

ESHB 1821 - S AMD 1485

By Senator Muzzall

ADOPTED 03/08/2022

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

3 **"Sec. 1.** RCW 41.05.700 and 2021 c 157 s 1 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 (iv) The health care service is determined to be safely and
17 effectively provided through telemedicine or store and forward
18 technology according to generally accepted health care practices and
19 standards, and the technology used to provide the health care service
20 meets the standards required by state and federal laws governing the
21 privacy and security of protected health information; and

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

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

31 (ii) Hospitals, hospital systems, telemedicine companies, and
32 provider groups consisting of eleven or more providers may elect to

1 negotiate an amount of compensation for telemedicine services that
2 differs from the amount of compensation for in-person services.

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

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

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

12 (a) Hospital;

13 (b) Rural health clinic;

14 (c) Federally qualified health center;

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

16 (e) Licensed or certified behavioral health agency;

17 (f) Skilled nursing facility;

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

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

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

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

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

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

40 (a) An originating site for professional fees;

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

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

5 (8)(a) If a provider intends to bill a patient or the patient's
6 health plan for an audio-only telemedicine service, the provider must
7 obtain patient consent for the billing in advance of the service
8 being delivered.

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

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

29 (9) For purposes of this section:

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

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

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

38 (B) The delivery of health care services that are customarily
39 delivered by audio-only technology and customarily not billed as

1 separate services by the provider, such as the sharing of laboratory
2 results;

3 (b) "Disciplining authority" has the same meaning as in RCW
4 18.130.020;

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

8 (d) "Established relationship" means the provider providing
9 audio-only telemedicine has access to sufficient health records to
10 ensure safe, effective, and appropriate care services and:

11 (i) For health care services included in the essential health
12 benefits category of mental health and substance use disorder
13 services, including behavioral health treatment:

14 (A) The covered person has had, within the past three years, at
15 least one in-person appointment (~~(within the past year)~~), or at least
16 one real-time interactive appointment using both audio and video
17 technology, with the provider providing audio-only telemedicine or
18 with a provider employed at the same medical group, at the same
19 clinic, or by the same integrated delivery system operated by a
20 carrier licensed under chapter 48.44 or 48.46 RCW as the provider
21 providing audio-only telemedicine; or ((the))

22 (B) The covered person was referred to the provider providing
23 audio-only telemedicine by another provider who has had, within the
24 past three years, at least one in-person appointment, or at least one
25 real-time interactive appointment using both audio and video
26 technology, with the covered person (~~(within the past year)~~) and has
27 provided relevant medical information to the provider providing
28 audio-only telemedicine;

29 (ii) For any other health care service:

30 (A) The covered person has had, within the past two years, at
31 least one in-person appointment, or, until January 1, 2024, at least
32 one real-time interactive appointment using both audio and video
33 technology, with the provider providing audio-only telemedicine or
34 with a provider employed at the same medical group, at the same
35 clinic, or by the same integrated delivery system operated by a
36 carrier licensed under chapter 48.44 or 48.46 RCW as the provider
37 providing audio-only telemedicine; or

38 (B) The covered person was referred to the provider providing
39 audio-only telemedicine by another provider who has had, within the
40 past two years, at least one in-person appointment, or, until January

1 1, 2024, at least one real-time interactive appointment using both
2 audio and video technology, with the covered person and has provided
3 relevant medical information to the provider providing audio-only
4 telemedicine;

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

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

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

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

12 (i) "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 (j) "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" includes
23 audio-only telemedicine, but does not include facsimile or email.

24 **Sec. 2.** RCW 48.43.735 and 2021 c 157 s 2 are each amended to
25 read as follows:

26 (1)(a) For health plans issued or renewed on or after January 1,
27 2017, a health carrier shall reimburse a provider for a health care
28 service provided to a covered person through telemedicine or store
29 and forward technology if:

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

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

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

36 (iv) The health care service is determined to be safely and
37 effectively provided through telemedicine or store and forward
38 technology according to generally accepted health care practices and
39 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, for
6 health plans issued or renewed on or after January 1, 2021, a health
7 carrier shall reimburse a provider for a health care service provided
8 to a covered person through telemedicine the same amount of
9 compensation the carrier would pay the provider if the health care
10 service was provided in person by the provider.

11 (ii) Hospitals, hospital systems, telemedicine companies, and
12 provider groups consisting of eleven or more providers may elect to
13 negotiate an amount of compensation for telemedicine services that
14 differs from the amount of compensation for in-person services.

