



September 23, 2022

John Hilger  
Washington Department of Health  
P.O. Box 47852  
Olympia, WA 98504

**RE: COMMENTS ON SUBSTITUTE HOUSE BILL 1821**

Dear Secretary Shah and Deputy Secretary Peterson:

On behalf of the ATA Action, I am writing you to comment on the Department of Health's proposed rule WSR 22-17-139.

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.

Although ATA Action applauds the Department's desire to promulgate telehealth rules aimed at expanding access to care in the home, ATA Action disapproves of the definitions of "Audio-only telemedicine" and "Established relationship" adopted by the Washington Legislature in the insurance code and which are included in this promulgated rule. As the Department recognizes, the "audio-only telemedicine" bills passed by the legislature "do not directly impact in-home services law." ATA Action understands the desire to harmonize state laws between health insurance and care, but cautions against adopting rules that unnecessarily restrict how that care is delivered.

First, the new rule would expand the definition of "Telemedicine" under the "Requirements Specific to Home Health Agency Services" so as to include "home health aide services to evaluate compliance with the plan of care and patient satisfaction with care." As the Department correctly notes, allowing supervisory visits using telehealth technologies will both reduce costs related to patient visits and reduce the risk of exposure to communicable diseases among health care staff. ATA Action supports telehealth rules that allow providers to improve efficiencies by utilizing telehealth technologies and maintain quality health services within the standard of care.

Unfortunately, the Department also chooses to incorporate a definition of "Audio-only telemedicine" which only permits "real-time communication" between the patient and agency provider for the purpose of consultation, education, diagnosis, or treatment, not including

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“facsimile, electronic mail, or text messages.” ATA Action believes that telehealth should not be limited to any specific technology provided that it is safe, effective, appropriate, and meets the standard of care. This definition both confusingly includes typically non-audio technology like e-mail and text messages, but also excludes everyday non-real time interactions used by practitioners, such as voice mail messages, to provide patient care information. Notably, this limited definition runs counter to the model laws developed by the Uniform Law Commission and the Federation of State Medical Boards, both of which endorse the use of asynchronous telemedicine to deliver patient care.

The Board’s inclusion of “Established relationship” to mean an in-person appointment within the past two years is equally problematic. This is an arbitrary requirement that does not bolster quality of care, but instead places a burden on patients and providers to carve out unnecessary in-person appointments out of already busy schedules. Furthermore, providers must always meet the standard of care in Washington regardless of the mode used to deliver that care; the Department should seek to empower provider discretion to decide when an in-person visitation is needed in order to meet that standard. ATA Action believes that providers should be able to establish a patient-provider relationship using whichever technologies are available to them 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.

Again, we thank you for your interest in telemedicine. We urge you to amend Proposed Rule 22-17-139 to exclude these problematic definitions and ensure easy and efficient access to high-quality health care services in Washington. Please do not hesitate to let us know how we can be helpful to your efforts to advance common-sense telemedicine policy. If you have any questions or would like to discuss the telemedicine industry’s perspective further, please contact me at [kzebley@ataaction.org](mailto:kzebley@ataaction.org).

Kind regards,

Kyle Zebley  
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ATA Action