Multiple Agency Fiscal Note Summary

Bill Number: 1196 E S HB	**Title:** Audio-only telemedicine

Estimated Cash Receipts

Agency Name	2021-23			2023-25			2025-27		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Washington State Health Care Authority	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Total $	0	0	0	0	0	0	0	0	0

Estimated Operating Expenditures

Agency Name	2021-23				2023-25				2025-27			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Washington State Health Care Authority	6.0	1,763,000	1,763,000	1,763,000	5.0	1,340,000	1,340,000	1,340,000	5.0	1,340,000	1,340,000	1,340,000
Washington State Health Care Authority	In addition to the estimate above,there are additional indeterminate costs and/or savings. Please see individual fiscal note.											
Office of Insurance Commissioner	2.1	0	0	648,935	1.7	0	0	451,733	1.6	0	0	428,680
Department of Health	.0	0	0	0	.0	0	0	0	.0	0	0	0
Total $	8.1	1,763,000	1,763,000	2,411,935	6.7	1,340,000	1,340,000	1,791,733	6.6	1,340,000	1,340,000	1,768,680

Estimated Capital Budget Expenditures

Agency Name	2021-23			2023-25			2025-27		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Washington State Health Care Authority	.0	0	0	.0	0	0	.0	0	0
Office of Insurance Commissioner	.0	0	0	.0	0	0	.0	0	0
Department of Health	.0	0	0	.0	0	0	.0	0	0
Total $	0.0	0	0	0.0	0	0	0.0	0	0

Estimated Capital Budget Breakout

Prepared by: Jason Brown, OFM	Phone: (360) 742-7277	Date Published: Preliminary 3/28/2021

Individual State Agency Fiscal Note

Bill Number: 1196 E S HB	Title: Audio-only telemedicine	Agency: 107-Washington State Health Care Authority

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Operating Expenditures from:

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	6.0	6.0	6.0	5.0	5.0
Account					
General Fund-State 001-1	909,000	854,000	1,763,000	1,340,000	1,340,000
Total $	909,000	854,000	1,763,000	1,340,000	1,340,000

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

☒ If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

☐ If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

☐ Capital budget impact, complete Part IV.

☐ Requires new rule making, complete Part V.

Legislative Contact:	Greg Attanasio	Phone: 360-786-7410	Date: 03/06/2021
Agency Preparation:	Corina Campbell	Phone: 360-725-1479	Date: 03/19/2021
Agency Approval:	SUMAN MAJUMDAR	Phone: 360-725-1319	Date: 03/19/2021
OFM Review:	Jason Brown	Phone: (360) 742-7277	Date: 03/26/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

See Attached Narrative

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

See Attached Narrative

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

See Attached Narrative

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2022	FY 2023	2021-23	2023-25	2025-27
001-1	General Fund	State	909,000	854,000	1,763,000	1,340,000	1,340,000
		Total $	909,000	854,000	1,763,000	1,340,000	1,340,000

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

III. B - Expenditures by Object Or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	6.0	6.0	6.0	5.0	5.0
A-Salaries and Wages	552,000	552,000	1,104,000	926,000	926,000
B-Employee Benefits	164,000	164,000	328,000	268,000	268,000
C-Professional Service Contracts	50,000	50,000	100,000		
E-Goods and Other Services	78,000	78,000	156,000	130,000	130,000
G-Travel	4,000	4,000	8,000	6,000	6,000
J-Capital Outlays	61,000	6,000	67,000	10,000	10,000
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total $	909,000	854,000	1,763,000	1,340,000	1,340,000

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2022	FY 2023	2021-23	2023-25	2025-27
Management Analyst 5		1.0	1.0	1.0		
Medical Assistance Program Specialist 2		3.0	3.0	3.0	3.0	3.0
Occupational Nurse Consultant		2.0	2.0	2.0	2.0	2.0
Total FTEs		6.0	6.0	6.0	5.0	5.0

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation . Totals need to agree with total FTEs in Part IVB*

NONE

See Attached Narrative

Part V: New Rule Making Required

Bill Number: ES HB1196 HCA Request #: 21-117

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

This bill is relating to audio-only telemedicine; amending RCW 41.05.700, 48.43.735, 70.41.020, 71.24.335, and 74.09.325; 18.130.180 and 28B.20.830 adding a new section to chapter 74.09 RCW; creating new sections; and providing an expiration date..

