
HOUSE BILL 1821

State of Washington

67th Legislature

2022 Regular Session

By Representatives Schmick, Riccelli, Cody, and Graham

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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))~~;

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

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

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

38 (C) The provider providing audio-only telemedicine has direct
39 access to the covered person's current health record;

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;

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; or

10 (C) The provider providing audio-only telemedicine has direct
11 access to the covered person's current health record;

12 (e) "Health care service" has the same meaning as in RCW
13 48.43.005;

14 (f) "Hospital" means a facility licensed under chapter 70.41,
15 71.12, or 72.23 RCW;

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

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

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

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

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

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

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

39 (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))~~;

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

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

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

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

3 (C) The provider providing audio-only telemedicine has direct
4 access to the covered person's current health record;

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;

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; or

15 (C) The provider providing audio-only telemedicine has direct
16 access to the covered person's current health record;

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

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

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

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

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

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

36 ~~((9) — [(10)])~~ (10) The commissioner may adopt any rules
37 necessary to implement this section.

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

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

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

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

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

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

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

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

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

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

39 (6) Behavioral health administrative services organizations and
40 managed care organizations may subject coverage of a telemedicine or

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

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

12 (a) An originating site for professional fees;

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

15 (c) An originating site or provider when the site or provider is
16 not a contracted provider.

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

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

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

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

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

35 (iii) The provider providing audio-only telemedicine has direct
36 access to the covered person's current health record;

37 (e) "Hospital" means a facility licensed under chapter 70.41,
38 71.12, or 72.23 RCW;

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

1 (g) "Provider" has the same meaning as in RCW 48.43.005;
2 (h) "Store and forward technology" means use of an asynchronous
3 transmission of a covered person's medical or behavioral health
4 information from an originating site to the provider at a distant
5 site which results in medical or behavioral health diagnosis and
6 management of the covered person, and does not include the use of
7 audio-only telephone, facsimile, or email; and
8 (i) "Telemedicine" means the delivery of health care or
9 behavioral health services through the use of interactive audio and
10 video technology, permitting real-time communication between the
11 patient at the originating site and the provider, for the purpose of
12 diagnosis, consultation, or treatment. For purposes of this section
13 only, "telemedicine" includes audio-only telemedicine, but does not
14 include facsimile or email.
15 (~~(9)~~—~~{(10)}~~) (10) The authority must adopt rules as necessary
16 to implement the provisions of this section.

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

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

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

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

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

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

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

1 (b) (i) Except as provided in (b) (ii) of this subsection, upon
2 initiation or renewal of a contract with the Washington state health
3 care authority to administer a medicaid managed care plan, a managed
4 health care system shall reimburse a provider for a health care
5 service provided to a covered person through telemedicine the same
6 amount of compensation the managed health care system would pay the
7 provider if the health care service was provided in person by the
8 provider.

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

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

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

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

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

24 (a) Hospital;

25 (b) Rural health clinic;

26 (c) Federally qualified health center;

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

28 (e) Licensed or certified behavioral health agency;

29 (f) Skilled nursing facility;

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

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

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

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

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

6 (6) A managed health care system may subject coverage of a
7 telemedicine or store and forward technology health service under
8 subsection (1) of this section to all terms and conditions of the
9 plan in which the covered person is enrolled 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 a managed health care system to
14 reimburse:

15 (a) An originating site for professional fees;

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

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

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

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

38 (c) If the provider has engaged in a pattern of unresolved
39 violations of this subsection (8), the appropriate disciplining
40 authority may levy a fine or cost recovery upon the provider in an

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

9 (9) For purposes of this section:

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

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

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

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

22 (b) "Disciplining authority" has the same meaning as in RCW
23 18.130.020;

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

27 (d) "Established relationship" means ~~((the))~~;

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

31 (A) 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 or clinic as the
36 provider providing audio-only telemedicine ~~((or the))~~;

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

1 technology, with the covered person ((within the past year)) and has
2 provided relevant medical information to the provider providing
3 audio-only telemedicine; or

4 (C) The provider providing audio-only telemedicine has direct
5 access to the covered person's current health record;

6 (ii) For any other health care service:

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

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

16 (C) The provider providing audio-only telemedicine has direct
17 access to the covered person's current health record;

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

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

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

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

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

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

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

7 NEW SECTION. **Sec. 5.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

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

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