



June 1, 2022

Mark H. LeQuire, MD  
Chairman, Alabama Board of Medical Examiners  
848 Washington Avenue  
Montgomery, Alabama 36104

Charles M. A. Rogers IV, MD  
Vice Chairman, Alabama Board of Medical Examiners  
848 Washington Avenue  
Montgomery, Alabama 36104

**RE: ATA ACTION COMMENTS ON RECENTLY APPROVED LAWS GOVERNING THE PRESCRIPTION OF CONTROLLED SUBSTANCES VIA TELEHEALTH**

Dear Chairman LeQuire and Vice Chairman Rogers:

On behalf of ATA Action, I am writing to support certain exceptions to Alabama's newly approved laws governing the prescription of controlled substances via 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 transform the health care delivery system – by improving patient outcomes, enhancing safety and effectiveness of care, addressing health disparities, and reducing costs – only if allowed to flourish.

On April 6, Governor Kay Ivey signed Senate Bill 272 into law. The bill contains several provisions which will enable the expeditious expansion of telehealth in the state. For instance, the proposed legislation contains a technology-neutral 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 patients do not have access to the broadband capabilities necessary to operate audiovisual modalities.

During the Legislature's deliberation on the bill, our organization expressed concern that the language in Senate Bill 272 relating to the prescription of controlled substances via telehealth would unnecessarily limit patient access to care and, after the bill's effective date (July 5, 2022), leave many Alabamians stranded without access to the prescribed medications they have been receiving via telehealth since the onset of the pandemic. However, the Legislature also gave the Alabama Board of Medical Examiners the ability to create exemptions through rulemaking that would allow for the prescribing of controlled substances for the treatment of a "patient's medical emergency," and we urge the Board to define these emergencies broadly.

**ATA ACTION**

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



Section §34-24-704 of Senate Bill 272 reads as follows:

*(a) A prescriber may prescribe a legend drug, medical supplies, or a controlled substance to a patient as a result of a telehealth medical service if the prescriber is authorized to prescribe the drug, supplies, or substance under applicable state and federal laws. To be valid, a prescription must be issued for a legitimate medical purpose by a prescriber acting in the usual course of his or her professional practice.*

*(b)*

*(1) A prescription for a controlled substance may only be issued as a result of telehealth medical services if each of the following apply:*

- a. The telehealth visit includes synchronous audio or audio-visual communication using HIPAA compliant equipment with the prescriber responsible for the prescription.*
- b. The prescriber has had at least one in-person encounter with the patient within the preceding 12 months.*
- c. The prescriber has established a legitimate medical purpose for issuing the prescription within the preceding 12 months.*

*(2) This subsection shall not apply in an in-patient setting.*

*(c) A physician shall be exempt from the requirements of subsection (b) and may issue a prescription for a controlled substance to a patient if the prescription is for the treatment of a patient's medical emergency, as further defined by rule by the Board of Medical Examiners and the Medical Licensure Commission.*

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 before the prescription of controlled substances online. These flexibilities enabled physicians operating in Alabama to prescribe controlled substances safely and remotely using telehealth, increasing access to clinically appropriate medications, including those for mental health and substance use disorder treatments.

These flexibilities are particularly vital to the efficient and effective delivery of health care services in Alabama, as mental health and substance use disorders continue to affect Alabamians at disproportionate rates. Research [assembled](#) by the National Alliance on Mental Illness in 2021 revealed that more than half of Alabamians struggling with mental health issues did not receive any treatment in the previous year. Statistics concerning opioid use disorder are even more startling. In 2017, physicians in Alabama [wrote](#) more prescriptions for opioids than there were people living in the state; roughly 16 in every 1,000 Alabamians were diagnosed with opioid use disorder, staggeringly higher than the national average of 8 people per 1,000.

Safe and permissive telehealth policies – including those regarding the prescription of controlled substances online – would help physicians in the state address Alabama’s opioid epidemic and broaden access to medication-assisted therapy. For instance, 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.

We encourage the Board to take several courses of action to ensure that patients relying on telehealth services to access their much-needed prescriptions do not have their health care services interrupted entirely and/or are prepared to obtain their prescriptions by other, non-virtual means. We ask that the Board deploy the medical emergency exemption outlined in §34-24-704(c) for patients receiving

#### **ATA ACTION**

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



medication-assisted treatment for opioid use disorder. Such a move would be in line with the approach pursued the federal government, which has considered the opioid crisis a public health emergency since 2017. Furthermore, we ask that the Board not enforce the provisions in Senate Bill 272 around the online prescription of controlled substances until it promulgates its own rules, allowing Alabama patients currently receiving their medicines via telehealth a grace period during which they can locate local, brick-and-mortar practices from which they will receive their prescriptions going forward. Finally, we ask that the Board consider allowing patients who already receive prescriptions via telehealth without seeing a provider in person to continue doing so. This will ensure that Alabamans who have come to depend on telehealth as a means of accessing health care do not have to scramble just to receive the prescriptions they need and have been receiving efficiently and safely since the start of the pandemic.

Thank you for the opportunity to comment. 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](mailto:kzebley@ataaction.org).

Kind regards,

A handwritten signature in black ink, appearing to read "Kyle Zebley", is written over a light gray circular background.

Kyle Zebley  
Executive Director  
ATA Action