
ENGROSSED SUBSTITUTE HOUSE BILL 1196

State of Washington

67th Legislature

2021 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Riccelli, Callan, Bateman, Ramos, Cody, Ortiz-Self, Duerr, Harris, Leavitt, Bergquist, Shewmake, Fitzgibbon, Macri, Tharinger, Slatter, Davis, Berg, Pollet, Orwall, Harris-Talley, and Frame)

READ FIRST TIME 02/05/21.

1 AN ACT Relating to audio-only telemedicine; amending RCW
2 41.05.700, 48.43.735, 70.41.020, 71.24.335, 74.09.325, 18.130.180,
3 and 28B.20.830; adding a new section to chapter 74.09 RCW; creating
4 new sections; and providing an expiration date.

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

6 **Sec. 1.** RCW 41.05.700 and 2020 c 92 s 2 are each amended to read
7 as follows:

8 (1)(a) A health plan offered to employees, school employees, and
9 their covered dependents under this chapter issued or renewed on or
10 after January 1, 2017, shall reimburse a provider for a health care
11 service provided to a covered person through telemedicine or store
12 and forward technology if:

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

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

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

20 (iv) The health care service is determined to be safely and
21 effectively provided through telemedicine or store and forward

1 technology according to generally accepted health care practices and
2 standards, and the technology used to provide the health care service
3 meets the standards required by state and federal laws governing the
4 privacy and security of protected health information; and

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

7 (b) (i) Except as provided in (b) (ii) of this subsection, a health
8 plan offered to employees, school employees, and their covered
9 dependents under this chapter issued or renewed on or after January
10 1, 2021, shall reimburse a provider for a health care service
11 provided to a covered person through telemedicine ~~((at))~~ the same
12 ~~((rate as))~~ amount of compensation the carrier would pay the provider
13 if the health care service was provided in person by the provider.

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

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

22 (2) For purposes of this section, reimbursement of store and
23 forward technology is available only for those covered services
24 specified in the negotiated agreement between the health plan 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) ~~((Community mental health center))~~ Licensed or certified
33 behavioral health agency;

34 (f) Skilled nursing facility;

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

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

39 (4) Except for subsection (3)(g) of this section, any originating
40 site under subsection (3) of this section may charge a facility fee

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

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

10 (6) The plan may subject coverage of a telemedicine or store and
11 forward technology health service under subsection (1) of this
12 section to all terms and conditions of the plan 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 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 (8) (a) If a provider intends to bill a patient or the patient's
23 health plan for an audio-only telemedicine service, the provider must
24 obtain patient consent for the billing in advance of the service
25 being delivered. The authority may submit information on any
26 potential violations of this subsection to the appropriate
27 disciplining authority, as defined in RCW 18.130.020.

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

36 (c) If the provider has engaged in a pattern of unresolved
37 violations of this subsection (8), the appropriate disciplining
38 authority may levy a fine or cost recovery upon the provider in an
39 amount not to exceed the applicable statutory amount per violation
40 and take other action as permitted under the authority of the

1 disciplining authority. Upon completion of its review of any
2 potential violation submitted by the health care authority or
3 initiated directly by an enrollee, the disciplining authority shall
4 notify the health care authority of the results of the review,
5 including whether the violation was substantiated and any enforcement
6 action taken as a result of a finding of a substantiated violation.

7 (9) For purposes of this section:

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

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

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

16 (B) The delivery of health care services that are customarily
17 delivered by audio-only technology and customarily not billed as
18 separate services by the provider, such as the sharing of laboratory
19 results.

