Mike Kreidler- Insurance commissioner

As required by

The Washington State Administrative Procedures Act

Chapter 34.05 RCW

Matter No. R2021-06

CONCISE EXPLANATORY STATEMENT; RESPONSIVENESS SUMMARY; RULE DEVELOPMENT PROCESS; AND IMPLEMENTATION PLAN

Relating to the adoption of

Telemedicine and coverage of audio-only telemedicine services
(ESHB 1196 (Chap. 157, Laws of 2021))

November 19, 2021

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Section 1: Introduction

Revised Code of Washington (RCW) 34.05.325 (6) requires the Office of Insurance Commissioner (OIC) to prepare a “concise explanatory statement” (CES) prior to filing a rule for permanent adoption. The CES shall:

1. Identify the Commissioner's reasons for adopting the rule;
2. Describe differences between the proposed rule and the final rule (other than editing changes) and the reasons for the differences; and
3. Summarize and respond to all comments received regarding the proposed rule during the official public comment period, indicating whether or not the comment resulted in a change to the final rule, or the Commissioner's reasoning in not incorporating the change requested by the comment; and
4. Be distributed to all persons who commented on the rule during the official public comment period and to any person who requests it.

Section 2: Reasons for Adopting the Rule

ESHB 1196 (Chapter 157, Laws of 2021) was signed into law on May 3, 2021. The legislation addresses coverage of telemedicine services, including audio-only telemedicine services. Prior to passage of this legislation, audio-only telemedicine services were explicitly excluded from the definition of “telemedicine”. Carriers were not required by statute to cover audio-only telemedicine services. During the COVID-19 public health emergency, OIC issued emergency orders requiring coverage of audio-only telemedicine services in order to ensure access to medical services. ESHB 1196 requires coverage of audio-only telemedicine services under specified conditions and amends the statutory language related to telemedicine payment parity.

This proposed rule is necessary to ensure clarity regarding several issues addressed in ESHB 1196, including telemedicine payment parity and the requirement that providers obtain consent from patients in advance of providing audio-only telemedicine encounters as a condition of receiving payment from carriers for those encounters. The rule will facilitate implementation of ESHB 1196 by ensuring that all affected consumers and health care entities understand their rights and obligations under the new law.

Section 3: Rule Development Process

The CR-101 for this rulemaking was filed in the Washington State Register on June 22, 2021 (WSR 21-13-132). The comment period for the CR-101 closed on July 7, 2021. Six comments were received.

OIC held a stakeholder meeting on July 12, 2021.

A first stakeholder draft was released on July 28, 2021. A stakeholder meeting was held on August 6, 2021. Twenty comments were received on the first stakeholder draft.

A second stakeholder draft was released on August 20, 2021. Four comments were received.

The CR-102 for this rulemaking was published in the Washington State Register (WSR 21-19-137) on September 21, 2021. The Commissioner accepted comments through October 25, 2021. No written comments were received.

The Commissioner held a public hearing on the proposed rule text on October 28, 2021; the hearing was administered by Jane Beyer, as a virtual meeting due to the COVID-19 pandemic. No testimony was presented at the hearing.

The CR-103 was submitted to the Code Reviser for adoption on November 19, 2021.

Section 4: Differences Between Proposed and Final Rule

The proposal included rules determined by OIC, after receiving extensive stakeholder input, to be necessary to implement ESHB 1196 (Chap. 157, Laws of 2021). Rulemaking is necessary to ensure that rules are adopted by OIC prior to January 1, 2022. These rules will facilitate implementation of the laws by ensuring that all affected health care entities understand their rights and obligations under the new laws.

The final rule differs from the proposed rule in the following respects:

- A technical reference was changed to refer to the correct WAC section in the definition of “patient consent” in WAC 284-170-130
- In WAC 284-170-433(6)(a), the term “related to” is revised to read “applicable to” in order to clarify the intent of the language

- In WAC 284-170-433(b), subsections were reordered to clarify language. Subsection (b)(iii) was moved up to appear as subsection (b)(ii) and subsection (b)(ii) was renumbered to subsection (b)(iii)
- Language was added to WAC 284-170-433(10) to clarify that the grace period associated with carriers filing conforming changes to their provider contracts does not limit the Commissioner's underlying authority provided in RCW 48.02.060 to enforce ESHB 1196 or WAC 284-170-433 as of the effective date of those laws.

