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Telehealth Policy to Transform Healthcare

February 1, 2022

The Honorable Kevin Hern
United States House of Representatives
1019 Longworth House Office Building
Washington, DC 20515

The Honorable Rick Allen
United States House of Representatives
2400 Rayburn House Office Building
Washington, DC 20515

Representative Victoria Spartz
United States House of Representatives
1523 Longworth House Office Building
Washington, DC 20515

RE: ATA Action Comments on the Affordability Subcommittee of the Healthy Future Task Force Request for Information (RFI)

Dear Representative Hern, Representative Allen, and Representative Spartz,

On behalf of ATA Action, the American Telemedicine Association's affiliated trade association focused on advocacy, we commend you for recognizing the importance of expanding telehealth and for providing ATA Action and outside stakeholders across the healthcare industry an opportunity to inform future telehealth policies. ATA Action advances policy to ensure all individuals have permanent access to telehealth services across the care continuum. As you know, telehealth has been a lifesaver for millions of Americans across the United States during the COVID-19 pandemic. Before COVID-19, 65% of patients felt hesitant about telehealth, but now 87% want to continue using telehealth services post-pandemic[1]. If Congress doesn't act before the Public Health Emergency (PHE) ends, millions of patients will lose access to care and fall off of the "telehealth cliff". This letter outlines permanent solutions ATA Action recommends to ensure patients do not lose access to care and are able to continue utilizing telehealth services without unnecessary barriers.

Make Permanent the Telehealth Flexibilities Implemented During the PHE Including:

- **Removal of Antiquated Geographic and Originating Site Restrictions**
  Prior to the pandemic, a patient had to be in a designated rural area and in a healthcare clinic in order to have been able to receive reimbursable telehealth services under the Medicare program.

[1] How Americans Feel About Telehealth: One Year Later | SYKES

During the PHE, the United States Health and Human Services (HHS) waived these restrictions allowing patients in any geographic area (not just rural) to receive telehealth services in any location, including their homes. We urge Congress to permanently remove the Section 1834(m) geographic and originating site restrictions to ensure that all patients can access care where and when they need it.

- **Ensure Federally Qualified Health Centers and Rural Health Clinics Continue to Furnish Telehealth Services After the PHE**
  FQHCs and RHCs provide critical health care services for underserved communities and populations across the United States. During the pandemic, FQHCs and RHCs could serve as distant sites and be reimbursed for telehealth services. ATA Action urges Congress to ensure that the roughly 1,400 FQHCs and 4,300 RHCs can continue offering telehealth services post-COVID while receiving fair reimbursement.

- **Enhance HHS Authority to Determine Appropriate Telehealth Services and Providers**
  Congress should provide the HHS Secretary with the flexibility to expand the list of providers who may furnish telehealth services. In addition, HHS should maintain the authority to add or eliminate telehealth services post-pandemic.

- **Make Permanent HHS's Temporary Waiver Authority for Future Emergencies**
  During the PHE, Congress has given the HHS secretary the authority under Section 1135 of the Social Security Act to waive telehealth restrictions. However, the waiver authority is specific to this particular PHE. Congress should ensure HHS and CMS can act quickly during future pandemics and natural disasters.

Repeal the In-person Requirement for Telemental Health Services

Since the COVID-19 pandemic, telemental health services have quickly become a crucial part of many Americans healthcare journeys. At the end of 2020, Congress passed a provision in the Consolidated Appropriations Act, 2021, Pub.L. 116–260, intended to increase access to telemental health services by permanently waiving historical Medicare restrictions like the geographic and originating site requirements for these services. ATA Action applauds Congress for expanding access and allowing telemental health services to be a permanent part of the Medicare program. However, the provision also included an unnecessary and unexpected guardrail, an in-person requirement. This provision, which would go into place post PHE, requires providers to see their patients in-person at least six months prior to conducting a telemental health visit (e.g. Section 123 establishes coverage and reimbursement of a telemental health service only if the practitioner has conducted an in-person examination of the patient in the prior six months and subsequently continues to conduct in-person exams at such a frequency to be determined by HHS).

