



June 16, 2021

The Honorable Richard Pan
Chair, California Senate Health Committee
California State Capitol
1315 10th Street, Room 5114
Sacramento, CA 95814

The Honorable Melissa A. Melendez
Chair, California Senate Health Committee
California State Capitol
1315 10th Street, Room 4082
Sacramento, CA 95814

RE: ATA OPPOSITION TO ASSEMBLY BILL 457

Dear Chair Pan and Vice Chair Melendez,

On behalf of the American Telemedicine Association and the over 400 organizations we represent, I am writing to voice our opposition to and seek clarification on Assembly Bill 457.

The ATA is the only national organization whose mission revolves solely around the advancement of telehealth in the United States. Our utmost priority is ensuring that Americans have the ability to receive affordable, first-rate health care when and where they need it. The expansion of telehealth infrastructure around the country eases strain on the overburdened health care system, enabling it to provide care for millions more patients every year in an efficient and effective manner. The ATA represents a diverse and expansive coalition of technology solution providers and payers, as well as partner organizations and alliances, working together to promote the implementation of telehealth across the country, endorse responsible telehealth policy, encourage government and market normalization, and deliver education and resources designed to further the integration of virtual care through the use of various innovative technologies.

The ATA is unclear as to what problem the legislature seeks to address through Assembly Bill 457. From our perspective, the bill discriminates against certain providers using technology to deliver health care services in California without providing any sort of clinical justification as to why the additional conditions placed on “third-party corporate telehealth providers” are necessary. In fact, the proposed legislation creates confusion in the marketplace by awkwardly and inappropriately defining “corporate telehealth providers.”

Assembly Bill 457 defines a third-party corporate telehealth provider as follows:



“Third-party corporate telehealth provider’ means a corporation directly contracted with a health care service plan/health insurer that provides health care services exclusively through a telehealth technology platform and has no physical location at which a patient can receive services.”

The provision that a third-party corporate telehealth provider be one that provides health care services *exclusively* through telehealth is a challenge. Take, for example, two health care corporations, X and Y. Both corporations employ practitioners who are licensed to practice in California and are subject to the same set of professional regulations. Licensed providers from corporation X work at a brick-and-mortar practice in Sacramento and deliver health care services both in-person and online; licensed providers from corporation Y are at their private residences across the country and provide health care services exclusively through a telehealth platform. The Sacramento-based practitioners from corporation X use the *exact same telehealth technology platform* to deliver health care services as the practitioners from corporation Y. While the quality of telehealth services provided and the modalities used in the delivery of those services are the same, corporation Y is designated as a third-party corporate telehealth provider and subject to more requirements than corporation X simply because corporation X’s practitioners, at least some of the time, deliver care from a brick-and-mortar location while corporation Y’s practitioners work exclusively from their private residence. Further, corporation X’s physical location does not mean they inevitably would be better than corporation Y in providing follow-up care for patients whose conditions cannot be diagnosed and treated appropriately via telehealth, as is the case for patients who need to be triaged to a specialist or an emergency department. There is no clinical justification for imposing the additional requirements upon the corporation that qualifies as a third-party corporate telehealth provider when the licensed providers are treating patients in a similar manner and meet the standard of care.

The ATA would also like to emphasize the fact that there is a fundamental difference between the people who are providing care and the platform on which they diagnose and treat patients. Practitioners are the individuals providing health care services; telehealth platforms serve as a means by which these practitioners can deliver health care services remotely. The corporate entities which operate those platforms do not engage in the process of diagnosing or treating patients; the practitioners do and have ultimate responsibility for patient care.

Moreover, the ATA has concerns with a provision proposed in 4(c) and 5(c) regarding the sharing of medical records. The language states that if services are provided to an enrollee through a third-party corporate telehealth provider, health care service plans/insurance plans shall notify the enrollee that the record of any services provided to the enrollee through a third-party corporate telehealth provider shall be shared with their primary care provider. The implementation of this provision would violate current sections of California’s statute which declare that practitioners must obtain permission to share a patient’s medical record before disclosing it to another health care provider (see California Civil Code § 56.10(a)). This inconsistency in the protection of California patients’ privacy is troubling to the ATA.

Our organization maintains that state statutes should not discriminate against telehealth providers simply because they use technologies that act as an alternative mode of delivering health care services. Despite the fact that the quality of care received by the patient from so-called third-party corporate telehealth providers would be no less than that received at a physical location, Assembly Bill 457 would place



additional requirements on third-party corporate telehealth providers simply because health care service plans and insurers directed patients to these telehealth providers as opposed to brick-and-mortar practices.

It is important to note that the licensed practitioners using the technology platforms to diagnose and treat patient must comply with current profession laws and regulations, including sharing patient records in the appropriate manner with other health care providers. Assembly Bill 457 ostensibly wants to ensure continuity of patient care but, in effect, shifts the responsibility for that worth objective from the licensed practitioner to the technology platform for telehealth encounters.

Finally, it is unclear to our organization as to the purpose of language added in Section 3(h). This language concerns referrals of patients by so-called “internet-based service providers,” an undefined term in California Code. In introducing additional undefined terms such as “internet-based service provider,” the language in Section 3(h) lacks the clarity necessary for businesses operating in the telehealth market to determine exactly which issue or issues the provision seeks to remedy or if their business models are affected by the new language. Moreover, this amendment was affixed to the bill yesterday, giving stakeholders (such as the ATA and our members) who had no input in the formulation of the amendment less than 24 hours to analyze and comment on its ambiguous language.

The ATA urges more thoughtful consideration on this issue. In the context of the ongoing pandemic, we believe that it is essential for Californians to have access to high-quality, affordable health care as efficiently and equitably as possible. We urge you and your colleagues to oppose Assembly Bill 457 unless it is amended to rectify the inconsistencies mentioned above. Please let us know how we can be helpful in your efforts to adopt sensible telehealth policy in California. 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, appearing to read "Kyle Zebley", written over a light gray circular watermark.

Kyle Zebley
Public Policy Director
American Telemedicine Association