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**HOUSE BILL 1462**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Representatives Rule, Lekanoff, Slatter, Shewmake, Bergquist, Pollet, and Riccelli

AN ACT Relating to the total compensation for telemedicine services; amending RCW 48.43.735; and creating a new section.

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

NEW SECTION. **Sec.**  (1) The legislature finds that in 2020, the legislature enacted Engrossed Substitute Senate Bill No. 5385, which requires regulated health carriers, public employee and school employee health plans, and medicaid managed care plans to reimburse a provider for health care services provided through telemedicine at the same rate as health care services provided in person, unless an exception is met. However, the legislature finds that since its enactment there has been some controversy as to the meaning of the term rate.

(2) The legislature finds that the office of the insurance commissioner issued an interpretative statement on December 15, 2020, stating that beginning on January 1, 2021, the law requires health carriers to pay providers the same total compensation, also called "allowed amount", for telemedicine services as they would for in-person services, unless negotiation has been undertaken as allowed by the law.

(3) Therefore, the legislature intends to codify the office of the insurance commissioner's interpretive statement and confirm that the intent of the law is to require health carriers to pay providers the same total compensation for telemedicine services as they would for in-person services unless negotiation has been undertaken as allowed by the law.

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

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

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

(ii) The health care service is medically necessary;

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

(iv) The health care service is 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 used to provide the health care service meets the standards required by state and federal laws governing the privacy and security of protected health information.

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

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

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

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

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

(a) Hospital;

(b) Rural health clinic;

(c) Federally qualified health center;

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

(e) Community mental health center;

(f) Skilled nursing facility;

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

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

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

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

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

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

(a) An originating site for professional fees;

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

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

(8) For purposes of this section:

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

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

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

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

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

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

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

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

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