SENATE BILL REPORT
ESHB 1196

As Reported by Senate Committee On:
Health & Long Term Care, March 26, 2021

Title: An act relating to audio-only telemedicine.

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).

Brief History: Passed House: 2/24/21, 94-3.
Committee Activity: Health & Long Term Care: 3/12/21, 3/26/21 [DPA-WM].

Brief Summary of Amended Bill

- Requires reimbursement for audio-only telemedicine services.
- Expands the definition of telemedicine for hospital privileging to include audio-only telemedicine services.
- Requires the Insurance Commissioner to study and make recommendations regarding telemedicine.
- Extends the termination date of the telemedicine collaborative.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Cleveland, Chair; Frockt, Vice Chair; Muzzall, Ranking Member; Conway, Holy, Keiser, Padden, Randall, Rivers, Robinson, Van De Wege and Wilson, J.

Staff: Greg Attanasio (786-7410)

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.

Background: 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, and 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.

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 these requirements, telemedicine does not include the use of audio-only telephone, facsimile, or e-mail.

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.

Telemedicine Collaborative. 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 of Amended Bill: 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, they must first obtain the patient's consent to the billing prior to the service being delivered. A pattern of potential violations of the 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 statutory authority. Upon completion of its review, the disciplining authority must notify the Insurance Commissioner or the Health Care Authority, as appropriate, 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 had at least one in-person appointment with the person within the past year and gave 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.

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

For 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 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 sharing laboratory results.

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

Hospital Privileging. The definition of telemedicine for hospital privileging is expanded to include audio-only telemedicine.

The Telemedicine Collaborative. The Collaborative must study the need for an established relationship before providing audio-only telemedicine and report to the Legislature by December 1, 2021. The termination date for the Collaborative is extended from December 31, 2021, to December 31, 2023.

Insurance Commissioner Study. The Insurance Commissioner, in collaboration with the Washington State Telemedicine Collaborative and the Health Care Authority, must complete a study by November 15, 2023 on:

- utilization trends of audio-only telemedicine;
- compliance and enforcement burdens related to audio-only telemedicine;
- the incidence of fraud related to audio-only telemedicine;
- methods to measure impacts of audio-only telemedicine on underserved communities and areas;
- the relative costs of providing audio-only telemedicine services; and
- any other issues deemed appropriate by the Insurance Commissioner.

EFFECT OF HEALTH & LONG TERM CARE COMMITTEE AMENDMENT(S):

- 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.
- Clarifies that Medicaid patients will not be billed for audio-only telemedicine visits.

Appropriation: None.

Fiscal Note: Requested on March 6, 2021.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Telemedicine is an important tool to ensure access, particularly during a pandemic. Some do not have access to video technology, particularly in rural and underserved areas. Audio-only telemedicine is important for behavioral health patients who are not comfortable with video. It is very effective for chronic disease management. Payment parity ensures equity.

OTHER: No other state requires an in person visit before providing audio-only telemedicine. The bill should be limited to behavioral health. Requiring an established relationship before providing audio-only telemedicine is a barrier to care.

Persons Testifying: PRO: Representative Marcus Riccelli, Prime Sponsor; Jane Beyer, Office of the Insurance Commissioner; Joelle Fathi, ARNPs United of Washington State; Leslie Hite, Association of Advanced Practice Psychiatric Nurses; Bob Cooper, Washington Association of Drug Courts; Thatcher Felt, Washington Chapter of the American Academy of Pediatrics; Lillian Wu, Washington Academy of Family Physicians; Diane Blake, Cascade Medical and Washington State Hospital Association; Jeb Shepard, Washington State Medical Association; Jessica Schlicher, MD, Washington State Medical Association; Joan Miller, Washington Council for Behavioral Health.

OTHER: Claudia Tucker, Teladoc Health, Inc.; Chris Bandoli, Association of Washington Healthcare Plans; Marissa Ingalls, Coordinated Care; Courtney Smith, Kaiser Permanente.

Persons Signed In To Testify But Not Testifying: No one.