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

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

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

24 (a) Hospital;

25 (b) Rural health clinic;

26 (c) Federally qualified health center;

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

28 (e) Licensed or certified behavioral health agency;

29 (f) Skilled nursing facility;

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

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

34 (4) Except for subsection (3)(g) of this section, any originating
35 site under subsection (3) of this section may charge a facility fee
36 for infrastructure and preparation of the patient. Reimbursement for
37 a facility fee must be subject to a negotiated agreement between the
38 originating site and the health carrier. A distant site, a hospital
39 that is an originating site for audio-only telemedicine, 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)(a) If a provider intends to bill a patient or the patient's
20 health plan for an audio-only telemedicine service, the provider must
21 obtain patient consent for the billing in advance of the service
22 being delivered.

23 (b) If the commissioner has cause to believe that a provider has
24 engaged in a pattern of unresolved violations of this subsection (8),
25 the commissioner may submit information to the appropriate
26 disciplining authority, as defined in RCW 18.130.020, for action.
27 Prior to submitting information to the appropriate disciplining
28 authority, the commissioner may provide the provider with an
29 opportunity to cure the alleged violations or explain why the actions
30 in question did not violate this subsection (8).

31 (c) If the provider has engaged in a pattern of unresolved
32 violations of this subsection (8), the appropriate disciplining
33 authority may levy a fine or cost recovery upon the provider in an
34 amount not to exceed the applicable statutory amount per violation
35 and take other action as permitted under the authority of the
36 disciplining authority. Upon completion of its review of any
37 potential violation submitted by the commissioner or initiated
38 directly by an enrollee, the disciplining authority shall notify the
39 commissioner of the results of the review, including whether the

1 violation was substantiated and any enforcement action taken as a
2 result of a finding of a substantiated violation.

3 (9) For purposes of this section:

4 (a) (i) "Audio-only telemedicine" means the delivery of health
5 care services through the use of audio-only technology, permitting
6 real-time communication between the patient at the originating site
7 and the provider, for the purpose of diagnosis, consultation, or
8 treatment.

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

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

12 (B) The delivery of health care services that are customarily
13 delivered by audio-only technology and customarily not billed as
14 separate services by the provider, such as the sharing of laboratory
15 results;

16 (b) "Disciplining authority" has the same meaning as in RCW
17 18.130.020;

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

21 (d) "Established relationship" means the provider providing
22 audio-only telemedicine has access to sufficient health records to
23 ensure safe, effective, and appropriate care services and:

24 (i) For health care services included in the essential health
25 benefits category of mental health and substance use disorder
26 services, including behavioral health treatment:

27 (A) The covered person has had, within the past three years, at
28 least one in-person appointment ((within the past year)), or at least
29 one real-time interactive appointment using both audio and video
30 technology, with the provider providing audio-only telemedicine or
31 with a provider employed at the same medical group, at the same
32 clinic, or by the same integrated delivery system operated by a
33 carrier licensed under chapter 48.44 or 48.46 RCW as the provider
34 providing audio-only telemedicine; or ((the))

35 (B) The covered person was referred to the provider providing
36 audio-only telemedicine by another provider who has had, within the
37 past three years, at least one in-person appointment, or at least one
38 real-time interactive appointment using both audio and video
39 technology, with the covered person ((within the past year)) and has

1 provided relevant medical information to the provider providing
2 audio-only telemedicine;

3 (ii) For any other health care service:

4 (A) The covered person has had, within the past two years, at
5 least one in-person appointment, or, until January 1, 2024, at least
6 one real-time interactive appointment using both audio and video
7 technology, with the provider providing audio-only telemedicine or
8 with a provider employed at the same medical group, at the same
9 clinic, or by the same integrated delivery system operated by a
10 carrier licensed under chapter 48.44 or 48.46 RCW as the provider
11 providing audio-only telemedicine; or

12 (B) The covered person was referred to the provider providing
13 audio-only telemedicine by another provider who has had, within the
14 past two years, at least one in-person appointment, or, until January
15 1, 2024, at least one real-time interactive appointment using both
16 audio and video technology, with the covered person and has provided
17 relevant medical information to the provider providing audio-only
18 telemedicine;

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

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

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

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

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

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

38 ~~((9) — [(10)])~~ (10) The commissioner may adopt any rules
39 necessary to implement this section.

1 **Sec. 3.** RCW 71.24.335 and 2021 c 157 s 4 and 2021 c 100 s 1 are
2 each reenacted and amended to read as follows:

3 (1) Upon initiation or renewal of a contract with the authority,
4 behavioral health administrative services organizations and managed
5 care organizations shall reimburse a provider for a behavioral health
6 service provided to a covered person through telemedicine or store
7 and forward technology if:

8 (a) The behavioral health administrative services organization or
9 managed care organization in which the covered person is enrolled
10 provides coverage of the behavioral health service when provided in
11 person by the provider;

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

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

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

19 (b) For purposes of this section, reimbursement of store and
20 forward technology is available only for those services specified in
21 the negotiated agreement between the behavioral health administrative
22 services organization, or managed care organization, and the
23 provider.