For the reasons described in the responses to the comments below, no other changes were made to the proposed rule in the final rule.

Section 5: Responsiveness Summary

The OIC received a total of thirty written comments and suggestions regarding R 2021-06, inclusive of the CR-101, stakeholder drafts and the CR-102. The following information contains a description of the comments, the OIC's assessment of the comments, and information about whether the OIC included or rejected the comments.

The OIC received comments from:

98point6 (Rachel Stauffer)
American Physical Therapy Assn., Washington (Jackie Barry)
Association of Washington Healthcare Plans (Chris Bandoli)
Cambia (Jane Douthit)
Coordinated Care (Liz Abekah)
Don Downing, University of Washington School of Pharmacy
Donna Cole Wilson
Jim Freeburg, Coalition of patient advocacy groups
Ruth Hooper, MSW, LICSW
Kaiser Fdn. Health Plan of the Northwest, Kaiser Fdn. Health Plan of Washington and Kaiser Fdn. Health Plan of Washington Options, Inc. (Merlene Converse)
National Multiple Sclerosis Society (Seth Greiner)
People Bloom Counseling (Ada Pang)
Planned Parenthood Alliance Advocates – Washington (Leslie Edwards)
Teledoc (Claudia Duck Tucker)
The Holt Company for ZoomCare (Tom Holt)
Upstream USA (Cara Bilodeau)
Washington State Hospital Assn. (Andrew Busz & David Streeter)
Washington State Medical Assn. (Jeb Shepard)
Washington State Mental Health Counselors Assn. (Shannon Thompson)
Washington State Podiatric Medical Assn. (Gail McGaffick)

Kathy Wilmering, MSW, ARNP

Comments received to the CR-101, stakeholder drafts and CR-102

Comment	***OIC Response***
General comments	
Support payment parity for telemedicine services	The Commissioner appreciates this comment. This policy is included in ESHB 1196 and this rulemaking.
Patient cost-sharing for telemedicine services shouldn't be higher than in-person visits	ESHB 1196 does not address cost-sharing related to telemedicine services. Therefore, this comment is beyond the scope of this rulemaking.
Support making audio-only telemedicine permanent. Given limited access to broadband in rural communities, access to audio-only telemedicine ensures continued access to care.	The Commissioner appreciates this comment. This policy is included in ESHB 1196 and this rulemaking.
WAC 284-170-130 **Definitions**	
Definitions in WAC should refer to citations for those terms defined in statute. Terms already defined in statute should not be modified for this rulemaking.	The Commissioner appreciates this comment. Terms that are defined in statute are defined in the rule by reference to their statutory definition.
• **Allowed amount**	
Revise the definition of "allowed amount" to depart from the statutory definition of that term and provide greater clarity.	The rule was not changed. The proposed revision to the rule language would not substantively change the meaning of the term, but it would be a departure from using the statutory definition of terms used in the rule. For purposes of consistency in definitions and interpretation of statutory

