

**ESHB 1196** - S COMM AMD  
By Committee on Ways & Means

ADOPTED 04/10/2021

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 41.05.700 and 2020 c 92 s 2 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 (i) The plan provides coverage of the health care service when  
11 provided in person by the provider;

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

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

17 (iv) The health care service is determined to be safely and  
18 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; and

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

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

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

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

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

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

15 (a) Hospital;

16 (b) Rural health clinic;

17 (c) Federally qualified health center;

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

19 (e) (~~(Community mental health center)~~) Licensed or certified  
20 behavioral health agency;

21 (f) Skilled nursing facility;

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

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

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

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

37 (6) The plan may subject coverage of a telemedicine or store and  
38 forward technology health service under subsection (1) of this  
39 section to all terms and conditions of the plan including, but not  
40 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 (8)(a) If a provider intends to bill a patient or the patient's  
10 health plan for an audio-only telemedicine service, the provider must  
11 obtain patient consent for the billing in advance of the service  
12 being delivered.

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

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

33 (9) For purposes of this section:

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

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

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

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

6 (b) "Disciplining authority" has the same meaning as in RCW  
7 18.130.020;

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

20 (e) "Health care service" has the same meaning as in RCW  
21 48.43.005;

22 ~~((e))~~ (f) "Hospital" means a facility licensed under chapter  
23 70.41, 71.12, or 72.23 RCW;

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

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

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

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

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

3       (1) (a) For health plans issued or renewed on or after January 1,  
4 2017, a health carrier shall reimburse a provider for a health care  
5 service provided to a covered person through telemedicine or store  
6 and forward technology if:

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

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

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

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

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

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

28       (ii) Hospitals, hospital systems, telemedicine companies, and  
29 provider groups consisting of eleven or more providers may elect to  
30 negotiate (~~a reimbursement rate~~) an amount of compensation for  
31 telemedicine services that differs from the (~~reimbursement rate~~)  
32 amount of compensation 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) For purposes of this section, reimbursement of store and  
37 forward technology is available only for those covered services  
38 specified in the negotiated agreement between the health carrier and  
39 the 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 health carrier. A distant site, a hospital  
19 that is an originating site for audio-only telemedicine, or any other  
20 site not identified in subsection (3) of this section may not charge  
21 a facility fee.

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

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

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

33 (a) An originating site for professional fees;

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

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

38 (8) (a) If a provider intends to bill a patient or the patient's  
39 health plan for an audio-only telemedicine service, the provider must

1 obtain patient consent for the billing in advance of the service  
2 being delivered.

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

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

22 (9) For purposes of this section:

23 (a)(i) "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 (ii) For purposes of this section only, "audio-only telemedicine"  
29 does not include:

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

31 (B) 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 (b) "Disciplining authority" has the same meaning as in RCW  
36 18.130.020;

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

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

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

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

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

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

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

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

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

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

35       Unless the context clearly indicates otherwise, the following  
36 terms, whenever used in this chapter, shall be deemed to have the  
37 following meanings:

38       (1) "Aftercare" means the assistance provided by a lay caregiver  
39 to a patient under this chapter after the patient's discharge from a

1 hospital. The assistance may include, but is not limited to,  
2 assistance with activities of daily living, wound care, medication  
3 assistance, and the operation of medical equipment. "Aftercare"  
4 includes assistance only for conditions that were present at the time  
5 of the patient's discharge from the hospital. "Aftercare" does not  
6 include:

7 (a) Assistance related to conditions for which the patient did  
8 not receive medical care, treatment, or observation in the hospital;  
9 or

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

12 (2) (a) "Audio-only telemedicine" means the delivery of health  
13 care services through the use of audio-only technology, permitting  
14 real-time communication between the patient at the originating site  
15 and the provider, for the purpose of diagnosis, consultation, or  
16 treatment.

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

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

19 (ii) The delivery of health care services that are customarily  
20 delivered by audio-only technology and customarily not billed as  
21 separate services by the provider, such as the sharing of laboratory  
22 results.

