

**ESHB 1448 - H AMD 613**

By Representative Bergquist

ADOPTED 02/05/2014

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

3 "NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
4 recognize the application of telemedicine as a reimbursable service by  
5 which an individual receives medical services from a health care  
6 provider without in person contact with the provider. It is also the  
7 intent of the legislature to reduce the compliance requirements on  
8 hospitals when granting privileges or associations to telemedicine  
9 physicians.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.05 RCW  
11 to read as follows:

12 (1) A health plan offered to employees and their covered dependents  
13 under this chapter issued or renewed on or after the effective date of  
14 this section shall reimburse a provider for a health care service  
15 provided to a covered person through telemedicine if:

16 (a) The plan provides coverage of the health care service when  
17 provided in-person by the provider; and

18 (b) The health care service is medically necessary.

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

21 (a) Hospital;

22 (b) Rural health clinic;

23 (c) Federally qualified health center;

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

25 (e) Community mental health center;

26 (f) Skilled nursing facility; or

27 (g) Renal dialysis center, except an independent renal dialysis  
28 center.

1 (3) Any originating site under subsection (2) of this section may  
2 charge a facility fee for infrastructure and preparation of the  
3 patient. Reimbursement must be subject to a negotiated agreement  
4 between the originating site and the health plan. A distant site or  
5 any other site not identified in subsection (2) of this section may not  
6 charge a facility fee.

7 (4) The plan may not distinguish between originating sites that are  
8 rural and urban in providing the coverage required in subsection (1) of  
9 this section.

10 (5) The plan may subject coverage of a telemedicine health service  
11 under subsection (1) of this section to all terms and conditions of the  
12 plan, including, but not limited to, utilization review, prior  
13 authorization, deductible, copayment, or coinsurance requirements that  
14 are applicable to coverage of a comparable health care service provided  
15 in-person.

16 (6) This section does not require the plan to reimburse:

17 (a) An originating site for professional fees;

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

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

22 (7) For purposes of this section:

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

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

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

29 (d) "Provider" has the same meaning as in RCW 48.43.005; and

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

36 NEW SECTION. **Sec. 3.** A new section is added to chapter 48.43 RCW  
37 to read as follows:

1 (1) For health plans issued or renewed on or after the effective  
2 date of this section, a health carrier shall reimburse a provider for  
3 a health care service provided to a covered person through telemedicine  
4 if:

5 (a) The plan provides coverage of the health care service when  
6 provided in-person by the provider; and

7 (b) The health care service is medically necessary.

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

10 (a) Hospital;

11 (b) Rural health clinic;

12 (c) Federally qualified health center;

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

14 (e) Community mental health center;

15 (f) Skilled nursing facility; or

16 (g) Renal dialysis center, except an independent renal dialysis  
17 center.

18 (3) Any originating site under subsection (2) of this section may  
19 charge a facility fee for infrastructure and preparation of the  
20 patient. Reimbursement must be subject to a negotiated agreement  
21 between the originating site and the health carrier. A distant site or  
22 any other site not identified in subsection (2) of this section may not  
23 charge a facility fee.

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

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

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

34 (a) An originating site for professional fees;

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

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

1 (7) For purposes of this section:

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

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

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

8 (d) "Provider" has the same meaning as in RCW 48.43.005; and

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

15 NEW SECTION. **Sec. 4.** A new section is added to chapter 74.09 RCW  
16 to read as follows:

17 (1) Upon initiation or renewal of a contract with the Washington  
18 state health care authority to administer a medicaid managed care plan,  
19 a managed health care system shall reimburse a provider for a health  
20 care service provided to a covered person through telemedicine if:

21 (a) The medicaid managed care plan in which the covered person is  
22 enrolled provides coverage of the health care service when provided in-  
23 person by the provider; and

24 (b) The health care service is medically necessary.

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

27 (a) Hospital;

28 (b) Rural health clinic;

29 (c) Federally qualified health center;

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

31 (e) Community mental health center;

32 (f) Skilled nursing facility; or

33 (g) Renal dialysis center, except an independent renal dialysis  
34 center.

35 (3) Any originating site under subsection (2) of this section may  
36 charge a facility fee for infrastructure and preparation of the  
37 patient. Reimbursement must be subject to a negotiated agreement

1 between the originating site and the managed health care system. A  
2 distant site or any other site not identified in subsection (2) of this  
3 section may not charge a facility fee.

