
SUBSTITUTE HOUSE BILL 1821

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 or clinic as the
32 provider providing audio-only telemedicine; or ((the))

33 (B) 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;

40 (ii) For any other health care service:

1 (A) The covered person has had, within the past two years, at
2 least one in-person appointment with the provider providing audio-
3 only telemedicine or with a provider employed at the same medical
4 group or clinic as the provider providing audio-only telemedicine; or

5 (B) The covered person was referred to the provider providing
6 audio-only telemedicine by another provider who has had, within the
7 past two years, at least one in-person appointment with the covered
8 person and has provided relevant medical information to the provider
9 providing audio-only telemedicine;

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

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

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

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

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

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

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

31 (1)(a) For health plans issued or renewed on or after January 1,
32 2017, a health carrier shall reimburse a provider for a health care
33 service provided to a covered person through telemedicine or store
34 and forward technology if:

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

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

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

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

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

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

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

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

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

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

31 (a) Hospital;

32 (b) Rural health clinic;

33 (c) Federally qualified health center;

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

35 (e) Licensed or certified behavioral health agency;

36 (f) Skilled nursing facility;

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

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

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

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

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

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

20 (a) An originating site for professional fees;

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

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

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

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

37 (c) If the provider has engaged in a pattern of unresolved
38 violations of this subsection (8), the appropriate disciplining
39 authority may levy a fine or cost recovery upon the provider in an
40 amount not to exceed the applicable statutory amount per violation

1 and take other action as permitted under the authority of the
2 disciplining authority. Upon completion of its review of any
3 potential violation submitted by the commissioner or initiated
4 directly by an enrollee, the disciplining authority shall notify the
5 commissioner of the results of the review, including whether the
6 violation was substantiated and any enforcement action taken as a
7 result of a finding of a substantiated violation.

8 (9) For purposes of this section:

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

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

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

17 (B) The delivery of health care services that are customarily
18 delivered by audio-only technology and customarily not billed as
19 separate services by the provider, such as the sharing of laboratory
20 results;

21 (b) "Disciplining authority" has the same meaning as in RCW
22 18.130.020;

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

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

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

32 (A) The covered person has had, within the past three years, at
33 least one in-person appointment (~~(within the past year)~~), or at least
34 one real-time interactive appointment using both audio and video
35 technology, with the provider providing audio-only telemedicine or
36 with a provider employed at the same medical group or clinic as the
37 provider providing audio-only telemedicine; or ((the))

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 three 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 (~~within the past year~~) and has
3 provided relevant medical information to the provider providing
4 audio-only telemedicine;

5 (ii) For any other health care service:

6 (A) The covered person has had, within the past two years, at
7 least one in-person appointment with the provider providing audio-
8 only telemedicine or with a provider employed at the same medical
9 group or clinic as 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 (~~(9)~~—~~{(10)}~~) (10) The commissioner may adopt any rules
35 necessary to implement this section.

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

38 (1) Upon initiation or renewal of a contract with the authority,
39 behavioral health administrative services organizations and managed

1 care organizations shall reimburse a provider for a behavioral health
2 service provided to a covered person through telemedicine or store
3 and forward technology if:

4 (a) The behavioral health administrative services organization or
5 managed care organization in which the covered person is enrolled
6 provides coverage of the behavioral health service when provided in
7 person by the provider;

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

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

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

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

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

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

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

37 (6) Behavioral health administrative services organizations and
38 managed care organizations may subject coverage of a telemedicine or
39 store and forward technology behavioral health service under
40 subsection (1) of this section to all terms and conditions of the

1 behavioral health administrative services organization or managed
2 care organization in which the covered person is enrolled, including,
3 but not limited to, utilization review, prior authorization,
4 deductible, copayment, or coinsurance requirements that are
5 applicable to coverage of a comparable behavioral health care service
6 provided in person.

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

10 (a) An originating site for professional fees;

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

13 (c) An originating site or provider when the site or provider is
14 not a contracted provider.

