

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE HOUSE BILL 1821**

Chapter 213, Laws of 2022

67th Legislature  
2022 Regular Session

AUDIO-ONLY TELEMEDICINE REIMBURSEMENT—DEFINITION OF ESTABLISHED  
RELATIONSHIP

EFFECTIVE DATE: June 9, 2022

Passed by the House March 9, 2022  
Yeas 96 Nays 0

\_\_\_\_\_  
LAURIE JINKINS

**Speaker of the House of  
Representatives**

Passed by the Senate March 8, 2022  
Yeas 49 Nays 0

\_\_\_\_\_  
DENNY HECK

**President of the Senate**

Approved March 30, 2022 2:31 PM

\_\_\_\_\_  
JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1821** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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BERNARD DEAN

**Chief Clerk**

FILED

March 31, 2022

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE HOUSE BILL 1821**

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AS AMENDED BY THE SENATE

Passed Legislature - 2022 Regular Session

**State of Washington**                      **67th Legislature**                      **2022 Regular Session**

**By** House Health Care & Wellness (originally sponsored by Representatives Schmick, Riccelli, Cody, and Graham)

READ FIRST TIME 01/27/22.

1            AN ACT Relating to the definition of established relationship for  
2 purposes of audio-only telemedicine; amending RCW 41.05.700,  
3 48.43.735, and 74.09.325; reenacting and amending RCW 71.24.335; and  
4 creating a new section.

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

6            **Sec. 1.** RCW 41.05.700 and 2021 c 157 s 1 are each amended to  
7 read 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            (iv) The health care service is determined to be safely and  
20 effectively provided through telemedicine or store and forward  
21 technology according to generally accepted health care practices and

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

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

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

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

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

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

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

26 (a) Hospital;

27 (b) Rural health clinic;

28 (c) Federally qualified health center;

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

30 (e) Licensed or certified behavioral health agency;

31 (f) Skilled nursing facility;

32 (g) Home or any location determined by the individual receiving  
33 the service; or

34 (h) Renal dialysis center, except an independent renal dialysis  
35 center.

36 (4) Except for subsection (3)(g) of this section, any originating  
37 site under subsection (3) of this section may charge a facility fee  
38 for infrastructure and preparation of the patient. Reimbursement for  
39 a facility fee must be subject to a negotiated agreement between the  
40 originating site and the health plan. A distant site, a hospital that

1 is an originating site for audio-only telemedicine, or any other site  
2 not identified in subsection (3) of this section may not charge a  
3 facility fee.

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

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

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

14 (a) An originating site for professional fees;

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

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

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

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

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

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

3 (9) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

3 (ii) For any other health care service:

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

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

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

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

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

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

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

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

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

1 (1) (a) For health plans issued or renewed on or after January 1,  
2 2017, a health carrier shall reimburse a provider for a health care  
3 service provided to a covered person through telemedicine or store  
4 and forward technology if:

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

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

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

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

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

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

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

38 (a) Hospital;

39 (b) Rural health clinic;

40 (c) Federally qualified health center;

- 1 (d) Physician's or other health care provider's office;
- 2 (e) Licensed or certified behavioral health agency;
- 3 (f) Skilled nursing facility;
- 4 (g) Home or any location determined by the individual receiving
- 5 the service; or
- 6 (h) Renal dialysis center, except an independent renal dialysis
- 7 center.

8 (4) Except for subsection (3)(g) of this section, any originating  
9 site under subsection (3) of this section may charge a facility fee  
10 for infrastructure and preparation of the patient. Reimbursement for  
11 a facility fee must be subject to a negotiated agreement between the  
12 originating site and the health carrier. A distant site, a hospital  
13 that is an originating site for audio-only telemedicine, or any other  
14 site not identified in subsection (3) of this section may not charge  
15 a facility fee.

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

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

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

27 (a) An originating site for professional fees;

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

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

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

36 (b) If the commissioner has cause to believe that a provider has  
37 engaged in a pattern of unresolved violations of this subsection (8),  
38 the commissioner may submit information to the appropriate  
39 disciplining authority, as defined in RCW 18.130.020, for action.  
40 Prior to submitting information to the appropriate disciplining



1 authority, the commissioner may provide the provider with an  
2 opportunity to cure the alleged violations or explain why the actions  
3 in question did not violate this subsection (8).