20 (b) "Disciplining authority" has the same meaning as in RCW
21 18.130.020;

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

34 (e) "Health care service" has the same meaning as in RCW
35 48.43.005;

36 ~~((e))~~ (f) "Hospital" means a facility licensed under chapter
37 70.41, 71.12, or 72.23 RCW;

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

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

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

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

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

17 (1)(a) For health plans issued or renewed on or after January 1,
18 2017, a health carrier shall reimburse a provider for a health care
19 service provided to a covered person through telemedicine or store
20 and forward technology if:

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

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

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

28 (iv) The health care service is determined to be safely and
29 effectively provided through telemedicine or store and forward
30 technology according to generally accepted health care practices and
31 standards, and the technology used to provide the health care service
32 meets the standards required by state and federal laws governing the
33 privacy and security of protected health information; and

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

36 (b)(i) Except as provided in (b)(ii) of this subsection, for
37 health plans issued or renewed on or after January 1, 2021, a health
38 carrier shall reimburse a provider for a health care service provided
39 to a covered person through telemedicine ~~((at))~~ the same ~~((rate as))~~

1 amount of compensation the carrier would pay the provider if the
2 health care service was provided in person by the provider.

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

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

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

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

17 (a) Hospital;

18 (b) Rural health clinic;

19 (c) Federally qualified health center;

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

21 (~~(Community mental health center)~~) Licensed or certified
22 behavioral health agency;

23 (f) Skilled nursing facility;

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

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

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

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

39 (6) A health carrier may subject coverage of a telemedicine or
40 store and forward technology health service under subsection (1) of

1 this section to all terms and conditions of the plan in which the
2 covered person is enrolled including, but not limited to, utilization
3 review, prior authorization, deductible, copayment, or coinsurance
4 requirements that are applicable to coverage of a comparable health
5 care service provided in person.

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

7 (a) An originating site for professional fees;

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

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

12 (8)(a) If a provider intends to bill a patient or the patient's
13 health plan for an audio-only telemedicine service, the provider must
14 obtain patient consent for the billing in advance of the service
15 being delivered. The insurance commissioner may submit information on
16 any potential violations of this subsection to the appropriate
17 disciplining authority, as defined in RCW 18.130.020.

18 (b) If the commissioner has cause to believe that a provider has
19 engaged in a pattern of unresolved violations of this subsection (8),
20 the commissioner may submit information to the appropriate
21 disciplining authority for action. Prior to submitting information to
22 the appropriate disciplining authority, the commissioner may provide
23 the provider with an opportunity to cure the alleged violations or
24 explain why the actions in question did not violate this subsection
25 (8).

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

37 (9) For purposes of this section:

38 (a)(i) "Audio-only telemedicine" means the delivery of health
39 care services through the use of audio-only technology, permitting
40 real-time communication between the patient at the originating site

1 and the provider, for the purpose of diagnosis, consultation, or
2 treatment.

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

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

6 (B) The delivery of health care services that are customarily
7 delivered by audio-only technology and customarily not billed as
8 separate services by the provider, such as the sharing of laboratory
9 results.

10 (b) "Disciplining authority" has the same meaning as in RCW
11 18.130.020;

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

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

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

26 ~~((e))~~ (f) "Hospital" means a facility licensed under chapter
27 70.41, 71.12, or 72.23 RCW;

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

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

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

37 ~~((g))~~ (j) "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. For purposes of this section only,
2 "telemedicine" (~~does not include the use of~~) includes audio-only
3 (~~telephone~~) telemedicine, but does not include facsimile(~~(r)~~) or
4 email.

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

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

9 Unless the context clearly indicates otherwise, the following
10 terms, whenever used in this chapter, shall be deemed to have the
11 following meanings:

12 (1) "Aftercare" means the assistance provided by a lay caregiver
13 to a patient under this chapter after the patient's discharge from a
14 hospital. The assistance may include, but is not limited to,
15 assistance with activities of daily living, wound care, medication
16 assistance, and the operation of medical equipment. "Aftercare"
17 includes assistance only for conditions that were present at the time
18 of the patient's discharge from the hospital. "Aftercare" does not
19 include:

20 (a) Assistance related to conditions for which the patient did
21 not receive medical care, treatment, or observation in the hospital;
22 or

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

25 (2) (a) "Audio-only telemedicine" means the delivery of health
26 care services through the use of audio-only technology, permitting
27 real-time communication between the patient at the originating site
28 and the provider, for the purpose of diagnosis, consultation, or
29 treatment.

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

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

32 (ii) The delivery of health care services that are customarily
33 delivered by audio-only technology and customarily not billed as
34 separate services by the provider, such as the sharing of laboratory
35 results.

