

ESHB 1196 - S COMM AMD

By Committee on Health & Long Term Care

OUT OF ORDER 04/10/2021

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

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

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

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

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

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

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

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

25 (b)(i) Except as provided in (b)(ii) of this subsection, a health
26 plan offered to employees, school employees, and their covered
27 dependents under this chapter issued or renewed on or after January
28 1, 2021, shall reimburse a provider for a health care service
29 provided to a covered person through telemedicine ~~((at))~~ the same
30 ~~((rate as))~~ amount of compensation the carrier would pay the provider
31 if the health care service was provided in person by the provider.

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

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

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

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

15 (a) Hospital;

16 (b) Rural health clinic;

17 (c) Federally qualified health center;

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

19 (e) (~~Community mental health center~~) Licensed or certified
20 behavioral health agency;

21 (f) Skilled nursing facility;

22 (g) Home or any location determined by the individual receiving
23 the service; or

24 (h) Renal dialysis center, except an independent renal dialysis
25 center.

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

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

37 (6) The plan may subject coverage of a telemedicine or store and
38 forward technology health service under subsection (1) of this
39 section to all terms and conditions of the plan including, but not
40 limited to, utilization review, prior authorization, deductible,

1 copayment, or coinsurance requirements that are applicable to
2 coverage of a comparable health care service provided in person.

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

4 (a) An originating site for professional fees;

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

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

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

13 (b) If the health care authority has cause to believe that a
14 provider has engaged in a pattern of unresolved violations of this
15 subsection (8), the health care authority may submit information to
16 the appropriate disciplining authority, as defined in RCW 18.130.020,
17 for action. Prior to submitting information to the appropriate
18 disciplining authority, the health care authority may provide the
19 provider with an opportunity to cure the alleged violations or
20 explain why the actions in question did not violate this subsection
21 (8).

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

33 (9) For purposes of this section:

34 (a)(i) "Audio-only telemedicine" means the delivery of health
35 care services through the use of audio-only technology, permitting
36 real-time communication between the patient at the originating site
37 and the provider, for the purpose of diagnosis, consultation, or
38 treatment.

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

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

2 (B) The delivery of health care services that are customarily
3 delivered by audio-only technology and customarily not billed as
4 separate services by the provider, such as the sharing of laboratory
5 results.

6 (b) "Disciplining authority" has the same meaning as in RCW
7 18.130.020;

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

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

20 (e) "Health care service" has the same meaning as in RCW
21 48.43.005;

22 ~~((e))~~ (f) "Hospital" means a facility licensed under chapter
23 70.41, 71.12, or 72.23 RCW;

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

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

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

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

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

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

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

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

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

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

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

22 (b) (i) Except as provided in (b) (ii) of this subsection, for
23 health plans issued or renewed on or after January 1, 2021, a health
24 carrier shall reimburse a provider for a health care service provided
25 to a covered person through telemedicine (~~at~~) the same (~~rate as~~)
26 amount of compensation the carrier would pay the provider if the
27 health care service was provided 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 (2) For purposes of this section, reimbursement of store and
37 forward technology is available only for those covered services
38 specified in the negotiated agreement between the health carrier and
39 the health care provider.

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

3 (a) Hospital;

4 (b) Rural health clinic;

5 (c) Federally qualified health center;

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

7 (e) (~~Community mental health center~~) Licensed or certified
8 behavioral health agency;

9 (f) Skilled nursing facility;

10 (g) Home or any location determined by the individual receiving
11 the service; or

12 (h) Renal dialysis center, except an independent renal dialysis
13 center.

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

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

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

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

33 (a) An originating site for professional fees;

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

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

38 (8) (a) If a provider intends to bill a patient or the patient's
39 health plan for an audio-only telemedicine service, the provider must

1 obtain patient consent for the billing in advance of the service
2 being delivered.

3 (b) If the commissioner has cause to believe that a provider has
4 engaged in a pattern of unresolved violations of this subsection (8),
5 the commissioner may submit information to the appropriate
6 disciplining authority, as defined in RCW 18.130.020, for action.
7 Prior to submitting information to the appropriate disciplining
8 authority, the commissioner may provide the provider with an
9 opportunity to cure the alleged violations or explain why the actions
10 in question did not violate this subsection (8).

