for behavioral health services and two years for all other health care services;
- allowing the previous appointment to take place via audio-video technology for behavioral health services—the appointment must still be in person for other health care services;
  - allowing the previous appointment to be with a provider in the same medical group or integrated delivery system, in addition to the same clinic; and
  - requiring, in all circumstances where an established relationship is required, that the audio-only telemedicine provider have access to sufficient health records to ensure safe, effective, and appropriate care services.

For purposes of the provisions in the definition relating to behavioral health, behavioral health services are services included in the essential health benefits category of "Mental Health and Substance Use Disorder Services, Including Behavioral Health Treatment."

**EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment: (1) allows a previous appointment to be conducted using audio-video telemedicine in order to demonstrate an established relationship for purposes of audio-only telemedicine reimbursement for non-behavioral health services and (2) expires this provision on January 1, 2024.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill clarifies the definition of "established relationship" and represents a compromise between different stakeholder positions. For many patients, there is no annual checkup, so extending the window to three years is helpful. Allowing the patient to be seen by a clinician in the same medical group is also helpful. This bill will improve patient access without sacrificing quality. The language about the health record should be tightened.

(Opposed) None.

(Other) The word "appointment" in this bill is concerning. Many providers see patients without an appointment, but those providers have established relationships with their patients. This part of the bill may cause reimbursement to be denied. Also, the term "health record" is problematic because there is no single health record. There are multiple health

records among multiple providers. The language about health records should be cleaned up. The two-year time extension is acceptable.

**Persons Testifying:** (In support) Representative Joe Schmick, prime sponsor; Tom Holt, ZoomCare; and Jeb Shepard, Washington State Medical Association.

(Other) Don Downing; and Lisa Thatcher, Washington State Hospital Association.

**Persons Signed In To Testify But Not Testifying:** None.