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

24 ~~((3))~~ (4) "Discharge" means a patient's release from a hospital  
25 following the patient's admission to the hospital.

26 ~~((4))~~ (5) "Distant site" means the site at which a physician or  
27 other licensed provider, delivering a professional service, is  
28 physically located at the time the service is provided through  
29 telemedicine.

30 ~~((5))~~ (6) "Emergency care to victims of sexual assault" means  
31 medical examinations, procedures, and services provided by a hospital  
32 emergency room to a victim of sexual assault following an alleged  
33 sexual assault.

34 ~~((6))~~ (7) "Emergency contraception" means any health care  
35 treatment approved by the food and drug administration that prevents  
36 pregnancy, including but not limited to administering two increased  
37 doses of certain oral contraceptive pills within seventy-two hours of  
38 sexual contact.

39 ~~((7))~~ (8) "Hospital" means any institution, place, building, or  
40 agency which provides accommodations, facilities and services over a

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

24 ~~((8))~~ (9) "Lay caregiver" means any individual designated as  
25 such by a patient under this chapter who provides aftercare  
26 assistance to a patient in the patient's residence. "Lay caregiver"  
27 does not include a long-term care worker as defined in RCW  
28 74.39A.009.

29 ~~((9))~~ (10) "Originating site" means the physical location of a  
30 patient receiving health care services through telemedicine.

31 ~~((10))~~ (11) "Person" means any individual, firm, partnership,  
32 corporation, company, association, or joint stock association, and  
33 the legal successor thereof.

34 ~~((11))~~ (12) "Secretary" means the secretary of health.

35 ~~((12))~~ (13) "Sexual assault" has the same meaning as in RCW  
36 70.125.030.

37 ~~((13))~~ (14) "Telemedicine" means the delivery of health care  
38 services through the use of interactive audio and video technology,  
39 permitting real-time communication between the patient at the  
40 originating site and the provider, for the purpose of diagnosis,

1 consultation, or treatment. "Telemedicine" (~~does not include the use~~  
2 ~~of~~) includes audio-only (~~telephone~~) telemedicine, but does not  
3 include facsimile(~~r~~) or email.

4 (~~(14)~~) (15) "Victim of sexual assault" means a person who  
5 alleges or is alleged to have been sexually assaulted and who  
6 presents as a patient.

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

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

14 (a) The behavioral health administrative services organization or  
15 managed care organization in which the covered person is enrolled  
16 provides coverage of the behavioral health service when provided in  
17 person by the provider; (~~and~~)

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

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

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 provider. Nothing in this section prohibits  
24 the use of telemedicine for the associated office visit.

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

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

34 (4) Any originating site, other than a home, under subsection (3)  
35 of this section may charge a facility fee for infrastructure and  
36 preparation of the patient. Reimbursement must be subject to a  
37 negotiated agreement between the originating site and the behavioral  
38 health administrative services organization, or managed care  
39 organization, as applicable. A distant site, a hospital that is an

1 originating site for audio-only telemedicine, or any other site not  
2 identified in subsection (3) of this section may not charge a  
3 facility fee.

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

8 (6) Behavioral health administrative services organizations and  
9 managed care organizations may subject coverage of a telemedicine or  
10 store and forward technology behavioral health service under  
11 subsection (1) of this section to all terms and conditions of the  
12 behavioral health administrative services organization or managed  
13 care organization in which the covered person is enrolled, including,  
14 but not limited to, utilization review, prior authorization,  
15 deductible, copayment, or coinsurance requirements that are  
16 applicable to coverage of a comparable behavioral health care service  
17 provided in person.

18 (7) This section does not require a behavioral health  
19 administrative services organization or a managed care organization  
20 to reimburse:

21 (a) An originating site for professional fees;

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

24 (c) An originating site or provider when the site or provider is  
25 not a contracted provider.

26 (8) (a) If a provider intends to bill a patient, a behavioral  
27 health administrative services organization, or a managed care  
28 organization for an audio-only telemedicine service, the provider  
29 must obtain patient consent for the billing in advance of the service  
30 being delivered.