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

22 (9) For purposes of this section:

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

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

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

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

35 (b) "Disciplining authority" has the same meaning as in RCW
36 18.130.020;

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

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

10 (e) "Health care service" has the same meaning as in RCW
11 48.43.005;

12 ~~((e))~~ (f) "Hospital" means a facility licensed under chapter
13 70.41, 71.12, or 72.23 RCW;

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

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

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

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

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

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

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

38 (1) "Aftercare" means the assistance provided by a lay caregiver
39 to a patient under this chapter after the patient's discharge from a

1 hospital. The assistance may include, but is not limited to,
2 assistance with activities of daily living, wound care, medication
3 assistance, and the operation of medical equipment. "Aftercare"
4 includes assistance only for conditions that were present at the time
5 of the patient's discharge from the hospital. "Aftercare" does not
6 include:

7 (a) Assistance related to conditions for which the patient did
8 not receive medical care, treatment, or observation in the hospital;
9 or

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

12 (2) (a) "Audio-only telemedicine" means the delivery of health
13 care services through the use of audio-only technology, permitting
14 real-time communication between the patient at the originating site
15 and the provider, for the purpose of diagnosis, consultation, or
16 treatment.

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

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

19 (ii) The delivery of health care services that are customarily
20 delivered by audio-only technology and customarily not billed as
21 separate services by the provider, such as the sharing of laboratory
22 results.

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

24 ~~((3))~~ (4) "Discharge" means a patient's release from a hospital
25 following the patient's admission to the hospital.

26 ~~((4))~~ (5) "Distant site" means the site at which a physician or
27 other licensed provider, delivering a professional service, is
28 physically located at the time the service is provided through
29 telemedicine.

30 ~~((5))~~ (6) "Emergency care to victims of sexual assault" means
31 medical examinations, procedures, and services provided by a hospital
32 emergency room to a victim of sexual assault following an alleged
33 sexual assault.

34 ~~((6))~~ (7) "Emergency contraception" means any health care
35 treatment approved by the food and drug administration that prevents
36 pregnancy, including but not limited to administering two increased
37 doses of certain oral contraceptive pills within seventy-two hours of
38 sexual contact.

39 ~~((7))~~ (8) "Hospital" means any institution, place, building, or
40 agency which provides accommodations, facilities and services over a

1 continuous period of twenty-four hours or more, for observation,
2 diagnosis, or care, of two or more individuals not related to the
3 operator who are suffering from illness, injury, deformity, or
4 abnormality, or from any other condition for which obstetrical,
5 medical, or surgical services would be appropriate for care or
6 diagnosis. "Hospital" as used in this chapter does not include
7 hotels, or similar places furnishing only food and lodging, or simply
8 domiciliary care; nor does it include clinics, or physician's offices
9 where patients are not regularly kept as bed patients for twenty-four
10 hours or more; nor does it include nursing homes, as defined and
11 which come within the scope of chapter 18.51 RCW; nor does it include
12 birthing centers, which come within the scope of chapter 18.46 RCW;
13 nor does it include psychiatric hospitals, which come within the
14 scope of chapter 71.12 RCW; nor any other hospital, or institution
15 specifically intended for use in the diagnosis and care of those
16 suffering from mental illness, intellectual disability, convulsive
17 disorders, or other abnormal mental condition. Furthermore, nothing
18 in this chapter or the rules adopted pursuant thereto shall be
19 construed as authorizing the supervision, regulation, or control of
20 the remedial care or treatment of residents or patients in any
21 hospital conducted for those who rely primarily upon treatment by
22 prayer or spiritual means in accordance with the creed or tenets of
23 any well recognized church or religious denominations.

24 ~~((8))~~ (9) "Lay caregiver" means any individual designated as
25 such by a patient under this chapter who provides aftercare
26 assistance to a patient in the patient's residence. "Lay caregiver"
27 does not include a long-term care worker as defined in RCW
28 74.39A.009.

29 ~~((9))~~ (10) "Originating site" means the physical location of a
30 patient receiving health care services through telemedicine.

31 ~~((10))~~ (11) "Person" means any individual, firm, partnership,
32 corporation, company, association, or joint stock association, and
33 the legal successor thereof.

34 ~~((11))~~ (12) "Secretary" means the secretary of health.

35 ~~((12))~~ (13) "Sexual assault" has the same meaning as in RCW
36 70.125.030.

