

# Enrolled House Bill 2508

Sponsored by Representative PRUSAK, Senator BEYER; Representatives ALONSO LEON, BONHAM, BOSHART DAVIS, BYNUM, CAMPOS, CLEM, DEXTER, DRAZAN, FAHEY, GRAYBER, HAYDEN, HELM, KOTEK, KROPF, LIVELY, MARSH, NATHANSON, NERON, NOBLE, NOSSE, OWENS, PHAM, POWER, RESCHKE, REYNOLDS, RUIZ, SANCHEZ, SCHOUTEN, SMITH DB, STARK, VALDERRAMA, WILDE, WILLIAMS, WITT, WRIGHT, ZIKA, Senators GORSEK, KENNEMER, MANNING JR, PATTERSON, TAYLOR (Pre-session filed.)

CHAPTER .....

AN ACT

Relating to telemedicine; creating new provisions; amending ORS 743A.058; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 414.**

**SECTION 2. (1) As used in this section:**

**(a)(A) “Audio only” means the use of audio telephone technology, permitting real-time communication between a health care provider and a patient for the purpose of diagnosis, consultation or treatment.**

**(B) “Audio only” does not include:**

**(i) The use of facsimile, electronic mail or text messages.**

**(ii) The delivery of health services that are customarily delivered by audio telephone technology and customarily not billed as separate services by a health care provider, such as the sharing of laboratory results.**

**(b) “Telemedicine” means the mode of delivering health services using information and telecommunication technologies to provide consultation and education or to facilitate diagnosis, treatment, care management or self-management of a patient’s health care.**

**(2) To encourage the efficient use of resources and to promote cost-effective procedures in accordance with ORS 413.011 (1)(L), the Oregon Health Authority shall reimburse the cost of health services delivered using telemedicine, including but not limited to:**

**(a) Health services transmitted via landlines, wireless communications, the Internet and telephone networks;**

**(b) Synchronous or asynchronous transmissions using audio only, video only, audio and video and transmission of data from remote monitoring devices; and**

**(c) Communications between providers or between one or more providers and one or more patients, family members, caregivers or guardians.**

**(3)(a) The authority shall pay the same reimbursement for a health service regardless of whether the service is provided in person or using any permissible telemedicine application or technology.**

(b) Paragraph (a) of this subsection does not prohibit the use of value-based payment methods, including global budgets or capitated, bundled, risk-based or other value-based payment methods, and does not require that any value-based payment method reimburse telemedicine health services based on an equivalent fee-for-service rate.

(4) The authority shall include the costs of telemedicine services in its rate assumptions for payments made to clinics or other providers on a prepaid capitated basis.

(5) This section does not require the authority or a coordinated care organization to pay a provider for a service that is not included within the Healthcare Procedure Coding System or the American Medical Association's Current Procedural Terminology codes.

(6) The authority shall adopt rules to ensure that coordinated care organizations reimburse the cost of health services delivered using telemedicine, consistent with subsections (2) and (3) of this section.

**SECTION 3.** ORS 743A.058 is amended to read:

743A.058. (1) As used in this section:

(a)(A) **"Audio only" means the use of audio telephone technology, permitting real-time communication between a health care provider and a patient for the purpose of diagnosis, consultation or treatment.**

(B) **"Audio only" does not include:**

(i) **The use of facsimile, electronic mail or text messages.**

(ii) **The delivery of health services that are customarily delivered by audio telephone technology and customarily not billed as separate services by a health care provider, such as the sharing of laboratory results.**

[(a)] (b) **"Health benefit plan" has the meaning given that term in ORS 743B.005.**

[(b)] (c) **"Health professional" means a person licensed, certified or registered in this state to provide health care services or supplies.**

(d) **"Health service" means physical, oral and behavioral health treatment or service provided by a health professional.**

[(c)] (e) **"Originating site" means the physical location of the patient.**

(f) **"State of emergency" includes:**

(A) **A state of emergency declared by the Governor under ORS 401.165; or**

(B) **A state of public health emergency declared by the Governor under ORS 433.441.**

(g) **"Telemedicine" means the mode of delivering health services using information and telecommunication technologies to provide consultation and education or to facilitate diagnosis, treatment, care management or self-management of a patient's health care.**

(2) A health benefit plan **and a dental-only plan** must provide coverage of a health service that is provided using [*synchronous two-way interactive video conferencing*] **telemedicine** if:

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

(b) The health service is medically necessary;

(c) The health service is determined to be safely and effectively provided [*using synchronous two-way interactive video conferencing*] **using telemedicine** according to generally accepted health care practices and standards; and

(d) The application and technology used to provide the health service meet all standards required by state and federal laws governing the privacy and security of protected health information.