This version differs from the previous by: amending RCW's 18.130.180 and 28B.20.830.

Section 1 (4) states all the originating sites except home are eligible to charge an originating site facility fee. The facility fee is subject to the negotiated agreement between the originating site and the health plan. The distant site, a hospital that is an originating site for audio-only telemedicine, or any other site not identified in subsection (3) of this section may not charge facility fee.

Section 1(8) is added directing the provider who intends to bill a patient or the patient's health plan for an audio-only telemedicine service, they must get patient consent in advance. The Washington State Health Care Authority (HCA) may submit information on any potential violations to the appropriate authority under the Unprofessional conduct RCW 18.130.180.

Section 5 (1)(b)(iv) is revised to state that a rural health clinic shall be reimbursed at the rural health clinic encounter rate, deleting reimbursement at the managed care encounter rate.

Section 5 (8)(b) is added allowing HCA if cause to believe that a provider has engaged in a pattern of unresolved violations of this subsection (8), may submit information to the appropriate authority under RCW 18.130.180 once provided opportunities for the provider to explain detailed in this section have been utilized.

Sections 1 and 2 add store and forward technology to these sections.

Section 1- RCW 41.05- This bill describes telemedicine and store and forward coverage that is reimbursed when:

- It is a covered service.
- The care is medically necessary.
- It is recognized as an essential health benefit under the federal patient protection and affordable act.
- The service is determined to be safely and effectively provided through audio-only telemedicine or store and forward according to generally accepted health care practices and standards and technology meets privacy and security standards to protect health information.

Section 1 (1)(a)(v) states beginning January 1, 2023, for audio-only telemedicine, the covered person has an established relationship with the provider.

Section 1 (1)(b) describes how telemedicine is to be reimbursed:

- Clarifies that telemedicine services are to be reimbursed with the same amount of compensation to the provider that the carrier would pay for in-person services as of January 1, 2021 for issued or renewed health plans offered to employees, school employees, and their covered dependents.

- Hospitals, hospital systems, telemedicine companies, provider groups consisting of more than 11 providers (in the group) may negotiate a different reimbursement rate that is different from the in-person compensations.

Section 1 (2) states 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.

Section 1 (3) states that the originating sites for telemedicine health care service include the following:

- Hospital
- Rural Health Clinics (RHC)
- Federally Qualified Health Centers (FQHC)
- Physician's or other health care provider's office
- Licensed or certified behavioral health agency
- Skilled nursing facility Home or any location the determined by the client
- Renal dialysis center, except an independent renal dialysis center

Section 1 (7) states the plan is not required to reimburse for:

- Originating site for professional fees
- Provider for a health care service that is not a covered benefit.
- An originating site facility fee or provider fee when they are not a contracted provider under the plan.

Section 1 (9)(a) defines Audio-only telemedicine as the delivery of health care services through the use of audio-only telephone technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. It does not include the use of facsimile or email.

Section 1 (8)(d) defines established relationship as "the covered person has had at least one in-person appointment within the past year with the provider providing audio-only telemedicine or the covered person referred to the provider providing audio-only telemedicine by another provider who has had at least one in –person appointment with the covered person within the past year and has provided relevant medical information to the provider providing audio-only telemedicine."

Section 1 (8)(i) adds the definition of store and forward technology to be an asynchronous transmission of a covered person's medical information form 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.

Section 1 (8)(j) adds the definition of 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 includes audio-only telemedicine but does not include facsimile or email.

Section 2 RCW 48.43.735 insurance reform

- Clarifies that telemedicine services are to be reimbursed with the same amount of compensation to the provider that the carrier would pay for in-person services as of January 1, 2023.
- Updates the eligible originating site to licensed or certified behavioral health agency.

- Adds definitions of audio-only telemedicine, established relationship, and updates the telemedicine definition to include audio-only.
- The commission may adopt any rules necessary to implement this section.