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

28 (4) Any originating site, other than a home, under subsection (3)
29 of this section may charge a facility fee for infrastructure and
30 preparation of the patient. Reimbursement must be subject to a
31 negotiated agreement between the originating site and the behavioral
32 health administrative services organization, or managed care
33 organization, as applicable. A distant site, a hospital that is an
34 originating site for audio-only telemedicine, or any other site not
35 identified in subsection (3) of this section may not charge a
36 facility fee.

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

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

11 (7) This section does not require a behavioral health
12 administrative services organization or a managed care organization
13 to reimburse:

14 (a) An originating site for professional fees;

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

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

19 (8)(a) If a provider intends to bill a patient, a behavioral
20 health administrative services organization, or a managed care
21 organization for an audio-only telemedicine service, the provider
22 must obtain patient consent for the billing in advance of the service
23 being delivered.

24 (b) If the health care authority has cause to believe that a
25 provider has engaged in a pattern of unresolved violations of this
26 subsection (8), the health care authority may submit information to
27 the appropriate disciplining authority, as defined in RCW 18.130.020,
28 for action. Prior to submitting information to the appropriate
29 disciplining authority, the health care authority may provide the
30 provider with an opportunity to cure the alleged violations or
31 explain why the actions in question did not violate this subsection
32 (8).

33 (c) If the provider has engaged in a pattern of unresolved
34 violations of this subsection (8), the appropriate disciplining
35 authority may levy a fine or cost recovery upon the provider in an
36 amount not to exceed the applicable statutory amount per violation
37 and take other action as permitted under the authority of the
38 disciplining authority. Upon completion of its review of any
39 potential violation submitted by the health care authority or
40 initiated directly by an enrollee, the disciplining authority shall

1 notify the health care authority of the results of the review,
2 including whether the violation was substantiated and any enforcement
3 action taken as a result of a finding of a substantiated violation.

4 (9) For purposes of this section:

5 (a) (i) "Audio-only telemedicine" means the delivery of health
6 care services through the use of audio-only technology, permitting
7 real-time communication between the patient at the originating site
8 and the provider, for the purpose of diagnosis, consultation, or
9 treatment.

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

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

13 (B) The delivery of health care services that are customarily
14 delivered by audio-only technology and customarily not billed as
15 separate services by the provider, such as the sharing of laboratory
16 results;

17 (b) "Disciplining authority" has the same meaning as in RCW
18 18.130.020;

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

22 (d) "Established relationship" means the provider providing
23 audio-only telemedicine has access to sufficient health records to
24 ensure safe, effective, and appropriate care services and:

25 (i) The covered person has had, within the past three years, at
26 least one in-person appointment ((within the past year)), or at least
27 one real-time interactive appointment using both audio and video
28 technology, with the provider providing audio-only telemedicine or
29 with a provider employed at the same medical group, at the same
30 clinic, or by the same integrated delivery system operated by a
31 carrier licensed under chapter 48.44 or 48.46 RCW as the provider
32 providing audio-only telemedicine; or ((the))

33 (ii) The covered person was referred to the provider providing
34 audio-only telemedicine by another provider who has had, within the
35 past three years, at least one in-person appointment, or at least one
36 real-time interactive appointment using both audio and video
37 technology, with the covered person ((within the past year)) and has
38 provided relevant medical information to the provider providing
39 audio-only telemedicine;

1 (e) "Hospital" means a facility licensed under chapter 70.41,
2 71.12, or 72.23 RCW;

3 (f) "Originating site" means the physical location of a patient
4 receiving behavioral health services through telemedicine;

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

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

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

19 (~~(9)~~—~~{(10)}~~) (10) The authority must adopt rules as necessary
20 to implement the provisions of this section.

21 **Sec. 4.** RCW 74.09.325 and 2021 c 157 s 5 are each amended to
22 read as follows:

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

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

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

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

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 the same
10 amount of compensation the managed health care system would pay the
11 provider if the health care service was provided in person by the
12 provider.

13 (ii) Hospitals, hospital systems, telemedicine companies, and
14 provider groups consisting of eleven or more providers may elect to
15 negotiate an amount of compensation for telemedicine services that
16 differs from the amount of compensation for in-person services.

