



February 15, 2022

The Honorable Patricia Puertas Rucker
West Virginia State Senate
1900 Kanawha Blvd. E., Building 1, Room 417M
Charleston, WV 25305

RE: ORIGINATING BILL RELATED TO TELEHEALTH

Dear Senator Rucker,

On behalf of ATA Action, I am writing to express our opposition to the Senate Judiciary Committee's originating bill regarding telehealth and its adverse effect on access to affordable, quality health care in West Virginia.

ATA Action, the American Telemedicine Association's affiliated trade association focused on advocacy, advances policy to ensure all individuals have permanent access to telehealth services across the care continuum. ATA Action supports the enactment of state and federal telehealth policies to secure telehealth access for all Americans, including those in rural and underserved communities. ATA Action recognizes that telehealth and virtual care have the potential to truly transform the health care delivery system – by improving patient outcomes, enhancing safety and effectiveness of care, addressing health disparities, and reducing costs – if only allowed to flourish.

ATA Action has serious concerns about the wrong turn taken for West Virginia telehealth policy yesterday in the West Virginia Senate Judiciary Committee with the originating bill that now requires a West Virginia patient to visit an “in-person” health care provider within 12 months of using an initial telehealth service or the telehealth service shall no longer be available to the patient.

This arbitrary barrier to patient care has no clinical justification whatsoever. Our organization believes that so long as the provider of telehealth services has determined, in his or her professional opinion, that the technologies used to deliver care are appropriate to meet the standard of care for the condition presented by the patient, providers should be able to utilize the full range of telemedicine technologies to establish relationships with patients and provide care virtually. If West Virginia telehealth providers are being held to the same standard as those delivering care in person, mandating an annual in-person requirement would not provide any additional benefits or protections to patients; in fact, it would only serve to make it more difficult for West Virginians, especially those in rural areas, to access the care they need, care they had been receiving virtually throughout the pandemic.

Passing this originating bill as currently written would make West Virginia the only state in the country in which all patients are required to engage in an in-person interaction before receiving

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telehealth services. While a handful of states have imposed requirements around in-person care as a condition of payment, no state currently imposes such a requirement as a condition of practicing medicine. Texas was the last state to remove any blanket requirement that a patient receive an in-person examination as a precondition to receiving health care services through telehealth; the Texas Legislature eliminated this clinically unsubstantiated requirement from state statute in 2017. Notably, the anticompetitive “in-person” mandate in Texas drew the attention of both the U.S. Federal Trade Commission and the U.S. Department of Justice before the legislature finally acted.

State legislatures have generally followed the Federation of State Medical Board (FSMB) “Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine” published in April 2014 that affirmed the efficacious use of remote technology in the diagnosis and treatment of patients. The FSMB’s model policy recognized the importance of professional discretion in determining the appropriate use of technology and explicitly states that “physician-patient relationships may be established using telemedicine technologies provided the standard of care can be met.”

Telehealth has evolved significantly since 2014. ATA Action has collaborated with the FSMB over the past year to update the aforementioned model policy; we expect it to be approved at the FSMB annual meeting later this spring. The latest iteration of the model policy will reaffirm the FSMB’s technology-neutral position regarding the establishment and maintenance of a physician-patient relationship via telehealth technologies.

It is clear that permitting patients and providers to interact with each other via telehealth technologies without placing arbitrary temporal restrictions on these telehealth interactions is becoming standard practice in states across the country. Passing this bill would make West Virginia one of the most restrictive states in the country in terms of telehealth policy.

Please let us know if there is anything else that we can do to help you promote practical 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@ataaction.org.

Kind regards,

A handwritten signature in black ink, appearing to read "Kyle Zebley", written in a cursive style.

Kyle Zebley
Executive Director
ATA Action

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