



March 30, 2022

Sean McCullough  
Director, Ohio Common Sense Initiative  
Office of Governor Mike DeWine  
77 S. High St., 30<sup>th</sup> Floor  
Columbus, OH 43215

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

Dear Director McCullough,

On behalf of ATA Action, I am writing to express our opposition to proposed rule 4725-25-01 regarding telehealth services delivered by Ohio optometrists and to request that the Common Sense Initiative consider the anti-competitive nature of the language forwarded in the proposed rule. We are concerned that proposed rule 4725-25-01 will lead to a decrease in the use of appropriate telehealth technologies by optometrists and, as a result, restrict access to affordable, high-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 is concerned about several elements of the proposed rule. Our greatest concern relates to language in Paragraph (D) which sets out the so-called "limitations" of telehealth services versus eye care delivered in person.

This arbitrary list of limitations includes statements that are irrelevant to whether or not a provider using telehealth technologies is capable of meeting the standard of care for the condition presented by the patient. An optometrist's inability to have direct, physical contact with the patient when using telehealth is not necessarily a limitation on the quality of health care services provided, as most clinical procedures in an in-person eye exam can be and are regularly performed without 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." Currently, optometrists in states across the country are using telehealth technologies to initiate such relationships in non-emergent situations and deliver care to new patients efficiently and safely.

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Furthermore, these rules do not comply with 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 visions 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.” 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.

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 telehealth technologies to establish relationships with patients and provide care virtually. Optometrists using telehealth are held to the same standard as those delivering care in person, ensuring that patient protections are upheld during the delivery of telehealth services.

The proposed rule’s list of limitations also indicates 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. Not only will adopting this proposed rule unnecessarily restrict patient access to eye care from optometrists practicing via telehealth, it will also create a regulatory environment in which providers with brick-and-mortar office locations maintain an unfair competitive advantage over providers who deliver care of the same quality via telehealth technologies.

Please let us know if there is anything else that we can do to help you promote practical telehealth policy for optometrists in Ohio. We urge the Initiative to consider the limiting and anti-competitive nature of this proposed rule in the interest of ensuring that Ohioans have access to high-quality, affordable eye care wherever and whenever they need it. If you have any

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questions or would like to discuss the telehealth industry's perspective further, please contact me at [kzebley@ataaction.org](mailto:kzebley@ataaction.org).

Kind regards,

A handwritten signature in black ink, appearing to read "Kyle Zebley", is written over a faint, dotted-line rectangular box.

Kyle Zebley  
Executive Director  
ATA Action