



May 17, 2021

The Honorable Ron Wyden
Chair
Senate Finance Committee
Washington, DC 20515

The Honorable Mike Crapo
Ranking Member
Senate Finance Committee
Washington, DC 20515

RE: ATA Testimony for Senate Finance Committee Hearing on COVID-19 Health Care Flexibilities: Perspective, Experience, and Lessons Learned

On behalf of the American Telemedicine Association (ATA), thank you for thoughtfully considering the future of telehealth during the upcoming Finance Committee hearing entitled, “COVID-19 Health Care Flexibilities: Perspective, Experiences, and Lessons Learned” on Wednesday, May 19. Federal flexibilities over the past year have allowed patients to continue to access much-needed care even as the health care system was shuddered by the pandemic. This hearing is an essential step toward determining and enacting commonsense policies that will ensure Medicare seniors are not pushed off the telehealth cliff at the end of the current COVID-19 Public Health Emergency (PHE). Please accept this letter as testimony by the ATA and continue to consider the ATA as a resource as we work together on this important bipartisan issue.

As the only organization exclusively devoted to expanding access to care through telehealth, the ATA appreciates the opportunity to share our federal policy priorities for 2021. During the COVID-19 PHE, telehealth has finally become a reality for millions of Americans out of necessity. This has been possible because of swift, decisive actions by Congress and the Department of Health and Human Services (HHS). However, unless Congress acts again before the end of the PHE, telehealth access will vanish for millions



of Medicare beneficiaries overnight. As you consider how to address this looming telehealth cliff, we request that you review [ATA's Permanent Policy Recommendations](#) as well as [ATA's Federal Legislative Priorities](#).

We encourage you to ensure policies reflect beneficiaries' and providers' growing interest in having telehealth as a choice when accessing care. Data continues to show that Medicare beneficiaries like telehealth and want to keep it. The nonpartisan [Medicare Payment Advisory Commission's](#) annual beneficiary survey this year found that 90% of Medicare respondents were satisfied with telehealth. The ATA has worked with partners to [identify similar trends](#), including nearly two thirds of patients expecting telehealth to continue post-pandemic. To ensure these patients have the choice to access telehealth in the future, the ATA has prioritized the following policies for consideration in the 117th Congress and would greatly appreciate the Committee's taking these priorities into consideration when drafting potential telehealth legislation.

- Remove provisions in law that mandate, for telehealth delivery of care or reimbursement, a prior in-person relationship between practitioner and patient.
- Allow state licensing boards and practitioners to determine the appropriate standards of care for patients. This includes removing the in-person requirement for telemental health services in the recently signed Consolidated Appropriations Act.
- Permanently remove the geographic and originating site barriers in statute.
- The originating site should be wherever the patient is located, including but not limited to a patient's home.
- Enhance HHS authority to determine appropriate telehealth services and providers.
- Ensure Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) can furnish telehealth and receive equitable reimbursement.
- Make permanent HHS's temporary waiver authority for future emergencies.
- Support existing fraud, waste, and abuse resources within HHS, including the Health Care Fraud and Abuse Control Program.



The ATA is proud that telehealth is a strong bipartisan issue in Congress. The above listed priorities have been reflected in several bipartisan bills already under consideration this Congress, including the Telehealth Modernization Act (S. 368, H.R. 1332), the Protecting Access to Post-COVID-19 Telehealth Act (H.R. 366), and the soon to-be-reintroduced CONNECT for Health Act. The ATA would greatly appreciate your support of each of these important pieces of legislation.

At minimum, the ATA urges Congress to remove existing statutory barriers that limit access to care and not simply replace existing statutory access restrictions with new ones. For far too long, 1834(m) of the Social Security Act has categorically excluded too many patients from even having the option to access care via telehealth because of the law's antiquated and arbitrary barriers whose only purpose is to limit access to healthcare. Providers and patients are best suited to determine clinical appropriateness of medical services, not federal law. The 1834(m) restrictions are nearing 20 years old, and by allowing them to persist, Congress will only punish Medicare beneficiaries by banning their access to technology already available to non-Medicare patients. As such, the ATA urges the Committee to take great care in considering the consequences of having restrictions specifically codified in statute as opposed to allowing these issues to be decided at the regulatory level. By explicitly and arbitrarily limiting care in statute through so-called "guardrails," legislators will unnecessarily stifle innovation and tie the hands of regulators, providers, and patients. Should the Committee have concerns with cost, utilization, or telefraud, the ATA stands ready to work with you on our shared goal of ensuring program integrity. As such, please consider ATA's recently released [Program Integrity Overview](#) as a resource.

While the ATA appreciates Congress's recent actions to expand access to care, specific restrictions on patients, providers, services, or the modality of care in statute only add to complexities in the health care system. One of the ATA's main federal policy priorities is removing the in-person requirement for telemental health services which was included in the Consolidated Appropriations Act, 2021, Pub.L. 116-260 . (e.g. Section 123 establishes coverage and reimbursement of a telemental health service *only if* the practitioner has conducted an in-person examination of the patient in the prior six months and subsequently continues to conduct in-person exams at such a frequency to be determined by HHS). The



ATA strongly opposes statutory in-person requirements as they create arbitrary and clinically unsupported barriers to accessing affordable, quality health care.

Today, not a single state in the U.S. requires a prior in-person relationship. At the national level, the association of state regulators who oversee standards of medical care, the Federation of State Medical Boards, stated that "...the relationship is clearly established when the physician agrees to undertake diagnosis and treatment of the patient, and the patient agrees to be treated, whether or not there has been an encounter in person between the physician (or other appropriately supervised health care practitioner) and patient."

We cannot ignore the importance of providing all Americans, regardless of whether they have a medical provider with whom they have an established relationship, the opportunity to access health care. Requiring a physician and patient to meet in-person before receiving certain telehealth services would be a huge step backward, and we hope to work with you to find an alternative to in-person requirements.

Thank you again for holding this important hearing and for your thoughtful deliberation on how your committee can enable access to quality health care services for Medicare beneficiaries. The ATA's policy development and ultimate recommendations are guided by a specific set of [policy principles](#) which all support the goal of promoting a healthcare system where people have access to safe, effective, and appropriate care when and where they need it. Please know the ATA is honored to continue to be a resource for you, the Committee, and your dedicated staff. If you have any questions or would like to further discuss the ATA's perspective, please contact kzebley@americantelemed.org.

Kind regards,

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

Kyle Zebley
Public Policy Director
American Telemedicine Association