



November 16, 2022

Ben Steffen
Executive Director, Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, MD 21215

RE: ATA ACTION COMMENTS ON DRAFT TELEHEALTH RECOMMENDATIONS

Dear Mr. Steffen,

On behalf of the ATA Action, the American Telemedicine Association affiliated trade association focused on advocacy, I am writing to contribute to the Maryland Health Care Commission’s upcoming discussion of draft telehealth recommendations developed by the Commission pursuant to the Telehealth Access Act of 2021. Although we look forward to the MHCC’s final report, we have some concerns that the proposed recommendations could unintentionally rollback Maryland’s current telehealth policies and create unnecessary confusion for providers and patients.

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.

First, the proposed recommendations include a proposed amendment to the definition of “telehealth” located in both the Maryland general health code and the health occupations code [§ 15-141.2(a)(7)(i) and § 1-1001(e)(1)] affecting every provider in the state delivering care via telehealth, not simply those accepting commercial or public coverage. The proposed amended language states “telehealth” includes “the use of audio-visual or audio-only technology to permit real-time interactive communication” which appears to eliminate the use of asynchronous telehealth technologies and remote patient monitoring.

The Commission’s proposed definition appears to contradict prior interpretations of telehealth made by both the General Assembly and the Commission itself. As recently as 2020, the General Assembly chose to recognize both synchronous and asynchronous telehealth services in the Maryland Health Occupations code [see § 1-1001(a), (b)]. Specifically, the Assembly’s definition of asynchronous interactions means an exchange of information with a patient that “does not occur in real time” and would also allow for remote patient monitoring. Additionally, the proposed definition appears to contradict the Commission’s own interpretation of “telehealth” in its Maryland Telemedicine Task Force 2014 Final Report.¹ The Commission indicated therein that “telehealth” includes both store-and-forward “non-real-time communication” and remote monitoring technologies. It is unclear why the Commission feels the need to change course now.

¹ See pages 4-5,
https://mhcc.maryland.gov/mhcc/pages/home/workgroups/documents/tlmd/tlmd_ttf_rpt_102014.pdf.



In Maryland and throughout the country, telehealth providers use robust and comprehensive asynchronous visits to perform patient evaluations for both new and established patients in fields including primary care, dermatology, radiology, psychology, and ophthalmology. It is important that policy makers do not preemptively restrict the modalities available to practitioners who can decide, relying on their professional discretion, how best to meet the standard of care. Restricting the use of these technologies also particularly risks reducing the effectiveness and efficiency of care delivery in unintended ways.

The Commission should also take note of the Federation of State Medical Boards (“FSMB”) guidelines, which state that a “physician-patient relationship may be established via either synchronous or asynchronous telemedicine technologies without any requirement of a prior in-person meeting, so long as the standard of care is met.”² We suggest that the Board review and consider the FSMB’s Model Guidelines when it is appropriate to promulgate telehealth rules. It is clear that the national momentum is in favor of allowing physicians to use their professional discretion and to determine what the appropriate care delivery modality is for each unique patient. We believe that a divergence from the FSMB’s Model Guidelines would needlessly limit a patient’s ability to safely access quality, affordable, and remote healthcare, and make Maryland an outlier among states that are adopting telehealth laws.

Second, we are uncertain why the Commission believes a new definition of “Established Patient” needs to be added to the health occupations code, without any further context provided. We are concerned that the implication is a provider must have had an in-person examination with a patient in the 3 years prior to the use of telehealth services. Of course, such a rule would be an arbitrary limit on care delivery and a deviation from the established standard of care. As with recommendation 13, this amendment to the occupations code would also apply to the delivery of all healthcare services, not simply to reimbursement.

ATA Action understands that the Commission is well-respected in the state and the General Assembly values the Commission’s feedback. We ask that the Commission remove, or at a minimum clarify, that these recommendations do not intent to restrict the availability of telehealth services in Maryland.

Please do not hesitate to let us know how we can be helpful to your efforts to develop practical telehealth rules in Maryland. If you have any questions or would like to discuss further the telehealth industry’s perspective, please contact me at kzebley@ataaction.org.

Kind regards,

A handwritten signature in black ink, appearing to read "Kyle Zebley".

Kyle Zebley
Executive Director
ATA Action

² See FSMB, The Appropriate Use of Telemedicine Technologies in the Practice of Medicine, page 6, adopted 2022. <https://www.fsmb.org/siteassets/advocacy/policies/fsmb-workgroup-on-telemedicineapril-2022-final.pdf>.