ATA Action strongly opposes statutory in-person requirements as they create arbitrary and clinically unsupported barriers to accessing affordable, quality health care. Requirements such as these could negatively impact those in underserved communities and populations who may not be able to have an in-

person exam due to provider shortages, work, lack of childcare, and/or other resources. Over 138 million people in the US live in designated mental health professional shortage areas.[2] Many counties have no mental health professionals at all. We cannot ignore the importance of providing all Americans, regardless of whether they have seen a provider in-person, the opportunity to access life-saving health care. We strongly Congress to enact the Telemental Health Access Act (S.2061, H.R 4058) which would remove the statutory telemental health in-person requirement, allowing patients to receive care where and when they need it especially when they are in their most vulnerable state.

Support the Removal of the In-person Requirement for Prescribing Controlled Substances
Prior to the pandemic, due to the Ryan Haight Act, a patient must have had an in-person visit before a provider could prescribe controlled substances by the means of the internet. During COVID-19, the Drug Enforcement Agency (DEA), in partnership with the Substance Abuse and Mental Health Services Administration (SAMHSA), used the Ryan Haight Act's "public health" emergency exception to temporarily waive the in-person requirement. Currently, no evidence exists that in-person visits are more effective than telemedicine visits in improving treatment outcomes or minimizing diversion.[3] On the contrary, having easier access to critical care is helping to combat the spikes in mental health and substance use. ATA Action believes the ultimate choice about a patient's care plan, including the modality of care and clinically valid services, should be the decision of an empowered patient and their provider in accordance with the standard of care. We are urging all U.S. policymakers to ensure patients continue to have access to certain controlled substances prescribed via telemedicine once the PHE ends by supporting legislation such as the TREATS Act (S.340/H.R.1647) which would permanently remove this in-person exam requirement.

Ensure Affordable Telehealth Services for the Commercially Insured
Americans with high-deductible health plans coupled with Health Savings Accounts (HDHP-HSAs) must meet minimum deductibles defined in statute before the cost of telehealth can be covered by their employer or health plan. Congress took swift bipartisan action as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 (P.L. 116-136) to ensure that more workers could receive covered telehealth services by allowing employers and health plans to provide pre-deductible coverage for such services. This commonsense policy helped ensure that families could access vital telehealth services – including virtual primary care and behavioral health services – prior to having to meet their deductible. In fact, according to a survey by the Employee Benefit Research Institute (EBRI), about 96 percent of employers adopted pre-deductible coverage for telehealth services as a result of this provision.

Unfortunately, this policy expired back on December 31, 2021. We urge Congress to resolve this immediately by passing the Telehealth Expansion Act (S.1704, H.R. 5981) which would permanently extend the exemption for telehealth services from certain high deductible health plan rules. It is imperative that the 32 million Americans with HDHP-HSAs have the ability to continue these using these lifesaving services.

[2] Shortage Areas (hrsa.gov)
[3] Telemedicine increases access to buprenorphine initiation during the COVID-19 pandemic - Journal of Substance Abuse Treatment

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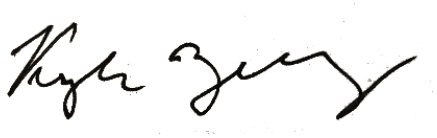
Encourage States to Adopt Reciprocal Licensure Compacts
ATA Action believes the necessary work of opening care across state lines must be done through state action with federal support—not through federal mandates or preemption. The federal government can play a positive role in state licensure by encouraging state legislatures to adopt reciprocal licensure compacts and helping ensure the compacts are working as planned. Congress can do so under the precedent that allows for the federal government to predicate funding on state legislatures adopting certain standards.

In pursuing such an approach, however, Congress must do so in a way that respects the jurisdiction of the appropriate state licensing boards the state where the patient is located, in a patient centered approach that upholds the standard of care. For more information on ATA Action's recommendations, please see the ATA's recommendations on Enabling Healthcare Delivery Across State Lines.

Again, thank you for giving ATA Action an opportunity to comment on this Request for Information and for your support to advance telehealth policies. If you have any questions or would like to further discuss our recommendations, please contact me at kzebley@ataaction.org.

Kind regards,



Kyle Zebley
Executive Director
ATA Action