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

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

14 (6) This section does not require a managed health care system to  
15 reimburse:

16 (a) An originating site for professional fees;

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

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

21 (7) For purposes of this section:

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

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

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

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

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

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

7 (8) To measure the impact on access to care for underserved  
8 communities and costs to the state and the medicaid managed health care  
9 system for reimbursement of telemedicine services, the Washington state  
10 health care authority, using existing data and resources, shall provide  
11 a report to the appropriate policy and fiscal committees of the  
12 legislature no later than December 31, 2018.

13 **Sec. 5.** RCW 70.41.020 and 2010 c 94 s 17 are each amended to read  
14 as follows:

15 Unless the context clearly indicates otherwise, the following  
16 terms, whenever used in this chapter, shall be deemed to have the  
17 following meanings:

18 (1) "Department" means the Washington state department of health.

19 (2) "Emergency care to victims of sexual assault" means medical  
20 examinations, procedures, and services provided by a hospital emergency  
21 room to a victim of sexual assault following an alleged sexual assault.

22 (3) "Emergency contraception" means any health care treatment  
23 approved by the food and drug administration that prevents pregnancy,  
24 including but not limited to administering two increased doses of  
25 certain oral contraceptive pills within seventy-two hours of sexual  
26 contact.

27 (4) "Hospital" means any institution, place, building, or agency  
28 which provides accommodations, facilities and services over a  
29 continuous period of twenty-four hours or more, for observation,  
30 diagnosis, or care, of two or more individuals not related to the  
31 operator who are suffering from illness, injury, deformity, or  
32 abnormality, or from any other condition for which obstetrical,  
33 medical, or surgical services would be appropriate for care or  
34 diagnosis. "Hospital" as used in this chapter does not include hotels,  
35 or similar places furnishing only food and lodging, or simply  
36 domiciliary care; nor does it include clinics, or physician's offices  
37 where patients are not regularly kept as bed patients for twenty-four

1 hours or more; nor does it include nursing homes, as defined and which  
2 come within the scope of chapter 18.51 RCW; nor does it include  
3 birthing centers, which come within the scope of chapter 18.46 RCW; nor  
4 does it include psychiatric hospitals, which come within the scope of  
5 chapter 71.12 RCW; nor any other hospital, or institution specifically  
6 intended for use in the diagnosis and care of those suffering from  
7 mental illness, intellectual disability, convulsive disorders, or other  
8 abnormal mental condition. Furthermore, nothing in this chapter or the  
9 rules adopted pursuant thereto shall be construed as authorizing the  
10 supervision, regulation, or control of the remedial care or treatment  
11 of residents or patients in any hospital conducted for those who rely  
12 primarily upon treatment by prayer or spiritual means in accordance  
13 with the creed or tenets of any well recognized church or religious  
14 denominations.

15 (5) "Person" means any individual, firm, partnership, corporation,  
16 company, association, or joint stock association, and the legal  
17 successor thereof.

18 (6) "Secretary" means the secretary of health.

19 (7) "Sexual assault" has the same meaning as in RCW 70.125.030.

20 (8) "Victim of sexual assault" means a person who alleges or is  
21 alleged to have been sexually assaulted and who presents as a patient.

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

25 (10) "Originating site" means the physical location of a patient  
26 receiving health care services through telemedicine.

27 (11) "Telemedicine" means the delivery of health care services  
28 through the use of interactive audio and video technology, permitting  
29 real-time communication between the patient at the originating site and  
30 the provider, for the purpose of diagnosis, consultation, or treatment.  
31 "Telemedicine" does not include the use of audio-only telephone,  
32 facsimile, or electronic mail.

33 **Sec. 6.** RCW 70.41.230 and 2013 c 301 s 3 are each amended to read  
34 as follows:

35 (1) Except as provided in subsection (3) of this section, prior to  
36 granting or renewing clinical privileges or association of any

1 physician or hiring a physician, a hospital or facility approved  
2 pursuant to this chapter shall request from the physician and the  
3 physician shall provide the following information:

4 (a) The name of any hospital or facility with or at which the  
5 physician had or has any association, employment, privileges, or  
6 practice during the prior five years: PROVIDED, That the hospital may  
7 request additional information going back further than five years, and  
8 the physician shall use his or her best efforts to comply with such a  
9 request for additional information;

10 (b) Whether the physician has ever been or is in the process of  
11 being denied, revoked, terminated, suspended, restricted, reduced,  
12 limited, sanctioned, placed on probation, monitored, or not renewed for  
13 any professional activity listed in (b)(i) through (x) of this  
14 subsection, or has ever voluntarily or involuntarily relinquished,  
15 withdrawn, or failed to proceed with an application for any  
16 professional activity listed in (b)(i) through (x) of this subsection  
17 in order to avoid an adverse action or to preclude an investigation or  
18 while under investigation relating to professional competence or  
19 conduct:

- 20 (i) License to practice any profession in any jurisdiction;
- 21 (ii) Other professional registration or certification in any  
22 jurisdiction;
- 23 (iii) Specialty or subspecialty board certification;
- 24 (iv) Membership on any hospital medical staff;
- 25 (v) Clinical privileges at any facility, including hospitals,  
26 ambulatory surgical centers, or skilled nursing facilities;
- 27 (vi) Medicare, medicaid, the food and drug administration, the  
28 national institute of health (office of human research protection),  
29 governmental, national, or international regulatory agency, or any  
30 public program;
- 31 (vii) Professional society membership or fellowship;
- 32 (viii) Participation or membership in a health maintenance  
33 organization, preferred provider organization, independent practice  
34 association, physician-hospital organization, or other entity;
- 35 (ix) Academic appointment;
- 36 (x) Authority to prescribe controlled substances (drug enforcement  
37 agency or other authority);



1 (c) Any pending professional medical misconduct proceedings or any  
2 pending medical malpractice actions in this state or another state, the  
3 substance of the allegations in the proceedings or actions, and any  
4 additional information concerning the proceedings or actions as the  
5 physician deems appropriate;

6 (d) The substance of the findings in the actions or proceedings and  
7 any additional information concerning the actions or proceedings as the  
8 physician deems appropriate;

9 (e) A waiver by the physician of any confidentiality provisions  
10 concerning the information required to be provided to hospitals  
11 pursuant to this subsection; and

12 (f) A verification by the physician that the information provided  
13 by the physician is accurate and complete.

14 (2) Except as provided in subsection (3) of this section, prior to  
15 granting privileges or association to any physician or hiring a  
16 physician, a hospital or facility approved pursuant to this chapter  
17 shall request from any hospital with or at which the physician had or  
18 has privileges, was associated, or was employed, during the preceding  
19 five years, the following information concerning the physician:

20 (a) Any pending professional medical misconduct proceedings or any  
21 pending medical malpractice actions, in this state or another state;

22 (b) Any judgment or settlement of a medical malpractice action and  
23 any finding of professional misconduct in this state or another state  
24 by a licensing or disciplinary board; and

25 (c) Any information required to be reported by hospitals pursuant  
26 to RCW 18.71.0195.

27 (3) In lieu of the requirements of subsections (1) and (2) of this  
28 section, when granting or renewing privileges or association of any  
29 physician providing telemedicine services, an originating site hospital  
30 may rely on a distant site hospital's decision to grant or renew  
31 clinical privileges or association of the physician if the originating  
32 site hospital obtains reasonable assurances, through a written  
33 agreement with the distant site hospital, that all of the following  
34 provisions are met:

35 (a) The distant site hospital providing the telemedicine services  
36 is a medicare participating hospital;

37 (b) Any physician providing telemedicine services at the distant

1 site hospital will be fully privileged to provide such services by the  
2 distant site hospital;

3 (c) Any physician providing telemedicine services will hold and  
4 maintain a valid license to perform such services issued or recognized  
5 by the state of Washington; and

6 (d) With respect to any distant site physician who holds current  
7 privileges at the originating site hospital whose patients are  
8 receiving the telemedicine services, the originating site hospital has  
9 evidence of an internal review of the distant site physician's  
10 performance of these privileges and sends the distant site hospital  
11 such performance information for use in the periodic appraisal of the  
12 distant site physician. At a minimum, this information must include  
13 all adverse events, as defined in RCW 70.56.010, that result from the  
14 telemedicine services provided by the distant site physician to the  
15 originating site hospital's patients and all complaints the originating  
16 site hospital has received about the distant site physician.

17 (4) The medical quality assurance commission shall be advised  
18 within thirty days of the name of any physician denied staff  
19 privileges, association, or employment on the basis of adverse findings  
20 under subsection (1) of this section.

21 ~~((+4))~~ (5) A hospital or facility that receives a request for  
22 information from another hospital or facility pursuant to subsections  
23 (1) ~~((and—(2)))~~ through (3) of this section shall provide such  
24 information concerning the physician in question to the extent such  
25 information is known to the hospital or facility receiving such a  
26 request, including the reasons for suspension, termination, or  
27 curtailment of employment or privileges at the hospital or facility.  
28 A hospital, facility, or other person providing such information in  
29 good faith is not liable in any civil action for the release of such  
30 information.