Comment	*OIC Response*
	terms, OIC retained the reference to the statutory definition.
• **Audio-only telemedicine**	
The definition of audio-only telemedicine could cause some confusion. Teladoc Health does use audio technology but in those cases it is always accompanied by some form of asynchronous store and forward data (such as medical history) relevant to the patient encounter. To remove the confusion, the definition of "audio- only" in WAC 284-170-130 (3)(a) should be amended as follows: "…means the delivery of health care services **solely** through the use…" Alternatively, (3)(c) exclusions could be amended to include: "(iii) the delivery of health care services utilizing audio-only technology in conjunction with store and forward technology for diagnosis, consultation and treatment."	The rule was not changed. The requirement for providers to obtain advance consent from consumers prior to the provision of audio-only telemedicine services was designed to protect consumers from being unknowingly billed for telephone conversations with their providers. The fact that a provider may have access to a consumer's medical history or other information transmitted via store and forward technology while speaking with a patient does not convert the visit to an audio-visual telemedicine encounter. Adopting the comment as proposed could effectively result in certain provider groups being exempt from the requirements to obtain patient consent prior to billing for audio-only telemedicine visits and to have an established relationship with a patient, which would be contrary to the language and intent of ESHB 1196.
The definition of "audio-only telemed" in the first stakeholder draft appears to exclude situations in which a visit begins as audio/visual and shifts to audio-only due to unanticipated technical circumstances. Clarification is needed so that this type of visit is not excluded from coverage.	The Commissioner appreciates this comment. The language of WAC 284-170-433(7) was revised to state that a carrier may not deny, reduce, terminate or fail to make payment for the delivery of health care services using audio and visual technology solely because the patient-provider communication during the encounter shifted to audio-only due to unanticipated circumstances. In such an instance, a carrier may not require a provider to obtain consent from the patient to continue the communication.

Comment	*OIC Response*
	To clarify the carrier's obligation when a shift from audio-visual to audio-only occurs, WAC 284-170-433(7) states that a carrier cannot be required to pay for both an audio-visual and an audio-only service when both means of communication are used in the course of an encounter due to unforeseen circumstances.
Add to the definition of "audio-only telemedicine" a requirement that the service will be paid at parity to in-person visits.	The rule language was not changed. Payment parity for telemedicine is a distinct legal requirement and is included in the rule at WAC 284-170-433(2). Including the payment parity requirement in definitions or other provisions of the rule would essentially repeat a requirement that is sufficiently addressed in the rule and is not necessary. In addition, the payment parity requirement is distinct from definitions of underlying terms.
• **Established relationship**	
This definition related to a referring provider participation in an audio-only telemedicine visit in the first stakeholder draft is unclear.	The Commissioner appreciates this comment. In WAC 284-170-130(13)(b) the definition of "established relationship" was revised to clarify the intent of the provision. The final rule reads as follows: "A referral includes circumstances in which the provider who has had at least one in-person appointment with the covered person participates in the audio-only telemedicine visit with the provider to whom the covered person has been referred."
A commentor asked whether the definition of "established relationship" would encompass a locums tenens situation?	The Commissioner appreciates this comment. Language was added to WAC 284-170-130(13) clarifying that a referring provider could be a provider in a locum tenens role.
Subsection (b) of definition of "established relationship":	The language of WAC 284-170-130(13)(b) is intended to address situations in which

Comment	*OIC Response*
Would request the OIC please explain what situation this is trying to solve for. Depending on the goal, limiting to audio-only might be problematic when clinical communication takes place over other modalities, such as email.	a patient's current provider is participating in the discussion between their patient and a provider to which the patient has been referred. This language is not intended to address direct communication between providers for purposes of consultation when the patient is not participating in the providers' communication.
• **Originating site**	
Concerns re definitions of "originating site" and "distant site" in RCW 48.43.735. E.g. definition of "originating site" includes medical facilities – why would a patient be at a medical facility? "Distant site" should list medical facilities. Please clarify this in the rule if possible.	The rule language was not changed. The terms "originating site" and "distant site" are defined in statute. The Commissioner does not have the authority to adopt rules that are inconsistent with the statutory language.
• **Patient consent**	
Support definition of "patient consent"	The Commissioner appreciates this comment.
The definition in the first stakeholder draft reads as if the provider would bill the patient and not their health plan.	The Commissioner appreciates this comment. The definition of "patient consent" in RCW 284-170-130(31) was revised to clarify that the patient consent would be to a provider billing the patient or the patient's health plan.
The term "informed decision" in the definition in the first stakeholder draft is unclear.	The Commissioner appreciates this comment. The definition of "patient consent" in WAC 284-170-130(31) was revised to add language clarifying that an informed decision is one that is made following an explanation by the provider or their staff that is presented in a manner understandable to the patient that is free of undue influence, fraud or duress.