31 (b) If the health care authority has cause to believe that a  
32 provider has engaged in a pattern of unresolved violations of this  
33 subsection (8), the health care authority may submit information to  
34 the appropriate disciplining authority, as defined in RCW 18.130.020,  
35 for action. Prior to submitting information to the appropriate  
36 disciplining authority, the health care authority may provide the  
37 provider with an opportunity to cure the alleged violations or  
38 explain why the actions in question did not violate this subsection  
39 (8).

1 (c) If the provider has engaged in a pattern of unresolved  
2 violations of this subsection (8), the appropriate disciplining  
3 authority may levy a fine or cost recovery upon the provider in an  
4 amount not to exceed the applicable statutory amount per violation  
5 and take other action as permitted under the authority of the  
6 disciplining authority. Upon completion of its review of any  
7 potential violation submitted by the health care authority or  
8 initiated directly by an enrollee, the disciplining authority shall  
9 notify the health care authority of the results of the review,  
10 including whether the violation was substantiated and any enforcement  
11 action taken as a result of a finding of a substantiated violation.

12 (9) For purposes of this section:

13 (a)(i) "Audio-only telemedicine" means the delivery of health  
14 care services through the use of audio-only technology, permitting  
15 real-time communication between the patient at the originating site  
16 and the provider, for the purpose of diagnosis, consultation, or  
17 treatment.

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

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

21 (B) The delivery of health care services that are customarily  
22 delivered by audio-only technology and customarily not billed as  
23 separate services by the provider, such as the sharing of laboratory  
24 results.

25 (b) "Disciplining authority" has the same meaning as in RCW  
26 18.130.020;

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

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

39 (e) "Hospital" means a facility licensed under chapter 70.41,  
40 71.12, or 72.23 RCW;

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

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

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

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

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

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

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

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

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

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

35       (iv) The health care service is determined to be safely and  
36 effectively provided through telemedicine or store and forward  
37 technology according to generally accepted health care practices and  
38 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; and

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

5 (b) (i) Except as provided in (b) (ii) of this subsection, upon  
6 initiation or renewal of a contract with the Washington state health  
7 care authority to administer a medicaid managed care plan, a managed  
8 health care system shall reimburse a provider for a health care  
9 service provided to a covered person through telemedicine (~~(at)~~) the  
10 same (~~(rate as)~~) amount of compensation the managed health care  
11 system would pay the provider if the health care service was provided  
12 in person by the provider.

13 (ii) Hospitals, hospital systems, telemedicine companies, and  
14 provider groups consisting of eleven or more providers may elect to  
15 negotiate (~~(a reimbursement rate)~~) an amount of compensation for  
16 telemedicine services that differs from the (~~(reimbursement rate)~~)  
17 amount of compensation 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 (iv) A rural health clinic shall be reimbursed for audio-only  
22 telemedicine at the rural health clinic encounter rate.

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

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

29 (a) Hospital;

30 (b) Rural health clinic;

31 (c) Federally qualified health center;

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

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

35 (f) Skilled nursing facility;

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

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

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

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

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

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

21 (a) An originating site for professional fees;

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

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

26 (8) (a) If a provider intends to bill a patient or a managed  
27 health care system for an audio-only telemedicine service, the  
28 provider must obtain patient consent for the billing in advance of  
29 the service being delivered and comply with all rules created by the  
30 authority related to restrictions on billing medicaid recipients. The  
31 authority may submit information on any potential violations of this  
32 subsection to the appropriate disciplining authority, as defined in  
33 RCW 18.130.020 or take contractual actions against the provider's  
34 agreement for participation in the medicaid program, or both.

35 (b) If the health care authority has cause to believe that a  
36 provider has engaged in a pattern of unresolved violations of this  
37 subsection (8), the health care authority may submit information to  
38 the appropriate disciplining authority for action. Prior to  
39 submitting information to the appropriate disciplining authority, the  
40 health care authority may provide the provider with an opportunity to

1 cure the alleged violations or explain why the actions in question  
2 did not violate this subsection (8).

