ataACTION
Telehealth Policy to Transform Healthcare

February 1, 2022

The Honorable Richard Neal
Chair
U.S. House of Representatives Ways and Means Committee
Washington, DC 20515

The Honorable Kevin Brady
Ranking Member
U.S. House of Representatives Ways and Means Committee
Washington, DC 20515

RE: ATA Action Telehealth Recommendations on Addressing Barriers to Mental Health Care

Dear Chair Neal and Ranking Member Brady,

On behalf of ATA Action, the American Telemedicine Association's affiliated trade association focused on advocacy, we want to thank you for holding a hearing on America's mental health crisis to better understand how Congress can permanently address the behavioral and mental health needs of millions of Americans. As you and your staff are well aware, the impacts of the pandemic have touched just about every American. Nationwide we're seeing alarming increases in rates of anxiety, depression, and substance use disorders. During this uncertain time - telehealth flexibilities - like the ability to serve a patient in their home and provide audio-only services - have been an effective lifeline for many individuals and families. We know that even as the pandemic subsides, the mental health needs of our communities are not going to lessen. As a result, there is clear urgency for decisive policy solutions that will enable mental and behavioral health providers to deliver care when and where consumers need it most. ATA Action recommends the following:

1. **Advance Health Equity Using Telehealth:** Telehealth helps reduce the stigma around seeking mental health or substance use disorder treatment for those who want to seek care confidentially. The ability to access care through telehealth broadens access to services to patients without childcare or transportation. Furthermore, audio-only telehealth, which has been a digital equalizer for those who lack access to broadband internet or video-enabled devices and for those who cannot utilize dual audio-video devices, is a critical flexibility. The ability to communicate between patients and behavioral health providers according to individuals' own needs is crucial to eliminating artificial barriers to care and advancing health equity. The following policy solutions seek to address health access disparities and advance health equity:

- **Pass the Telemental Health Care Access Act (S.2061) to remove in-person requirements for telemental health:** 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 requirement for these services. However, the provision also included an unexpected and unnecessary in-person requirement. (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 in-person requirements[1] and believes putting service restrictions on telehealth access through arbitrary in-person requirements undercuts the very tenets around flexibility and access afforded by telehealth and other virtual care modalities. There is no clinical evidence for an arbitrary in-person requirement before a patient can access telehealth services. In fact, evidence has demonstrated that telemental services like telepsychology are just as effective as in-person visits.[2] Additionally, requirements such as these could negatively impact those in underserved communities who may not be able to procure an in-person exam due to provider shortages, work, lack of childcare, and/or other resources. As such, the in-person requirements, which would go into place after the PHE concludes, would place unnecessary burdens on patients and providers alike. Furthermore, Section 123's mandate for an in-person visit applies only to mental health treatment, whereas Medicare beneficiaries seeking other medical services via telehealth are not subject to this requirement. It is our recommendation that these in-person requirements be removed by enacting the Telemental Health Care Access Act.

Demand for mental health care has increased in recent years, but the pandemic has only exacerbated these needs. Recent SAMHSA data reported among adults 18 or older in 2020, 1.2 million attempted suicide in the past 12 months and 3.2 million made a suicide plan in the past year. Among adolescents aged 12 to 17 in 2020, 3.0 million had serious thoughts of suicide, 1.3 million made a suicide plan, and 629,000 attempted suicide in the past year. Trends in suicide attempts and deaths by suicide have been increasing among adolscents each year, becoming a major public health concern in the U.S. ATA Action urges Congress to address this public health concern by including the Telemental Health Care Access Act in the next spending package and permanently eliminating the telemental health in-person requirement. (For more information, read the telehealth stakeholder letter signed by 336 organziations) We must ensure that patients can receive care where and when they need it especially when they are in their most vulnerable state.

- **Allow telephonic (audio-only) services for mental health and substance use disorder services after the PHE concludes:** In 2019, the Federal Communications Commission (FCC) reported that between 21.3 and 42 million Americans lacked access to broadband. Many older adults and people with disabilities lack access to video-enabled devices or struggle to use the more complex video-enabled devices even if they have access to them. Likewise, many in racial/ethnic and low-income communities lack access to broadband or video-enabled devices. Given the significant increase in demand for behavioral health services and the role audio-only plays as a digital equalizer, we recommend making permanent this flexibility for the provision of mental health and substance use disorder services. Moreover, this recommendation is consistent with the Medicare Payment Advisory Commission's (MedPac) March 2021 report to congress.[3] During this time, regulators may evaluate data to better understand which behavioral health modalities should be considered for audio-only on a permanent basis.