Comment	*OIC Response*
In WAC 284-170-433 of the second stakeholder draft, a provider or their auxiliary personnel can obtain patient consent. To be consistent, the definition of "patient consent" also should reference auxiliary personnel.	The Commissioner appreciates this comment. Reference to a provider's auxilliary personnel was added to the definition of "patient consent" in WAC 284-170-130(31).
• **"Same amount of compensation"**	
Define "same amount of compensation" consistent with the OIC Technical Assistance Advisory issued in December 2020.	The Commissioner appreciates this comment. WAC 284-170-130(38) defines "same amount of compensation" consistent with the language included in OIC's December 2020 Technical Assistance Advisory.
WAC 284-170- 433: Provider contracts – telemedicine	
Language expressly referencing the payment parity requirement should be added to subsection (1)(a).	The final rule language was not changed. Payment parity for telemedicine is expressly required in WAC 284-170-433(2). WAC 284-170-433 addresses several issues. Inclusion of payment parity language in subsection (1)(a) – the introductory phrase to the section -- is not necessary.
• **Originating site**	
This following language in WAC 284-170-433(3)(a) seems more like commentary than rulemaking: "If the site chosen by the individual receiving service is in a state other than the state of Washington, a provider's ability to conduct a telemedicine encounter in that state is determined by the licensure status	The final rule language was not changed. Both RCW 48.43.735 and the proposed rule allow a site chosen by a patient to be an "originating site" for provision of telemedicine services. This language is necessary to include in the rule, as it modifies or conditions a patient's ability to choose the originating site, i.e. telemedicine cannot be provided to a

Comment	*OIC Response*
of the provider and the provider licensure laws of the other state."	consumer located out of state by a Washington state provider if the provider is unable to provide care in that state due to the other state's laws.
In defining "originating site", clarify the ability of a consumer to define the originating site, while also being reflective of interstate compacts that increasingly allow providers to see consumers across state lines. The question is whether a provider licensed in Washington state can provide care for an enrollee when that individual is out of state for travel or other purposes.	The Commissioner appreciates this comment. As of April 2020, WA currently participates in 2 interstate compacts -- the physical therapy compact & the Interstate Medical Licensure Compact. [1] Each state's law controls which health care practitioners can practice in their state. When consumers travel to another state, it is that state's law that governs whether their provider in Washington state can provide telemedicine services to that individual while out of state. WAC 284-170-433(3)(a)(vii) notes that while an enrollee can chose home or another location to receive telemedicine services, if the site chosen by the individual receiving service is in a state other than the state of Washington, a provider's ability to conduct a telemedicine encounter in that state is determined by the licensure status of the provider and the provider licensure laws of the other state.
• **Consent**	
Support not requiring advance consent in those situations in which a visit begins with use of audio-visual telemedicine but needs to shift to audio-only due to connectivity or other issues.	The Commissioner appreciates this comment. WAC 284-170-433(7) clarifies that a visit that begins using audio and visual technology solely but shifts to audio-only due to unanticipated circumstances does not require patient consent to continue the communication.
Support flexibility in how patient consent is obtained, i.e. do not require written consent.	The Commissioner appreciates this comment. The language of WAC 284-170-433(6) provides this flexibility by allowing consent to be obtained and documented as part of the process of

[1] https://compacts.csg.org/wp-content/uploads/2020/11/OL_Compacts_InAction_Update_APR_2020-3.pdf

Comment	*OIC Response*
	making an appointment for an audio-only telehealth visit, recorded verbally as part of the encounter record, or otherwise documented in the patient record.
Support allowing consent to audio-only billing for up to a 12 month period.	The Commissioner appreciates this comment. This provision is included in the final rule language at WAC 284-170-433(6)(b).
Expand the concept of "auxiliary personnel" who can obtain consent from the patient to all personnel in the practice, not just those under the general supervision of the provider.	The final rule does not include this language. The Commissioner's primary concern is that consumers fully understand whether and when they will be billed for an audio-only encounter. The Commissioner is concerned that allowing all personnel in the practice to obtain patient consent would create a risk of patients not associating a request for consent with a particular provider encounter. From a consumer perspective, there is concern that, especially in larger or multi-specialty practices, consumers would not understand the scope of the consent being provided, given the potential scope of the providers participating in the system.
It is important consent is obtained every time health care services are delivered through audio-only telemedicine and not included as part of new patient forms or as a blanket consent form for all future audio-only telemedicine encounters.	The final rule does not include a requirement that consent be obtained each time an audio-only telemedicine encounter occurs. The final rule attempts to balance the legislature's intent that patient consent be obtained with the administrative burden that would be associated with obtaining patient consent each and every time an encounter occurs. Under WAC 284-170-433(6)(b), consent can be obtained for up to a 12 month period. WAC 284-170-433(6)(b)(iv) clearly states the patient's right to revoke their consent.

