



February 16, 2022

The Honorable Joel Ferry
Chair, Utah House Business and Labor Committee
Utah House of Representatives
350 North State Street, Suite 400
Salt Lake City, UT 84114

The Honorable Walt Brooks
Vice Chair, Utah House Business and Labor Committee
Utah House of Representatives
350 North State Street, Suite 350
Salt Lake City, UT 84114

RE: ATA ACTION OPPOSITION TO HOUSE BILL 365

Dear Chair Ferry and Vice Chair Brooks,

On behalf of ATA Action, I am writing you to express our opposition to House Bill 365 relating to telehealth.

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 – including teledentistry services – across the care continuum. ATA Action supports the enactment of state and federal telehealth coverage and fair payment 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.

House Bill 365 would prohibit licensed providers from prescribing prescription drugs to patients with whom they established a provider-patient relationship only via asynchronous technologies, with certain exceptions. The bill also directs the licensing division to make rules to specify the prescription drugs that may be prescribed under these exceptions and the conditions for which these prescription drugs may be prescribed.

Our organization believes that House Bill 365 would limit Utah patients' access to high-quality health care. Across the United States, patients and consumers are seeking more cost-effective and efficient ways to access the health care they need, and prescriptions are an essential part of that health care experience. ATA Action maintains that the choice about a patient's care plan, including the technology utilized to render care, should ultimately be the decision of an empowered patient and his or her provider, one that is made in accordance with the standard of care.

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Preventing patients from receiving their much-needed prescriptions through an asynchronous encounter simply because they established a relationship with their preferred provider via asynchronous technology serves as an arbitrary barrier to patient care. Instead of favoring certain technologies over others in the practice of telehealth, the Legislature should create policies which ensure that providers use sufficient technology to diagnose and treat the patient and meet the standard of care for the condition presented by the patient when delivering virtual care.

With that said, the ATA recognizes that some controlled substances, including those belonging to Schedules I and II, pose a risk of dependency and illegal diversion. As such, we believe that permanent policy should focus on ensuring that patients can use telehealth technologies to receive prescriptions for substances that fall under the Schedule III and IV categories, as well as Schedule II substances (stimulants only) under certain circumstances and certain medications utilized to treat patients with substance use and opioid use disorders (e.g., suboxone, naloxone, buprenorphine), provided the prescriber of these substances otherwise complies with requirements under federal law.

More generally, our organization worries that this bill would create a regulatory structure that would result in unnecessary confusion for providers. Allowing the licensing division to determine which prescription drugs meet the exceptions detailed in 26-60-103(3)(b) and the specific conditions for which those exception-meeting substances may be prescribed will only create unpredictability about the use of asynchronous technologies – even in situations where asynchronous modalities are capable of meeting the standard of care. It is also unclear how the new law and the requirements therein would intersect with the Online Prescribing, Dispensing, and Facilitation Licensing Act. Again, ATA Action suggests enacting statutes and promulgating regulations that clearly tie all telehealth interactions – synchronous and asynchronous – to the established standard of care.

Thank you for the opportunity to comment. We urge you to reconsider the implications of passing House Bill 365 as currently written in the interest of expanding Utah patients' access to high-quality, affordable health care. Please do not hesitate to let us know how we can be helpful to your efforts to advance common-sense telehealth policy in Utah. 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

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Executive Director
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