Section 3 RCW 70.41.020 Hospital Licensing adds definitions of audio-only telemedicine, established relationship, and updates the telemedicine definition to include audio-only.

Section 4 of this bill amends chapter 71.24.335 (Reimbursement for behavioral health services) and 2019 c 325 s 1019 RCW. This section requires behavioral health administrative services organizations and MCO, upon initiation or renewal of a contract with HCA, to reimburse a provider for a behavioral health service provided to a covered person who is under 18 years old through audio-only telemedicine if:

- The service is provided by a covered behavior health provider or a MCO;
- The service is medically necessary; and
- The client has an established relationship with the provider.

Section 5 of this bill amends chapter 74.09.325 (Reimbursement of a health care service) and 2020 c 92 s 3 RCW. This section requires managed health care systems, upon initiation or renewal of a contract with HCA to administer a Medicaid managed care plan, to reimburse a provider for a health care service provided to a covered person through audio-only telemedicine. The detailed specifications of this requirement are similar to that of Section 1 of this bill.

Section 6 of this bill adds a new section to chapter 74.09 RCW (Medical Care). This section requires HCA to adopt rules regarding Medicaid fee-for-service reimbursement for services delivered through audio-only telemedicine. Except for rural health clinics, the rules must establish a manner of reimbursement for audio-only telemedicine that is consistent with section 4 of this bill. HCA is required to reimburse rural health clinics (RHCs) for audio-only telemedicine at the rural health clinic encounter rate.

Section 8 of this bill directs the Insurance Commissioner, in collaboration with the Washington State Telehealth Collaborative and HCA, to study and make recommendations regarding effects of audio-only telemedicine expansion. In consultation with the department of labor and industries, the extent to which telemedicine reimbursement requirements should be extended to industrial insurance and other programs administered by the department of labor and industries;

- An evaluation of the relative costs to providers and facilities of providing audio-only telemedicine services as compared to audio-video telemedicine services and in-person services; and
- Any other issues the insurance commissioner deems appropriate.
- The insurance commissioner must report his or her findings and recommendations to the appropriate committees of the legislature by November 15, 2023.
- This section expires January 1, 2024.

Section 10 of this bill renders any other part of the bill, that conflicts with requirements for allocation of federal funds to the state, inoperative.

II. B - Cash Receipts Impact

Indeterminate.

II. C - Expenditures

PEBB and SEBB

Indeterminate.

RCW 41.05 governs the self-insured Uniform Medical Plans (UMP), which are offered by the Public Employees Benefits Board (PEBB) and School Employees Benefits Board (SEBB) programs. RCW 48.43 governs the fully insured health plans offered by the PEBB and SEBB programs. To the extent, audio-only utilization increases as a result of the required reimbursement parity, increased premiums for the self-insured and fully insured medical plans could increase which may impact the state medical benefit contribution and employee contributions for health benefits.

The changes in this bill are similar to what PEBB and SEBB plans are currently doing during the course of the COVID-19 pandemic, however, this bill would require that expansion of reimbursement for telehealth remain permanent. It is unclear if audio-only telemedicine is a substitute or complement for in-person and audio-visual telemedicine visits. Additionally, audio-only telemedicine may not be safe or effective in certain cases, though HCA will need staffing and implementation time to definitively identify those situations. The price of audio-only technology and its associated costs of utilization are less than those of audio-visual technology, which may increase access, but the extent to which this may occur is unknown. Overall, it is unclear which services would increase in utilization, to what extent these services would show an increase in utilization, and how many facility fees would be charged by originating sites. This legislation could potentially open access and increase utilization which may translate to higher costs for PEBB and SEBB plans. Due to the unknown impact on utilization, the PEBB and SEBB medical plans are unable to determine cost impacts due to this legislation.

The estimates below use PEBB UMP historical data to provide an *illustrative example of potential expenditure increases* between one and five percent. While the HCA is not able to substantiate the level of cost impacts this bill imposes, the table below provides an example of potential impacts. This is for the PEBB UMP population only, and does not account for the SEBB UMP population, or the PEBB and SEBB fully insured costs. The amounts below are based on the allowed amount and do not take into consideration member cost sharing.