37 ~~((13))~~ (14) "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. "Telemedicine" (~~does not include the use~~
2 ~~of~~) includes audio-only (~~telephone~~) telemedicine, but does not
3 include facsimile(~~r~~) or email.

4 (~~(14)~~) (15) "Victim of sexual assault" means a person who
5 alleges or is alleged to have been sexually assaulted and who
6 presents as a patient.

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

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

14 (a) The behavioral health administrative services organization or
15 managed care organization in which the covered person is enrolled
16 provides coverage of the behavioral health service when provided in
17 person by the provider; (~~and~~)

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

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

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

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

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

34 (4) Any originating site, other than a home, under subsection (3)
35 of this section may charge a facility fee for infrastructure and
36 preparation of the patient. Reimbursement must be subject to a
37 negotiated agreement between the originating site and the behavioral
38 health administrative services organization, or managed care
39 organization, as applicable. A distant site, a hospital that is an

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

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

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

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

21 (a) An originating site for professional fees;

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

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

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

31 (b) If the health care authority has cause to believe that a
32 provider has engaged in a pattern of unresolved violations of this
33 subsection (8), the health care authority may submit information to
34 the appropriate disciplining authority, as defined in RCW 18.130.020,
35 for action. Prior to submitting information to the appropriate
36 disciplining authority, the health care authority may provide the
37 provider with an opportunity to cure the alleged violations or
38 explain why the actions in question did not violate this subsection
39 (8).

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

12 (9) For purposes of this section:

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

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

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

21 (B) The delivery of health care services that are customarily
22 delivered by audio-only technology and customarily not billed as
23 separate services by the provider, such as the sharing of laboratory
24 results.

25 (b) "Disciplining authority" has the same meaning as in RCW
26 18.130.020;

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

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

39 (e) "Hospital" means a facility licensed under chapter 70.41,
40 71.12, or 72.23 RCW;

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (b) (i) Except as provided in (b) (ii) of this subsection, upon
6 initiation or renewal of a contract with the Washington state health
7 care authority to administer a medicaid managed care plan, a managed
8 health care system shall reimburse a provider for a health care
9 service provided to a covered person through telemedicine (~~(at)~~) the
10 same (~~(rate as)~~) amount of compensation the managed health care
11 system would pay the provider if the health care service was provided
12 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 (~~(a reimbursement rate)~~) an amount of compensation for
16 telemedicine services that differs from the (~~(reimbursement rate)~~)
17 amount of compensation for in-person services.

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

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

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

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

29 (a) Hospital;

30 (b) Rural health clinic;

31 (c) Federally qualified health center;

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

33 (~~(Community mental health center)~~) Licensed or certified
34 behavioral health agency;

35 (f) Skilled nursing facility;

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

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

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

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

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

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

21 (a) An originating site for professional fees;

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

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

26 (8) (a) If a provider intends to bill a patient or a managed
27 health care system for an audio-only telemedicine service, the
28 provider must obtain patient consent for the billing in advance of
29 the service being delivered and comply with all rules created by the
30 authority related to restrictions on billing medicaid recipients. The
31 authority may submit information on any potential violations of this
32 subsection to the appropriate disciplining authority, as defined in
33 RCW 18.130.020 or take contractual actions against the provider's
34 agreement for participation in the medicaid program, or both.

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 for action. Prior to
39 submitting information to the appropriate disciplining authority, the
40 health care authority may provide the provider with an opportunity to

1 cure the alleged violations or explain why the actions in question
2 did not violate this subsection (8).

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

14 (9) For purposes of this section:

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

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

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

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

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

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

32 ~~((b))~~ (d) "Established relationship" means the covered person
33 has had at least one in-person appointment within the past year with
34 the provider providing audio-only telemedicine or with a provider
35 employed at the same clinic as the provider providing audio-only
36 telemedicine or the covered person was referred to the provider
37 providing audio-only telemedicine by another provider who has had at
38 least one in-person appointment with the covered person within the
39 past year and has provided relevant medical information to the
40 provider providing audio-only telemedicine.

1 (e) "Health care service" has the same meaning as in RCW
2 48.43.005;

3 ~~((e))~~ (f) "Hospital" means a facility licensed under chapter
4 70.41, 71.12, or 72.23 RCW;

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

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

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

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

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

32 ~~((9) To measure the impact on access to care for underserved
33 communities and costs to the state and the medicaid managed health
34 care system for reimbursement of telemedicine services, the
35 Washington state health care authority, using existing data and
36 resources, shall provide a report to the appropriate policy and
37 fiscal committees of the legislature no later than December 31,
38 2018.))~~

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

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

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

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

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

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

19 (ii) The delivery of health care services that are customarily
20 delivered by audio-only technology and customarily not billed as
21 separate services by the provider, such as the sharing of laboratory
22 results.

