



January 18, 2021

The Honorable Dawn M. Adams
Pocahontas Building
900 E. Main St, Room E314
Richmond, Virginia 23219

RE: ATA OPPOSITION TO PROPOSED AMENDMENTS TO HOUSE BILL 1987

Dear Delegate Adams,

On behalf of the American Telemedicine Association (ATA) and the 400 organizations we represent, I am writing to express concerns about an amendment made to HB 1987 in §54.1-3303 (B). Across the United States, telehealth providers use various technological means to perform patient evaluations and provide medications for new and established patients in fields including primary care, dermatology, radiology, psychology, and ophthalmology. In its revised form, HB 1987 would create unnecessary and impractical barriers to the establishment of telehealth services across Virginia, limiting practitioners' ability to prescribe vital medications to their patients throughout the state based on arbitrary geographic restrictions.

The ATA is committed to ensuring that everyone has access to safe, affordable, and appropriate care whenever and wherever is necessary, allowing the already-strained health care system to handle an increasing number of patients. The ATA represents a diverse and wide-ranging coalition of technology solution providers, delivery systems and payers, as well as partner organizations and alliances, working together to advance the adoption of telehealth, promote responsible policy for government and market normalization, and provide education resources to help integrate virtual care into emerging delivery modalities.

Currently, the bill would place geographic restrictions that determine the practitioners who can provide prescriptions to their patients, the language reading:

“To prescribe a Schedule II through V controlled substance utilizing telemedicine, the prescriber must maintain and practice or have a relationship with a practitioner at a physical office practice in the Commonwealth or in an immediately contiguous jurisdiction in order to ensure availability for an in-person examination when required by the standard of care.”

In mandating the existence of a physical presence for practitioners to prescribe Schedule II through V controlled substances, the language establishes an arbitrary geographical barrier that would limit Virginians' access to the prescriptions they need to lead healthy lives. When applied to real-world scenarios, the requirement proposed in this amendment is not practical in protecting Virginians' safety or ensuring their access to accessible and high-quality care. If this bill were passed with the amended language, a Virginia citizen located in Alexandria could legally receive a prescription from a provider in Memphis, Tennessee (as Tennessee shares a border with Virginia), 881 miles away. However, a practitioner in Philadelphia, Pennsylvania, just 146 miles away from that same citizen, could not prescribe this patient's medication simply because Pennsylvania does not border Virginia.



Moreover, this language is not needed because if an in-person examination is needed to meet the standard of care for prescribing, then the practitioner would already be violating the standard by using telehealth technology to do so - regardless of whether they have a physical office or a relationship with a practitioner in Virginia or a “contiguous jurisdiction.” Simply put, there is no overlap between when a practitioner can use telehealth to prescribe medication and when an in-person exam is needed to prescribe, making this proposed amendment unneeded.

Finally, the language also is likely in violation of the 10th Amendment. While the 10th Amendment gives broad discretion to states to regulate the health, welfare, and safety of its citizens, it still cannot “arbitrarily” or “capriciously” violate the Commerce Clause when doing so. The requirements imposed by this bill certainly would legally violate the Commerce Clause by limiting an out-of-state practitioners’ ability to practice medicine in Virginia despite the fact that they are licensed to practice there.

Throughout the COVID-19 pandemic, the expanded use of telehealth has brought additional evidence that, when used appropriately, telehealth and the use of safe and effective technologies to deliver remote care improves health care quality and outcomes while reducing the costs of that care. the ATA stresses the necessity of providing Virginians with a health care environment in which access to essential medical services, such as prescriptions, is as efficient and effective as possible without compromising the standard of care.

The ATA applauds other aspects of HB 1987 which guarantee that nothing shall preclude coverage of telehealth services by insurers, including those services which involve remote patient monitoring. However, the ATA strongly objects to the amended language, and we believe that passing House Bill 1987 in its current form would be a step backward for patients and practitioners in the Commonwealth. Please do not hesitate to let us know if there is anything that we can do to help you promote common-sense telehealth policy in Virginia. If you have any questions or would like to discuss further the telehealth industry’s perspective, please contact me at kzebley@americantelemed.org.

Kind regards,

A handwritten signature in black ink that reads "Kyle Zebley".

Kyle Zebley
Public Policy Director
American Telemedicine Association