

ESHB 1821 - S COMM AMD

By Committee on Health & Long Term Care

ADOPTED 03/01/2022

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

3 "Sec. 1. RCW 41.05.700 and 2021 c 157 s 1 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 (iv) The health care service is determined to be safely and  
17 effectively provided through telemedicine or store and forward  
18 technology according to generally accepted health care practices and  
19 standards, and the technology used to provide the health care service  
20 meets the standards required by state and federal laws governing the  
21 privacy and security of protected health information; and

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

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

31 (ii) Hospitals, hospital systems, telemedicine companies, and  
32 provider groups consisting of eleven or more providers may elect to

1 negotiate an amount of compensation for telemedicine services that  
2 differs from the amount of compensation for in-person services.

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

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

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

12 (a) Hospital;

13 (b) Rural health clinic;

14 (c) Federally qualified health center;

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

16 (e) Licensed or certified behavioral health agency;

17 (f) Skilled nursing facility;

18 (g) Home or any location determined by the individual receiving  
19 the service; or

20 (h) Renal dialysis center, except an independent renal dialysis  
21 center.

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

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

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

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

40 (a) An originating site for professional fees;

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

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

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

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

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

29 (9) For purposes of this section:

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

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

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

38 (B) The delivery of health care services that are customarily  
39 delivered by audio-only technology and customarily not billed as

1 separate services by the provider, such as the sharing of laboratory  
2 results;

3 (b) "Disciplining authority" has the same meaning as in RCW  
4 18.130.020;

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

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

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

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

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

29 (ii) For any other health care service:

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

38 (B) The covered person was referred to the provider providing  
39 audio-only telemedicine by another provider who has had, within the  
40 past two years, at least one in-person appointment, or at least one

1 real-time interactive appointment using both audio and video  
2 technology, with the covered person and has provided relevant medical  
3 information to the provider providing audio-only telemedicine;

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

6 (f) "Hospital" means a facility licensed under chapter 70.41,  
7 71.12, or 72.23 RCW;

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

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

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

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

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

25 (1)(a) For health plans issued or renewed on or after January 1,  
26 2017, a health carrier shall reimburse a provider for a health care  
27 service provided to a covered person through telemedicine or store  
28 and forward technology if:

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

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

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

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, for  
6 health plans issued or renewed on or after January 1, 2021, a health  
7 carrier shall reimburse a provider for a health care service provided  
8 to a covered person through telemedicine the same amount of  
9 compensation the carrier would pay the provider if the health care  
10 service was provided in person by the provider.

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

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

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

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

24 (a) Hospital;

25 (b) Rural health clinic;

26 (c) Federally qualified health center;

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

28 (e) Licensed or certified behavioral health agency;

29 (f) Skilled nursing facility;

30 (g) Home or any location determined by the individual receiving  
31 the service; or

32 (h) Renal dialysis center, except an independent renal dialysis  
33 center.

34 (4) Except for subsection (3)(g) of this section, any originating  
35 site under subsection (3) of this section may charge a facility fee  
36 for infrastructure and preparation of the patient. Reimbursement for  
37 a facility fee must be subject to a negotiated agreement between the  
38 originating site and the health carrier. A distant site, a hospital  
39 that is an originating site for audio-only telemedicine, or any other

1 site not identified in subsection (3) of this section may not charge  
2 a facility fee.

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

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

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

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

1 violation was substantiated and any enforcement action taken as a  
2 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 at least one real-time  
6 interactive appointment using both audio and video technology, with  
7 the provider providing audio-only telemedicine or with a provider  
8 employed at the same medical group, at the same clinic, or by the  
9 same integrated delivery system operated by a carrier licensed under  
10 chapter 48.44 or 48.46 RCW as the provider providing audio-only  
11 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 at least one  
15 real-time interactive appointment using both audio and video  
16 technology, with the covered person and has provided relevant medical  
17 information to the provider providing audio-only telemedicine;

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

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

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

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

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

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

37 ~~((9) — [(10)])~~ (10) The commissioner may adopt any rules  
38 necessary to implement this section.

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

3       (1) Upon initiation or renewal of a contract with the authority,  
4 behavioral health administrative services organizations and managed  
5 care organizations shall reimburse a provider for a behavioral health  
6 service provided to a covered person through telemedicine or store  
7 and forward technology if:

8       (a) The behavioral health administrative services organization or  
9 managed care organization in which the covered person is enrolled  
10 provides coverage of the behavioral health service when provided in  
11 person by the provider;

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

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

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

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

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

28       (4) Any originating site, other than a home, under subsection (3)  
29 of this section may charge a facility fee for infrastructure and  
30 preparation of the patient. Reimbursement must be subject to a  
31 negotiated agreement between the originating site and the behavioral  
32 health administrative services organization, or managed care  
33 organization, as applicable. A distant site, a hospital that is an  
34 originating site for audio-only telemedicine, or any other site not  
35 identified in subsection (3) of this section may not charge a  
36 facility fee.