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

37 (~~(3)~~) (4) "Discharge" means a patient's release from a hospital
38 following the patient's admission to the hospital.

1 ~~((4))~~ (5) "Distant site" means the site at which a physician or
2 other licensed provider, delivering a professional service, is
3 physically located at the time the service is provided through
4 telemedicine.

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

9 ~~((6))~~ (7) "Emergency contraception" means any health care
10 treatment approved by the food and drug administration that prevents
11 pregnancy, including but not limited to administering two increased
12 doses of certain oral contraceptive pills within seventy-two hours of
13 sexual contact.

14 ~~((7))~~ (8) "Hospital" means any institution, place, building, or
15 agency which provides accommodations, facilities and services over a
16 continuous period of twenty-four hours or more, for observation,
17 diagnosis, or care, of two or more individuals not related to the
18 operator who are suffering from illness, injury, deformity, or
19 abnormality, or from any other condition for which obstetrical,
20 medical, or surgical services would be appropriate for care or
21 diagnosis. "Hospital" as used in this chapter does not include
22 hotels, or similar places furnishing only food and lodging, or simply
23 domiciliary care; nor does it include clinics, or physician's offices
24 where patients are not regularly kept as bed patients for twenty-four
25 hours or more; nor does it include nursing homes, as defined and
26 which come within the scope of chapter 18.51 RCW; nor does it include
27 birthing centers, which come within the scope of chapter 18.46 RCW;
28 nor does it include psychiatric hospitals, which come within the
29 scope of chapter 71.12 RCW; nor any other hospital, or institution
30 specifically intended for use in the diagnosis and care of those
31 suffering from mental illness, intellectual disability, convulsive
32 disorders, or other abnormal mental condition. Furthermore, nothing
33 in this chapter or the rules adopted pursuant thereto shall be
34 construed as authorizing the supervision, regulation, or control of
35 the remedial care or treatment of residents or patients in any
36 hospital conducted for those who rely primarily upon treatment by
37 prayer or spiritual means in accordance with the creed or tenets of
38 any well recognized church or religious denominations.

39 ~~((8))~~ (9) "Lay caregiver" means any individual designated as
40 such by a patient under this chapter who provides aftercare

1 assistance to a patient in the patient's residence. "Lay caregiver"
2 does not include a long-term care worker as defined in RCW
3 74.39A.009.

4 ~~((9))~~ (10) "Originating site" means the physical location of a
5 patient receiving health care services through telemedicine.

6 ~~((10))~~ (11) "Person" means any individual, firm, partnership,
7 corporation, company, association, or joint stock association, and
8 the legal successor thereof.

9 ~~((11))~~ (12) "Secretary" means the secretary of health.

10 ~~((12))~~ (13) "Sexual assault" has the same meaning as in RCW
11 70.125.030.

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

19 ~~((14))~~ (15) "Victim of sexual assault" means a person who
20 alleges or is alleged to have been sexually assaulted and who
21 presents as a patient.

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

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

29 (a) The behavioral health administrative services organization or
30 managed care organization in which the covered person is enrolled
31 provides coverage of the behavioral health service when provided in
32 person by the provider; ~~((and))~~

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

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

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

1 (b) For purposes of this section, reimbursement of store and
2 forward technology is available only for those services specified in
3 the negotiated agreement between the behavioral health administrative
4 services organization, or managed care organization, and the
5 provider.

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

10 (4) Any originating site, other than a home, under subsection (3)
11 of this section may charge a facility fee for infrastructure and
12 preparation of the patient. Reimbursement must be subject to a
13 negotiated agreement between the originating site and the behavioral
14 health administrative services organization, or managed care
15 organization, as applicable. A distant site, a hospital that is an
16 originating site for audio-only telemedicine, or any other site not
17 identified in subsection (3) of this section may not charge a
18 facility fee.

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

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

33 (7) This section does not require a behavioral health
34 administrative services organization or a managed care organization
35 to reimburse:

36 (a) An originating site for professional fees;

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

39 (c) An originating site or provider when the site or provider is
40 not a contracted provider.

