



June 22, 2022

The Honorable Richard Pan  
Chair, Senate Health Committee  
California State Assembly  
1021 O St., Room 3310  
Sacramento, CA 95814

**RE: ATA ACTION COMMENTS IN OPPOSITION TO ASSEMBLY BILL 32**

Dear Chair Pan and members of the Senate Health Committee:

On behalf of ATA Action, I am writing you to comment on provisions in Assembly Bill 32 relating to Medi-Cal telehealth policy.

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.

Language in the bill relating to Medi-Cal telehealth policy largely reflects language released by the Department of Health Care Service (DHCS) in its policy proposal document titled "Post-COVID-19 Public Health Emergency Telehealth Policy Recommendations." Among the telehealth-related topics covered in the bill are coverage for synchronous and asynchronous telehealth services, reimbursement for telehealth services, establishing patient-provider relationships via telehealth, and patient consent to/choice regarding telehealth services.

ATA Action believes that some of the telehealth-related provisions in the bill would serve as steps forward for Medi-Cal's telehealth policy.

First, the bill would ensure that Medi-Cal patients would be covered when receiving virtual care via synchronous (meaning both video and audio-only) modalities, asynchronous technologies, remote patient monitoring services, and other permissible virtual communication modalities. ATA Action applauds the Legislature for working to guarantee that Medi-Cal patients have their telehealth services covered permanently regardless of which kind of telehealth technology is used to deliver their care. Such a policy will make it substantially easier for these patients to access the high-quality care they want and need without having to worry about the cost of that care.

ATA Action also appreciates the Legislature's efforts to incorporate some flexibility in reimbursement rates for certain telehealth services, specifically those provided via asynchronous technologies, remote patient monitoring services, and virtual communications. As far as the rate of reimbursement for telehealth services is concerned, ATA Action believes that state policymakers should set rational

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guidelines that are fair to the provider of such services while reflecting the cost savings the effective use of telehealth technologies offers to the health care system. In some instances, reimbursement parity may be appropriate; in other instances, it may not. To enact optimal reimbursement policy, we suggest adopting language which grants providers the flexibility to accept reimbursement amounts less than the amount those providers would charge for the same services delivered in person. For example, see Section 14132.725(f)(2) relating to Medi-Cal managed care plans:

*(2) Subject to subdivision (j), for applicable health care services appropriately provided by a network provider via video synchronous interaction or an audio-only synchronous interaction modality to an enrollee of a Medi-Cal managed care plan, the Medi-Cal managed care plan shall reimburse the network provider at payment amounts that are not less than the amounts the network provider would have received if the services were delivered via in-person, face-to-face contact, unless the Medi-Cal managed care plan and network provider mutually agree to reimbursement in different amounts.*

Our organization also has several concerns with the language in the bill, particularly with provisions related to the establishment of a patient-provider relationship via telehealth, patient consent, patient choice in telehealth modality, and certain referral provisions. With these concerning provisions in the bill, it is not possible for ATA Action to support the bill in its current form.

ATA Action takes issue with certain language that would prohibit providers from establishing new patient relationships using telehealth modalities other than synchronous video modalities. Throughout the pandemic, patients across California have utilized an assortment of telehealth technologies to establish relationships with the providers who they choose to meet their medical needs best. ATA Action 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 appropriate telehealth modality that is sufficient to evaluate and treat the patient for the condition presented – whether it be a synchronous or asynchronous modality – to establish a professional relationship with a patient. Prohibiting patients and providers from establishing professional relationships using asynchronous or audio-only modalities will make it far more difficult for patients – especially the 1.3 million Californians who do not have access to internet speeds capable of operating synchronous video modalities reliably – to access high-quality care from their preferred providers. Instead of being able to establish new relationships with providers from 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.

Second, our organization is concerned that several of the new consent requirements contemplated in the bill would place an undue burden on telehealth providers. Currently, telehealth providers are already required to document verbal or written patient consent before rendering care virtually. If passed, the bill would require providers to share the following information with beneficiaries:

- Patients' right to in-person services
- Voluntary nature of consent
- Availability of transportation to access in-person services when other available resources have been reasonably exhausted
- Limitations/risks of receiving services

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While ATA Action recognizes the importance of obtaining informed patient consent before the delivery of telehealth services, we believe that these additional requirements fall outside the scope of providers' responsibilities to their patients. Our organization believes that duties such as informing beneficiaries about Medi-Cal's transportation offerings should be the responsibility of health care plans, not providers with the responsibility to evaluate, diagnose, and treat patients.

Third, ATA Action is concerned about language in the trailer bill relating to patient choice in telehealth modality. Section 14132.725(c)(1) stipulates that providers furnishing services through audio-only telehealth must also offer health care services via video synchronous interaction. While we reiterate that patient consent to and choice in telehealth services are essential to any first-rate telehealth experience, forcing providers to have the option to deploy video synchronous modalities neglects both patient and provider choice during the process of rendering care. This issue is exacerbated in geographic areas that lack access to reliable broadband. These areas may be better served using audio-only without a video capability or via asynchronous store-and-forward technologies. Our organization believes that providers who wish to deliver telehealth services to California patients solely through audio-only or asynchronous technologies should be able to do so independently of synchronous video capabilities so long as the tools are sufficient to meet the standard of care for the condition presented by the patient.

Finally, the ATA takes issue with provisions regarding so-called "hot handoffs" for referring a patient. The current language would require Medi-Cal providers offering care through telehealth either to (a) offer the service in person or (b) to arrange for a referral to, and a facilitation of, in-person care that does not require a patient to contact a different provider independently to arrange for that care. ATA Action strongly supports patient choice in care settings (whether telehealth or in-person care) and also believes telehealth providers should have protocols in place for assisting patients in situations during which the provider determines that virtual care is not sufficient to meet the standard of care for the patient's condition. However, the provisions contemplated in the bill go far beyond these objectives and would hold telehealth services to a far higher standard than in-person care settings as it would essentially require the provider to become the patient's personal scheduler. When California patients go to a traditional provider's office in person and the provider determines that the patient needs more specialized care, the provider is not required to "arrange" or "facilitate" an appointment with a specialist in person or even provide the patient with a referral to a specific specialist who could serve the patient's medical needs. If the Legislature intends to hold telehealth providers to such referral obligations, ATA Action questions whether Medi-Cal intends to reimburse telehealth providers for this care coordination and whether a similar mandate will be issued for in-person care settings.

If approved, this provision would also restrict access to care for many Californians by cutting off the ability for telehealth to address provider and specialist shortages throughout the state. In fearing that they would not be able to comply with this referral requirement, many providers will simply choose not to enroll in the Medi-Cal program. Under the proposed language, California-licensed telehealth providers without a brick-and-mortar presence in California would not be able to deliver services to California patients if they do not have access to – or the bandwidth to meet – the requisite scheduling capabilities to comply with the warm referral requirements. Additionally, any telehealth provider with an in-state office location who hopes to avoid the burdensome referral obligations placed on providers in (B) would only be able to see patients within reasonable travelling distance. These kinds of arbitrary and clinically unsubstantiated geographic barriers are precisely what telehealth technologies are designed to eliminate.

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Ironically, these proposed mandates have the effect of limiting patient choice and stifling innovation in the delivery of quality remote health care.

Thank you for your support for telehealth. We encourage you and your colleagues to not pass this bill until changes have been made to address the concerns we raised above. Please let us know if there is anything that we can do to assist you in your efforts to adopt practical telehealth policy in California. 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 watermark.

Kyle Zebley  
Executive Director  
ATA Action