



May 13, 2022

Ms. Katherine Ceroalo
New York State Department of Health
Bureau of Program Counsel, Regulatory Affairs Unit
Corning Tower Building
5 Empire State Plaza, Room #2438
Albany, New York 12237

**RE: ATA ACTION COMMENTS ON PROPOSED RULES RELATED TO
TELEHEALTH SERVICES FOR MEDICAID PATIENTS**

On behalf of ATA Action, I am writing you to express our support for proposed additions to New York's regulations covering telehealth services for Medicaid patients.

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.

The proposed rules, first published in the New York Register on March 23rd, 2022, would add Section 538 to New York's code regulating the Department of Social Services (Title 18).

Our organization believes that the proposed rules would be a step forward for New York's state telehealth regulations. The proposed additions seek to ensure continuity of care for Medicaid enrollees who have been receiving health care services via telehealth throughout the public health emergency by expanding the types of providers who are permitted to deliver care via telehealth and adding audio-only technologies (among others) to the list of approved modalities for use in delivering telehealth services to Medicaid patients.

Our organization supports the Department of Health in its efforts to ensure that New Yorkers have access to telehealth services by permitting all Medicaid providers, as well as providers employed by Medicaid facilities or provider agencies who are authorized to provide in-person services, to deliver telehealth services to Medicaid patients. Throughout the COVID-19 pandemic, patients across the country benefitted from the expansion of telehealth services, receiving physical and mental health services whenever and wherever they needed it. In the process of prompting these connections, telehealth technologies eliminated arbitrary geographic barriers between patients and their preferred providers, saved patients time and money by

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allowing them to receive their health care from work or at home, and assisted patients in rural and underserved communities in accessing care easily and efficiently. Enabling New York Medicaid patients to connect with a wide range of providers via telehealth will make it significantly easier for these patients to receive the care they want, need, and deserve.

We support provisions in the proposed rule which would allow telehealth providers delivering care to Medicaid patients to use a variety of appropriate technologies while rendering care. 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. Implementing a technologically permissive definition of telehealth – one which enables providers to use the full range of innovative technologies to deliver virtual care – affords providers the opportunity to reach patients more easily than ever before, even if patients do not have access to the broadband capabilities necessary to operate audiovisual modalities.

Additionally, ATA Action also thanks the Department for exploring how telehealth modalities can improve maternity care. Importantly, if New York wants a best-in-class telehealth model for maternity care, then it needs a permissive and flexible regulatory framework to ensure that every FDA-approved telehealth tool is covered, even those that may not fit squarely into the current list of covered modalities like remote patient monitoring, asynchronous or synchronous care. For example, ATA Action would urge New York to also cover remote fetal, nonstress tests, which measure maternal heart rate, fetal heart rate and fetal movement in the home. Many high risks moms are directed by their providers to receive a nonstress test at least twice a week during the third trimester but adhering to this care plan is almost impossible for moms who lack adequate access to transportation, who live far from their OB/GYN or who cannot take off work that frequently. Now, moms can schedule an appointment with their provider and receive a remote nonstress test in the home, helping moms adhere to care plans and reduce the rate of preterm births, unnecessary C-sections, and other prenatal and postpartum complications.

Thank you for the opportunity to comment and for your support for telehealth. We encourage the Department to adopt the proposed rules 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
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