3 (c) If the provider has engaged in a pattern of unresolved  
4 violations of this subsection (8), the appropriate disciplining  
5 authority may levy a fine or cost recovery upon the provider in an  
6 amount not to exceed the applicable statutory amount per violation  
7 and take other action as permitted under the authority of the  
8 disciplining authority. Upon completion of its review of any  
9 potential violation submitted by the health care authority or  
10 initiated directly by an enrollee, the disciplining authority shall  
11 notify the health care authority of the results of the review,  
12 including whether the violation was substantiated and any enforcement  
13 action taken as a result of a finding of a substantiated violation.

14 (9) For purposes of this section:

15 (a)(i) "Audio-only telemedicine" means the delivery of health  
16 care services through the use of audio-only technology, permitting  
17 real-time communication between the patient at the originating site  
18 and the provider, for the purpose of diagnosis, consultation, or  
19 treatment.

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

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

23 (B) The delivery of health care services that are customarily  
24 delivered by audio-only technology and customarily not billed as  
25 separate services by the provider, such as the sharing of laboratory  
26 results.

27 (b) "Disciplining authority" has the same meaning as in RCW  
28 18.130.020;

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

32 ~~((b))~~ (d) "Established relationship" means the covered person  
33 has had at least one in-person appointment within the past year with  
34 the provider providing audio-only telemedicine or with a provider  
35 employed at the same clinic as the provider providing audio-only  
36 telemedicine or the covered person was referred to the provider  
37 providing audio-only telemedicine by another provider who has had at  
38 least one in-person appointment with the covered person within the  
39 past year and has provided relevant medical information to the  
40 provider providing audio-only telemedicine.

1       (e) "Health care service" has the same meaning as in RCW  
2 48.43.005;

3       ~~((e))~~ (f) "Hospital" means a facility licensed under chapter  
4 70.41, 71.12, or 72.23 RCW;

5       ~~((d))~~ (g) "Managed health care system" means any health care  
6 organization, including health care providers, insurers, health care  
7 service contractors, health maintenance organizations, health  
8 insuring organizations, or any combination thereof, that provides  
9 directly or by contract health care services covered under this  
10 chapter and rendered by licensed providers, on a prepaid capitated  
11 basis and that meets the requirements of section 1903(m)(1)(A) of  
12 Title XIX of the federal social security act or federal demonstration  
13 waivers granted under section 1115(a) of Title XI of the federal  
14 social security act;

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

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

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

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

32       ~~((9) To measure the impact on access to care for underserved  
33 communities and costs to the state and the medicaid managed health  
34 care system for reimbursement of telemedicine services, the  
35 Washington state health care authority, using existing data and  
36 resources, shall provide a report to the appropriate policy and  
37 fiscal committees of the legislature no later than December 31,  
38 2018.))~~

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

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

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

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

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

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

19       (ii) The delivery of health care services that are customarily  
20   delivered by audio-only technology and customarily not billed as  
21   separate services by the provider, such as the sharing of laboratory  
22   results.

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

25       The following conduct, acts, or conditions constitute  
26   unprofessional conduct for any license holder under the jurisdiction  
27   of this chapter:

28       (1) The commission of any act involving moral turpitude,  
29   dishonesty, or corruption relating to the practice of the person's  
30   profession, whether the act constitutes a crime or not. If the act  
31   constitutes a crime, conviction in a criminal proceeding is not a  
32   condition precedent to disciplinary action. Upon such a conviction,  
33   however, the judgment and sentence is conclusive evidence at the  
34   ensuing disciplinary hearing of the guilt of the license holder of  
35   the crime described in the indictment or information, and of the  
36   person's violation of the statute on which it is based. For the  
37   purposes of this section, conviction includes all instances in which  
38   a plea of guilty or nolo contendere is the basis for the conviction  
39   and all proceedings in which the sentence has been deferred or

1 suspended. Nothing in this section abrogates rights guaranteed under  
2 chapter 9.96A RCW;

