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SECOND ENGROSSED SUBSTITUTE HOUSE BILL 1448

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State of Washington

63rd Legislature

2014 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Bergquist, Ross, Cody, Harris, Green, Rodne, Tharinger, Johnson, Manweller, Magendanz, and Morrell)

READ FIRST TIME 02/22/13.

1 AN ACT Relating to telemedicine; amending RCW 70.41.020 and  
2 70.41.230; adding a new section to chapter 41.05 RCW; adding a new  
3 section to chapter 48.43 RCW; adding a new section to chapter 74.09  
4 RCW; creating new sections; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
7 recognize the application of telemedicine as a reimbursable service by  
8 which an individual receives medical services from a health care  
9 provider without in person contact with the provider. It is also the  
10 intent of the legislature to reduce the compliance requirements on  
11 hospitals when granting privileges or associations to telemedicine  
12 physicians.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.05 RCW  
14 to read as follows:

15 (1) A health plan offered to employees and their covered dependents  
16 under this chapter issued or renewed on or after the effective date of  
17 this section shall reimburse a provider for a health care service  
18 provided to a covered person through telemedicine if:

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

3 (b) The health care service is medically necessary.

4 (2) An originating site for a telemedicine health care service  
5 subject to subsection (1) of this section includes a:

6 (a) Hospital;

7 (b) Rural health clinic;

8 (c) Federally qualified health center;

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

10 (e) Community mental health center;

11 (f) Skilled nursing facility; or

12 (g) Renal dialysis center, except an independent renal dialysis  
13 center.

14 (3) Any originating site under subsection (2) of this section may  
15 charge a facility fee for infrastructure and preparation of the  
16 patient. Reimbursement must be subject to a negotiated agreement  
17 between the originating site and the health plan. A distant site or  
18 any other site not identified in subsection (2) of this section may not  
19 charge a facility fee.

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

23 (5) The plan may subject coverage of a telemedicine health service  
24 under subsection (1) of this section to all terms and conditions of the  
25 plan, including, but not limited to, utilization review, prior  
26 authorization, deductible, copayment, or coinsurance requirements that  
27 are applicable to coverage of a comparable health care service provided  
28 in-person.

29 (6) This section does not require the plan to reimburse:

30 (a) An originating site for professional fees;

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

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

35 (7) For purposes of this section:

36 (a) "Distant site" means the site at which a physician or other  
37 licensed provider, delivering a professional service, is physically  
38 located at the time the service is provided through telemedicine;

- 1 (b) "Health care service" has the same meaning as in RCW 48.43.005;
- 2 (c) "Originating site" means the physical location of a patient
- 3 receiving health care services through telemedicine;
- 4 (d) "Provider" has the same meaning as in RCW 48.43.005; and
- 5 (e) "Telemedicine" means the delivery of health care services
- 6 through the use of interactive audio and video technology, permitting
- 7 real-time communication between the patient at the originating site and
- 8 the provider, for the purpose of diagnosis, consultation, or treatment.
- 9 For purposes of this section only, "telemedicine" does not include the
- 10 use of audio- only telephone, facsimile, or electronic mail.

11 NEW SECTION. **Sec. 3.** A new section is added to chapter 48.43 RCW  
12 to read as follows:

13 (1) For health plans issued or renewed on or after the effective  
14 date of this section, a health carrier shall reimburse a provider for  
15 a health care service provided to a covered person through telemedicine  
16 if:

17 (a) The plan provides coverage of the health care service when  
18 provided in-person by the provider; and

19 (b) The health care service is medically necessary.

20 (2) An originating site for a telemedicine health care service  
21 subject to subsection (1) of this section includes a:

22 (a) Hospital;

23 (b) Rural health clinic;

24 (c) Federally qualified health center;

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

26 (e) Community mental health center;

27 (f) Skilled nursing facility; or

28 (g) Renal dialysis center, except an independent renal dialysis  
29 center.

