



March 29, 2022

Clarissa M. Rodriguez
Chair, New York State Workers' Compensation Board
New York State Workers' Compensation Board
328 State Street
Schenectady, NY 12305

Freida Foster
Vice Chair, New York State Workers' Compensation Board
New York State Workers' Compensation Board
328 State Street
Schenectady, NY 12305

RE: ATA ACTION OPPOSITION TO REVISED PROPOSED RULE 12 NYCRR 324.2

Dear Chair Rodriguez and Vice Chair Foster:

On behalf of ATA Action, I am writing you to express our concerns with proposed rule 12 NYCRR 324.2 relating to the New York Workers' Compensation Board's policy on 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 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.

We strongly support how the Board proposes to allow workers and their providers to leverage telehealth technologies in the delivery of care permanently. Indeed, throughout the pandemic, the emergency orders on telehealth offered workers a new and critical access point for quality care from a variety of clinicians, including physicians, psychologists, and occupational therapists.

ATA Action has concerns revised proposed rule 12 NYCRR 324.2 would serve as a serious step backward to this progress and would prohibit any meaningful adoption of telehealth in the New York Workers' Compensation system. If passed, the rule would require patients seen under the New York State Workers' Compensation system to see providers "in person" before receiving telehealth services and engage in another "in-person" encounter after every third telehealth visit.

ATA Action is concerned that the provision requiring patients and providers to meet "in person" before being permitted to engage in telehealth interactions will significantly restrict patient access to high-quality care. Our organization believes that so long as the provider obtains the patient's consent for the use of telehealth services, verifies the patient's identity, and discloses his or her own identity and credentials, he or she should be able to use any telehealth modality – synchronous or asynchronous – to establish a

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professional relationship with a patient. Prohibiting patients and providers from utilizing telehealth technologies without first meeting in person will make it far more difficult for patients – especially those who lack access to reliable modes of transportation or suffer from physical ailments – to access high-quality care from their preferred providers. Instead of initiating their experiences with telehealth from the comfort and safety of their homes or workplaces, many patients will be forced to take time out of their busy schedules and/or travel long distances to meet with those providers in person. The requirement for a patient to be seen “in person” should be determined by the professional discretion of the treating health care provider for the condition as presented in order to meet the standard of care and not by an arbitrary number in rule without clinical support.

Our organization also opposes language in the revised proposed rule which would require Workers’ Compensation patients to engage in an in-person visit after every third telehealth visit. If telehealth providers rendering virtual care to Workers’ Compensation patients are being held to the same standard as those delivering care in person, mandating an in-person requirement after every three telehealth visits would not provide any additional benefits or protections to those patients. In fact, it would only serve to make it more difficult for New Yorkers in need to access the care they need. Instead of implementing arbitrary temporal restrictions on the use of telehealth (there is no clinical evidence to support requiring an in-person interaction after three visits as opposed to some other number of visits), we suggest that the Board requires all telehealth interactions to meet the same standard of care regardless of how often the provider and patient interact. Moreover, the rule should recognize the professional discretion of the treating provider to make an informed decision on the efficacy of a telehealth encounter for the condition presented by the patient.

Thank you for the opportunity to comment. We encourage the Board to keep the current pandemic-related regulations in place in the interest of expanding New Yorkers’ access to affordable, high-quality care. Please let us know if there is anything that we can do to assist you in your efforts to adopt practical telehealth policy in New York. If you have any questions or would like to engage in additional discussion regarding the telehealth industry’s perspective, 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