August 12, 2021

Jane Beyer, Senior Health Policy Advisor
Washington Office of the Insurance Commissioner
P.O. Box 40258
Olympia, WA 98504-0258
Submitted via email to: rulescoordinator@oic.wa.gov

Re: R 2021-06 Telemedicine and Audio-only Telemedicine Service Stakeholder Draft

Dear Ms. Beyer,

On behalf of the Association of Washington Healthcare Plans (AWHP), we would like to offer the following comments on the Office of the Insurance Commissioner's (OIC) stakeholder draft for the telemedicine and audio-only telemedicine services rulemaking (R 2021-06). We appreciate the opportunity to comment on the OIC's rulemaking and participate in a stakeholder call in advance of a proposed rule (CR-102).

Overall, AWHP is concerned with placing the telemedicine and audio-only telemedicine services regulations within this chapter of the Washington Administrative Code (WAC). WAC 284-170 primarily regulates health plan provider networks and provider contracts. We believe it is more logical and appropriate to create a new chapter within WAC 284 to house all telemedicine regulations. This will ensure the regulations can easily be located and will not tie all current and future telemedicine requirements to health plan contracts with providers.

WAC 284-170-130 Definitions

There are several instances throughout the definitions section where existing definitions are copied into this section of regulation. For example, "distant site" matches the existing definition in RCW 48.43.735(8)(a) and "store and forward technology" matches the existing definition in RCW 48.43.735(8)(f). We recommend in those instances the regulation simply reference the applicable statutory definition; this will ensure the regulation won't require revision if the statutory definitions change in the future.

There are also several instances where the OIC is proposing to bring a statutory definition into the regulation and added to its language. For example, in WAC 284-170-130(45), "voice mail or text messaging" was added to the types of communications not considered telemedicine. It is AWHP's strong preference that the original definitions found in RCW 48.43.735 and ESHB 1196 remain unaltered for this rulemaking. We support the addition of several brand new definitions, such as "patient consent" and "same amount of compensation," however, we believe it is prudent for this rulemaking to let the original intent of the definitions from ESHB 1196 and RCW 48.43.735 remain unaltered.

WAC 284-170-433 Provider contracts—Telemedicine

We are very concerned that all health plans within the scope of this regulation will be required to update all provider contracts to comply with this section. Existing statute does not require the information contained in this section to be included in health plans' contracts with providers. Provider contracts already contain standard provisions requiring providers to comply with existing laws and regulations including the requirements applicable to providers under RCW 48.43.735 and ESHB 1196. Therefore, health plans already have the expectation of provider compliance with the telemedicine and audio-only telemedicine requirements without adding language or making specific references to the statutes. There are many benefits and services mandated by law today that are not required to be specifically listed in our provider contracts. Provider contracts need to be generic enough and only contain the essential information needed to conduct business with another party. We are very concerned with setting a precedent or starting a pattern of calling out specific services and/or restating statutory requirements in our provider contracts. These actions will significantly increase the size of the contracts and in this instance create a sense of emphasis on telemedicine above all other benefits, services, or methods of delivering health care services. We strongly request the OIC not mandate the information contained in this section be added to health plans' provider contracts. Alternatively, we recommend the OIC work with the Department of Health on developing provider-specific regulations in the appropriate section of Washington Administrative Code if there is a concern about provider enforcement and/or provider compliance.

Subsection (5) requires that "…The terms and conditions of a health plan cannot impose deductibles, copayments, or coinsurance requirements that are higher for telemedicine services than cost-sharing that would apply if the same service were provided in-person." While we expect it to be unlikely a health plan would ever want to set cost-sharing for telemedicine services higher than in-person services, we strongly disagree that ESHB 1196 or RCW 48.43.735 provide the OIC the necessary authority to regulate health plan telemedicine cost-sharing. ESHB 1196 and RCW 48.43.735 clearly regulate health plan reimbursement to providers for telemedicine services. The amount of cost-sharing a health plan member pays for health care services delivered through telemedicine does not impact the total amount a provider receives as compensation for the services. Cost-sharing is a health plan benefit design, which is outside of the scope of ESHB 1196 and RCW 48.43.735. We request that this provision is removed from the draft regulation.

Subsection (6)(a) requires provider contracts contain expanded requirements around provider consent, effective July 25, 2021. Because provider contracts are not currently required to contain most of the requirements in this subsection, we recommend the OIC include a future compliance deadline for carriers to comply by. It can be a lengthy process to update language, refile, obtain OIC approval and communicate with providers for new contract changes. We are concerned if the final regulation is effective the standard 31-days after filing, carriers will not have enough time to comply with these new requirements, should the OIC decide to retain them as required provider contract elements.

Subsection (6)(b)(ii) states "A covered person may consent to be billed in writing or verbally. Consent must be documented and retained by the provider for a minimum of five years. The carrier also may require documentation of the covered person's consent as a condition of claim payment." To ensure consistent implementation of this provisions across all carriers, we believe it is important to clarify that carriers may obtain a copy of the consent documentation but do not

need to require it with every audio-only claim. We recommend this subsection be re-worded as follows:

> "A covered person may consent to be billed in writing or verbally. Consent must be documented and retained by the provider for a minimum of five years. **As needed, t**~~T~~he carrier ~~also~~ may ~~require~~ **request** documentation of the covered person's consent as a condition of claim payment."

Finally, we believe subsection (8) is duplicative of existing nondiscrimination requirements placed on both providers and carriers today and therefore it is not necessary to create a new provider contract requirement. We agree with the importance of access to telemedicine services for individuals with disabilities or limited-English proficiency and health plan contracts with providers contain nondiscrimination clauses already. We would like to reiterate our hesitance with calling out requirements for specific services and/or restating regulatory requirements in provider contracts.

We appreciate your consideration of our comments and our continued collaboration as the OIC works on this rulemaking project. Please don't hesitate to contact me with any questions or to discuss.

Sincerely,

Executive Director