



January 21, 2022

The Honorable Charles S. Trump IV
Chair, West Virginia Senate Judiciary Committee
West Virginia State Capitol
1900 Kanawha Blvd E, Room 210W
Charleston, WV 25305

The Honorable Ryan Weld
Vice-Chair, West Virginia Senate Judiciary Committee
West Virginia State Capitol
1900 Kanawha Blvd E, Room 216W
Charleston, WV 25305

RE: ATA SUPPORT FOR SENATE BILL 371 AS CURRENTLY WRITTEN

Dear Chair Trump and Vice-Chair Weld:

On behalf of the American Telemedicine Association (ATA) and the over 400 organizations we represent, I am writing you to express our support for Senate Bill 371 as currently written.

The ATA is the only national organization whose mission revolves solely around the advancement of telehealth. Our utmost priority is ensuring that Americans have the ability to receive affordable, high-quality health care, including dental 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 the education and resources necessary to integrate virtual care through the use of various innovative technologies.

Senate Bill 371 serves as the legislative vehicle approving 11 CSR 15, rules relating to telehealth and interstate telehealth registration for physicians, podiatric physicians and physician assistants. As currently written, the bill would approve language in the rule requiring “established patients” for telehealth – defined in West Virginia Code §30-26-1 as patients who have 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 – to be examined in person once every 12 months in order to meet the standard of care. All other telehealth patients would be under no obligation to visit a brick-and-mortar facility unless required to meet the standard of care.

The ATA cautions the legislature from amending the bill, specifically in reference to language in rule §11-15-7.4, to mandate that all telehealth patients must meet with providers once per year. Requiring all telehealth patients to visit an in-person provider once every 12 months would serve as an anti-competitive provision that would not be in compliance with West Virginia statute.

Current statute in West Virginia permits the establishment of a patient-provider relationship via telehealth. West Virginia Code §30-3-13a(c) reads:

(2) If an existing physician-patient or podiatrist-patient relationship does not exist prior to the utilization to telemedicine technologies, or if services are rendered solely through telemedicine technologies, a physician-patient or podiatrist-patient relationship may only be established:

(A) Through the use of telemedicine technologies which incorporate interactive audio using store and forward technology, real-time videoconferencing, or similar secure video services during the initial physician-patient or podiatrist-patient encounter.

(C) Through the use of audio-only calls or conversations that occur in real time. Patient communication though audio-visual communication is preferable, if available or possible. Audio-only calls or conversations that occur in real time may be used to establish the physician-patient relationship.

(3) Once a physician-patient or podiatrist-patient relationship has been established, either through an in-person encounter or in accordance with subdivision (2) of this subsection, the physician or podiatrist may utilize any telemedicine technology that meets the standard of care and is appropriate for the patient presentation.

Furthermore, West Virginia Code §30-1-26(b)(4) clarifies that while there exist in-person requirements in some circumstances, these in-person requirements apply only to “established patients,” or those who have seen a healthcare provider, face-to-face, within the past three years. The statute reads:

The standard of care shall require that with respect to the established patient, the patient shall visit an in-person health care practitioner within 12 months of using the initial telemedicine service or the telemedicine service shall no longer be available to the patient until an in-person visit is obtained. This requirement may be suspended, in the discretion of the health care practitioner, on a case-by-case basis, and it does not to the following services: acute inpatient care, post-operative follow-up checks, behavioral medicine, addiction medicine, or palliative care.



Amending the bill to exclude the phrase “with respect to an established patient” in §11-15-7.4 of the rule would require all telehealth patients – “established” or not – to meet with a provider in person at least once per year in order to receive telehealth services, a provision that directly conflicts with language in the statute permitting telehealth patients who are not considered “established patients” to establish a patient-provider relationship and receive telehealth services *indefinitely* without meeting a provider in person.

The ATA believes that such language in the rule would thus be unenforceable, as it is not in compliance with West Virginia statute. Any mandate requiring all West Virginia patients who access health care through telehealth to attend an in-office visit at least once every 12 months would need to be implemented by amending the enabling telehealth statute.

Regardless of whether health care services are delivered in person or via telehealth, these services are held to the same standard of care. Licensed professionals – not legislatures or regulatory bodies – should determine which technologies are appropriate to meet the standard of care and under which circumstances patients require in-person contact to meet that standard. Subjecting all telehealth patients – whether they be “established patients” or not – to the 12-month in-person requirement would create an arbitrary and clinically unsubstantiated barrier to patient care, making it much more difficult for West Virginians to access the high-quality, affordable health care they want and need. This regulatory barrier would have the most noticeable impact on unserved and underserved communities, including those in rural areas, who do not have convenient access to a brick-and-mortar practice.

We respectfully urge the legislature to pass Senate Bill 371 in its current form in the interest of enabling West Virginians to access the high-quality, affordable health care they need. Attempting to change the language of the rule by amending Senate Bill 371 in an effort to subject all telehealth patients to an in-person requirement would enact anti-competitive and clinically unsubstantiated barriers to care. Please do not hesitate to let us know how we can be helpful in your efforts to advance common-sense telehealth policy in West Virginia. If you have any questions or would like to discuss the telehealth industry’s perspective further, please contact me at kzebley@americantelemed.org.

Kind regards,

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

Kyle Zebley
Vice President of Public Policy
American Telemedicine Association