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RE: Audio-Only Telemedicine Rulemaking – ESSB 1196 Implementation

On behalf of the Washington State Hospital Association (WSHA), we thank you for the opportunity to comment on the new and revised rules relating to telemedicine under ESSB 1196. WSHA strongly supported the law with the goal of expanding access to remote care for patients who are unable to connect to audio-visual telemedicine visits while ensuring that audio-only telemedicine is used as a supplemental tool for care. We appreciate the Health Care Authority's work on this issue and offer the following recommendations.

182-501-0300 - Telemedicine and store and forward technology

Section 3(d)(i) on Criteria for health care services states, "The agency determines the health care services that may be provided through telemedicine or store and forward technology...". The authorizing law, however, is silent as to the person or entity responsible for making these determinations; if the legislature intended for the HCA to have jurisdiction, it would have specified, as evidenced in other parts of the statute.

Additionally, the determination of whether a health care service can be "safely and effectively provided through telemedicine or store and forward technology based on generally accepted health care practices and standards" is most appropriately made by physicians and other healthcare professionals.

As such, we propose the suggested edits to align the HCA rule with the authorizing law and with the related Office of Insurance Commissioner WAC 284-170-433:

(i) ~~The agency determines the health care services that may be provided through telemedicine or store and forward technology based on whether~~ if the health care service is:

(A) A covered service when provided in person by the provider;

(B) Medically necessary; and

(C) Determined to be safely and effectively provided through telemedicine or store and forward technology according to generally accepted health care practices and standards, and the technology used to provide the health care service meets the standards required by state and federal laws governing the privacy and security of protected health information. ~~Determined to be safely and effectively provided through telemedicine or store and forward technology based on generally accepted health care practices and standards;~~ ~~and~~

(D) ~~Provided through a technology that meets the standards required by state and federal laws governing the privacy and security of protected health information.~~

Section 3(d)(iii) on Criteria for health care services states, "For health care services authorized for delivery through store and forward technology, there must be an associated visit between the referring provider and the client."

The associated visit requirement is specific to audio-only telemedicine behavioral health services in accordance with RCW 71.24.335, but as written in the proposed rule, appears to apply to all health care services provided through store and forward technology. The authorizing law does not include this requirement.

We strongly encourage the HCA to only apply 3(d)(iii) to behavioral health services delivered under RCW 71.34.335. To ensure alignment with statute is critical because the proposed requirement presents an impediment to health care access when services can be safely delivered via store and forward technology without the need for an in-person visit. For example, if a patient in a rural area can utilize store and forward technology for dermatological assessment, they would still be required to present for an in-person appointment. This limits the advantage of telemedicine and burdens patients with the fewest resources by requiring them to travel long distances unnecessarily.

Section 8(b) on Recordkeeping:

8(b)(ii) and (iii) require providers using telemedicine or store and forward technology to document the client's location and the people attending the appointment with the client, respectively. Unless the goal is to verify the client is in Washington state or determine if they are at an originating site, the value of the information is unclear. More worrisome, the questions could be considered invasive by patients and contribute to an increase in administrative burden for providers. We request HCA clarify this requirement so that it captures the necessary information for reimbursement without creating burdens for patients or providers. ***Removal of the requirement would be preferred.*** Providers are already capturing a modifier for billing of telemedicine.

8(b)(vi) requires providers using telemedicine or store and forward technology to document the start and end time of the health care service provided by telemedicine in the client's medical record.

This proposed documentation requirement would apply to all telemedicine services but not all services are billed based on time. Additionally, documenting the start and end of a service is a different time standard than for E/M codes, which can include pre- and post-work rather than only the encounter. E/M codes do not require time-based documentation. ***As such, we strongly encourage this requirement either be removed or be amended to the "start and end time or duration of service (when billing a code based on time)" to avoid unnecessary administrative burden.***

8(b)(vii) requires providers using telemedicine or store and forward technology to document the client's consent for the telemedicine technology used to deliver the health care service in the client's medical record.

This proposed documentation requirement would apply to all telemedicine services but RCW 41.05.700, as amended by HB [1821 \(2022\)](#), only requires consent for services that are provided over audio-only telemedicine. We request 8(b)(vii) be amended to "Client's consent when audio-only telemedicine technology is used to deliver the health care service" to align with RCW 41.05.700.

Thank you again for the opportunity to comment on the proposed rules. Should you have additional questions on WSHA's recommendations, please contact Katerina LaMarche, katerinal@wsha.org.

Sincerely,

/Katerina LaMarche
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