Percent of Increase in Expenditure	Increase in Expenditure - Fund 721
1%	$ 1,858,223
2%	$ 3,716,446
3%	$ 5,574,670
4%	$ 7,432,893
5%	$ 9,291,116

*Based on claims data from calendar year 2017-2019, using the same claims codes as the Medicaid analysis.

Apple Health

Indeterminate.

Bill Number: ES HB1196 HCA Request #: 21-117

HCA has expanded telemedicine coverage for Apple Health services prior to the current public health emergency (PHE). Reimbursement parity was expanded during the PHE to include services delivered using an audio-only modality. HCA is unable to definitively quantify what portion of the currently billed telemedicine encounters are audio-only and which are delivered using audio-visual, though there is significant utilization of the audio only policy currently estimated at over $1.5M/week.

Prior to the PHE, there was limited billing of telemedicine; although, the amount of telemedicine has significantly increased during the PHE. It is unclear the degree to which audio-visual and audio-only telemedicine fully substitutes for in-person care and the degree to which it is in addition to traditional in-person care. It is possible that the current pandemic experience with telemedicine (and virtual delivery of care in general) will lead to a net increase in services if this bill is enacted and the current reimbursement parity becomes permanent.

Audio-only telemedicine may not be safe or effective in certain cases. HCA will need staffing and implementation time to definitively identify those situations. The price of audio-only technology and its associated costs of service delivery are less than those of audio-visual technology. This lower cost to implement the technology may increase access, but the extent to which this may occur is unknown. Overall, it is unclear which services would increase in utilization, to what extent these services would impact utilization, and how many facility fees would be charged by originating sites.

In order to gain an understanding of the magnitude of potential fiscal impact of the proposed policy, a list of relevant billing codes was identified based on HCA's current telehealth utilization during the PHE. Fiscal impact was then estimated as the increased cost resulting from an increase in utilization of these services over their calendar year 2019 utilization. The cost calculations assumed an originating site fee for all audio-only telemedicine claims. For each percent increase in utilization stemming from audio-only telemedicine, HCA predicts a fiscal impact of $14,302,058 ($4,682,174 GF-S). Additional scenarios are provided below to help illustrate the potential fiscal impact.

Potential annual cost of allowing audio-only telemedicine

Utilization Increase	GF-S	GF-F	Total Cost
1%	$4,682,174	$9,619,884	$14,302,058
2%	$9,364,349	$19,239,768	$28,604,117
3%	$14,046,523	$28,859,652	$42,906,175
4%	$18,728,697	$38,479,536	$57,208,233
5%	$23,410,872	$48,099,420	$71,510,292

HCA is unable to predict the actual fiscal impact without knowing the exact nature of the impact on utilization, as indicated by the preliminary analysis presented above. However, the following factors are worth considering in understanding the total impact of this bill.

- HCA does not currently pay an originating site fee for audio-only telemedicine. The fiscal impact of doing so would be proportional to the number of audio-only telemedicine claims in the future. Moreover, as mentioned above, it is unknown whether audio-only services are purely substitutive or additive.
- HCA's assumption is that claims for audio-only services will not be paid by Medicare after the PHE ends. As a result, HCA will have the added cost of paying for these services for dual-eligible clients. These costs were not included in the fiscal estimates presented above.

- Some services are only allowed to be performed in an in-person setting by coding specifications. These procedures would be ineligible for audio-only telemedicine coverage, though it is unclear how many of these procedures exist.
- The likelihood of fraud may increase significantly under audio-only telemedicine. HCA has already referred 13 suspected cases of telehealth fraud to the Medicaid Fraud Control Unit in calendar year 2021 alone. HCA will need additional staff to address the large increase in potential fraud, waste, and abuse claims.
- The agency will need to ensure that audio-only telemedicine doesn't negatively impact quality of care especially for non-English speakers and lower income individuals. This decrease in quality of care is reportedly already taking place during the public health emergency. This could potentially drive costs up through resulting subsequent visits.
- The industry has recognized both the need and appropriate payment structure for audio-only services. Washington participates with four other states (Colorado, Nevada, Oregon, and California in the Western States Pact and a component of that work is a collaborative effort regarding telehealth. Per California's published policy "these interactions are not typically viewed equivalent to face-to-face in-person visits and therefore should be reimbursed at a rate appropriate to the service provided." Deviation from this standard puts Washington out of alignment with industry norms and adopted policies which will have consequences to our joint work.