Comment	*OIC Response*
Recommend that providers are required to retain documentation of patient consent.	The Commissioner appreciates this comment. WAC 284-170-433(6)(b)(ii) requires providers to document consent and retain the documentation for a minimum period of five years.
Provide some additional safeguards for consumers, such as the ability to revoke consent and provision of the written notification to the consumer.	The Commissioner appreciates this comment. WAC 284-170-433(6)(b)(iv) expressly allows consumers to revoke their consent to be billed for audio-only telemedicine services. The revocation can be verbal or in writing and must be retained by a provider for a minimum of five years.
Clarify the consent provision to ensure that services that were provided as part of the normal provision of care, i.e. sharing of lab results, remain unbillable.	The Commissioner appreciates this comment. Consistent with the language of RCW 48.43.735, WAC 284-170-130(3) provides that audio-only telemedicine does not include the delivery of health care services that are customarily delivered by audio-only technology and customarily not billed as separate services by the provider, such as the sharing of laboratory results.
To ensure consistent implementation of this provisions across all carriers, 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.”	The Commissioner appreciates this comment. WAC 284-170-433(6)(b)(ii) was revised to include the language suggested by the commentor.

Comment	*OIC Response*
The revisions to the second stakeholder draft in WAC 284-170-433(6)(b)(ii) will be very helpful when implementing the rule.	The Commissioner appreciates this comment.
There are concerns regarding a minor being able to consent to being billed for audio-only telemedicine.	This issue is beyond the scope of this rulemaking. The Commissioner's jurisdiction relates to ensuring that carriers meet their obligations to pay for covered services. A minor's ability or right to consent to being billed would be governed by Washington state law that is not within OIC jurisdiction.
Add a reference to the payment parity requirement in WAC 284-170-433(7).	This subsection addresses a carrier's obligation to treat a telemedicine visit as audio-visual when it shifts to audio-only due to unanticipated circumstances. The payment parity requirement is clearly stated in WAC 284-170-433(2) and applies to telemedicine services generally.
• **Established relationship**	
A commentor asks whether the established relationship requirement can be met by a provider making a home visit to a patient.	The Commissioner appreciates this comment. WAC 294-170-130(13) defines "establishes relationship" as an "…in-person appointment within the past year"… The WAC does not limit the location of the in-person appointment. As long as the provider has had an-person appointment with a patient in the past year, the "established relationship" requirement is satisfied.
Requiring an established relationship creates a barrier for low income, low health literacy, or low mobility individuals. Please remove this requirement.	RCW 48.43.735(1)(a)(v) requires that a covered person have an established relationship with a provider as a condition of covering audio-only telemedicine services. OIC does not have statutory authority to remove this requirement. OIC notes that the requirement to have an established relationship as a condition to