30 (3) Any originating site under subsection (2) of this section may  
31 charge a facility fee for infrastructure and preparation of the  
32 patient. Reimbursement must be subject to a negotiated agreement  
33 between the originating site and the health carrier. A distant site or  
34 any other site not identified in subsection (2) of this section may not  
35 charge a facility fee.

36 (4) A health carrier may not distinguish between originating sites

1 that are rural and urban in providing the coverage required in  
2 subsection (1) of this section.

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

9 (6) This section does not require a health carrier to 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 (7) For purposes of this section:

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

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

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

22 (d) "Provider" has the same meaning as in RCW 48.43.005; and

23 (e) "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 and  
26 the provider, for the purpose of diagnosis, consultation, or treatment.  
27 For purposes of this section only, "telemedicine" does not include the  
28 use of audio-only telephone, facsimile, or electronic mail.

29 NEW SECTION. **Sec. 4.** A new section is added to chapter 74.09 RCW  
30 to read as follows:

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

35 (a) The medicaid managed care plan in which the covered person is  
36 enrolled provides coverage of the health care service when provided in-  
37 person by the provider; and

1 (b) The health care service is medically necessary.

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

4 (a) Hospital;

5 (b) Rural health clinic;

6 (c) Federally qualified health center;

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

8 (e) Community mental health center;

9 (f) Skilled nursing facility; or

10 (g) Renal dialysis center, except an independent renal dialysis  
11 center.

12 (3) Any originating site under subsection (2) of this section may  
13 charge a facility fee for infrastructure and preparation of the  
14 patient. Reimbursement must be subject to a negotiated agreement  
15 between the originating site and the managed health care system. A  
16 distant site or any other site not identified in subsection (2) of this  
17 section may not charge a facility fee.

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

21 (5) A managed health care system may subject coverage of a  
22 telemedicine health service under subsection (1) of this section to all  
23 terms and conditions of the plan in which the covered person is  
24 enrolled, including, but not limited to, utilization review, prior  
25 authorization, deductible, copayment, or coinsurance requirements that  
26 are applicable to coverage of a comparable health care service provided  
27 in-person.

28 (6) This section does not require a managed health care system to  
29 reimburse:

30 (a) An originating site for professional fees;

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

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

35 (7) For purposes of this section:

36 (a) "Distant site" means the site at which a physician or other  
37 licensed provider, delivering a professional service, is physically  
38 located at the time the service is provided through telemedicine;

- 1 (b) "Health care service" has the same meaning as in RCW 48.43.005;
- 2 (c) "Managed health care system" means any health care  
3 organization, including health care providers, insurers, health care  
4 service contractors, health maintenance organizations, health insuring  
5 organizations, or any combination thereof, that provides directly or by  
6 contract health care services covered under this chapter and rendered  
7 by licensed providers, on a prepaid capitated basis and that meets the  
8 requirements of section 1903(m)(1)(A) of Title XIX of the federal  
9 social security act or federal demonstration waivers granted under  
10 section 1115(a) of Title XI of the federal social security act;
- 11 (d) "Originating site" means the physical location of a patient  
12 receiving health care services through telemedicine;
- 13 (e) "Provider" has the same meaning as in RCW 48.43.005; and
- 14 (f) "Telemedicine" means the delivery of health care services  
15 through the use of interactive audio and video technology, permitting  
16 real-time communication between the patient at the originating site and  
17 the provider, for the purpose of diagnosis, consultation, or treatment.  
18 For purposes of this section only, "telemedicine" does not include the  
19 use of audio-only telephone, facsimile, or electronic mail.
- 20 (8) To measure the impact on access to care for underserved  
21 communities and costs to the state and the medicaid managed health care  
22 system for reimbursement of telemedicine services, the Washington state  
23 health care authority, using existing data and resources, shall provide  
24 a report to the appropriate policy and fiscal committees of the  
25 legislature no later than December 31, 2018.

