

FINAL BILL REPORT

ESHB 1196

C 157 L 21
Synopsis as Enacted

Brief Description: Concerning audio-only telemedicine.

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

House Committee on Health Care & Wellness
Senate Committee on Health & Long Term Care
Senate Committee on Ways & Means

Background:

Telemedicine is the use of interactive audio, video, or electronic media for the purpose of diagnosis, consultation, or treatment of a patient at an originating site.

I. Telemedicine Reimbursement.

A health plan offered by a health carrier, a health plan offered to school or state employees and their dependents, a Medicaid managed care plan, or a behavioral health administrative services organization (for covered persons under 18 years of age) must reimburse providers for health care services provided through telemedicine or store and forward technology if:

- the services are covered services;
- the services are medically necessary;
- the services are essential health benefits under the federal Patient Protection and Affordable Care Act;
- the services are determined to be safely and effectively provided through telemedicine or store and forward technology according to generally accepted health care practices and standards; and
- the technology meets state and federal standards governing the privacy and security of protected health information.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

An originating site for telemedicine includes a hospital, rural health clinic, federally qualified health center, health care provider's office, community mental health center, skilled nursing center, renal dialysis center, or a home.

A health plan offered by a health carrier, a health plan offered to school or state employees, and a Medicaid managed care plan must reimburse a provider for a health care service provided through telemedicine at the same rate as if it was provided in person. Hospitals, hospital systems, telemedicine companies, and provider groups of 11 or more providers may negotiate a different reimbursement rate.

For purposes of these requirements, telemedicine does not include the use of audio-only telephone, facsimile, or electronic mail (e-mail).

II. Hospital Privileging.

A hospital may grant privileges to physicians to treat patients in its facilities. When a patient is being treated through telemedicine, an originating site hospital may rely on a distant site hospital's decision to grant or renew the privileges or association of any physician providing telemedicine services if the originating site hospital has a written agreement with the distant site hospital. The definition of "telemedicine" for this purpose does not include audio-only telephone, facsimile, or e-mail.

III. The Collaborative for the Advancement of Telemedicine.

Hosted by the University of Washington, the Collaborative for the Advancement of Telemedicine (Collaborative) is a group convened to develop recommendations on telemedicine. Issues the Collaborative considers include reimbursement, access, best practices, and technical assistance. The Collaborative expires on December 31, 2021.

Summary:

I. Telemedicine Reimbursement.

A health plan offered by a health carrier, a health plan offered to school or state employees and their dependents, a Medicaid managed care plan, or a behavioral health administrative services organization (for covered persons under 18 years of age) must reimburse providers for health care services provided through audio-only telemedicine under the same conditions applicable to audio-video telemedicine.

If a provider intends to bill for audio-only telemedicine, he or she must first obtain the patient's consent to the billing prior to the service being delivered. A pattern of potential violations of the patient consent requirement must be reported to the provider's disciplining authority and the provider must be given the opportunity to cure or explain the violations.

The disciplining authority may levy a fine or cost recovery and take any other action as permitted under its authority. Upon completion of its review, the disciplining authority must notify the Insurance Commissioner or the Health Care Authority (HCA), as appropriate, of the results of the review.

Beginning January 1, 2023, the audio-only telemedicine reimbursement requirement applies only if the covered person has an established relationship with the provider. An established relationship exists if the person has had at least one in-person appointment within the past year with the audio-only telemedicine provider or a provider in the same clinic or the covered person was referred by another provider who has had at least one in-person appointment with the person within the past year and has given relevant medical information to the audio-only telemedicine provider.

A health plan offered by a health carrier, a health plan offered to school or state employees, and a Medicaid managed care plan must reimburse a provider for a health care service provided through telemedicine the same amount of compensation that would have been paid to the provider if the service was provided in person. Medicaid managed care organizations must reimburse rural health clinics for audio-only telemedicine at the rural health clinic encounter rate. A hospital acting as an originating site may not charge a facility fee for audio-only telemedicine.

Medicaid providers wishing to bill for audio-only telemedicine must comply with rules created by the HCA relating to restrictions on billing Medicaid recipients. The HCA may take actions against a Medicaid provider's participation agreement.

The HCA must adopt rules requiring Medicaid fee-for-service reimbursement for audio-only telemedicine services. The rules must establish a manner of reimbursement that is consistent with Medicaid managed care, except that rural health clinics must be reimbursed at the encounter rate.

For purposes of these requirements, "audio-only telemedicine" means the delivery of health care services through the use of audio-only technology, permitting real-time communication between the patient at the originating site and the provider for purposes of diagnosis, consultation, or treatment. Audio-only telemedicine does not include facsimile, electronic mail or the delivery of health care services that are customarily delivered by audio-only technology and not billed as separate services by the provider, such as the sharing of laboratory results.

The Insurance Commissioner may adopt any rules necessary to implement telemedicine requirements applicable to health carriers.

II. Hospital Privileging.

The definition of "telemedicine" for purposes of hospital privileging is expanded to include

audio-only telemedicine.

III. The Collaborative for the Advancement of Telemedicine.

The termination date for the Collaborative for the Advancement of Telemedicine is extended from December 31, 2021, to December 31, 2023.

IV. Telemedicine Studies.

The Insurance Commissioner, in collaboration with the Collaborative for the Advancement of Telemedicine and the HCA, must study and make recommendations regarding:

- preliminary utilization trends for audio-only telemedicine;
- qualitative data from health carriers, including Medicaid managed care organizations, on the burden of compliance and enforcement requirements for audio-only telemedicine;
- preliminary information regarding whether requiring reimbursement for audio-only telemedicine has affected the incidence of fraud;
- proposed methods to measure the impact of audio-only telemedicine on access to health care services for historically underserved communities and geographic areas; and
- an evaluation of the relative costs to providers and facilities of providing audio-only telemedicine services compared to audio-video telemedicine services and in-person services.

The Insurance Commissioner must report findings and recommendations to the appropriate committees of the Legislature by November 15, 2023.

The Collaborative for the Advancement of Telemedicine must study the need for an established patient/provider relationship for audio-only telemedicine and submit recommendations to the Legislature by December 1, 2021.

V. Fraud.

Nothing in the act alters the requirement for the HCA to report potential fraud to the Attorney General.

Votes on Final Passage:

House	94	3	
Senate	45	4	(Senate amended)
House	96	0	(House concurred)

Effective: July 25, 2021