



July 29, 2021

Mr. Mark A. Spangler
Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311

RE: American Telemedicine Association Comment Letter on Proposed Telehealth Rules 11CSR15

Mr. Spangler,

On behalf of the American Telemedicine Association and the over 400 organizations we represent, I am writing to voice our concerns with the proposed telehealth rules.

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 supportive of many aspects of the proposed rules – particularly the creation of a registration system that allows out-of-state providers to easily and efficiently submit their registration application to the Board so that they can render care to West Virginia citizens. This will increase the number of providers available for West Virginia patients to utilize and will ultimately increase the access to and affordability of care in West Virginia. Similarly, the ATA supports the permissive definition of telehealth created by HB2024 and adopted by the Board that allows for the use of synchronous and asynchronous modalities by providers.

The ATA is concerned that there may be confusion for providers around the standard of care language found in Section 7 of the proposed rules. While the language in the proposed rule at §11-15-7.4 *et al* is similar to the language found in §30-1-26(b)(4), the proposed rule notably differs from the legislation by not distinguishing that this standard of care only applies to “established patients” as defined in both statute at §30-1-26(a) and in the proposed rules §11-15-2.4. House Bill 2024 bifurcated telehealth patients into two categories: (1) an “established patient” who “has received professional services, face-to face, from the physician, qualified health care professional, or another physician or qualified health care professional of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years,” and (2) a “virtual telehealth” patient who is a “new patient or follow-up patient for



acute care that does not require chronic management or scheduled medications.” The legislative intent behind the bifurcation of “established patient” and “virtual telehealth” patient was to ensure that patients living with chronic conditions are regularly seen in-person by their providers. This legislative decision is what gave rise to a legislated standard of care that mandates a yearly encounter for “established patients.” While the ATA believes that the decision on whether to require that a patient have an in-person encounter is best left to the discretion of the treating healthcare provider in conjunction with the patient’s preferences, we understand that the legislature has spoken on this matter. However, the legislature only dictated this mandate for “established patients” – not for “virtual patients.” This distinction is not reflected in the proposed rules as §11-15-7.4 encapsulates all patients, not just “established patients” as is contemplated by the authorizing Code section at §30-1-26(b)(4).

With this in mind, the ATA suggests that the Board amend their proposed rules to include the definition of “virtual telehealth” patient - as found in §5-16-7b (7) – and make clear that the standard of care as posited in §11-15-7.4 *et al* is limited to “established patients” and does not encapsulate “virtual telehealth” patients. By making this change, it will ensure that more West Virginia patients are able to receive the care they want, need, and deserve.

The ATA urges thoughtful consideration on this issue. In the context of the ongoing pandemic, we believe that it is essential for West Virginians to have access to high-quality, affordable health care as efficiently and equitably as possible. We urge you and your colleagues to consider the changes as proposed in this letter. Please let us know how we can be helpful in your efforts to adopt telehealth policy in West 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, appearing to read "Kyle Zebley", written over a light grey circular watermark.

Kyle Zebley
Public Policy Director
American Telemedicine Association