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

25 The following conduct, acts, or conditions constitute
26 unprofessional conduct for any license holder under the jurisdiction
27 of this chapter:

28 (1) The commission of any act involving moral turpitude,
29 dishonesty, or corruption relating to the practice of the person's
30 profession, whether the act constitutes a crime or not. If the act
31 constitutes a crime, conviction in a criminal proceeding is not a
32 condition precedent to disciplinary action. Upon such a conviction,
33 however, the judgment and sentence is conclusive evidence at the
34 ensuing disciplinary hearing of the guilt of the license holder of
35 the crime described in the indictment or information, and of the
36 person's violation of the statute on which it is based. For the
37 purposes of this section, conviction includes all instances in which
38 a plea of guilty or nolo contendere is the basis for the conviction
39 and all proceedings in which the sentence has been deferred or

1 suspended. Nothing in this section abrogates rights guaranteed under
2 chapter 9.96A RCW;

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

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

6 (4) Incompetence, negligence, or malpractice which results in
7 injury to a patient or which creates an unreasonable risk that a
8 patient may be harmed. The use of a nontraditional treatment by
9 itself shall not constitute unprofessional conduct, provided that it
10 does not result in injury to a patient or create an unreasonable risk
11 that a patient may be harmed;

12 (5) Suspension, revocation, or restriction of the individual's
13 license to practice any health care profession by competent authority
14 in any state, federal, or foreign jurisdiction, a certified copy of
15 the order, stipulation, or agreement being conclusive evidence of the
16 revocation, suspension, or restriction;

17 (6) Except when authorized by RCW 18.130.345, the possession,
18 use, prescription for use, or distribution of controlled substances
19 or legend drugs in any way other than for legitimate or therapeutic
20 purposes, diversion of controlled substances or legend drugs, the
21 violation of any drug law, or prescribing controlled substances for
22 oneself;

23 (7) Violation of any state or federal statute or administrative
24 rule regulating the profession in question, including any statute or
25 rule defining or establishing standards of patient care or
26 professional conduct or practice;

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

28 (a) Not furnishing any papers, documents, records, or other
29 items;

30 (b) Not furnishing in writing a full and complete explanation
31 covering the matter contained in the complaint filed with the
32 disciplining authority;

33 (c) Not responding to subpoenas issued by the disciplining
34 authority, whether or not the recipient of the subpoena is the
35 accused in the proceeding; or

36 (d) Not providing reasonable and timely access for authorized
37 representatives of the disciplining authority seeking to perform
38 practice reviews at facilities utilized by the license holder;

1 (9) Failure to comply with an order issued by the disciplining
2 authority or a stipulation for informal disposition entered into with
3 the disciplining authority;

4 (10) Aiding or abetting an unlicensed person to practice when a
5 license is required;

6 (11) Violations of rules established by any health agency;

7 (12) Practice beyond the scope of practice as defined by law or
8 rule;

9 (13) Misrepresentation or fraud in any aspect of the conduct of
10 the business or profession;

11 (14) Failure to adequately supervise auxiliary staff to the
12 extent that the consumer's health or safety is at risk;

13 (15) Engaging in a profession involving contact with the public
14 while suffering from a contagious or infectious disease involving
15 serious risk to public health;

16 (16) Promotion for personal gain of any unnecessary or
17 inefficacious drug, device, treatment, procedure, or service;

18 (17) Conviction of any gross misdemeanor or felony relating to
19 the practice of the person's profession. For the purposes of this
20 subsection, conviction includes all instances in which a plea of
21 guilty or nolo contendere is the basis for conviction and all
22 proceedings in which the sentence has been deferred or suspended.
23 Nothing in this section abrogates rights guaranteed under chapter
24 9.96A RCW;

25 (18) The procuring, or aiding or abetting in procuring, a
26 criminal abortion;

27 (19) The offering, undertaking, or agreeing to cure or treat
28 disease by a secret method, procedure, treatment, or medicine, or the
29 treating, operating, or prescribing for any health condition by a
30 method, means, or procedure which the licensee refuses to divulge
31 upon demand of the disciplining authority;

