



October 5, 2020

Chairman John Maldon
Washington Medical Commission
111 Israel Road SE
Turnwater, WA 98501

RE: Telehealth Industry Support for Amending Draft Rule Language for Consideration Released by the Washington Medical Commission.

Chairman John Maldon and Medical Commission Members:

On behalf of the telehealth industry, and the over 400 organizations we as the American Telemedicine Association represent, I am writing to express our thoughts on the draft rule language for consideration released by the Washington Medical Commission as part of the Telemedicine Rule Workshop Notice. We so appreciate the Commission's interest in and support for telemedicine. As you know, telemedicine effectively connects individuals and their healthcare providers when in-person interaction is not clinically necessary and facilitates physician to physician's consultation. It has been shown to be a safe and quality care modality that improves efficiencies, helps to reduce costs, and enables healthcare providers and hospital systems to do more good for more people.

The ATA is committed to ensuring that everyone has access to safe, affordable and appropriate care when and where they need it. The ATA represents a broad and inclusive network of technology solution providers, delivery systems and payers, as well as partner organizations and alliances, working together to advance adoption of telehealth, promote responsible policy, advocate for government and market normalization, and provide education and resources to help integrate virtual care into emerging value-based delivery models.

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We support the Commission’s efforts to update the Telemedicine Rules and to implement a consistent regulatory framework that promotes telehealth adoption. In its current form, however, the draft rule language does not align with ATA’s values and would restrict the availability of quality care in Washington. Unlike the Commission’s current guidelines, the proposed rules (i) narrowly define telemedicine to care delivery through audio-visual technologies and (ii) unnecessarily mandates that providers use a real-time interaction to establish a valid practitioner-patient relationship.

This language gives undue weight to the delivery tools enabling a clinical encounter rather than the clinical components and competencies which make up a standard clinical practice. These limitations also do not capture how telemedicine providers are increasingly relying on asynchronous (or “store and forward”) telehealth technologies to establish patient relationships, perform patient evaluations, and appropriately prescribe medication in many fields. Asynchronous (or “store and forward”) technologies are critical to the industry as they are used to quickly and conveniently transmit a patient’s health data, vital signs, digital diagnostic images, and other physiologic data.

The ATA has a long-standing position that policies related to tech-enabled health delivery should be modality neutral and enable a healthcare professional to practice optimally. Rather than mandating specific telehealth technologies, the Commission should develop a regulatory framework that empowers providers to use their clinical judgment to determine the appropriate telehealth modality --whether real-time or non-real time-- to uphold the standard of care and serve the best interest of their patients. Technology-neutral language will also provide flexibility to account for emerging clinical technologies that contain costs and improve quality.

The proposed definitions of both the practice of medicine and store and forward technology should not include any reference to compensation. The Commission should expect practitioners to deliver quality care to a patient based on medical need and not on compensation.

Furthermore, we also respectfully suggest that the Commission is not best suited to define Artificial Intelligence for the first time in the Washington Administrative Code as it



relates to health care. It would be more appropriate for the Commission to receive policy guidance from the legislature on this issue before moving forward.

The ATA proposes the following changes, which we believe properly puts the focus on the standard of care and ensure providers have a range of telehealth tools to meaningfully engage with their patients:

In the definition section of the proposed rule:

Telemedicine: A mode of delivering healthcare services through the use of telecommunications technologies, including but not limited to asynchronous and synchronous technology, and remote patient monitoring technology, by a healthcare practitioner to a patient or a practitioner at a different physical location than the healthcare practitioner.

"Asynchronous" (or "store and forward"): The exchange of information regarding a patient that does not occur in real time, including the secure collection and transmission of a patient's medical information, clinical data, clinical images, laboratory results, or a self-reported medical history.

"Synchronous": The exchange of information regarding a patient occurring in real time.

Practice of medicine: For the purposes of this rule, this is the evaluation, diagnosis or treatment of a patient.

In the Standard of Care Requirements (C.1) of the proposed rule:

Practitioner-Patient Relationship: A valid practitioner-patient relationship may be established via synchronous or asynchronous telehealth communication without a prior in-person exam. As a condition of establishing a valid practitioner-patient relationship, the practitioner must:



1. Obtain the patient's consent for the use of telehealth as an acceptable mode of delivering healthcare services. Acknowledgement of such consent shall be documented in the patient's medical record; and
2. Verify the patient's identity and disclose the practitioner's identity and applicable credentials.

We appreciate the Commission seeking stakeholder comment and look forward to working together in the months ahead to develop rules that will allow Washington to continue to have the most flexible, forward thinking and pro-innovative telemedicine policies in the country. Thank you so much for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Kyle Zebley".

Kyle Zebley
Director, Public Policy
The American Telemedicine Association