



October 11, 2022

Craig Cellini
Rules Coordinator
Illinois Department of Financial and Professional Regulation
320 West Washington, 2nd Floor
Springfield, IL 62786

Submitted electronically to: craig.cellini@illinois.gov

RE: ATA ACTION COMMENTS IN OPPOSITION TO THE PROPOSED PHYSICAL THERAPY TELEHEALTH RULES IN ILLINOIS REGULATION 19549

Dear Mr. Cellini,

On behalf of ATA Action, I am writing you to express opposition to Illinois Regulation 19549.

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 believes that several of the sections contained in the proposed telehealth regulations would be detrimental for Illinois physical therapy patients, are needlessly restrictive of telehealth care, and should be reconsidered by the Department.

ATA Action appreciates the Department's recognition that telehealth may be used to deliver physical therapy care to Illinois patients. Telehealth is important for increasing access to care and improving outcomes. We also take no issue with section 1340.80(d) which states that a patient receiving physical therapy care must be able to request in-person care. ATA Action agrees, patients should always have the right to choose how they receive care, whether in-person or delivered via telehealth.

Unfortunately, ATA Action has concerns with sections 1340.80(b), (c), and (e) which place additional and unnecessary requirements on telehealth providers and do not appear to align with telehealth laws adopted by the Illinois General Assembly.

Clause (b) states that the use of telehealth as a primary means for delivering physical therapy should be an exception without further explanation of what circumstances would allow for this exception to be used. This will cause confusion for both patients and providers about when telehealth care can or should be utilized. The Department should defer to the expertise of licensed medical professionals, in this case physical therapists, to determine if telehealth can be used to meet the standard of care for the patient's needs. If the standard of care can be met via telehealth, the provider wishes to offer care via telehealth,

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and the patient consents to telehealth care, then the physical therapy services should be allowed to be delivered via telehealth without determining if the circumstances are exceptional or not. Additionally, the requirement to provide a clinical justification for providing care via telehealth is both an undue burden on providers and invites confusion over what circumstances qualify as an “exception” to providing care via telehealth. Additionally, the Department’s rules should not exceed the directives provided for telehealth by the General Assembly in statute. As the Department is likely aware, there is no language in the Illinois Telehealth Act which supports the assertion that telehealth is an exception to in-person care or requires documentation of a clinical justification for telehealth use.

Clause (c) of Section 1340.80, which prohibits an initial evaluation from being performed via telehealth unless it addresses a “documented hardship,” also does not appear anywhere in the Telehealth Act. The Department’s rule for initial exams should conform with the General Assembly’s directive for establishing a patient relationship in the Telehealth Act. However, the definition of “established patient” in the Telehealth Act does not include any language about initial evaluations or any in-person requirements for establishing a patient relationship. So long as the standard of care can be met, there are no statutory or clinical justification for prohibiting services delivered via telehealth. Clause (c) creates further confusion because there is no elaboration on a definition or circumstances that arise for a “documented hardship” which would allow for the initial evaluation to be conducted using telehealth. This will create confusion for both providers and patients about when telehealth could be utilized for the initial evaluation under these rules. Because providers typically seek to reduce their risk of legal exposure, they may be hesitant to utilize the Department’s vague documented hardship exception.

The Department clearly acknowledges that physical therapy care can be provided via telehealth and meet the standard of care as acknowledged in Section 1340.80(a), but then limits telehealth to an exception to care under 1340.80(b) and only in cases of documented hardship under 1340.80(c). Only allowing for telehealth care under these poorly defined circumstances is not only confusing for providers but also restrictive of a patient’s choice, who may want to receive physical therapy care via telehealth for a variety of reasons. The Department should respect patient choice, as well as provider expertise, and reconsider these provisions to allow for telehealth care in physical therapy in any circumstance where the patient wishes to receive virtual care and when the provider is capable of meeting the standard of care.

Finally, ATA Action takes issue with the requirement in 1340.80(e) for telehealth providers to have the capacity to provide in-person care within the State of Illinois. Requiring telehealth providers to also maintain a brick-and-mortar location is an unnecessarily restrictive burden on care. This burden will have the effect of eliminating many of the cost-benefits of delivering telehealth care and may eliminate the ability of some providers to deliver telehealth care altogether. If the telehealth provider is licensed to practice in the state of Illinois they should be able to provide care, regardless of the ability to provide in-person care. This is another example of the proposed regulation going beyond legislative intent to limit telehealth care in physical therapy. If the Department wishes to provide patients with the maximum flexibility and choice in seeking the healthcare they need it should reconsider this requirement for telehealth providers.

Thank you for your support for telehealth. We encourage you to consider changes to these rules 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 Illinois. 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.

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Kind regards,

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

Kyle Zebley
Executive Director
ATA Action