HCA's administrative costs will require $1,763,000 General Fund-State and 6.0 Full Time Equivalent Staff (FTE) in the 2021-23 Biennium and $1,340,000 and 5.0 FTE each biennium thereafter. These staff are detailed below.

- 1.0 FTE Occupational Nurse Consultant to convene a medical audio telemedicine work group, review research codes for each medical service and write Washington Administrative Code (WAC) for each service that does not meet standards of care that would need to be placed into rule.
- 1.0 FTE Occupation Nurse Consultant to review charts and auditing to support the proper utilization of an audio-only service delivery model.
- 3.0 FTE Medical Assistance Program Specialist 2 responsible for extracting, cleaning, data validation, analysis, monitoring and visualization of data.
- 1.0 FTE Management Analyst 5 for research on audio-only impact as it results to these changes for two years.
- $50,000 for contracting with an actuarial consultant for two years.

HCA Expenditures by Fund:

Expenditures			FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
001	GF-State	1	909,000	854,000	670,000	670,000	670,000	670,000
Total			**909,000**	**854,000**	**670,000**	**670,000**	**670,000**	**670,000**
Biennial Total				**1,763,000**		**1,340,000**		**1,340,000**

HCA's Expenditure by Object:

Objects		FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
A	Salaries & Wages	552,000	552,000	463,000	463,000	463,000	463,000
B	Employee Benefits	164,000	164,000	134,000	134,000	134,000	134,000
C	Personal Serv Contr	50,000	50,000	-	-	-	-
E	Goods and Services	78,000	78,000	65,000	65,000	65,000	65,000
G	Travel	4,000	4,000	3,000	3,000	3,000	3,000
J	Capital Outlays	61,000	6,000	5,000	5,000	5,000	5,000
M	Inter Agency Fund Transfers	-	-	-	-	-	-
N	Grants, Benefits Services	-	-	-	-	-	-
P	Debt Service	-	-	-	-	-	-
S	Interagency Reimbursement	-	-	-	-	-	-
T	Intra-Agency Reimbursement	-	-	-	-	-	-
Total		**909,000**	**854,000**	**670,000**	**670,000**	**670,000**	**670,000**

HCA's FTE's:

Job title	Salary	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
OCCUPATIONAL NURSE CONSULTANT	122,472	1.0	1.0	1.0	1.0	1.0	1.0
OCCUPATIONAL NURSE CONSULTANT	122,472	1.0	1.0	1.0	1.0	1.0	1.0
MEDICAL ASSISTANCE PROGRAM SPECIALIST 2	72,756	3.0	3.0	3.0	3.0	3.0	3.0
MANAGEMENT ANALYST 5	88,644	1.0	1.0	0.0	0.0	0.0	0.0
Total	406,344	6.0	6.0	5.0	5.0	5.0	5.0

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Part IV: Capital Budget Impact

None.

Part V: New Rule Making Required

Yes, a Washington Administrative Code will need written. Each service that does not meet the standards of care would need to be placed into rule.

Individual State Agency Fiscal Note

Bill Number: 1196 E S HB	Title: Audio-only telemedicine	Agency: 160-Office of Insurance Commissioner

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	2.1	2.1	2.1	1.7	1.6
Account					
Insurance Commissioners Regulatory Account-State 138-1	310,834	338,101	648,935	451,733	428,680
Total $	310,834	338,101	648,935	451,733	428,680

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact . Factors impacting the precision of these estimates , and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

☒ If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia , complete entire fiscal note form Parts I-V.

☐ If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia , complete this page only (Part I).

☐ Capital budget impact, complete Part IV.

☒ Requires new rule making, complete Part V.