1 (8)(a) If a provider intends to bill a patient, a behavioral
2 health administrative services organization, or a managed care
3 organization for an audio-only telemedicine service, the provider
4 must obtain patient consent for the billing in advance of the service
5 being delivered. The authority may submit information on any
6 potential violations of this subsection to the appropriate
7 disciplining authority, as defined in RCW 18.130.020.

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

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

27 (9) For purposes of this section:

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

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

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

36 (B) The delivery of health care services that are customarily
37 delivered by audio-only technology and customarily not billed as
38 separate services by the provider, such as the sharing of laboratory
39 results.

1 (b) "Disciplining authority" has the same meaning as in RCW
2 18.130.020;

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

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

15 (e) "Hospital" means a facility licensed under chapter 70.41,
16 71.12, or 72.23 RCW;

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

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

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

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

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

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

38 (1) (a) Upon initiation or renewal of a contract with the
39 Washington state health care authority to administer a medicaid

1 managed care plan, a managed health care system shall reimburse a
2 provider for a health care service provided to a covered person
3 through telemedicine or store and forward technology if:

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

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

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

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

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

20 (b) (i) Except as provided in (b) (ii) of this subsection, upon
21 initiation or renewal of a contract with the Washington state health
22 care authority to administer a medicaid managed care plan, a managed
23 health care system shall reimburse a provider for a health care
24 service provided to a covered person through telemedicine (~~at~~) the
25 same (~~rate as~~) amount of compensation the managed health care
26 system would pay the provider if the health care service was provided
27 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 (iv) A rural health clinic shall be reimbursed for audio-only
37 telemedicine at the rural health clinic encounter rate.

38 (2) For purposes of this section, reimbursement of store and
39 forward technology is available only for those services specified in

1 the negotiated agreement between the managed health care system and
2 health care provider.

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

5 (a) Hospital;

6 (b) Rural health clinic;

7 (c) Federally qualified health center;

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

9 (e) (~~Community mental health center~~) Licensed or certified
10 behavioral health agency;

11 (f) Skilled nursing facility;

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

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

16 (4) Except for subsection (3)(g) of this section, any originating
17 site under subsection (3) of this section may charge a facility fee
18 for infrastructure and preparation of the patient. Reimbursement for
19 a facility fee must be subject to a negotiated agreement between the
20 originating site and the managed health care system. A distant site,
21 a hospital that is an originating site for audio-only telemedicine,
22 or any other site not identified in subsection (3) of this section
23 may not charge a facility fee.

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

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

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

36 (a) An originating site for professional fees;

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

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

1 (8)(a) If a provider intends to bill a patient or a managed
2 health care system for an audio-only telemedicine service, the
3 provider must obtain patient consent for the billing in advance of
4 the service being delivered. The authority may submit information on
5 any potential violations of this subsection to the appropriate
6 disciplining authority, as defined in RCW 18.130.020.

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

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

26 (9) For purposes of this section:

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

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

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

35 (B) The delivery of health care services that are customarily
36 delivered by audio-only technology and customarily not billed as
37 separate services by the provider, such as the sharing of laboratory
38 results.

39 (b) "Disciplining authority" has the same meaning as in RCW
40 18.130.020;

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

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

13 (e) "Health care service" has the same meaning as in RCW
14 48.43.005;

15 ~~((e))~~ (f) "Hospital" means a facility licensed under chapter
16 70.41, 71.12, or 72.23 RCW;

17 ~~((d))~~ (g) "Managed health care system" means any health care
18 organization, including health care providers, insurers, health care
19 service contractors, health maintenance organizations, health
20 insuring organizations, or any combination thereof, that provides
21 directly or by contract health care services covered under this
22 chapter and rendered by licensed providers, on a prepaid capitated
23 basis and that meets the requirements of section 1903(m)(1)(A) of
24 Title XIX of the federal social security act or federal demonstration
25 waivers granted under section 1115(a) of Title XI of the federal
26 social security act;

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

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

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

36 ~~((h))~~ (k) "Telemedicine" means the delivery of health care
37 services through the use of interactive audio and video technology,
38 permitting real-time communication between the patient at the
39 originating site and the provider, for the purpose of diagnosis,
40 consultation, or treatment. For purposes of this section only,

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

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

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

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

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

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

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

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

29 (ii) The delivery of health care services that are customarily
30 delivered by audio-only technology and customarily not billed as
31 separate services by the provider, such as the sharing of laboratory
32 results.