31 ~~((+5))~~ (6) Information and documents, including complaints and  
32 incident reports, created specifically for, and collected, and  
33 maintained by a quality improvement committee are not subject to  
34 discovery or introduction into evidence in any civil action, and no  
35 person who was in attendance at a meeting of such committee or who  
36 participated in the creation, collection, or maintenance of information  
37 or documents specifically for the committee shall be permitted or  
38 required to testify in any civil action as to the content of such

1 proceedings or the documents and information prepared specifically for  
2 the committee. This subsection does not preclude: (a) In any civil  
3 action, the discovery of the identity of persons involved in the  
4 medical care that is the basis of the civil action whose involvement  
5 was independent of any quality improvement activity; (b) in any civil  
6 action, the testimony of any person concerning the facts which form the  
7 basis for the institution of such proceedings of which the person had  
8 personal knowledge acquired independently of such proceedings; (c) in  
9 any civil action by a health care provider regarding the restriction or  
10 revocation of that individual's clinical or staff privileges,  
11 introduction into evidence information collected and maintained by  
12 quality improvement committees regarding such health care provider; (d)  
13 in any civil action, disclosure of the fact that staff privileges were  
14 terminated or restricted, including the specific restrictions imposed,  
15 if any and the reasons for the restrictions; or (e) in any civil  
16 action, discovery and introduction into evidence of the patient's  
17 medical records required by regulation of the department of health to  
18 be made regarding the care and treatment received.

19 ~~((+6+))~~ (7) Hospitals shall be granted access to information held  
20 by the medical quality assurance commission and the board of  
21 osteopathic medicine and surgery pertinent to decisions of the hospital  
22 regarding credentialing and recredentialing of practitioners.

23 ~~((+7+))~~ (8) Violation of this section shall not be considered  
24 negligence per se.

25 NEW SECTION. **Sec. 7.** The medical quality assurance commission,  
26 the nursing care quality assurance commission, and the board of  
27 osteopathic medicine and surgery shall inform the health committees of  
28 the legislature on recommended or adopted criteria under which health  
29 care providers from outside of Washington state would be permitted to  
30 deliver telemedicine services to Washington state residents that will  
31 ensure the quality of services delivered and the safety of those  
32 patients receiving those services. By December 1, 2014, the board and  
33 commissions shall provide an update to the appropriate committees of  
34 the legislature on the progress of these efforts.

35 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act take effect  
36 January 1, 2016.

1           NEW SECTION.   **Sec. 9.** The legislature encourages health plans to  
2 adopt the requirements of sections 2 through 4 of this act prior to  
3 January 1, 2016. Therefore, nothing in this act prohibits a plan from  
4 adopting the requirements of sections 2 through 4 of this act prior to  
5 January 1, 2016."

6           Correct the title.

EFFECT: (1) Removes the requirement that telemedicine services be reimbursed on the same basis and at the same rate as in-person services.

(2) Removes the prohibition against reimbursed telemedicine service duplicating or supplanting a health care service that is available in-person.

(3) Removes the requirement that a plan reimburse an originating site for the infrastructure and preparation of the patient; instead, allows an originating site to charge a facility fee for infrastructure and preparation of the patient and allows reimbursement to be subject to a negotiated agreement.

(4) Prohibits a site other than an originating site from charging a facility fee.

(5) Allows health plans to subject telemedicine to prior authorization.

(6) Provides a definition of "distant site": The site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through telemedicine.

(7) Narrows the definition of "telemedicine" to include only audio and video (as opposed to audio or video) permitting real-time communication between the patient at the originating site and the provider.

(8) Removes sites where public health services are provided from the list of "originating sites."

(9) Removes independent renal dialysis facilities from the list of "originating sites."

(10) Adds other health care providers' offices to the list of "originating sites."

(11) Broadens the definition of "originating site" by removing the requirement that the site prepare the patient for telemedicine services and provide the infrastructure for the telemedicine services to occur.

(12) Makes the requirement to reimburse for telemedicine services applicable to medicaid managed care plans.

(13) Removes the requirement that the Medical Quality Assurance Commission (MQAC), the Nursing Care Quality Assurance Commission (NCQAC), and the Board of Osteopathic Medicine and Surgery (BOMS) must develop policies to allow out-of-state health care providers to deliver telemedicine services to Washington residents; instead, requires the MQAC, the NCQAC, and the BOMS to inform the health committees of the legislature on recommended or adopted criteria under which health care

providers from outside of Washington would be permitted to deliver telemedicine services to Washington residents that will ensure the quality of services delivered and the safety of the patient receiving the services.

(14) Requires the MQAC, the NCQAC, and the BOMS to report their progress to the legislature by December 1, 2014.

(15) States that the legislature encourages plans to adopt the telemedicine requirements early and clarifies that nothing in the act prohibits plans from adopting the requirements prior to January 1, 2016.

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