(3) **Except as provided in subsection (4) of this section, permissible telemedicine applications and technologies include:**

(a) **Landlines, wireless communications, the Internet and telephone networks; and**

(b) **Synchronous or asynchronous transmissions using audio only, video only, audio and video and transmission of data from remote monitoring devices.**

(4) **During a state of emergency, a health benefit plan or dental-only plan shall provide coverage of a telemedicine service delivered to an enrollee residing in the geographic area specified in the declaration of the state of emergency, if the telemedicine service is delivered**

using any commonly available technology, regardless of whether the technology meets all standards required by state and federal laws governing the privacy and security of protected health information.

~~[(3)]~~ (5) A health benefit plan and a dental-only plan may not:

(a) Distinguish between rural and urban originating sites in providing coverage under subsection (2) of this section or restrict originating sites that qualify for reimbursement.

(b) Restrict a health care provider to delivering services only in person or only via telemedicine.

(c) Use telemedicine health care providers to meet network adequacy standards under ORS 743B.505.

(d) Require an enrollee to have an established patient-provider relationship with a provider to receive telemedicine health services from the provider or require an enrollee to consent to telemedicine services in person.

(e) Impose additional certification, location or training requirements for telemedicine providers or restrict the scope of services that may be provided using telemedicine to less than a provider's permissible scope of practice.

(f) Impose more restrictive requirements for telemedicine applications and technologies than those specified in subsection (3) of this section.

(g) Impose on telemedicine health services different annual dollar maximums or prior authorization requirements than the annual dollar maximums and prior authorization requirements imposed on the services if provided in person.

(h) Require a medical assistant or other health professional to be present with an enrollee at the originating site.

(i) Deny an enrollee the choice to receive a health service in person or via telemedicine.

(j) Reimburse an out-of-network provider at a rate for telemedicine health services that is different than the reimbursement paid to the out-of-network provider for health services delivered in person.

(k) Restrict a provider from providing telemedicine services across state lines if the services are within the provider's scope of practice and:

(A) The provider has an established practice within this state;

(B) The provider's employer operates health clinics or licensed health care facilities in this state;

(C) The provider has an established relationship with the patient; or

(D) The patient was referred to the provider by the patient's primary care or specialty provider located in this state.

(L) Prevent a provider from prescribing, dispensing or administering drugs or medical supplies or otherwise providing treatment recommendations to an enrollee after having performed an appropriate examination of the enrollee in person, through telemedicine or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically.

(m) Establish standards for determining medical necessity for services delivered using telemedicine that are higher than standards for determining medical necessity for services delivered in person.

(6) A health benefit plan and a dental-only plan shall:

(a) Work with contracted providers to ensure meaningful access to telemedicine services by assessing an enrollee's capacity to use telemedicine technologies that comply with accessibility standards, including alternate formats, and providing the optimal quality of care for the enrollee given the enrollee's capacity;

(b) Ensure access to auxiliary aids and services to ensure that telemedicine services accommodate the needs of enrollees who have difficulty communicating due to a medical condition, who need an accommodation due to disability or advanced age or who have limited English proficiency;

(c) **Ensure access to telemedicine services for enrollees who have limited English proficiency or who are deaf or hard-of-hearing by providing interpreter services reimbursed at the same rate as interpreter services provided in person; and**

(d) **Ensure that telemedicine services are culturally and linguistically appropriate and trauma-informed.**

[(4)] (7) The coverage under subsection (2) of this section is subject to:

(a) The terms and conditions of the health benefit plan **or dental-only plan**; and

(b) **Subject to subsection (8) of this section**, the reimbursement specified in the contract between the plan and the health professional.

(8)(a) **A health benefit plan and dental-only plan must pay the same reimbursement for a health service regardless of whether the service is provided in person or using any permissible telemedicine application or technology.**

(b) **Paragraph (a) of this subsection does not prohibit the use of value-based payment methods, including capitated, bundled, risk-based or other value-based payment methods, and does not require that any value-based payment method reimburse telemedicine health services based on an equivalent fee-for-service rate.**

[(5)] (9) This section does not require a health benefit plan **or dental-only plan** to reimburse a health professional:

(a) For a health service that is not a covered benefit under the plan; [or]

(b) Who has not contracted with the plan[.]; **or**

(c) **For a service that is not included within the Healthcare Procedure Coding System or the American Medical Association's Current Procedural Terminology codes or related modifier codes.**

(10) **This section is exempt from ORS 743A.001.**

**SECTION 4. No later than March 1, 2023, the Department of Consumer and Business Services shall report to the interim committees of the Legislative Assembly related to health on the impact of the reimbursement specified in ORS 743A.058 (8) on the cost of health insurance premiums in this state.**

**SECTION 5. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.**

**Passed by House April 14, 2021**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate May 19, 2021**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2021

**Approved:**

.....M.,....., 2021

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2021

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Shemia Fagan, Secretary of State