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

34 (21) Violation of chapter 19.68 RCW or a pattern of violations of
35 RCW 41.05.700(8), 48.43.735(8), 48.49.020 ((e)), 48.49.030,
36 71.24.335(8), or 74.09.325(8);

37 (22) Interference with an investigation or disciplinary
38 proceeding by willful misrepresentation of facts before the
39 disciplining authority or its authorized representative, or by the
40 use of threats or harassment against any patient or witness to

1 prevent them from providing evidence in a disciplinary proceeding or
2 any other legal action, or by the use of financial inducements to any
3 patient or witness to prevent or attempt to prevent him or her from
4 providing evidence in a disciplinary proceeding;

5 (23) Current misuse of:

6 (a) Alcohol;

7 (b) Controlled substances; or

8 (c) Legend drugs;

9 (24) Abuse of a client or patient or sexual contact with a client
10 or patient;

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

18 (26) Violation of RCW 18.130.420;

19 (27) Performing conversion therapy on a patient under age
20 eighteen;

21 (28) Violation of RCW 18.130.430.

22 NEW SECTION. **Sec. 8.** (1) The insurance commissioner, in
23 collaboration with the Washington state telehealth collaborative and
24 the health care authority, shall study and make recommendations
25 regarding:

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

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

30 (c) Preliminary information regarding whether requiring
31 reimbursement for audio-only telemedicine has affected the incidence
32 of fraud;

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

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

1 (f) Any other issues the insurance commissioner deems
2 appropriate.

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

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

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

9 (1) The collaborative for the advancement of telemedicine is
10 created to enhance the understanding and use of health services
11 provided through telemedicine and other similar models in Washington
12 state. The collaborative shall be hosted by the University of
13 Washington telehealth services and shall be comprised of one member
14 from each of the two largest caucuses of the senate and the house of
15 representatives, and representatives from the academic community,
16 hospitals, clinics, and health care providers in primary care and
17 specialty practices, carriers, and other interested parties.

18 (2) By July 1, 2016, the collaborative shall be convened. The
19 collaborative shall develop recommendations on improving
20 reimbursement and access to services, including originating site
21 restrictions, provider to provider consultative models, and
22 technologies and models of care not currently reimbursed; identify
23 the existence of telemedicine best practices, guidelines, billing
24 requirements, and fraud prevention developed by recognized medical
25 and telemedicine organizations; and explore other priorities
26 identified by members of the collaborative. After review of existing
27 resources, the collaborative shall explore and make recommendations
28 on whether to create a technical assistance center to support
29 providers in implementing or expanding services delivered through
30 telemedicine technologies.

31 (3) The collaborative must submit an initial progress report by
32 December 1, 2016, with follow-up policy reports including
33 recommendations by December 1, 2017, December 1, 2018, and December
34 1, 2021. The reports shall be shared with the relevant professional
35 associations, governing boards or commissions, and the health care
36 committees of the legislature.

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

39 (a) Utilization;

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

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

5 (d) Ocular services.

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

8 (6) The collaborative must study the need for an established
9 patient/provider relationship before providing audio-only
10 telemedicine, including considering what types of services may be
11 provided without an established relationship. By December 1, 2021,
12 the collaborative must submit a report to the legislature on its
13 recommendations regarding the need for an established relationship
14 for audio-only telemedicine.

15 (7) The future of the collaborative shall be reviewed by the
16 legislature with consideration of ongoing technical assistance needs
17 and opportunities. The collaborative terminates December 31, ((2021))
18 2023.

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

ESHB 1196 - S COMM AMD

By Committee on Health & Long Term Care

OUT OF ORDER 04/10/2021

28 On page 1, line 1 of the title, after "telemedicine;" strike the
29 remainder of the title and insert "amending RCW 41.05.700, 48.43.735,
30 70.41.020, 71.24.335, 74.09.325, 18.130.180, and 28B.20.830; adding a
31 new section to chapter 74.09 RCW; creating new sections; and
32 providing an expiration date."

EFFECT: (1) Directs the telemedicine collaborative to study the need for an established relationship before providing audio-only telemedicine and report to the Legislature by December 1, 2021.

(2) Clarifies that medicaid patients will not be billed for audio-only telemedicine visits.

--- END ---