26 **Sec. 5.** RCW 70.41.020 and 2010 c 94 s 17 are each amended to read  
27 as follows:

28 Unless the context clearly indicates otherwise, the following  
29 terms, whenever used in this chapter, shall be deemed to have the  
30 following meanings:

- 31 (1) "Department" means the Washington state department of health.
- 32 (2) "Emergency care to victims of sexual assault" means medical  
33 examinations, procedures, and services provided by a hospital emergency  
34 room to a victim of sexual assault following an alleged sexual assault.
- 35 (3) "Emergency contraception" means any health care treatment  
36 approved by the food and drug administration that prevents pregnancy,

1 including but not limited to administering two increased doses of  
2 certain oral contraceptive pills within seventy-two hours of sexual  
3 contact.

4 (4) "Hospital" means any institution, place, building, or agency  
5 which provides accommodations, facilities and services over a  
6 continuous period of twenty-four hours or more, for observation,  
7 diagnosis, or care, of two or more individuals not related to the  
8 operator who are suffering from illness, injury, deformity, or  
9 abnormality, or from any other condition for which obstetrical,  
10 medical, or surgical services would be appropriate for care or  
11 diagnosis. "Hospital" as used in this chapter does not include hotels,  
12 or similar places furnishing only food and lodging, or simply  
13 domiciliary care; nor does it include clinics, or physician's offices  
14 where patients are not regularly kept as bed patients for twenty-four  
15 hours or more; nor does it include nursing homes, as defined and which  
16 come within the scope of chapter 18.51 RCW; nor does it include  
17 birthing centers, which come within the scope of chapter 18.46 RCW; nor  
18 does it include psychiatric hospitals, which come within the scope of  
19 chapter 71.12 RCW; nor any other hospital, or institution specifically  
20 intended for use in the diagnosis and care of those suffering from  
21 mental illness, intellectual disability, convulsive disorders, or other  
22 abnormal mental condition. Furthermore, nothing in this chapter or the  
23 rules adopted pursuant thereto shall be construed as authorizing the  
24 supervision, regulation, or control of the remedial care or treatment  
25 of residents or patients in any hospital conducted for those who rely  
26 primarily upon treatment by prayer or spiritual means in accordance  
27 with the creed or tenets of any well recognized church or religious  
28 denominations.

29 (5) "Person" means any individual, firm, partnership, corporation,  
30 company, association, or joint stock association, and the legal  
31 successor thereof.

32 (6) "Secretary" means the secretary of health.

33 (7) "Sexual assault" has the same meaning as in RCW 70.125.030.

34 (8) "Victim of sexual assault" means a person who alleges or is  
35 alleged to have been sexually assaulted and who presents as a patient.

36 (9) "Distant site" means the site at which a physician or other  
37 licensed provider, delivering a professional service, is physically  
38 located at the time the service is provided through telemedicine.

1       (10) "Originating site" means the physical location of a patient  
2 receiving health care services through telemedicine.

3       (11) "Telemedicine" means the delivery of health care services  
4 through the use of interactive audio and video technology, permitting  
5 real-time communication between the patient at the originating site and  
6 the provider, for the purpose of diagnosis, consultation, or treatment.  
7 "Telemedicine" does not include the use of audio-only telephone,  
8 facsimile, or electronic mail.