Comment	*OIC Response*
	coverage of providing audio-only telemedicine services could be an issue for future consideration. Section 9 of ESHB 1196 amends RCW 28B.20.830. It directs the Telemedicine Collaborative to study the need for an established patient/provider relationship prior to providing audio-only medicine and to provide recommendations to the legislature by December 1, 2021.
Revise definition of “established relationship” to include in person visit within the past three years, rather than one year.	RCW 48.43.735(1)(a)(v) and (9)(d) require that a covered person have an established relationship with a provider as a condition of covering audio-only telemedicine services. Established relationship is defined as having had at least one-in person appointment with the provider withing the past year. OIC does not have statutory authority to modify the requirement to a three year period. OIC notes that the requirement to have an established relationship as a condition to coverage of providing audio-only telemedicine services could be an issue for future consideration. Section 9 of ESHB 1196 amends RCW 28B.20.830. It directs the Telemedicine Collaborative to study the need for an established patient/provider relationship prior to providing audio-only medicine and to provide recommendations to the legislature by December 1, 2021.
We recognize that OIC may not be in a position to redefine the statutory requirement for an ‘established relationship’ for the use of ‘covered’ audio-only services. However, while this rule does not currently directly impact 98point6, we wish to raise this important issue for future consideration.	OIC notes that the requirement to have an established relationship as a condition to coverage of providing audio-only telemedicine services could be an issue for future consideration. Section 9 of ESHB 1196 amends RCW 28B.20.830. It directs the Telemedicine Collaborative to study the need for an established patient/provider relationship prior to

Comment	*OIC Response*
The data suggests that an in person visit is not necessary and not always preferred by the patient. We hope that you will consider these important factors as you move further along in your study of telemedicine.	providing audio-only medicine and to provide recommendations to the legislature by December 1, 2021.
• **Use of provider contracts to establish requirements**	
Commentors have concerns regarding the rule's approach of requiring that specific provisions of the rule be included in provider contracts. Provider contracts already require that providers comply with existing federal, state and local laws and regulations. Existing statute does not require the information in RCW 48.43.735 to be included in provider contracts. The provider contract portion should be removed and the consent to billing process should be addressed in a separate section of the rule.	RCW 48.43.735 has specific requirements related to claims payment for audio-only telemedicine visits. The specificity of these requirements and the fact that failure to comply with the advanced consent requirement is a basis for professional licensure disciplinary action merits inclusion of these provisions in health plan/provider contracts. RCW 18.130.180(21) defines "unprofessional conduct" to include a pattern of violations of RCW 48.43.735(8). Thus, a provider's professional license is at risk for failure to comply with the requirements of RCW 48.43.735(8).
Recommend that OIC include a future compliance deadline for carriers to amend their contracts; otherwise it would need to happen within the standard 31 days after filing the CR-103. If provider contracts must be the vehicle, then allow time for contracts to be amended and filed with OIC.	The Commissioner understands the administrative burdens associated with modifying their provider contracts. The final rule requires that provider contracts contain language conforming to WAC 284-170-433 by July 1, 2022. The Commissioner notes however, that Chap. 157, Laws of 2021 was effective July 25, 2021. Thus, the requirements of RCW 48.43.735 apply to both carriers and providers as of that date. A rule cannot delay the effective date of a statutory provision.

Comment	*OIC Response*
	OIC can take enforcement action against a carrier for failure to comply with the statute and this rule based upon the effective dates of those provisions. To clarify this point, the final rule makes a technical revision to WAC 284-170-433(10) to read as follows: "(10) Each carrier's provider contracts must include language conforming to the requirements of this section by July 1, 2022. The grace period associated with carriers filing conforming changes to their provider contracts under this section in no way limits the authority of the commissioner to enforce the provisions of RCW 48.43.735 or this section on or after the effective date of those sections of law."
• **Telemedicine cost-sharing**	
A commentor strongly disagrees that ESHB 1196 or RCW 48.43.735 provide the OIC with 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 component of health plan benefit design, which is outside of the scope of ESHB 1196 and RCW 48.43.735. The commentors requests that this provision be removed from the draft regulation.	The Commissioner appreciates this comment. The final rule removes this subsection of the stakeholder draft.

Comment	*OIC Response*
• **Nondiscrimination**	
WAC 284-170-433(9) should be removed as not necessary. Carriers already have these obligations under state nondiscrimination law and rules.	The rule language was not changed. While coverage of telemedicine services can address equity concerns related to consumers' lack of access to broadband coverage or to computers and smart phones, other critical equity issues regarding access to telemedicine services remain. These issues include but are not limited to access for patients with limited English proficiency and for patients with visual, hearing or other disabilities. It is critical that carriers are aware of their nondiscrimination obligations as they execute provider contracts.
• **Enforcement**	
Revise the definition of "pattern of unresolved violations" in WAC 284-170-433(8)(b) to require that the "two or more violations" are intentional violations.	The final rule language was not changed. RCW 48.43.735(8) gives the Commissioner discretion to determine whether a "pattern of unresolved violations" has occurred. In determining whether to refer a provider to the applicable disciplinary authority, WAC 284-170-433(8) provides an opportunity for the Commissioner to take into consideration whether a provider's violations of the consent provisions of RCW 48.43.735 were intentional or not.

