

HOUSE BILL REPORT

ESSB 5481

As Passed House - Amended:

March 1, 2024

Title: An act relating to the uniform law commission's uniform telehealth act.

Brief Description: Concerning the uniform law commission's uniform telehealth act.

Sponsors: Senate Committee on Health & Long Term Care (originally sponsored by Senators Cleveland and Pedersen; by request of Uniform Law Commission).

Brief History:

Committee Activity:

Health Care & Wellness: 2/16/24, 2/21/24 [DPA].

Floor Activity:

Passed House: 3/1/24, 94-0.

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Specifies the circumstances in which telehealth services may be provided to patients in Washington.
- Allows a provider-patient relationship to be established through telehealth.
- Renames and extends the Collaborative for the Advancement of Telemedicine (Collaborative) and directs the Collaborative to review a proposal to allow out-of-state providers to register to provide telehealth services to patients in this state.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass as amended. Signed by 17 members: Representatives Riccelli, Chair; Bateman, Vice Chair; Schmick, Ranking Minority Member; Hutchins, Assistant

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

Ranking Minority Member; Bronoske, Caldier, Davis, Graham, Harris, Macri, Maycumber, Mosbrucker, Orwall, Simmons, Stonier, Thai and Tharinger.

Staff: Kim Weidenaar (786-7120).

Background:

Telemedicine Reimbursement.

Telemedicine is the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. A telemedicine visit is considered to take place at the patient's location, known as the originating site. An originating site for telemedicine includes a hospital, rural health clinic, federally qualified health center, health care provider's office, community mental health center, skilled nursing center, renal dialysis center, or a home.

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

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

Collaborative for the Advancement of Telemedicine.

In July 2016 the Collaborative for the Advancement of Telemedicine (Collaborative) was established to enhance the understanding and use of health services provided through telemedicine and other similar models in Washington. The Collaborative is hosted by the University of Washington and considers issues related to reimbursement, access, best practices, and technical assistance. The Collaborative expired December 31, 2023.

Uniform Law Commission Telehealth Act.

In 2022 the Uniform Law Commission approved and recommended the Uniform Telehealth Act for enactment in all states. The Uniform Telehealth Act includes a registration system that allows out-of-state practitioners who lack a license in the enacting state to provide telehealth services in the same circumstances in which practitioners licensed in the enacting state may provide these services. Registered practitioners are subject to potential disciplinary action in connection with the telehealth services they provide to patients located in the enacting state but are not subject to licensure-related requirements such as continuing

education requirements.

Health Care Professional Licensure.

The Department of Health (DOH) licenses and certifies health care professionals in a variety of fields. Licensure or certification may entail the adoption of rules, verification of educational attainment and completion of supervised training, completion of a background check and verification of good character requirements, administration of a knowledge or practical skills examination, and collection of license or certification fees. The Uniform Disciplinary Act (UDA) provides laws governing the conduct and discipline of license and certification holders, with the DOH, or a board or commission within the DOH, acting as the disciplining authority.

Summary of Amended Bill:

A health care practitioner may provide telehealth services to a patient located in Washington if the services are consistent with the health care practitioner's scope of practice, applicable professional practice standards, and requirements and limitations of federal law and law of this state. A practitioner-patient relationship may be established through telehealth, but may not be established through email, instant messaging, text messaging, or faxes. A health care practitioner who provides telehealth services to a patient located in Washington must provide the services in compliance with the applicable professional practice standards and all practice standards and laws related to the provision of health care services apply to the provision of telehealth services.

A disciplining authority may not adopt or enforce a rule that establishes a different professional practice standard for telehealth services, merely because the services are provided through telehealth, or limit the telecommunication technology that may be used for telehealth services.

An out-of-state health care practitioner may provide telehealth services to a patient located in Washington, if the practitioner:

- holds a current license or certification required to provide health care in Washington or is otherwise authorized to provide care in Washington; or
- holds a license or certification in good standing in another state and provides telehealth services:
 - in the form of a consultation with a health care practitioner who has a practitioner-patient relationship with the patient and who remains responsible for diagnosing and treating the patient in the state;
 - in the form of a specialty assessment, diagnosis, or recommendation for treatment, but does not include the provision of treatment; or
 - in the form of follow-up by a primary care practitioner, mental health practitioner, or recognized clinical specialist to maintain continuity of care with an established patient who is temporarily located in this state and received treatment in the state where the practitioner is located and licensed.