Legislative Contact:	Greg Attanasio	Phone: 360-786-7410	Date: 03/06/2021
Agency Preparation:	Jane Beyer	Phone: 360-725-7043	Date: 03/11/2021
Agency Approval:	Bryon Welch	Phone: 360-725-7037	Date: 03/11/2021
OFM Review:	Jason Brown	Phone: (360) 742-7277	Date: 03/12/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Section 2(1) requires health carriers to cover audio-only telemedicine and to reimburse a provider for a health care service provided to a covered person through audio-only telemedicine at the same rate as if the health care service were provided in person by the provider. Beginning January 1, 2023, the covered person also must have an established relationship with the provider.

Section 2(8) requires providers, if the provider intends to bill a patient or their health plan for an audio-only telemedicine visit, to obtain patient consent for the billing in advance of the service being delivered. If the Office of Insurance Commissioner (OIC) has cause to believe that a provider has engaged in a pattern of unresolved violations of this subsection, the OIC may give the provider an opportunity to cure the violation or explain why no violation occurred prior to referring the provider to the appropriate disciplinary authority (Department of Health or the applicable health professions regulatory commission).

Sections 1, 3 and 4 address PEBB/SEBB and Medicaid contracting, adding new sections to chapters 41.05 RCW, 71.24 RCW and 74.09 RCW. The Office of Insurance Commissioner (OIC) is responsible for the review and approval of all provider contracts regardless of whether they are submitted for health care purchased under chapters 41.05, 48.43, 71.24 RCW or 74.09 RCW.

Section 8 requires the OIC, in collaboration with the Washington State Telehealth Collaborative and the Health Care Authority, to study and make recommendations to the legislature by November 15, 2023 on audio-only telemedicine issues. These issues include:

- utilization of audio-only services, including impacts on access to health services for historically underserved communities and geographic areas
- any impacts on the incidence of fraud
- qualitative data on the burden of compliance and enforcement requirements for audio-only telemedicine
- evaluation of the relative costs of audio-only telemedicine as compared to audio-visual and in-person services
- any other issues OIC deems appropriate

The legislation is effective ninety days after the end of session.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Section 2(1) requires health carriers to cover audio-only telemedicine and to reimburse a provider for a health care service provided to a covered person through audio-only telemedicine at the same rate as if the health care service were provided in person by the provider. Beginning January 1, 2023, the covered person also must have an established relationship with the provider.

The Office of Insurance Commissioner (OIC) will be required to develop and apply a new standard of review for health plan provider contract filings that are submitted to OIC on and after the effective date of the law. OIC also will be required to develop and apply a new standard of review to health form filings. This will include updating existing review checklists and speed-to-market tools, training the health forms analysts, and educating issuers requiring 20 hours

of a Functional Program Analyst 4 (FPA4) in FY2022.

The OIC receives approximately 7,350 provider contract filings each year. The current review time is approximately 4 hours per filing. The new review criteria is expected to result in an additional 20 minutes of review per filing, or a total of 2,450 hours (7,350 filings x 20 minutes), of a FPA4 each year beginning in FY2022.

The OIC estimates approximately 550 health plan form filings each year will need to be reviewed for compliance with this bill. The new review criteria is expected to rarely result in objections requiring an additional 10 minutes per form, or a total of 92 hours (550 filings x 10 minutes), of a FPA4 (30 hours) and Functional Program Analyst 3 (62 hours) each year beginning in FY2022.

Beginning in FY2022, the OIC anticipates one enforcement case a year to address a health carrier's failure to reimburse a provider for audio-only telemedicine at the same rate as if the health care service was provided in person by the provider. Investigations generally take anywhere between 25-80 hours per case and enforcement actions require the equivalent of approximately 25 hours per case. For purposes of this fiscal note, it is assumed that investigations will require an average of 25 hours per case of an Investigator 3 and enforcement actions will require an average of 25 hours per case of an Insurance Enforcement Specialist.

Section 2(8) requires providers, if the provider intends to bill a patient or their health plan for an audio-only telemedicine visit, to obtain patient consent for the billing in advance of the service being delivered. If the OIC has cause to believe that a provider has engaged in a pattern of unresolved violations of this subsection, the OIC may give the provider an opportunity to cure the violation or explain why no violation occurred prior to referring the provider to the appropriate disciplinary authority (Department of Health (DOH) or the applicable health professions regulatory commission).