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

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

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

14 (a) An originating site for professional fees;

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

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

19 (8)(a) If a provider intends to bill a patient, a behavioral  
20 health administrative services organization, or a managed care  
21 organization for an audio-only telemedicine service, the provider  
22 must obtain patient consent for the billing in advance of the service  
23 being delivered.

24 (b) If the health care authority has cause to believe that a  
25 provider has engaged in a pattern of unresolved violations of this  
26 subsection (8), the health care authority may submit information to  
27 the appropriate disciplining authority, as defined in RCW 18.130.020,  
28 for action. Prior to submitting information to the appropriate  
29 disciplining authority, the health care authority may provide the  
30 provider with an opportunity to cure the alleged violations or  
31 explain why the actions in question did not violate this subsection  
32 (8).

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

1 notify the health care authority of the results of the review,  
2 including whether the violation was substantiated and any enforcement  
3 action taken as a result of a finding of a substantiated violation.

4 (9) For purposes of this section:

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

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

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

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

17 (b) "Disciplining authority" has the same meaning as in RCW  
18 18.130.020;

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

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

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

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

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

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

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

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

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

19 (~~(9)~~—~~{(10)}~~) (10) The authority must adopt rules as necessary  
20 to implement the provisions of this section.

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

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

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

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

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

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 the same  
10 amount of compensation the managed health care system would pay the  
11 provider if the health care service was provided in person by the  
12 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 (iv) A rural health clinic shall be reimbursed for audio-only  
21 telemedicine at the rural health clinic encounter rate.

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

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

28 (a) Hospital;

29 (b) Rural health clinic;

30 (c) Federally qualified health center;

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

32 (e) Licensed or certified behavioral health agency;

33 (f) Skilled nursing facility;

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

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

38 (4) Except for subsection (3) (g) of this section, any originating  
39 site under subsection (3) of this section may charge a facility fee  
40 for infrastructure and preparation of the patient. Reimbursement for

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

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

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

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

18 (a) An originating site for professional fees;

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

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

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

33 (b) If the health care authority has cause to believe that a  
34 provider has engaged in a pattern of unresolved violations of this  
35 subsection (8), the health care authority may submit information to  
36 the appropriate disciplining authority for action. Prior to  
37 submitting information to the appropriate disciplining authority, the  
38 health care authority may provide the provider with an opportunity to  
39 cure the alleged violations or explain why the actions in question  
40 did not violate this subsection (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 (d) "Established relationship" means the provider providing  
31 audio-only telemedicine has access to sufficient health records to  
32 ensure safe, effective, and appropriate care services and:

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

36 (A) 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 (B) 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 (ii) For any other health care service:

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

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

26 (e) "Health care service" has the same meaning as in RCW  
27 48.43.005;

28 (f) "Hospital" means a facility licensed under chapter 70.41,  
29 71.12, or 72.23 RCW;

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

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

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

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

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

16 NEW SECTION. **Sec. 5.** If any provision of this act or its  
17 application to any person or circumstance is held invalid, the  
18 remainder of the act or the application of the provision to other  
19 persons or circumstances is not affected.

20 NEW SECTION. **Sec. 6.** If any part of this act is found to be in  
21 conflict with federal requirements that are a prescribed condition to  
22 the allocation of federal funds to the state, the conflicting part of  
23 this act is inoperative solely to the extent of the conflict and with  
24 respect to the agencies directly affected, and this finding does not  
25 affect the operation of the remainder of this act in its application  
26 to the agencies concerned. Rules adopted under this act must meet  
27 federal requirements that are a necessary condition to the receipt of  
28 federal funds by the state."

**ESHB 1821** - S COMM AMD

By Committee on Health & Long Term Care

**ADOPTED 03/01/2022**

29 On page 1, line 2 of the title, after "telemedicine;" strike the  
30 remainder of the title and insert "amending RCW 41.05.700, 48.43.735,  
31 and 74.09.325; reenacting and amending RCW 71.24.335; and creating a  
32 new section."

EFFECT: Modifies the definition of "established relationship" to allow a relationship to be established for physical health services through a telemedicine visit that includes both audio and video technology.

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