



February 16, 2022

Marlene Anielski, Executive Director
Ohio Vision Professionals Board
77 S. High Street, 16th Floor
Columbus, Ohio 43215

*Sent via email: Rules@Vision.Ohio.gov
CC: board@vision.ohio.gov*

RE: PROPOSED RULE 4725-25-01 RELATED TO TELEHEALTH SERVICES

Dear Director Anielski,

On behalf of ATA Action, I am writing to express our opposition to the proposed rule 4725-25-01 regarding telehealth services by optometrists in Ohio, and to request that the Board consider a new approach to its regulatory oversight of the use of telehealth by optometrists. We are concerned that the proposed rule is potentially confusing and will lead to significantly less use of appropriate telehealth by optometrists in your state and as a result, will reduce access to affordable, quality eye care in Ohio.

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 concerns about several elements of the proposed rule. Our greatest concern relates to Paragraph (D) which sets out so-called "limitations" of telehealth services versus in-person care.

This arbitrary list of limitations includes statements that are irrelevant (i.e., the optometrist's inability to have direct, physical contact with the patient when using telehealth is a fact that is not a limitation, as most clinical procedures in an in-person eye exam can be and are regularly performed with no direct, physical contact.) Even more troubling are statements with no clinical justification whatsoever. For example, it is simply not accurate to state that optometrists are unable "to accurately gain all necessary ocular information to establish a new provider-patient relationship via telehealth services, except in ocular health emergency situations."

Furthermore, these rules do not comply with the recently enacted statutory language. House Bill 122, which was signed into law during the 2021 General Assembly session, clearly articulates that regulatory boards – including "the state vision professional board" – shall only promulgate rules which allow "a health care professional [to] use synchronous or asynchronous technology to provide telehealth services to a patient during an initial visit if the appropriate standard of care for an initial visit is satisfied." Similarly, any regulatory provision that would bar the use of telehealth for an initial encounter would be contrary to the legislative intent and letter of the law.

ATA ACTION

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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. The public is protected by the fact that optometrists using telehealth are held to the same standard as those delivering care in person.

The proposed rule's list of limitations goes on to indicate that patients must receive in-person refractive care. This would not provide any additional benefits or protections to patients; in fact, it would only serve to make it more difficult for Ohioans, especially those in rural areas, to access the eye care they need to correct refractive error, care they had been receiving virtually throughout the pandemic.

There should be one approach to regulating telehealth eye care services in Ohio, i.e., the rules for optometrists and physicians should be similar unless there is a meaningful and material scope of practice difference relating to telehealth. Health care regulatory boards can find useful guidance in 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."

Permitting patients and providers to interact with each other via telehealth technologies without placing arbitrary restrictions on these telehealth interactions is becoming standard practice in states across the country. Adopting this proposed rule will unnecessarily restrict patient access to eye care from optometrists. We assume that the Ohio Vision Professionals Board believes that optometrists are as qualified as ophthalmologists to use telehealth, and the proposed rule should be revised to make that clear.

Please let us know if there is anything else that we can do to help you promote practical telehealth policy for optometrists in Ohio. 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