The OIC will be required to update its complaint processes, procedures and template letters and forms to include complaints against providers regarding the lack of patient consent prior to delivering services. OIC also will be required to update the current Memorandum of Understandings (MOU) with DOH and the health profession's disciplinary authorities. Updating the complaints process and MOUs will require 32 hours of a Functional Program Analyst 4 (FPA4) in FY2022.

Based on OIC's experience with implementing the Balanced Billing Protection Act, it is estimated that three complaints will be received each year regarding providers' failure to obtain consent for billing of audio-only telemedicine prior to delivering services. Responding to complaints requires 3.5 hours per complaint for a total of 10.5 hours (3 complaints x 3.5 hours) of a Functional Program Analyst 3 each year beginning in FY2022.

Section 2(9) gives OIC rulemaking authority. Section 2(1)(b) amends current law to clarify reimbursement for a health care service provided through audio-only telemedicine. Rather than using the term "same rate", the language requires the carrier to reimburse "the same amount of compensation the carrier would pay the provider" if the health care service was provided in person by the provider. We anticipate that 'normal' rulemaking, in FY2022, will be required to define the term "same amount of compensation" and may be required with respect to the prior consent provision in section 2(8).

Section 8 requires the OIC, in collaboration with the Washington State Telehealth Collaborative and the Health Care Authority, to study and make recommendations to the legislature by November 15, 2023 on audio-only telemedicine issues. The study includes claims data analysis, as well as the gathering of qualitative data from carriers, Medicaid managed care organizations, providers and potentially consumers as well. It also requires close collaboration with the Health Care Authority and the Washington State Telemedicine Collaborative.

- For the period August 2021 to November 2023, the OIC will require 20 hours a month each of a Senior Policy Analyst and a Management Analyst 5 to develop project plan, coordinate with HCA and the WA State Telehealth Collaborative, develop interagency agreements or MOUs to obtain or disclose data, contract administration, data

research, compilation of findings and preparation of a final report. Additionally, technical input regarding insurance rates, forms and provider networks will require two hours a month of an Actuary 4, Health Forms Program Manager, and Provider Network Oversight Program Manager.

• All Payer Claims Database data retrieval and analysis: We assume this will be accomplished through an interagency agreement with the Health Care Authority to have OnPoint, the APCD data vendor, pull and analyze relevant claims data. OnPoint provided an estimate of $15,000 to $70,000 for this work, as this is an early estimate without full detail on the scope of work. A reasonable midpoint would be $40,000 paid to OnPoint to access the APCD data.

• Assuming a data call is necessary to supplement the APCD data: drafting the data call, answering questions, clarifying data, requesting additional information and coordination with LNI, HCA and the WA State Telehealth Cooperative is estimated to require 200 hours of Chief Market Analyst time in FY2023. This is comparable to other data calls the OIC has done in the past.

• Obtain qualitative information from carriers, providers and consumers: Contract for an entity to organize and run approximately five focus groups of carriers, Medicaid managed care organizations, health care providers and consumers. The contractor also will provide opportunities for admission and compilation of written comments from those groups, possibly via a survey instrument. Based upon similar activities in a 2020 Minnesota state government telemedicine report, the estimated cost of conducting five focus groups is $30,000 paid to the contracted entity.

Ongoing Costs:
Salary, benefits and associated costs for 1.52 FTE Functional Program Analyst 4; .04 FTE Functional Program Analyst 3; .02 FTE Investigator 3; and .02 FTE Insurance Enforcement Specialist beginning in FY2022.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2022	FY 2023	2021-23	2023-25	2025-27
138-1	Insurance Commissioners Regulatory Account	State	310,834	338,101	648,935	451,733	428,680
		Total $	310,834	338,101	648,935	451,733	428,680

III. B - Expenditures by Object Or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	2.1	2.1	2.1	1.7	1.6
A-Salaries and Wages	171,406	169,999	341,405	265,614	251,838
B-Employee Benefits	61,261	60,482	121,743	95,772	91,106
C-Professional Service Contracts		30,000	30,000		
E-Goods and Other Services	78,167	77,620	155,787	90,347	85,736
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total $	310,834	338,101	648,935	451,733	428,680