4 (c) If the provider has engaged in a pattern of unresolved  
5 violations of this subsection (8), the appropriate disciplining  
6 authority may levy a fine or cost recovery upon the provider in an  
7 amount not to exceed the applicable statutory amount per violation  
8 and take other action as permitted under the authority of the  
9 disciplining authority. Upon completion of its review of any  
10 potential violation submitted by the commissioner or initiated  
11 directly by an enrollee, the disciplining authority shall notify the  
12 commissioner of the results of the review, including whether the  
13 violation was substantiated and any enforcement action taken as a  
14 result of a finding of a substantiated violation.

15 (9) For purposes of this section:

16 (a) (i) "Audio-only telemedicine" means the delivery of health  
17 care services through the use of audio-only technology, permitting  
18 real-time communication between the patient at the originating site  
19 and the provider, for the purpose of diagnosis, consultation, or  
20 treatment.

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

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

24 (B) The delivery of health care services that are customarily  
25 delivered by audio-only technology and customarily not billed as  
26 separate services by the provider, such as the sharing of laboratory  
27 results;

28 (b) "Disciplining authority" has the same meaning as in RCW  
29 18.130.020;

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

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

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

39 (A) The covered person has had, within the past three years, at  
40 least one in-person appointment (~~within the past year~~), or at least

1 one real-time interactive appointment using both audio and video  
2 technology, with the provider providing audio-only telemedicine or  
3 with a provider employed at the same medical group, at the same  
4 clinic, or by the same integrated delivery system operated by a  
5 carrier licensed under chapter 48.44 or 48.46 RCW as the provider  
6 providing audio-only telemedicine; or ((the))

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

14 (ii) For any other health care service:

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

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

30 (e) "Health care service" has the same meaning as in RCW  
31 48.43.005;

32 (f) "Hospital" means a facility licensed under chapter 70.41,  
33 71.12, or 72.23 RCW;

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

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

37 (i) "Store and forward technology" means use of an asynchronous  
38 transmission of a covered person's medical information from an  
39 originating site to the health care provider at a distant site which  
40 results in medical diagnosis and management of the covered person,

1 and does not include the use of audio-only telephone, facsimile, or  
2 email; and

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

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

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

13 (1) Upon initiation or renewal of a contract with the authority,  
14 behavioral health administrative services organizations and managed  
15 care organizations shall reimburse a provider for a behavioral health  
16 service provided to a covered person through telemedicine or store  
17 and forward technology if:

18 (a) The behavioral health administrative services organization or  
19 managed care organization in which the covered person is enrolled  
20 provides coverage of the behavioral health service when provided in  
21 person by the provider;

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

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

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

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

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

38 (4) Any originating site, other than a home, under subsection (3)  
39 of this section may charge a facility fee for infrastructure and

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

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

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

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

25 (a) An originating site for professional fees;

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

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

30 (8)(a) If a provider intends to bill a patient, a behavioral  
31 health administrative services organization, or a managed care  
32 organization for an audio-only telemedicine service, the provider  
33 must obtain patient consent for the billing in advance of the service  
34 being delivered.

35 (b) If the health care authority has cause to believe that a  
36 provider has engaged in a pattern of unresolved violations of this  
37 subsection (8), the health care authority may submit information to  
38 the appropriate disciplining authority, as defined in RCW 18.130.020,  
39 for action. Prior to submitting information to the appropriate  
40 disciplining authority, the health care authority may provide the

1 provider with an opportunity to cure the alleged violations or  
2 explain why the actions in question did not violate this subsection  
3 (8).

4 (c) If the provider has engaged in a pattern of unresolved  
5 violations of this subsection (8), the appropriate disciplining  
6 authority may levy a fine or cost recovery upon the provider in an  
7 amount not to exceed the applicable statutory amount per violation  
8 and take other action as permitted under the authority of the  
9 disciplining authority. Upon completion of its review of any  
10 potential violation submitted by the health care authority or  
11 initiated directly by an enrollee, the disciplining authority shall  
12 notify the health care authority of the results of the review,  
13 including whether the violation was substantiated and any enforcement  
14 action taken as a result of a finding of a substantiated violation.