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

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

6 (4) Incompetence, negligence, or malpractice which results in  
7 injury to a patient or which creates an unreasonable risk that a  
8 patient may be harmed. The use of a nontraditional treatment by  
9 itself shall not constitute unprofessional conduct, provided that it  
10 does not result in injury to a patient or create an unreasonable risk  
11 that a patient may be harmed;

12 (5) Suspension, revocation, or restriction of the individual's  
13 license to practice any health care profession by competent authority  
14 in any state, federal, or foreign jurisdiction, a certified copy of  
15 the order, stipulation, or agreement being conclusive evidence of the  
16 revocation, suspension, or restriction;

17 (6) Except when authorized by RCW 18.130.345, the possession,  
18 use, prescription for use, or distribution of controlled substances  
19 or legend drugs in any way other than for legitimate or therapeutic  
20 purposes, diversion of controlled substances or legend drugs, the  
21 violation of any drug law, or prescribing controlled substances for  
22 oneself;

23 (7) Violation of any state or federal statute or administrative  
24 rule regulating the profession in question, including any statute or  
25 rule defining or establishing standards of patient care or  
26 professional conduct or practice;

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

28 (a) Not furnishing any papers, documents, records, or other  
29 items;

30 (b) Not furnishing in writing a full and complete explanation  
31 covering the matter contained in the complaint filed with the  
32 disciplining authority;

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

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

1 (9) Failure to comply with an order issued by the disciplining  
2 authority or a stipulation for informal disposition entered into with  
3 the disciplining authority;

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

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

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

9 (13) Misrepresentation or fraud in any aspect of the conduct of  
10 the business or profession;

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

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

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

18 (17) Conviction of any gross misdemeanor or felony relating to  
19 the practice of the person's profession. For the purposes of this  
20 subsection, conviction includes all instances in which a plea of  
21 guilty or nolo contendere is the basis for conviction and all  
22 proceedings in which the sentence has been deferred or suspended.  
23 Nothing in this section abrogates rights guaranteed under chapter  
24 9.96A RCW;

25 (18) The procuring, or aiding or abetting in procuring, a  
26 criminal abortion;

27 (19) The offering, undertaking, or agreeing to cure or treat  
28 disease by a secret method, procedure, treatment, or medicine, or the  
29 treating, operating, or prescribing for any health condition by a  
30 method, means, or procedure which the licensee refuses to divulge  
31 upon demand of the disciplining authority;

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

34 (21) Violation of chapter 19.68 RCW or a pattern of violations of  
35 RCW 41.05.700(8), 48.43.735(8), 48.49.020 ((e)), 48.49.030,  
36 71.24.335(8), or 74.09.325(8);

37 (22) Interference with an investigation or disciplinary  
38 proceeding by willful misrepresentation of facts before the  
39 disciplining authority or its authorized representative, or by the  
40 use of threats or harassment against any patient or witness to

1 prevent them from providing evidence in a disciplinary proceeding or  
2 any other legal action, or by the use of financial inducements to any  
3 patient or witness to prevent or attempt to prevent him or her from  
4 providing evidence in a disciplinary proceeding;

5 (23) Current misuse of:

6 (a) Alcohol;

7 (b) Controlled substances; or

8 (c) Legend drugs;

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

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

18 (26) Violation of RCW 18.130.420;

19 (27) Performing conversion therapy on a patient under age  
20 eighteen;

21 (28) Violation of RCW 18.130.430.

22 NEW SECTION. **Sec. 8.** (1) The insurance commissioner, in  
23 collaboration with the Washington state telehealth collaborative and  
24 the health care authority, shall study and make recommendations  
25 regarding:

26 (a) Preliminary utilization trends for audio-only telemedicine;

27 (b) Qualitative data from health carriers, including medicaid  
28 managed care organizations, on the burden of compliance and  
29 enforcement requirements for audio-only telemedicine;

30 (c) Preliminary information regarding whether requiring  
31 reimbursement for audio-only telemedicine has affected the incidence  
32 of fraud;

33 (d) Proposed methods to measure the impact of audio-only  
34 telemedicine on access to health care services for historically  
35 underserved communities and geographic areas;

36 (e) An evaluation of the relative costs to providers and  
37 facilities of providing audio-only telemedicine services as compared  
38 to audio-video telemedicine services and in-person services; and

1 (f) Any other issues the insurance commissioner deems  
2 appropriate.