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation . Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2022	FY 2023	2021-23	2023-25	2025-27
Actuary 4	185,988	0.0	0.0	0.0	0.0	
Chief Market Analyst	96,096		0.1	0.1		
Functional Program Analyst 3	70,956	0.1	0.1	0.1	0.1	0.1
Functional Program Analyst 4	78,408	1.6	1.5	1.6	1.5	1.5
Health Forms Program Manager	91,992	0.0	0.0	0.0	0.0	
Insurance Enforcement Specialist	87,120	0.0	0.0	0.0	0.0	0.0
Investigator 3	72,432	0.0	0.0	0.0	0.0	0.0
Management Analyst 5	74,604	0.1	0.2	0.1	0.0	
Provider Network Program Manager	100,644	0.0	0.0	0.0	0.0	
Senior Policy Analyst	91,896	0.3	0.2	0.2	0.0	
Total FTEs		2.1	2.1	2.1	1.7	1.6

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation . Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules .

Section 2(9) gives OIC rulemaking authority. Section 2(1)(b) amends current law to clarify reimbursement for a health care service provided through audio-only telemedicine. Rather than using the term "same rate", the language requires the carrier to reimburse "the same amount of compensation the carrier would pay the provider" if the health care service was provided in person by the provider. We anticipate that 'normal' rulemaking, in FY2022, will be required to define the term "same amount of compensation" and may be required with respect to the prior consent provision in section 2 (8).

Individual State Agency Fiscal Note

Bill Number: 1196 E S HB	Title: Audio-only telemedicine	Agency: 303-Department of Health

Part I: Estimates

[X] **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:
NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact . Factors impacting the precision of these estimates , and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

[ ] If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia , complete entire fiscal note form Parts I-V.

[ ] If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia , complete this page only (Part I).

[ ] Capital budget impact, complete Part IV.

[ ] Requires new rule making, complete Part V.

Legislative Contact:	Greg Attanasio	Phone: 360-786-7410	Date: 03/06/2021
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Agency Approval:	Carl Yanagida	Phone: 360-789-4832	Date: 03/10/2021
OFM Review:	Danielle Cruver	Phone: (360) 522-3022	Date: 03/15/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Section 1: Amends RCW 41.05.700 (Reimbursement of health care services provided through telemedicine or store and forward technology). This section becomes effective January 1, 2023.

Section 2: Amends RCW 48.43.735 (Reimbursement of health care services provided through telemedicine or store and forward technology). This section becomes effective upon passage.

Section 4: Amends RCW 71.24.335 (Reimbursement for behavioral health services provided through telemedicine or store or forward technology—Coverage requirements.). This section becomes effective January 1, 2023.

Section 5: Amends RCW 74.09.325 (Reimbursement of a health care service provided through telemedicine or store and forward technology—Report to the legislature.). This section becomes effective January 1, 2023.

Sections 1, 2, 4 & 5: For audio-only telemedicine, these changes allow the HCA or the OIC to submit information on any potential violations of this subsection to the appropriate disciplining authority, as defined in RCW 18.130.020 (Regulation of Health Professions – Uniform Disciplinary Act – Definitions). If a provider has engaged in a pattern of unresolved violations, the appropriate disciplining authority may levy a fine or cost recovery upon the provider in an amount not to exceed the applicable statutory amount per violation and take other action as permitted.

Upon completion of its review of any potential violation submitted by the HCA, the OIC or initiated directly by an enrollee, the disciplining authority shall notify the HCA of the results of the review, including whether the violation was substantiated and any enforcement action taken as a result of a finding of a substantiated violation.

Section 7: Amends RCW 18.130.180 (Unprofessional conduct.) to include as unprofessional conduct a pattern of violations for failing to receive consent prior to billing for audio-only telemedicine.

This bill does not give the department investigative authority; therefore, no further action is required of the department or disciplining authorities. If the OIC or HCA did submit a complaint, the information would be reviewed and issued a civil penalty in accordance with existing processes, as a result there is no fiscal impact.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation . Totals need to agree with total FTEs in Part I and Part IIIA*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation . Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required