15 (9) For purposes of this section:

16 (a) (i) "Audio-only telemedicine" means the delivery of health  
17 care services through the use of audio-only technology, permitting  
18 real-time communication between the patient at the originating site  
19 and the provider, for the purpose of diagnosis, consultation, or  
20 treatment.

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

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

24 (B) The delivery of health care services that are customarily  
25 delivered by audio-only technology and customarily not billed as  
26 separate services by the provider, such as the sharing of laboratory  
27 results;

28 (b) "Disciplining authority" has the same meaning as in RCW  
29 18.130.020;

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

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

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

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

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

11 (e) "Hospital" means a facility licensed under chapter 70.41,  
12 71.12, or 72.23 RCW;

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

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

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

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

29 ((~~(9)~~—~~{(10)}~~)) (10) The authority must adopt rules as necessary  
30 to implement the provisions of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (a) Hospital;

40 (b) Rural health clinic;

- 1 (c) Federally qualified health center;
- 2 (d) Physician's or other health care provider's office;
- 3 (e) Licensed or certified behavioral health agency;
- 4 (f) Skilled nursing facility;
- 5 (g) Home or any location determined by the individual receiving
- 6 the service; or
- 7 (h) Renal dialysis center, except an independent renal dialysis
- 8 center.

9 (4) Except for subsection (3)(g) of this section, any originating  
10 site under subsection (3) of this section may charge a facility fee  
11 for infrastructure and preparation of the patient. Reimbursement for  
12 a facility fee must be subject to a negotiated agreement between the  
13 originating site and the managed health care system. A distant site,  
14 a hospital that is an originating site for audio-only telemedicine,  
15 or any other site not identified in subsection (3) of this section  
16 may not charge a facility fee.

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

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

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

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

34 (8)(a) If a provider intends to bill a patient or a managed  
35 health care system for an audio-only telemedicine service, the  
36 provider must obtain patient consent for the billing in advance of  
37 the service being delivered and comply with all rules created by the  
38 authority related to restrictions on billing medicaid recipients. The  
39 authority may submit information on any potential violations of this  
40 subsection to the appropriate disciplining authority, as defined in



1 RCW 18.130.020(~~(+)~~), or take contractual actions against the  
2 provider's agreement for participation in the medicaid program, or  
3 both.

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

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

23 (9) For purposes of this section:

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

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

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

32 (B) 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 (b) "Disciplining authority" has the same meaning as in RCW  
37 18.130.020;

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

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

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

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

15 (B) The covered person was referred to the provider providing  
16 audio-only telemedicine by another provider who has had, within the  
17 past three years, at least one in-person appointment, or at least one  
18 real-time interactive appointment using both audio and video  
19 technology, with the covered person ((within the past year)) and has  
20 provided relevant medical information to the provider providing  
21 audio-only telemedicine;

22 (ii) For any other health care service:

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

31 (B) The covered person was referred to the provider providing  
32 audio-only telemedicine by another provider who has had, within the  
33 past two years, at least one in-person appointment, or, until January  
34 1, 2024, at least one real-time interactive appointment using both  
35 audio and video technology, with the covered person and has provided  
36 relevant medical information to the provider providing audio-only  
37 telemedicine;

38 (e) "Health care service" has the same meaning as in RCW  
39 48.43.005;

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

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

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

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

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

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

28 NEW SECTION. **Sec. 5.** If any provision of this act or its  
29 application to any person or circumstance is held invalid, the  
30 remainder of the act or the application of the provision to other  
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 6.** If any part of this act is found to be in  
33 conflict with federal requirements that are a prescribed condition to  
34 the allocation of federal funds to the state, the conflicting part of  
35 this act is inoperative solely to the extent of the conflict and with  
36 respect to the agencies directly affected, and this finding does not  
37 affect the operation of the remainder of this act in its application  
38 to the agencies concerned. Rules adopted under this act must meet

1 federal requirements that are a necessary condition to the receipt of  
2 federal funds by the state.

Passed by the House March 9, 2022.

Passed by the Senate March 8, 2022.

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