9       **Sec. 6.** RCW 70.41.230 and 2013 c 301 s 3 are each amended to read  
10 as follows:

11       (1) Except as provided in subsection (3) of this section, prior to  
12 granting or renewing clinical privileges or association of any  
13 physician or hiring a physician, a hospital or facility approved  
14 pursuant to this chapter shall request from the physician and the  
15 physician shall provide the following information:

16       (a) The name of any hospital or facility with or at which the  
17 physician had or has any association, employment, privileges, or  
18 practice during the prior five years: PROVIDED, That the hospital may  
19 request additional information going back further than five years, and  
20 the physician shall use his or her best efforts to comply with such a  
21 request for additional information;

22       (b) Whether the physician has ever been or is in the process of  
23 being denied, revoked, terminated, suspended, restricted, reduced,  
24 limited, sanctioned, placed on probation, monitored, or not renewed for  
25 any professional activity listed in (b)(i) through (x) of this  
26 subsection, or has ever voluntarily or involuntarily relinquished,  
27 withdrawn, or failed to proceed with an application for any  
28 professional activity listed in (b)(i) through (x) of this subsection  
29 in order to avoid an adverse action or to preclude an investigation or  
30 while under investigation relating to professional competence or  
31 conduct:

32       (i) License to practice any profession in any jurisdiction;

33       (ii) Other professional registration or certification in any  
34 jurisdiction;

35       (iii) Specialty or subspecialty board certification;

36       (iv) Membership on any hospital medical staff;



1 (v) Clinical privileges at any facility, including hospitals,  
2 ambulatory surgical centers, or skilled nursing facilities;

3 (vi) Medicare, medicaid, the food and drug administration, the  
4 national institute of health (office of human research protection),  
5 governmental, national, or international regulatory agency, or any  
6 public program;

7 (vii) Professional society membership or fellowship;

8 (viii) Participation or membership in a health maintenance  
9 organization, preferred provider organization, independent practice  
10 association, physician-hospital organization, or other entity;

11 (ix) Academic appointment;

12 (x) Authority to prescribe controlled substances (drug enforcement  
13 agency or other authority);

14 (c) Any pending professional medical misconduct proceedings or any  
15 pending medical malpractice actions in this state or another state, the  
16 substance of the allegations in the proceedings or actions, and any  
17 additional information concerning the proceedings or actions as the  
18 physician deems appropriate;

19 (d) The substance of the findings in the actions or proceedings and  
20 any additional information concerning the actions or proceedings as the  
21 physician deems appropriate;

22 (e) A waiver by the physician of any confidentiality provisions  
23 concerning the information required to be provided to hospitals  
24 pursuant to this subsection; and

25 (f) A verification by the physician that the information provided  
26 by the physician is accurate and complete.

27 (2) Except as provided in subsection (3) of this section, prior to  
28 granting privileges or association to any physician or hiring a  
29 physician, a hospital or facility approved pursuant to this chapter  
30 shall request from any hospital with or at which the physician had or  
31 has privileges, was associated, or was employed, during the preceding  
32 five years, the following information concerning the physician:

33 (a) Any pending professional medical misconduct proceedings or any  
34 pending medical malpractice actions, in this state or another state;

35 (b) Any judgment or settlement of a medical malpractice action and  
36 any finding of professional misconduct in this state or another state  
37 by a licensing or disciplinary board; and

1 (c) Any information required to be reported by hospitals pursuant  
2 to RCW 18.71.0195.

3 (3) In lieu of the requirements of subsections (1) and (2) of this  
4 section, when granting or renewing privileges or association of any  
5 physician providing telemedicine services, an originating site hospital  
6 may rely on a distant site hospital's decision to grant or renew  
7 clinical privileges or association of the physician if the originating  
8 site hospital obtains reasonable assurances, through a written  
9 agreement with the distant site hospital, that all of the following  
10 provisions are met:

11 (a) The distant site hospital providing the telemedicine services  
12 is a medicare participating hospital;

13 (b) Any physician providing telemedicine services at the distant  
14 site hospital will be fully privileged to provide such services by the  
15 distant site hospital;

16 (c) Any physician providing telemedicine services will hold and  
17 maintain a valid license to perform such services issued or recognized  
18 by the state of Washington; and

19 (d) With respect to any distant site physician who holds current  
20 privileges at the originating site hospital whose patients are  
21 receiving the telemedicine services, the originating site hospital has  
22 evidence of an internal review of the distant site physician's  
23 performance of these privileges and sends the distant site hospital  
24 such performance information for use in the periodic appraisal of the  
25 distant site physician. At a minimum, this information must include  
26 all adverse events, as defined in RCW 70.56.010, that result from the  
27 telemedicine services provided by the distant site physician to the  
28 originating site hospital's patients and all complaints the originating  
29 site hospital has received about the distant site physician.

