

August 12, 2021

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

Re: Comments on telemedicine rulemaking R 2021-06

Dear Ms. Beyer,

Kaiser Foundation Health Plan of the Northwest, Kaiser Foundation Health Plan of Washington, and Kaiser Foundation Health Plan of Washington Options, Inc. (collectively “Kaiser Permanente”), appreciate the opportunity to provide feedback to the Office of the Insurance Commissioner (“OIC”) on the telemedicine rulemaking (R 2021-06). Kaiser Permanente is an integrated health care system that covers and cares for more than 760,000 members in Washington State. We are committed to delivering affordable, coordinated, and high-quality care and coverage that supports not only our members but also the communities we serve.

Thank you for holding the meeting last week to discuss the stakeholder draft. It was helpful to hear the OIC’s perspective and goals for this rulemaking topic. As a follow-up to that discussion, we offer the following comments for consideration by the OIC’s rulemaking team. We also want to express support for the letter submitted by the Association of Washington Healthcare Plans and will not repeat their comments. We outline additional concerns below on the definitions, the patient consent process, and the implementation time needed to amend provider contracts.

Definitions should point to the statute—WAC 284-170-130

Where the regulation definitions are taken from the statute, we recommend that the regulation use a citation to that law rather than restating the definition. This ensures consistency between the definitions and limits the need for rulemaking in the future if the legislature makes changes to the statutory definition.

Allow flexibility for patient consent to happen at the provider group level within a legal entity

Thank you for adding language in the stakeholder draft in WAC 284-170-433 (6)(b)(iii) that permits the patient consent to be obtained by auxiliary staff under the general supervision of the participating provider. Kaiser Permanente operates as an integrated delivery system with a group practice model for providing services to members. Functions such as scheduling appointments are handled via centralized appointing processes and the member website. While the current language offers some flexibility for someone other than the physician to obtain patient consent, the regulation would still require appointing staff to see which specific physician or health care provider the patient had already provided consent for and obtain another consent if the patient was seeing a different physician or health care provider. The patient consent process would be more streamlined for the patient and the appointing staff if the consent could be obtained at the legal entity or group practice level.

During the meeting, the OIC noted that “group practice” is not a defined term. We recommend the following language for the OIC’s consideration to address this concept.

(iii) Consent by the patient for the health carrier to be billed for audio-only telemedicine services may be obtained by a provider’s auxiliary personnel who are under the general supervision of the participating provider. Providers or auxiliary personnel who are part of a health care system or provider group under common ownership may obtain the patient’s consent once per year that applies to all providers in that health care system or provider group. The consent documents must state that consent is provided at the health care system or provider group level.

Implementation time is needed to update provider contracts

We have a strong preference that the provider contract portion of this regulation be removed and for the consent process information to be addressed in its own section of regulation. However, if the OIC proceeds down the provider contract route, we have concerns about the implementation time needed. As drafted, the regulation states the effective dates of the underlying statutes for telemedicine services. With no separate comply by date for the inclusion of this information in the provider contract, the regulatory requirement would go into effect 31 days after the regulation is adopted. This would create a significant backlog of filings for carriers as well as a backlog of filings for OIC staff to review. We recommend that the regulation allow six months for carriers to work with their network providers on the new provider contract language requirement.

We note that the underlying statute does not require language about telemedicine services to appear in the provider contract. While we understand that the OIC cannot change the effective date of state law, the OIC does have the discretion to insert a sentence with a comply by date for provider contracts to contain the updated language. The OIC could add a new (1) or a new (9) that states a comply by date such as the following: “By July 1, 2022, provider contracts must contain language conforming to this subsection.”

We thank you for the opportunity to provide comments on this stakeholder draft, and for the OIC’s willingness to consider our feedback. We look forward to our continued collaboration throughout this rulemaking process. Please do not hesitate to contact us with questions.

Sincerely,



Merlene Converse

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From: [Merlene S Converse](#)
To: [Beyer, Jane \(OIC\)](#)
Cc: [Melissa Putman](#)
Subject: KP feedback: patient consent for telemedicine services (R 2021-06)
Date: Wednesday, July 21, 2021 10:18:58 AM

External Email

Hi Jane,

We received your request via the Association of Washington Healthcare Plans concerning any current health carrier policies or practices related to consent for telemedicine services. I am responding on behalf of Kaiser Foundation Health Plan of the Northwest, Kaiser Foundation Health Plan of Washington and Kaiser Foundation Health Plan of Washington Options, Inc.

As you know, RCW 48.43.735 (8) places the accountability with the provider to obtain patient consent for telemedicine services. The law does not place a requirement on the health carrier to take a specific action. If a health carrier receives a claim for audio-only telemedicine services, we are not requesting or expecting specific documentation to accompany the claim that would show the physician or health care provider obtained patient consent to be billed. We expect that if we have received a claim that the provider or their broader health care team has obtained this consent and is complying with the law.

We participated in the stakeholder meeting on July 12 and heard concerns from some participants asking the OIC to develop clear requirements for the type of authorization and documentation that health care providers must do. Because health care providers are not regulated by the OIC, it may be difficult to write requirements for providers. To the extent that regulations are written, we encourage that the regulation include flexibility for physicians and providers to develop workflows for obtaining patient consent that work for their practice and broader health care team and support staff. These workflows may look different from one provider to another.

We look forward to continued discussions on this rulemaking topic. Please let us know if you have questions.

Thank you.

Merlene Converse

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