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

20 (iv) A rural health clinic shall be reimbursed for audio-only
21 telemedicine at the rural health clinic encounter rate.

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

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

28 (a) Hospital;

29 (b) Rural health clinic;

30 (c) Federally qualified health center;

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

32 (e) Licensed or certified behavioral health agency;

33 (f) Skilled nursing facility;

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

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

38 (4) Except for subsection (3) (g) of this section, any originating
39 site under subsection (3) of this section may charge a facility fee
40 for infrastructure and preparation of the patient. Reimbursement for

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

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

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

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

18 (a) An originating site for professional fees;

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

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

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

33 (b) If the health care authority has cause to believe that a
34 provider has engaged in a pattern of unresolved violations of this
35 subsection (8), the health care authority may submit information to
36 the appropriate disciplining authority for action. Prior to
37 submitting information to the appropriate disciplining authority, the
38 health care authority may provide the provider with an opportunity to
39 cure the alleged violations or explain why the actions in question
40 did not violate this subsection (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 (d) "Established relationship" means the provider providing
31 audio-only telemedicine has access to sufficient health records to
32 ensure safe, effective, and appropriate care services and:

33 (i) For health care services included in the essential health
34 benefits category of mental health and substance use disorder
35 services, including behavioral health treatment:

36 (A) The covered person has had, within the past three years, at
37 least one in-person appointment ((within the past year)), or at least
38 one real-time interactive appointment using both audio and video
39 technology, with the provider providing audio-only telemedicine or
40 with a provider employed at the same medical group, at the same

1 clinic, or by the same integrated delivery system operated by a
2 carrier licensed under chapter 48.44 or 48.46 RCW as the provider
3 providing audio-only telemedicine; or ((the))

4 (B) The covered person was referred to the provider providing
5 audio-only telemedicine by another provider who has had, within the
6 past three years, at least one in-person appointment, or at least one
7 real-time interactive appointment using both audio and video
8 technology, with the covered person ((within the past year)) and has
9 provided relevant medical information to the provider providing
10 audio-only telemedicine;

11 (ii) For any other health care service:

12 (A) The covered person has had, within the past two years, at
13 least one in-person appointment, or, until January 1, 2024, at least
14 one real-time interactive appointment using both audio and video
15 technology, with the provider providing audio-only telemedicine or
16 with a provider employed at the same medical group, at the same
17 clinic, or by the same integrated delivery system operated by a
18 carrier licensed under chapter 48.44 or 48.46 RCW as the provider
19 providing audio-only telemedicine; or

20 (B) The covered person was referred to the provider providing
21 audio-only telemedicine by another provider who has had, within the
22 past two years, at least one in-person appointment, or, until January
23 1, 2024, at least one real-time interactive appointment using both
24 audio and video technology, with the covered person and has provided
25 relevant medical information to the provider providing audio-only
26 telemedicine;

27 (e) "Health care service" has the same meaning as in RCW
28 48.43.005;

29 (f) "Hospital" means a facility licensed under chapter 70.41,
30 71.12, or 72.23 RCW;

31 (g) "Managed health care system" means any health care
32 organization, including health care providers, insurers, health care
33 service contractors, health maintenance organizations, health
34 insuring organizations, or any combination thereof, that provides
35 directly or by contract health care services covered under this
36 chapter and rendered by licensed providers, on a prepaid capitated
37 basis and that meets the requirements of section 1903(m)(1)(A) of
38 Title XIX of the federal social security act or federal demonstration
39 waivers granted under section 1115(a) of Title XI of the federal
40 social security act;

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

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

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

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

16 NEW SECTION. **Sec. 5.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

20 NEW SECTION. **Sec. 6.** If any part of this act is found to be in
21 conflict with federal requirements that are a prescribed condition to
22 the allocation of federal funds to the state, the conflicting part of
23 this act is inoperative solely to the extent of the conflict and with
24 respect to the agencies directly affected, and this finding does not
25 affect the operation of the remainder of this act in its application
26 to the agencies concerned. Rules adopted under this act must meet
27 federal requirements that are a necessary condition to the receipt of
28 federal funds by the state."

ESHB 1821 - S AMD 1485
By Senator Muzzall

ADOPTED 03/08/2022

29 On page 1, line 2 of the title, after "telemedicine;" strike the
30 remainder of the title and insert "amending RCW 41.05.700, 48.43.735,
31 and 74.09.325; reenacting and amending RCW 71.24.335; and creating a
32 new section."

EFFECT: Modifies the definition of "established relationship" to allow a relationship to be established for physical health services through a telemedicine visit that includes both audio and video technology until January 1, 2024.

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