30 (4) The medical quality assurance commission shall be advised  
31 within thirty days of the name of any physician denied staff  
32 privileges, association, or employment on the basis of adverse findings  
33 under subsection (1) of this section.

34 ((+4)) (5) A hospital or facility that receives a request for  
35 information from another hospital or facility pursuant to subsections  
36 (1) ((and-(2))) through (3) of this section shall provide such  
37 information concerning the physician in question to the extent such  
38 information is known to the hospital or facility receiving such a

1 request, including the reasons for suspension, termination, or  
2 curtailment of employment or privileges at the hospital or facility.  
3 A hospital, facility, or other person providing such information in  
4 good faith is not liable in any civil action for the release of such  
5 information.

6 ~~((+5))~~ (6) Information and documents, including complaints and  
7 incident reports, created specifically for, and collected, and  
8 maintained by a quality improvement committee are not subject to  
9 discovery or introduction into evidence in any civil action, and no  
10 person who was in attendance at a meeting of such committee or who  
11 participated in the creation, collection, or maintenance of information  
12 or documents specifically for the committee shall be permitted or  
13 required to testify in any civil action as to the content of such  
14 proceedings or the documents and information prepared specifically for  
15 the committee. This subsection does not preclude: (a) In any civil  
16 action, the discovery of the identity of persons involved in the  
17 medical care that is the basis of the civil action whose involvement  
18 was independent of any quality improvement activity; (b) in any civil  
19 action, the testimony of any person concerning the facts which form the  
20 basis for the institution of such proceedings of which the person had  
21 personal knowledge acquired independently of such proceedings; (c) in  
22 any civil action by a health care provider regarding the restriction or  
23 revocation of that individual's clinical or staff privileges,  
24 introduction into evidence information collected and maintained by  
25 quality improvement committees regarding such health care provider; (d)  
26 in any civil action, disclosure of the fact that staff privileges were  
27 terminated or restricted, including the specific restrictions imposed,  
28 if any and the reasons for the restrictions; or (e) in any civil  
29 action, discovery and introduction into evidence of the patient's  
30 medical records required by regulation of the department of health to  
31 be made regarding the care and treatment received.

32 ~~((+6))~~ (7) Hospitals shall be granted access to information held  
33 by the medical quality assurance commission and the board of  
34 osteopathic medicine and surgery pertinent to decisions of the hospital  
35 regarding credentialing and recredentialing of practitioners.

36 ~~((+7))~~ (8) Violation of this section shall not be considered  
37 negligence per se.

1        NEW SECTION.    **Sec. 7.** The medical quality assurance commission,  
2 the nursing care quality assurance commission, and the board of  
3 osteopathic medicine and surgery shall inform the health committees of  
4 the legislature on recommended or adopted criteria under which health  
5 care providers from outside of Washington state would be permitted to  
6 deliver telemedicine services to Washington state residents that will  
7 ensure the quality of services delivered and the safety of those  
8 patients receiving those services. By December 1, 2014, the board and  
9 commissions shall provide an update to the appropriate committees of  
10 the legislature on the progress of these efforts.

11        NEW SECTION.    **Sec. 8.** Sections 1 through 6 of this act take effect  
12 January 1, 2016.

13        NEW SECTION.    **Sec. 9.** The legislature encourages health plans to  
14 adopt the requirements of sections 2 through 4 of this act prior to  
15 January 1, 2016. Therefore, nothing in this act prohibits a plan from  
16 adopting the requirements of sections 2 through 4 of this act prior to  
17 January 1, 2016.

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