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ENGROSSED SUBSTITUTE HOUSE BILL 1821

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State of Washington

67th Legislature

2022 Regular Session

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

READ FIRST TIME 01/27/22.

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

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

6 **Sec. 1.** RCW 41.05.700 and 2021 c 157 s 1 are each amended to  
7 read as follows:

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

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

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

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

19 (iv) The health care service is determined to be safely and  
20 effectively provided through telemedicine or store and forward  
21 technology according to generally accepted health care practices and

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

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

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

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

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

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

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

26 (a) Hospital;

27 (b) Rural health clinic;

28 (c) Federally qualified health center;

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

30 (e) Licensed or certified behavioral health agency;

31 (f) Skilled nursing facility;

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

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

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

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

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

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

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

14 (a) An originating site for professional fees;

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

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

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

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

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

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

3 (9) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

3 (ii) For any other health care service:

4 (A) The covered person has had, within the past two years, at  
5 least one in-person appointment with the provider providing audio-  
6 only telemedicine or with a provider employed at the same medical  
7 group, at the same clinic, or by the same integrated delivery system  
8 operated by a carrier licensed under chapter 48.44 or 48.46 RCW as  
9 the provider providing audio-only telemedicine; or

10 (B) The covered person was referred to the provider providing  
11 audio-only telemedicine by another provider who has had, within the  
12 past two years, at least one in-person appointment with the covered  
13 person and has provided relevant medical information to the provider  
14 providing audio-only telemedicine;

15 (e) "Health care service" has the same meaning as in RCW  
16 48.43.005;

17 (f) "Hospital" means a facility licensed under chapter 70.41,  
18 71.12, or 72.23 RCW;

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

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

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

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

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

36 (1)(a) For health plans issued or renewed on or after January 1,  
37 2017, a health carrier shall reimburse a provider for a health care  
38 service provided to a covered person through telemedicine or store  
39 and forward technology if:

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

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

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

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

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

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

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

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

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

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

34 (a) Hospital;

35 (b) Rural health clinic;

36 (c) Federally qualified health center;

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

38 (e) Licensed or certified behavioral health agency;

39 (f) Skilled nursing facility;

1 (g) Home or any location determined by the individual receiving  
2 the service; or

3 (h) Renal dialysis center, except an independent renal dialysis  
4 center.

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

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

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

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

24 (a) An originating site for professional fees;

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

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

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

33 (b) If the commissioner has cause to believe that a provider has  
34 engaged in a pattern of unresolved violations of this subsection (8),  
35 the commissioner may submit information to the appropriate  
36 disciplining authority, as defined in RCW 18.130.020, for action.  
37 Prior to submitting information to the appropriate disciplining  
38 authority, the commissioner may provide the provider with an  
39 opportunity to cure the alleged violations or explain why the actions  
40 in question 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 commissioner or initiated  
8 directly by an enrollee, the disciplining authority shall notify the  
9 commissioner of the results of the review, including whether the  
10 violation was substantiated and any enforcement action taken as a  
11 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 with the provider providing audio-  
14 only telemedicine or with a provider employed at the same medical  
15 group, at the same clinic, or by the same integrated delivery system  
16 operated by a carrier licensed under chapter 48.44 or 48.46 RCW as  
17 the provider providing audio-only telemedicine; or

18 (B) The covered person was referred to the provider providing  
19 audio-only telemedicine by another provider who has had, within the  
20 past two years, at least one in-person appointment with the covered  
21 person and has provided relevant medical information to the provider  
22 providing audio-only telemedicine;

23 (e) "Health care service" has the same meaning as in RCW  
24 48.43.005;

25 (f) "Hospital" means a facility licensed under chapter 70.41,  
26 71.12, or 72.23 RCW;

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

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

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

36 (j) "Telemedicine" means the delivery of health care services  
37 through the use of interactive audio and video technology, permitting  
38 real-time communication between the patient at the originating site  
39 and the provider, for the purpose of diagnosis, consultation, or

1 treatment. For purposes of this section only, "telemedicine" includes  
2 audio-only telemedicine, but does not include facsimile or email.