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

35 The following conduct, acts, or conditions constitute
36 unprofessional conduct for any license holder under the jurisdiction
37 of this chapter:

1 (1) The commission of any act involving moral turpitude,
2 dishonesty, or corruption relating to the practice of the person's
3 profession, whether the act constitutes a crime or not. If the act
4 constitutes a crime, conviction in a criminal proceeding is not a
5 condition precedent to disciplinary action. Upon such a conviction,
6 however, the judgment and sentence is conclusive evidence at the
7 ensuing disciplinary hearing of the guilt of the license holder of
8 the crime described in the indictment or information, and of the
9 person's violation of the statute on which it is based. For the
10 purposes of this section, conviction includes all instances in which
11 a plea of guilty or nolo contendere is the basis for the conviction
12 and all proceedings in which the sentence has been deferred or
13 suspended. Nothing in this section abrogates rights guaranteed under
14 chapter 9.96A RCW;

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

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

18 (4) Incompetence, negligence, or malpractice which results in
19 injury to a patient or which creates an unreasonable risk that a
20 patient may be harmed. The use of a nontraditional treatment by
21 itself shall not constitute unprofessional conduct, provided that it
22 does not result in injury to a patient or create an unreasonable risk
23 that a patient may be harmed;

24 (5) Suspension, revocation, or restriction of the individual's
25 license to practice any health care profession by competent authority
26 in any state, federal, or foreign jurisdiction, a certified copy of
27 the order, stipulation, or agreement being conclusive evidence of the
28 revocation, suspension, or restriction;

29 (6) Except when authorized by RCW 18.130.345, the possession,
30 use, prescription for use, or distribution of controlled substances
31 or legend drugs in any way other than for legitimate or therapeutic
32 purposes, diversion of controlled substances or legend drugs, the
33 violation of any drug law, or prescribing controlled substances for
34 oneself;

35 (7) Violation of any state or federal statute or administrative
36 rule regulating the profession in question, including any statute or
37 rule defining or establishing standards of patient care or
38 professional conduct or practice;

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

- 1 (a) Not furnishing any papers, documents, records, or other
2 items;
- 3 (b) Not furnishing in writing a full and complete explanation
4 covering the matter contained in the complaint filed with the
5 disciplining authority;
- 6 (c) Not responding to subpoenas issued by the disciplining
7 authority, whether or not the recipient of the subpoena is the
8 accused in the proceeding; or
- 9 (d) Not providing reasonable and timely access for authorized
10 representatives of the disciplining authority seeking to perform
11 practice reviews at facilities utilized by the license holder;
- 12 (9) Failure to comply with an order issued by the disciplining
13 authority or a stipulation for informal disposition entered into with
14 the disciplining authority;
- 15 (10) Aiding or abetting an unlicensed person to practice when a
16 license is required;
- 17 (11) Violations of rules established by any health agency;
- 18 (12) Practice beyond the scope of practice as defined by law or
19 rule;
- 20 (13) Misrepresentation or fraud in any aspect of the conduct of
21 the business or profession;
- 22 (14) Failure to adequately supervise auxiliary staff to the
23 extent that the consumer's health or safety is at risk;
- 24 (15) Engaging in a profession involving contact with the public
25 while suffering from a contagious or infectious disease involving
26 serious risk to public health;
- 27 (16) Promotion for personal gain of any unnecessary or
28 inefficacious drug, device, treatment, procedure, or service;
- 29 (17) Conviction of any gross misdemeanor or felony relating to
30 the practice of the person's profession. For the purposes of this
31 subsection, conviction includes all instances in which a plea of
32 guilty or nolo contendere is the basis for conviction and all
33 proceedings in which the sentence has been deferred or suspended.
34 Nothing in this section abrogates rights guaranteed under chapter
35 9.96A RCW;
- 36 (18) The procuring, or aiding or abetting in procuring, a
37 criminal abortion;
- 38 (19) The offering, undertaking, or agreeing to cure or treat
39 disease by a secret method, procedure, treatment, or medicine, or the
40 treating, operating, or prescribing for any health condition by a

