AN ACT Relating to audio-only telemedicine; amending RCW 41.05.700, 48.43.735, 70.41.020, 71.24.335, and 74.09.325; adding a new section to chapter 74.09 RCW; creating new sections; and providing an expiration date.

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

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

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

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

(ii) The health care service is medically necessary;

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

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

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

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

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

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

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

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

(a) Hospital;
(b) Rural health clinic;
(c) Federally qualified health center;
(d) Physician's or other health care provider's office;
(e) ((Community mental health center)) Licensed or certified
behavioral health agency;
(f) Skilled nursing facility;
(g) Home or any location determined by the individual receiving
the service; or
(h) Renal dialysis center, except an independent renal dialysis
center.

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

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

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

(7) This section does not require the plan to reimburse:
(a) An originating site for professional fees;
(b) A provider for a health care service that is not a covered benefit under the plan; or
(c) An originating site or health care provider when the site or provider is not a contracted provider under the plan.

(8) For purposes of this section:
(a) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only telephone technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "audio-only telemedicine" does not include the use of facsimile or email.
(b) "Distant site" means 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;
((b)) (c) "Established relationship" means the covered person has had at least one in-person appointment within the past year with the provider providing audio-only telemedicine or the covered person was referred to the provider providing audio-only telemedicine by another provider who has had at least one in-person appointment with the covered person within the past year and has provided relevant medical information to the provider providing audio-only telemedicine.
(d) "Health care service" has the same meaning as in RCW 48.43.005;

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

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

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

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

(i) "Telemedicine" means 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. For purposes of this section only, "telemedicine" includes audio-only telemedicine, but does not include facsimile or email.

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

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

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

(ii) The health care service is medically necessary;

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

(iv) The health care service is determined to be safely and effectively provided through telemedicine or store and forward technology according to generally accepted health care practices and standards, and the technology used to provide the health care service.

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meets the standards required by state and federal laws governing the
privacy and security of protected health information; and

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

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

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

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

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

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

(a) Hospital;
(b) Rural health clinic;
(c) Federally qualified health center;
(d) Physician's or other health care provider's office;
(e) ((Community mental health center)) Licensed or certified
behavioral health agency;
(f) Skilled nursing facility;
(g) Home or any location determined by the individual receiving
the service; or
(h) Renal dialysis center, except an independent renal dialysis
center.

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

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

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

(7) This section does not require a health carrier to reimburse:
   (a) An originating site for professional fees;
   (b) A provider for a health care service that is not a covered benefit under the plan; or
   (c) An originating site or health care provider when the site or provider is not a contracted provider under the plan.

(8) For purposes of this section:
   (a) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only telephone technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "audio-only telemedicine" does not include the use of facsimile or email.
   (b) "Distant site" means 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;
   (c) "Established relationship" means the covered person has had at least one in-person appointment within the past year with the provider providing audio-only telemedicine or the covered person was referred to the provider providing audio-only telemedicine by another provider who has had at least one in-person appointment with the covered person within the past year and has provided relevant medical information to the provider providing audio-only telemedicine.
   (d) "Health care service" has the same meaning as in RCW 48.43.005;
"Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW;
"Originating site" means the physical location of a patient receiving health care services through telemedicine;
"Provider" has the same meaning as in RCW 48.43.005;
"Store and forward technology" means use of an asynchronous transmission of a covered person's medical information from an originating site to the health care provider at a distant site which results in medical diagnosis and management of the covered person, and does not include the use of audio-only telephone, facsimile, or email; and
"Telemedicine" means 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. For purposes of this section only, "telemedicine" includes audio-only telemedicine, but does not include facsimile or email.

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

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

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

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

(a) Assistance related to conditions for which the patient did not receive medical care, treatment, or observation in the hospital; or
(b) Tasks the performance of which requires licensure as a health care provider.
"Audio-only telemedicine" means the delivery of health care services through the use of audio-only telephone technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "audio-only telemedicine" does not include the use of facsimile or email.

"Department" means the Washington state department of health. "Discharge" means a patient's release from a hospital following the patient's admission to the hospital. "Distant site" means 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. "Emergency care to victims of sexual assault" means medical examinations, procedures, and services provided by a hospital emergency room to a victim of sexual assault following an alleged sexual assault. "Emergency contraception" means any health care treatment approved by the food and drug administration that prevents pregnancy, including but not limited to administering two increased doses of certain oral contraceptive pills within seventy-two hours of sexual contact. "Hospital" means any institution, place, building, or agency which provides accommodations, facilities and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care, of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this chapter does not include hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include clinics, or physician's offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include birthing centers, which come within the scope of chapter 18.46 RCW; nor does it include psychiatric hospitals, which come within the scope of chapter 71.12 RCW; nor any other hospital, or institution specifically intended for use in the diagnosis and care of those...
suffering from mental illness, intellectual disability, convulsive disorders, or other abnormal mental condition. Furthermore, nothing in this chapter or the rules adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denominations.

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

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

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

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

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

((13)) (14) "Telemedicine" means 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. "Telemedicine" includes audio-only (telephone) telemedicine, but does not include facsimile (fax) or email.

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

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

(1) Upon initiation or renewal of a contract with the authority, behavioral health administrative services organizations and managed care organizations shall reimburse a provider for a behavioral health service provided to a covered person who is under eighteen years old through telemedicine or store and forward technology if:
(a) The behavioral health administrative services organization or managed care organization in which the covered person is enrolled provides coverage of the behavioral health service when provided in person by the provider; 

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

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

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

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

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

(4) Any originating site, other than a home, under subsection (3) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement must be subject to a negotiated agreement between the originating site and the behavioral health administrative services organization, or managed care organization, as applicable. A distant site or any other site not identified in subsection (3) of this section may not charge a facility fee.

