



March 7, 2022

The Honorable Paul W. Lee
Chair, Alabama House Health Committee
Alabama House of Representatives
11 South Union St., Suite 410F
Montgomery, AL 36130

The Honorable Ed Oliver
Vice Chair, Alabama House Health Committee
Alabama House of Representatives
11 South Union St., Suite 410B
Montgomery, AL 36130

RE: ATA ACTION COMMENTS ON HOUSE BILL 423

Dear Chair Lee and Vice Chair Oliver:

On behalf of ATA Action, I am writing you to comment on House Bill 423, a bill relating to telehealth, and share concerns with some of its provisions.

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.

House Bill 423 contains several provisions that we believe would serve as steps forward for Alabama's telehealth policy. First, the proposed legislation contains a permissive definition of telehealth and allows physicians to establish physician-patient relationships without a prior in-person meeting. Our organization maintains that telehealth providers should be able to utilize any technologies which, in the provider's professional opinion, meet the standard of care for the condition presented by the patient. With telehealth providers able to use the full range of innovative technologies to deliver virtual care, they can reach patients more easily than ever before, even if the patients do not have access to the broadband capabilities necessary to operate audiovisual modalities.

However, the bill's definition of telehealth is not inclusive of remote patient monitoring (RPM), a widely recognized telehealth modality. For example, last year, Kentucky, Indiana, Minnesota, and Oklahoma, among others, include RPM in the definition of telehealth. RPM allows providers to monitor, collect and analyze a patient's physiological data when home to create and manage a patient's treatment plan. This technology helps monitor patients with chronic illnesses like chronic obstructive pulmonary disease, congestive heart failure, coronary artery disease, hypertension, diabetes, among others. Moreover, RPM helps monitor patients recovering from acute conditions when discharged to the home. It has been widely proven that RPM reduces patients' hospital readmission rates and emergency department visits, saving

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901 N. Glebe Road, Ste 850 | Arlington, VA 22203
Info@ataaction.org



costs and improving outcomes. ATA Action urges the bill to be amended to include RPM in the definition of telehealth. to make it clear that these technologies are authorized modalities.

In addition, we believe that so long as the practitioner 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 to establish a physician-patient relationship. Enabling patients and providers to establish professional relationships online will allow patients to access high-quality care from their preferred providers without having to take time out of their busy schedules or travel long distances to meet with those providers.

ATA Action also supports the Legislature's effort to expand access to care by allowing providers licensed in other states to deliver irregular or infrequent care and consult with Alabama-licensed providers. Provisions like these allow patients to continue interacting with the providers who know their conditions best and access the best providers our system has to offer even if they are not located in the same physical location.

While ATA Action is supportive of many of the provisions in this bill, we believe that others have the potential to limit patient access to high-quality, affordable health care significantly. ATA Action strongly opposes the provision in the bill which would require physicians who provide telehealth medical services to a patient four or more times per year to have at least one in-person visit with the patient every 12 months unless otherwise provided by rule of the Board of Medical Examiners. If Alabama telehealth providers are being held to the same standard as those delivering care in person, mandating an annual in-person requirement would not provide any additional benefits or protections to patients. In fact, it would only serve to make it more difficult for Alabamans, especially those in rural areas or those with chronic conditions, to access the care they need. Instead of implementing arbitrary temporal restrictions on the use of telehealth, we suggest that the Legislature requires all telehealth interactions to meet the same standard of care, regardless of how often the provider and patient interact. Moreover, the legislation should recognize the professional discretion of the treating practitioner to make an informed decision on the efficacy of a telehealth encounter for the condition presented by the patient.

Second, while we applaud the Legislature for enabling providers to prescribe legend drugs and medical devices via telehealth without having to interact with the patient in person, we oppose the provision which would require providers prescribing controlled substances to meet with the patient at least once in the 12 months preceding the issuing of the prescription. Whether through statute or regulation, mandating that providers meet with patients in person before prescribing any controlled substance will make it harder for patients to get the prescriptions they need in a safe and efficient manner.

During the COVID-19 public health emergency, the federal government used its public emergency authority to waive the requirement for a prior in-person interaction. This has enabled providers to prescribe controlled substances safely and remotely using telemedicine, increasing access to clinically appropriate medications, including those for mental health and substance use disorder treatment. The Journal of Substance Abuse Treatment published a study on two harm reduction primary care programs providing buprenorphine treatment for opioid use disorder via telehealth. The study found the removal of the in-person requirement greatly increased access to care and addressed health inequities. This is especially important as mental health and substance use disorders are impacting a growing number of the people across the country.

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ATA Action believes 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 certain 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.

Finally, ATA Action objects to provisions in the bill which appear to give the Board of Medical Examiners the ability to regulate the practice of telehealth in an anti-competitive manner. In §34-24-706(a), the bill contemplates allowing the Board to adopt rules regulating the practice of telehealth by Alabama physicians “even if the rules displace competition.” Then, in §34-24-707(b), the bill offers the Board immunity from any state or federal antitrust laws while regulating telehealth. If it is the Legislature’s intent to expand access to high-quality, affordable care for all Alabamans, then it should not permit the Board to promulgate rules which explicitly exclude certain providers from rendering care to Alabama patients, nor should it work to shield a board from the legal consequences of using its regulatory power to protect its own financial interests to the detriment of patients and other market competitors. Allowing a board full of active market participants to regulate telehealth in an unfettered manner that would benefit traditional, brick-and-mortar medical practices would only result in decreased access to care for Alabamans, especially those in rural and other underserved or unserved communities. ATA Action suggests removing these provisions entirely.

We appreciate the Legislature’s efforts to expand telehealth access in Alabama. We encourage the Committee to amend House Bill 423 as outlined above in the interest of ensuring access to high-quality health 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 Alabama. 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", is written over a light blue circular stamp.

Kyle Zebley
Executive Director
ATA Action