Section 6: Implementation Plan

A. Implementation and enforcement of the rule.

As described below, implementation of the rule will occur through numerous activities at OIC. The Rates, Forms and Provider Networks Division will rely on this rule when reviewing health plan filings and provider contracts filed with OIC. Questions related to compliance with this rule can be raised and addressed through these processes. The Consumer Affairs Division will respond to

consumer complaints. Through these complaints, OIC will monitor implementation of the rule. This monitoring will identify any need to conduct further stakeholder education regarding the rule. Enforcement will occur when a carrier is determined by OIC to have violated the requirements of these rules.

B. How the Agency intends to inform and educate affected persons about the rule.

OIC Policy staff will distribute the final rule and the Concise Explanatory Statement (CES) to all interested parties by posting and sharing the documents through the OIC's standard rule making listserv and emailing the documents to stakeholder participants. The OIC Rules Coordinator will post the CR-103 documents on the OIC's website.

Type of Inquiry	Division
Consumer assistance	Consumer Advocacy Program
Rule content	Policy Division
Authority for rules	Legal Division
Enforcement of rule	Company Supervision, Rates, Forms and Provider Networks
Market Compliance	Company Supervision; Rates, Forms and Provider Networks

C. How the Agency intends to promote and assist voluntary compliance for this rule.

OIC will assess compliance with this rule in its annual review of health plan filings, which will provide an opportunity for carriers to fully understand and comply with these rules prior to approval of their health plans.

D. How the Agency intends to evaluate whether the rule achieves the purpose for which it was adopted.

The goal of the laws implemented through this rulemaking is to ensure that consumers are able to access and receive telemedicine services. OIC will monitor for consumer complaints related to this rule and carriers' compliance with the rule through their health plan filings.

Appendix A

CR-102 Hearing Summary

Summarizing Memorandum **To: Mike Kreidler** **Insurance Commissioner** **From: Jane Beyer** **Presiding Official, Hearing on Rule-making**
Matter No. R2021-06
Topic of Rule-making: Telemedicine and coverage of audio-only telemedicine services
This memorandum summarizes the hearing on the above-named rule making, held on October 28, 2021 at 11am via Zoom, due to the COVID-19 public health emergency, over which I presided in your stead. The following agency personnel were present: Sharon Daniel, Jennifer Kreitler, Deanna Ogo, John Haworth, Stephanie Marquis, Mary Tedders-Young and Jesse Wolff **In attendance:** Melanie Anderson, United HealthCare Michelle Baird, PacificSource Ann Bray, Lifeline Connections Crystal Chindavongsa Merlene Converse, Kaiser Permanente Thalia Cronin, Community Health Plan of Washington Amy Do, Molina HealthCare Jane Douthit, Regence Leslie Emerick Donna Goodwin Robert Hopkins, Cigna Frankie Kaiser, Kaiser Permanente Katerina LaMarche, Washington State Medical Assn. Gail McGaffick Tracy Mikesell, Washington State Department of Health Sarah Pettey, Providence

Hilary Preston, Premera
Dauna Shoulders, HealthPoint Community Health Centers
Scott Sigmon
Kevin Smith, Health Alliance
David Szostak, Cigna
Julie Stewart, Island Hospital
David Streeter, Washington State Hospital Assn.
Julie Sylvester, University of Washington
Katherine Therrien, Aetna
Shannon Thompson, Washington Mental Health Counselors Assn.

Contents of the presentations made at hearing: There was no testimony at the hearing.

The hearing was adjourned.

SIGNED this 16th day of November 2021

_ *Jane Beyer*__________
[NAME], Presiding Official