[1] ATA-Overview-of-In-Person-Requirements-1.pdf (americantelemed.org)
[2] Clinically Based Policy Decisions: In-Person Requirements for Telehealth Create Unnecessary Barriers (psychiatrictimes.com)
[3] http://medpac.gov/docs/default-source/reports/mar21_medpac_report_to_the_congress_sec.pdf?sfvrsn=0&source=emai

- **Maintain a technology neutraul approach and allow for asyncronous chat/text-based services for mental health:** As the need for mental health services continues to climb and there is dire shortage of providers, Congress should pursue a technology neutral approach and allow eligible practitioners to determine appropriate technologies based on provider preference and patient choice so long as the standard of care is upheld, and the treating provider can meet the regulatory requirements for the provision of telehealth in the state in which the patient is located. Virtual care, especially telemental health services, should not have clinically unsubstantiated barriers to technologies if it is safe, effective, appropriate, and complies with HIPAA and all related state privacy requirements. For example, secure asynchronous chat and text-based services that meet the requirements of HIPAA and delivered by a licensed clinician, are a clinically appropriate entry into care for many patients.

  Moving forward we encourage Committee members to avoid an overly prescriptive approach that would limit the types of technologies that a provider may use for the purposes of payment and coverage under Medicare, especially when these modalities have already been authorized under state law and regulation.

- **Support funding for behavioral health IT programs:** In order to meet this growing demand for mental health care and substance use disorder services, behavioral health providers are being pressed to make significant technological advances. Telehealth software, which is critical for auditing telehealth appointments and meeting interoperability requirements with existing Electronic Health Record (EHR) systems, can add significant costs. Additionally, many providers are making further investments in cybersecurity to protect PHI as well as other infrastructure costs such as telehealth rooms and/or bringing on more technical support staff. These costs are significant and currently not reimbursed.

  Moreover, most behavioral health providers were carved out of the $30 billion investment (HITECH Act, passed as part of the American Recovery and Reinvestment Act of 2009, P.L. 111-5) given to hospitals and other healthcare entities to adopt EHRs and learn how to successfully exchange patient information using certified electronic health record technology. Although behavioral health providers were excluded from this initiative, we understand that Congress is dedicated to promoting interoperability and supporting the access, exchange, and use of electronic health information across the care continuum in order to improve the cost and quality of care. With the growing demand for mental and behavioral health care services, this policy goal can only be achieved with behavioral health providers being provided the necessary financial and administrative support to adopt and implement interoperable technology, such as with financing for new behavioral health IT grant programs.

2. Take actions to address significant behavioral health workforce shortages: Prior to the pandemic, the behavioral health sector already was experiencing significant workforce shortages. For example, more than 60 percent of all counties in the United States—including 80 percent of all rural counties—do not have a single psychiatrist.[4]

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[4] http://research.newamericaneconomy.org/wp-content/uploads/2017/10/NAE_PsychiatristShortage_V6-1.pdf
[5] https://www.npr.org/sections/coronavirus-live-updates/2020/10/02/919517914/enough-already-multiple-demands-causing-women-to-abandon-workforce
[6] Treating mental illness in the ED | AAMC

Additionally, given that behavioral health is a female-dominated workforce and that an increasing number of women are leaving the workforce to help with caregiving in the backdrop of the pandemic, the behavioral workforce is increasingly strained.[5] As a result of the behavioral health workforce shortages, psychiatry practices across the U.S. have long waits for appointments and some times even turn away new patients. According to one study of psychiatrists' availability in Boston, Massachusetts; Houston, Texas; and Chicago, Illinois, the average wait time was 25 days for a first visit. About one in five psychiatrists were not accepting new patients.[6] Telehealth enables providers to most efficiently utilize their limited workforce to meet the growing demand for mental health and substance use disorder services. Additional barriers still remain as the workforce seeks to keep pace with demand.

3. 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. Thus far, there has been no evidence that the flexibility allowed during the PHE has resulted in an increase in illegal drug diversion, inappropriate prescribing, or the prevalence of opioid dependency. 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 (TREATS Act, S.340/H.R.1647) that would permanently remove this in-person exam requirement.

4. Ensuring Affordable Virtual Mental Health 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.

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Again, thank you for holding this important and timely hearing on mental health. We appreciate your leadership advancing policies to address mental and behavorial health. If you have any questions or would like to discuss our recommendations further, please contact me at kzebley@ataaction.org.

Kind regards,

Kyle Zebley
Executive Director
ATA Action