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

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

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

(a) An originating site for professional fees;

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

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

(8) For purposes of this section:

(a) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only telephone technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "audio-only telemedicine" does not include the use of facsimile or email.

(b) "Distant site" means 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;

(c) "Established relationship" means the covered person has had at least one in-person appointment within the past year with the provider providing audio-only telemedicine or the covered person was referred to the provider providing audio-only telemedicine by another provider who has had at least one in-person appointment with the covered person within the past year and has provided relevant medical information to the provider providing audio-only telemedicine.

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

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

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

(g) "Store and forward technology" means use of an asynchronous transmission of a covered person's medical or behavioral health information from an originating site to the provider at a distant site which results in medical or behavioral health diagnosis and management of the covered person, and does not include the use of audio-only telephone, facsimile, or email; and
"Telemedicine" means the delivery of health care or behavioral health 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. For purposes of this section only, "telemedicine" includes audio-only ((telephone)) telemedicine, but does not include facsimile or email.

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

Sec. 5. RCW 74.09.325 and 2020 c 92 s 3 are each amended to read as follows:
(1)(a) Upon initiation or renewal of a contract with the Washington state health care authority to administer a medicaid managed care plan, a managed health care system shall reimburse a provider for a health care service provided to a covered person through telemedicine or store and forward technology if:
(i) The medicaid managed care plan in which the covered person is enrolled provides coverage of the health care service when provided in person by the provider;
(ii) The health care service is medically necessary;
(iii) The health care service is a service recognized as an essential health benefit under section 1302(b) of the federal patient protection and affordable care act in effect on January 1, 2015;
(iv) The health care service is determined to be safely and effectively provided through telemedicine or store and forward technology according to generally accepted health care practices and standards, and the technology used to provide the health care service meets the standards required by state and federal laws governing the privacy and security of protected health information; and
(v) Beginning January 1, 2023, for audio-only telemedicine, the covered person has an established relationship with the provider.

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

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

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

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

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

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

(a) Hospital;
(b) Rural health clinic;
(c) Federally qualified health center;
(d) Physician's or other health care provider's office;
(e) ((Community mental health center)) Licensed or certified behavioral health agency;
(f) Skilled nursing facility;
(g) Home or any location determined by the individual receiving the service; or
(h) Renal dialysis center, except an independent renal dialysis center.

(4) Except for subsection (3)(g) of this section, any originating site under subsection (3) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement for a facility fee must be subject to a negotiated agreement between the originating site and the managed health care system. A distant site or any other site not identified in subsection (3) of this section may not charge a facility fee.

(5) A managed health care system may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.
(6) A managed health care system may subject coverage of a telemedicine or store and forward technology health service under subsection (1) of this section to all terms and conditions of the plan in which the covered person is enrolled including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable health care service provided in person.

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

(a) An originating site for professional fees;
(b) A provider for a health care service that is not a covered benefit under the plan; or
(c) An originating site or health care provider when the site or provider is not a contracted provider under the plan.

(8) For purposes of this section:

(a) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only telephone technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "audio-only telemedicine" does not include the use of facsimile or email.

(b) "Distant site" means 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;

(c) "Established relationship" means the covered person has had at least one in-person appointment within the past year with the provider providing audio-only telemedicine or the covered person was referred to the provider providing audio-only telemedicine by another provider who has had at least one in-person appointment with the covered person within the past year and has provided relevant medical information to the provider providing audio-only telemedicine.

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

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

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

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

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

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

((h)) (j) "Telemedicine" means 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. For purposes of this section only, "telemedicine" ((does not include the use of)) includes audio-only ((telephone)) telemedicine, but does not include facsimile((7)) or email.

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

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

(1) The authority shall adopt rules regarding medicaid fee-for-service reimbursement for services delivered through audio-only telemedicine. Except as provided in subsection (2) of this section, the rules must establish a manner of reimbursement for audio-only telemedicine that is consistent with RCW 74.09.325.
(2) The rules shall require rural health clinics to be reimbursed for audio-only telemedicine at the encounter rate.

(3) For purposes of this section, "audio-only telemedicine" means the delivery of health care services through the use of audio-only telephone technology, permitting real-time communication between a patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "audio-only telemedicine" does not include the use of facsimile or email.

NEW SECTION. Sec. 7. (1) The insurance commissioner, in collaboration with the Washington state telehealth collaborative and the health care authority, shall study and make recommendations regarding:

(a) Preliminary utilization trends for audio-only telemedicine;
(b) Qualitative data from health carriers, including medicaid managed care organizations, on the burden of compliance and enforcement requirements for audio-only telemedicine;
(c) Preliminary information regarding whether requiring reimbursement for audio-only telemedicine has affected the incidence of fraud;
(d) Proposed methods to measure the impact of audio-only telemedicine on access to health care services for historically underserved communities and geographic areas;
(e) In consultation with the department of labor and industries, the extent to which telemedicine reimbursement requirements should be extended to industrial insurance and other programs administered by the department of labor and industries;
(f) An evaluation of the relative costs to providers and facilities of providing audio-only telemedicine services as compared to audio-video telemedicine services and in-person services; and
(g) Any other issues the insurance commissioner deems appropriate.

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

(3) This section expires January 1, 2024.

NEW SECTION. Sec. 8. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to
the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.