3 (2) The insurance commissioner must report his or her findings  
4 and recommendations to the appropriate committees of the legislature  
5 by November 15, 2023.

6 (3) This section expires January 1, 2024.

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

9 (1) The collaborative for the advancement of telemedicine is  
10 created to enhance the understanding and use of health services  
11 provided through telemedicine and other similar models in Washington  
12 state. The collaborative shall be hosted by the University of  
13 Washington telehealth services and shall be comprised of one member  
14 from each of the two largest caucuses of the senate and the house of  
15 representatives, and representatives from the academic community,  
16 hospitals, clinics, and health care providers in primary care and  
17 specialty practices, carriers, and other interested parties.

18 (2) By July 1, 2016, the collaborative shall be convened. The  
19 collaborative shall develop recommendations on improving  
20 reimbursement and access to services, including originating site  
21 restrictions, provider to provider consultative models, and  
22 technologies and models of care not currently reimbursed; identify  
23 the existence of telemedicine best practices, guidelines, billing  
24 requirements, and fraud prevention developed by recognized medical  
25 and telemedicine organizations; and explore other priorities  
26 identified by members of the collaborative. After review of existing  
27 resources, the collaborative shall explore and make recommendations  
28 on whether to create a technical assistance center to support  
29 providers in implementing or expanding services delivered through  
30 telemedicine technologies.

31 (3) The collaborative must submit an initial progress report by  
32 December 1, 2016, with follow-up policy reports including  
33 recommendations by December 1, 2017, December 1, 2018, and December  
34 1, 2021. The reports shall be shared with the relevant professional  
35 associations, governing boards or commissions, and the health care  
36 committees of the legislature.

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

39 (a) Utilization;

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

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

5 (d) Ocular services.

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

8 (6) The collaborative must study the need for an established  
9 patient/provider relationship before providing audio-only  
10 telemedicine, including considering what types of services may be  
11 provided without an established relationship. By December 1, 2021,  
12 the collaborative must submit a report to the legislature on its  
13 recommendations regarding the need for an established relationship  
14 for audio-only telemedicine.

15 (7) The future of the collaborative shall be reviewed by the  
16 legislature with consideration of ongoing technical assistance needs  
17 and opportunities. The collaborative terminates December 31, ((2021))  
18 2023.

19 NEW SECTION. Sec. 10. If any part of this act is found to be in  
20 conflict with federal requirements that are a prescribed condition to  
21 the allocation of federal funds to the state, the conflicting part of  
22 this act is inoperative solely to the extent of the conflict and with  
23 respect to the agencies directly affected, and this finding does not  
24 affect the operation of the remainder of this act in its application  
25 to the agencies concerned. Rules adopted under this act must meet  
26 federal requirements that are a necessary condition to the receipt of  
27 federal funds by the state. Nothing in this act alters the  
28 requirement for the health care authority to report potential fraud  
29 to the medicaid fraud control division of the Washington attorney  
30 general's office under 42 C.F.R. 455.21."

**ESHB 1196** - S COMM AMD

By Committee on Ways & Means

**ADOPTED 04/10/2021**

31 On page 1, line 1 of the title, after "telemedicine;" strike the  
32 remainder of the title and insert "amending RCW 41.05.700, 48.43.735,  
33 70.41.020, 71.24.335, 74.09.325, 18.130.180, and 28B.20.830; adding a

1 new section to chapter 74.09 RCW; creating new sections; and  
2 providing an expiration date."

EFFECT: (1) Directs the telemedicine collaborative to study the need for an established relationship before providing audio-only telemedicine and report to the Legislature by December 1, 2021.

(2) Clarifies that medicaid patients will not be billed for audio-only telemedicine visits.

(3) Clarifies that this act does not alter the Health Care Authority's responsibility to report potential Medicaid fraud to the Attorney General's Office.

--- END ---