



October 12, 2022

The Honorable Herb Conaway
Chair, Assembly Health Committee
New Jersey State Assembly
Committee Room 11, 4th Floor, State House Annex,
Trenton, NJ 08625

RE: ATA ACTION OPPOSITION AND COMMENTS ON A2193

Dear Chair Conaway and the New Jersey Assembly Health Committee,

On behalf of ATA Action, I am writing you to express opposition to New Jersey AB2193 in its current form and to offer our thoughts to help improve this bill.

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 appreciates the Assembly's efforts to facilitate effective provision of emergency services to New Jersey patients utilizing telehealth; however, we have several concerns with the bill. Namely, ATA Action believes the bill could lead to increased risks for patients in need of emergency care, and place burdensome and unnecessary requirements on telehealth providers that are not in place for similar in-person care providers. Additionally, the proposed language for suicide attempt reporting is lacking important details and should apply consistently to both in-person and telehealth care.

The Committee should defer to well established ethical guidelines and the Federation of State Medical Boards proposed policy language regarding emergency care

First, telehealth, and all healthcare providers for that matter, are already ethically obligated to assist patients in emergency situations to the extent possible, as guided by ethical codes and the standard of care, making the provisions in this bill redundant. The American Medical Association Code of Medical Ethics states that while caring for a patient, "responsibility to the patient [is] paramount"¹ and that "As professionals dedicated to protecting the well-being of

¹ AMA Principles of Medical Ethics, <https://www.ama-assn.org/sites/ama-assn.org/files/corp/media-browser/principles-of-medical-ethics.pdf>.

patients, *physicians have an ethical obligation to provide care in cases of medical emergency.*² The same is true in New Jersey where the Administrative Code governing the New Jersey Board of Medical Examiners states that board licensee are required to “Provide, [sic] all necessary emergency care or services, including the provision of necessary prescriptions, until the date on which services are terminated.”³ Together, these provide adequate safeguards for patients who experience a medical emergency during the delivery of telehealth service and placing additional ethical guidelines on providers would be arbitrary and confusing. ATA Action is unaware of any need, in fact or principle, for legislative action to supplement or alter what is already required by national and state codes of medical ethics. Without a given specific reason for this legislation, ATA Action recommends assembly members should continue to defer to these long-standing codes.

Second, these requirements single out telehealth providers by placing standards on them that do not apply to in-person care providers. Both in-person and telehealth providers are required to meet the same standard of care and adhere to the same codes of ethics previously described. It is unclear why these new rules should only apply to telehealth providers, as not all in-person facilities have the same on-site emergency care services at their disposal, if any at all. This would also be a first in the nation double-standard for telehealth providers, going beyond the requirements of any other state or federal law.

Third, the bill’s “written emergency care” plans that would need to be created for each and every telehealth patient would produce immense administrative costs on telehealth providers. Although these plans sound simple in concept, health care administrators must create, facilitate and manage these written plans for all of their telehealth patients—potentially thousands of patients—significantly increasing time and cost burdens on providers. For example, administrators located in Princeton would need to locate and document the nearest located emergency providers for every patient located in Newark, Jersey City, Trenton, Atlantic City, Hoboken, etc., and then regularly review all of these documents to ensure they are up-to-date, or risk violating the “good faith” requirement in the bill. These increased administrative costs could severely impact the cost-benefit of telehealth services and reduce the number of providers.

Fourth, although the “good faith” requirement seems intended to be a light legal burden, these requirements can easily produce unintended legal consequences on providers. For example, consider providers who may be unaware that the emergency services listed in the written plan are out of date (e.g., if the patient is logged on from a new location or the provider wastes time dialing out of date emergency contact information), then the provider risks using incorrectly compiled emergency information while simply intending to help their patient. Because the “good faith” provision is undefined by the bill language and vague, the provider’s organization may be held liable for what is certainly an innocent error.

² AMA Code of Medical Ethics, Chapter 1: Ethics of Patient-Physician Relationships, Page 2, <https://www.ama-assn.org/delivering-care/ethics/code-medical-ethics-overview>. (emphasis added)

³ New Jersey Administrative Code Title 13 Chapter 35, Page 206, <https://www.njconsumeraffairs.gov/regulations/Chapter-35-State-Board-of-Medical-Examiners.pdf>

Finally, placing the burden of connecting patients with local emergency services on telehealth providers substantially risks patient lives. Logistically, the fastest way to connect a patient with emergency care is to have the patient or someone close by immediately dial 9-1-1. Not all providers may have the technology to dial 9-1-1 for patients in their geographic area. The proposed rule instead may require telehealth providers to spend time identifying local emergency providers with the patient, when instead the patient should be dialing 9-1-1. Once again, should a patient experiencing an emergency situation be incapacitated or unable to contact emergency services, the provider is already obligated by both ethical guidelines and the standard to care to aid the patient in obtaining emergency care.

None of this is to say providers should not be prepared for emergency situations; in fact, ATA Action fully supports adopting policies that ensure telehealth providers have proactive policies and protocols in place for emergent situations. ATA Action recommends that the Committee should consider adopting the language proposed by the Federation of State Medical Boards (“FSMB”, which represents 71 state medical and osteopathic boards across the country) in its policy document titled “The Appropriate Use of Telemedicine Technologies in the Practice of Medicine.” The FSMB’s language reads as follows:

If a patient is inappropriate for care via telemedicine technologies or experiences an emergent situation, complication, or side effects after an encounter using telemedicine technologies, physicians should have a standing plan in place and have the responsibility to refer the patient to appropriate care (e.g. acute care, emergency room, or another provider) to ensure patient safety.

Rules for reporting suicide attempts should apply to both in-person and telehealth providers and direct the Department of Health to clarify reporting requirements

New Jersey does not require in-person medical providers to report suicide attempts to the Department of Health. Although ATA understands and supports the desire to improve the collective understanding regarding suicide and mental health, should the State wish to collect this data we believe that these requirements should be incumbent on both in-person and telehealth providers. It is not readily apparent why New Jersey would only want this information from telehealth providers but not in-person providers. Indeed, as in-person care providers typically are first responders to suicide attempts, collecting this data only from telehealth providers will provide a less than complete picture of the data.

Furthermore, if the legislature must direct the Department of Health to adopt protocols for the safe, secure communication of this information, and what specific, anonymous information providers should be supplying that will be most helpful for analysis. Fortunately, New Jersey has already developed language with this level of detail in statute covering reporting requirements for teachers, psychologists and counselors in school settings at N.J. Stat § 30:9A-24. ATA

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Action believes this statute would make a good starting point for drafting legislation around health provider reporting and that this language should be brought in separate legislation.

Thank you for your support for telehealth. We encourage you to consider changes to this legislation 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 New Jersey. 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.

Sincerely,

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