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**SUBSTITUTE SENATE BILL 5175**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Health Care (originally sponsored by Senators Becker, Frockt, Angel, Rivers, Cleveland, Dammeier, Keiser, Fain, Parlette, Darneille, Pedersen, Habib, Kohl-Welles, and Mullet)

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

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

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

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

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

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

(b) The health care service is medically necessary; and

(c) The health care service is a service recognized as an essential health benefit under section 1302(b) of the federal patient protection and affordable care act in effect on the effective date of this section.

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

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

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

(a) Hospital;

(b) Rural health clinic;

(c) Federally qualified health center;

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

(e) Community mental health center;

(f) Skilled nursing facility; or

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

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

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

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

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

(a) An originating site for professional fees;

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

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

(9) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

(b) The health care service is medically necessary; and

(c) The health care service is a service recognized as an essential health benefit under section 1302(b) of the federal patient protection and affordable care act in effect on the effective date of this section.

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

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

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

(a) Hospital;

(b) Rural health clinic;

(c) Federally qualified health center;

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

(e) Community mental health center;

(f) Skilled nursing facility; or

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

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

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

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

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

(a) An originating site for professional fees;

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

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

(8) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

(b) The health care service is medically necessary; and

(c) The health care service is a service recognized as an essential health benefit under section 1302(b) of the federal patient protection and affordable care act in effect on the effective date of this section.

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

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

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

(a) Hospital;

(b) Rural health clinic;

(c) Federally qualified health center;

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

(e) Community mental health center;

(f) Skilled nursing facility; or

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

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

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

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

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

(a) An originating site for professional fees;

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

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

(8) For purposes of this section:

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

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

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

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

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

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

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

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

(9) To measure the impact on access to care for underserved communities and costs to the state and the medicaid managed health care system for reimbursement of telemedicine services, the Washington state health care authority, using existing data and resources, shall provide a report to the appropriate policy and fiscal committees of the legislature no later than December 31, 2018.

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

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

(1) "Department" means the Washington state department of health.

(2) "Emergency care to victims of sexual assault" means medical examinations, procedures, and services provided by a hospital emergency room to a victim of sexual assault following an alleged sexual assault.

(3) "Emergency contraception" means any health care treatment approved by the food and drug administration that prevents pregnancy, including but not limited to administering two increased doses of certain oral contraceptive pills within seventy-two hours of sexual contact.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Specialty or subspecialty board certification;

(iv) Membership on any hospital medical staff;

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

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

(vii) Professional society membership or fellowship;

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

(ix) Academic appointment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

((~~(4)~~)) (5) A hospital or facility that receives a request for information from another hospital or facility pursuant to subsections (1) ((~~and (2)~~)) through (3) of this section shall provide such information concerning the physician in question to the extent such information is known to the hospital or facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital or facility. A hospital, facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.

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

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

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

NEW SECTION. **Sec.**  Sections 2 through 4 of this act take effect January 1, 2017.

NEW SECTION. **Sec.**  The legislature encourages health plans to adopt the requirements of sections 2 through 4 of this act prior to January 1, 2017. Therefore, nothing in this act prohibits a plan from adopting the requirements of sections 2 through 4 of this act prior to January 1, 2017.

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