1 method, means, or procedure which the licensee refuses to divulge
2 upon demand of the disciplining authority;

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

5 (21) Violation of chapter 19.68 RCW or a pattern of violations of
6 RCW 41.05.700(8), 48.43.735(8), 48.49.020 ((e)), 48.49.030,
7 71.24.335(8), or 74.09.325(8);

8 (22) Interference with an investigation or disciplinary
9 proceeding by willful misrepresentation of facts before the
10 disciplining authority or its authorized representative, or by the
11 use of threats or harassment against any patient or witness to
12 prevent them from providing evidence in a disciplinary proceeding or
13 any other legal action, or by the use of financial inducements to any
14 patient or witness to prevent or attempt to prevent him or her from
15 providing evidence in a disciplinary proceeding;

16 (23) Current misuse of:

17 (a) Alcohol;

18 (b) Controlled substances; or

19 (c) Legend drugs;

20 (24) Abuse of a client or patient or sexual contact with a client
21 or patient;

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

29 (26) Violation of RCW 18.130.420;

30 (27) Performing conversion therapy on a patient under age
31 eighteen;

32 (28) Violation of RCW 18.130.430.

33 NEW SECTION. **Sec. 8.** (1) The insurance commissioner, in
34 collaboration with the Washington state telehealth collaborative and
35 the health care authority, shall study and make recommendations
36 regarding:

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

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

4 (c) Preliminary information regarding whether requiring
5 reimbursement for audio-only telemedicine has affected the incidence
6 of fraud;

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

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

13 (f) Any other issues the insurance commissioner deems
14 appropriate.

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

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

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

21 (1) The collaborative for the advancement of telemedicine is
22 created to enhance the understanding and use of health services
23 provided through telemedicine and other similar models in Washington
24 state. The collaborative shall be hosted by the University of
25 Washington telehealth services and shall be comprised of one member
26 from each of the two largest caucuses of the senate and the house of
27 representatives, and representatives from the academic community,
28 hospitals, clinics, and health care providers in primary care and
29 specialty practices, carriers, and other interested parties.

30 (2) By July 1, 2016, the collaborative shall be convened. The
31 collaborative shall develop recommendations on improving
32 reimbursement and access to services, including originating site
33 restrictions, provider to provider consultative models, and
34 technologies and models of care not currently reimbursed; identify
35 the existence of telemedicine best practices, guidelines, billing
36 requirements, and fraud prevention developed by recognized medical
37 and telemedicine organizations; and explore other priorities
38 identified by members of the collaborative. After review of existing
39 resources, the collaborative shall explore and make recommendations

1 on whether to create a technical assistance center to support
2 providers in implementing or expanding services delivered through
3 telemedicine technologies.

4 (3) The collaborative must submit an initial progress report by
5 December 1, 2016, with follow-up policy reports including
6 recommendations by December 1, 2017, December 1, 2018, and December
7 1, 2021. The reports shall be shared with the relevant professional
8 associations, governing boards or commissions, and the health care
9 committees of the legislature.

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

12 (a) Utilization;

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

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

17 (d) Ocular services.

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

20 (6) The future of the collaborative shall be reviewed by the
21 legislature with consideration of ongoing technical assistance needs
22 and opportunities. The collaborative terminates December 31, (~~2021~~)
23 2023.

24 NEW SECTION. **Sec. 10.** If any part of this act is found to be in
25 conflict with federal requirements that are a prescribed condition to
26 the allocation of federal funds to the state, the conflicting part of
27 this act is inoperative solely to the extent of the conflict and with
28 respect to the agencies directly affected, and this finding does not
29 affect the operation of the remainder of this act in its application
30 to the agencies concerned. Rules adopted under this act must meet
31 federal requirements that are a necessary condition to the receipt of
32 federal funds by the state.

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