3 ~~((9) — [(10)])~~ (10) The commissioner may adopt any rules  
4 necessary to implement this section.

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

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

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

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

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

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

23 (b) 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 behavioral health administrative  
26 services organization, or managed care organization, and the  
27 provider.

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

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

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

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

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

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

20 (a) An originating site for professional fees;

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

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

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

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

39 (c) If the provider has engaged in a pattern of unresolved  
40 violations of this subsection (8), the appropriate disciplining

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

10 (9) For purposes of this section:

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

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

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

19 (B) 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 (b) "Disciplining authority" has the same meaning as in RCW  
24 18.130.020;

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

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

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

39 (ii) The covered person was referred to the provider providing  
40 audio-only telemedicine by another provider who has had, within the

1 past three years, at least one in-person appointment, or at least one  
2 real-time interactive appointment using both audio and video  
3 technology, with the covered person ((within the past year)) and has  
4 provided relevant medical information to the provider providing  
5 audio-only telemedicine;

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

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

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

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

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

24 ((~~(9)~~—~~{(10)}~~)) (10) The authority must adopt rules as necessary  
25 to implement the provisions of this section.

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

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

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

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

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

1 (iv) The health care service is determined to be safely and  
2 effectively provided through telemedicine or store and forward  
3 technology according to generally accepted health care practices and  
4 standards, and the technology used to provide the health care service  
5 meets the standards required by state and federal laws governing the  
6 privacy and security of protected health information; and

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

9 (b) (i) Except as provided in (b) (ii) of this subsection, upon  
10 initiation or renewal of a contract with the Washington state health  
11 care authority to administer a medicaid managed care plan, a managed  
12 health care system shall reimburse a provider for a health care  
13 service provided to a covered person through telemedicine the same  
14 amount of compensation the managed health care system would pay the  
15 provider if the health care service was provided in person by the  
16 provider.

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

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

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

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

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

32 (a) Hospital;

33 (b) Rural health clinic;

34 (c) Federally qualified health center;

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

36 (e) Licensed or certified behavioral health agency;

37 (f) Skilled nursing facility;

38 (g) Home or any location determined by the individual receiving  
39 the service; or

1 (h) Renal dialysis center, except an independent renal dialysis  
2 center.

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

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

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

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

23 (a) An originating site for professional fees;

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

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

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

38 (b) If the health care authority has cause to believe that a  
39 provider has engaged in a pattern of unresolved violations of this  
40 subsection (8), the health care authority may submit information to

1 the appropriate disciplining authority for action. Prior to  
2 submitting information to the appropriate disciplining authority, the  
3 health care authority may provide the provider with an opportunity to  
4 cure the alleged violations or explain why the actions in question  
5 did not violate this subsection (8).

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

17 (9) For purposes of this section:

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

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

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

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

30 (b) "Disciplining authority" has the same meaning as in RCW  
31 18.130.020;

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

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

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



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

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

16       (ii) For any other health care service:

17       (A) The covered person has had, within the past two years, at  
18 least one in-person appointment with the provider providing audio-  
19 only telemedicine or with a provider employed at the same medical  
20 group, at the same clinic, or by the same integrated delivery system  
21 operated by a carrier licensed under chapter 48.44 or 48.46 RCW as  
22 the provider providing audio-only telemedicine; or

23       (B) The covered person was referred to the provider providing  
24 audio-only telemedicine by another provider who has had, within the  
25 past two years, at least one in-person appointment with the covered  
26 person and has provided relevant medical information to the provider  
27 providing audio-only telemedicine;

28       (e) "Health care service" has the same meaning as in RCW  
29 48.43.005;

30       (f) "Hospital" means a facility licensed under chapter 70.41,  
31 71.12, or 72.23 RCW;

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

1 waivers granted under section 1115(a) of Title XI of the federal  
2 social security act;

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

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

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

12 (k) "Telemedicine" means the delivery of health care services  
13 through the use of interactive audio and video 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. For purposes of this section only, "telemedicine" includes  
17 audio-only telemedicine, but does not include facsimile or email.

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

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

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