The provision of a telehealth service occurs at the patient's location at the time the service is provided. In a civil action arising out of a health care practitioner's provision of telehealth services brought by a patient or patient's personal representative, conservator, guardian, or other person entitled to bring a claim under the state's wrongful death statute, the venue is proper in the patient's county of residence or in another county authorized by law.

Collaborative for the Advancement of Telehealth.

The Collaborative is renamed the Collaborative for the Advancement of Telehealth and it is extended until July 1, 2025. The Collaborative must review the proposal authored by the Uniform Law Commission for the state to implement a process for out-of-state health care providers to register with the disciplining authority regulating their profession, allowing that provider to provide services through telehealth or store and forward technology to persons located in Washington. By December 1, 2024, the Collaborative must submit a report to the Legislature on its recommendations regarding the proposal.

Definitions.

A "health care practitioner" is defined as a physician, osteopathic physician, podiatric physician, advanced registered nurse practitioner, naturopath, physician assistant, and any person who is otherwise authorized to practice health care, to the extent the profession's scope of practice includes health care that can be provided through telehealth. A "health care practitioner" does not include a veterinarian.

"Telehealth" includes telemedicine and means the use of synchronous or asynchronous telecommunication technology by a practitioner to provide health care to a patient at a different physical location than the practitioner. "Telehealth" does not include the use, in isolation, of email, instant messaging, text messaging, or faxes.

Miscellaneous Provisions.

The provisions of the bill do not permit a health care practitioner to bill a patient directly for a telehealth service that is not a telemedicine service that must be reimbursed under state law without receiving patient consent to be billed prior to providing the telehealth service.

A new chapter in Title 18 RCW is created, and the act may be known and cited as the Uniform Telehealth Act. Disciplining authorities may adopt rules to administer, enforce, implement, or interpret this Act. In applying and construing this chapter, a court must consider the promotion of uniformity among jurisdictions that enact the Uniform Telehealth Act.

Appropriation: None.

Fiscal Note: Available.

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

bill is passed.

Staff Summary of Public Testimony:

(In support) The purpose of this bill is to expand access to quality health care. It does this by providing broad authorization for telehealth services and including some limited allowances for out-of-state practitioners to provide care to patients in Washington. This bill does not include the registration piece of the Uniform Telehealth Act.

This bill would apply certain provisions of the Uniform Telehealth Act, but not all of the provisions. Elements incorporated within the Uniform Telehealth Act have been enacted in a number of states. Providers may use telehealth consistent with their scope of practice. This bill represents the best elements of other states' approaches to telehealth.

(Opposed) None.

(Other) Veterinarians were not intended to be covered in this bill. The Senate floor amendment allowing a provider-patient relationship to be established through telehealth is of great concern for veterinarians. Human and animal medicine are similar, but there are distinct differences, and a physical examination of an animal is often required such as when using human drugs for animal use.

The Washington Medical Commission's telehealth policy is the basis for the Federation of State Medical Board's national policy for telehealth that was adopted in 2022. While there are some tweaks that could be made to this bill, it is important to establish uniform telehealth standards. Hospitals believe that the intent of section 6 of the bill is to allow specialty providers to collaborate with specialists located outside of Washington, but not to allow them to provide treatment. However, as currently drafted, this bill would allow these out-of-state providers to provide treatment. An amendment has been requested that would prohibit the provision of treatment in this circumstance.

The bill includes an expansive definition of telehealth that goes far beyond telemedicine. Accordingly, the permissible practices allowed in this bill are beyond what health plans will pay for and so there should be some transparency around billing. This bill also provides that health carriers do not need to reimburse for services only covered in this act, but it does not include state-purchased health care. The bill also does not require that out-of-state providers need to be licensed and in good standing in other states in order to provide telehealth services.

The removal of the registration piece is appreciated. However, there are concerns about the out-of-state practitioner provisions, which need some clarification. When the Legislature has been discussing telemedicine over the years, they've talked about three specific modalities. This bill is much broader than that and it includes emails, text messages, and faxes, and allows for the establishment of a relationship through these modalities.

Persons Testifying: (In support) Michele Radosevich, Uniform Law Commission; and Quinn Shean, American Telemedicine Association Action.

(Other) Micah Matthews, Washington Medical Commission; Remy Kerr, Washington State Hospital Association; Greg Hanon, Washington State Veterinary Medical Association; Evan Klein, Health Care Authority; and Sean Graham, Washington State Medical Association.

Persons Signed In To Testify But Not Testifying: None.