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

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

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

40 (9) For purposes of this section:

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

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

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

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

13 (b) "Disciplining authority" has the same meaning as in RCW
14 18.130.020;

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

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

21 (i) The covered person has had, within the past three years, at
22 least one in-person appointment ((within the past year)), or at least
23 one real-time interactive appointment using both audio and video
24 technology, with the provider providing audio-only telemedicine or
25 with a provider employed at the same medical group or clinic as the
26 provider providing audio-only telemedicine; or ((the))

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

34 (e) "Hospital" means a facility licensed under chapter 70.41,
35 71.12, or 72.23 RCW;

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

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

39 (h) "Store and forward technology" means use of an asynchronous
40 transmission of a covered person's medical or behavioral health

1 information from an originating site to the provider at a distant
2 site which results in medical or behavioral health diagnosis and
3 management of the covered person, and does not include the use of
4 audio-only telephone, facsimile, or email; and

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

12 (~~(9)~~—~~(10)~~) (10) The authority must adopt rules as necessary
13 to implement the provisions of this section.

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

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

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

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

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

28 (iv) The health care service is determined to be safely and
29 effectively provided through telemedicine or store and forward
30 technology according to generally accepted health care practices and
31 standards, and the technology used to provide the health care service
32 meets the standards required by state and federal laws governing the
33 privacy and security of protected health information; and

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

36 (b)(i) Except as provided in (b)(ii) of this subsection, upon
37 initiation or renewal of a contract with the Washington state health
38 care authority to administer a medicaid managed care plan, a managed
39 health care system shall reimburse a provider for a health care

1 service provided to a covered person through telemedicine the same
2 amount of compensation the managed health care system would pay the
3 provider if the health care service was provided in person by the
4 provider.

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

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

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

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

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

- 20 (a) Hospital;
- 21 (b) Rural health clinic;
- 22 (c) Federally qualified health center;
- 23 (d) Physician's or other health care provider's office;
- 24 (e) Licensed or certified behavioral health agency;
- 25 (f) Skilled nursing facility;
- 26 (g) Home or any location determined by the individual receiving
27 the service; or
- 28 (h) Renal dialysis center, except an independent renal dialysis
29 center.

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

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

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

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

10 (a) An originating site for professional fees;

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

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

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

25 (b) If the health care authority has cause to believe that a
26 provider has engaged in a pattern of unresolved violations of this
27 subsection (8), the health care authority may submit information to
28 the appropriate disciplining authority for action. Prior to
29 submitting information to the appropriate disciplining authority, the
30 health care authority may provide the provider with an opportunity to
31 cure the alleged violations or explain why the actions in question
32 did not violate this subsection (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) For health care services included in the essential health
26 benefits category of mental health and substance use disorder
27 services, including behavioral health treatment:

28 (A) The covered person has had, within the past three years, at
29 least one in-person appointment ((within the past year)), or at least
30 one real-time interactive appointment using both audio and video
31 technology, with the provider providing audio-only telemedicine or
32 with a provider employed at the same medical group or clinic as the
33 provider providing audio-only telemedicine; or ((the))

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

1 (ii) For any other health care service:

2 (A) The covered person has had, within the past two years, at
3 least one in-person appointment with the provider providing audio-
4 only telemedicine or with a provider employed at the same medical
5 group or clinic as the provider providing audio-only telemedicine; or

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

11 (e) "Health care service" has the same meaning as in RCW
12 48.43.005;

13 (f) "Hospital" means a facility licensed under chapter 70.41,
14 71.12, or 72.23 RCW;

15 (g) "Managed health care system" means any health care
16 organization, including health care providers, insurers, health care
17 service contractors, health maintenance organizations, health
18 insuring organizations, or any combination thereof, that provides
19 directly or by contract health care services covered under this
20 chapter and rendered by licensed providers, on a prepaid capitated
21 basis and that meets the requirements of section 1903(m)(1)(A) of
22 Title XIX of the federal social security act or federal demonstration
23 waivers granted under section 1115(a) of Title XI of the federal
24 social security act;

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

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

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

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

1 NEW SECTION. **Sec. 5.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 6.** If any part of this act is found to be in
6 conflict with federal requirements that are a prescribed condition to
7 the allocation of federal funds to the state, the conflicting part of
8 this act is inoperative solely to the extent of the conflict and with
9 respect to the agencies directly affected, and this finding does not
10 affect the operation of the remainder of this act in its application
11 to the agencies concerned. Rules adopted under this act must meet
12 federal requirements that are a necessary condition to the receipt of
13 federal funds by the state.

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