



December 13, 2022

Jourdan Green, Director  
Office of Regulation and Policy Coordination  
Maryland Department of Health  
201 W. Preston Street, Room 512  
Baltimore, MD 21201

Sent electronically to: mdh.regs@maryland.gov

**RE: ATA ACTION COMMENT ON PROPOSED RULES OF A NEW PART TO TITLE 10, SUBTITLE 9, CHAPTER 49 REGARDING TELEHEALTH SERVICES.**

Dear Ms. Green:

On behalf of ATA Action, I am writing you to comment on the proposed telehealth rules promulgated by the Maryland Department of Health.

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 wants to thank the Department for timely conforming its rules with revised Maryland statutes on Remote Patient Monitoring and Originating Site Requirements. It is important for states to remove clinically unnecessary barriers to patient care, including rules that restrict certain technologies that can be effectively used to provide care. Asynchronous transmission of information is critical to Remote Patient Monitoring, and thousands of Maryland patients will benefit from this change. It is also important to let patients and providers decide under the circumstances whether an originating site is appropriate for care delivery, rather than subject this interaction to a set of limited state prescribed locations. We appreciate all of the advances both the legislature and Department have made to enable effective delivery of telehealth services in Maryland.

However, ATA Action has several concerns with the proposed telehealth rules restriction on telehealth modalities and recommends the Department address the issues identified below before proceeding with the rulemaking process.

It is our understanding the proposed rules may conflict in part with the text and intent of the Legislature as detailed in the Preserve Telehealth Access Act of 2021 (the "Act").

**ATA ACTION**

901 N. Glebe Road, Ste 850 | Arlington, VA 22203  
Info@ataaction.org



The Act defines “Telehealth” as “the delivery of medically necessary somatic, dental, or behavioral health services to a patient at an originating site by a distant provider through use of technology-assisted communication” and “includes both [s]ynchronous *and asynchronous* interactions.” MD § 15-141.2 (emphasis added). The code provided by the Legislature explicitly and unambiguously states that the delivery of telehealth services to include both synchronous and asynchronous interactions.

However, in several places the proposed rules appear to contradict the language of the Legislature by limiting asynchronous telehealth modalities without any clear justification provided. The Proposed Regulation “applies to covered services delivered via *synchronous* telehealth” (10.09.49.01), defining telehealth as “the *synchronous* delivery of medically necessary services to a patient at an originating site by a distant site provider, through the use of technology-assisted communication.” (10.09.49.02) (emphasis added). Additionally, the proposed rules only identify “*synchronous* audio-visual telehealth” in establishing technical requirements. (10.09.49.05).

By limiting the definition of telehealth to synchronous telehealth modalities and establishing a rule for coverage of medically necessary services as defined in the rule, the Department appears to bar the use of asynchronous technologies in Medicaid reimbursed telehealth. It is unclear where the Department derives the statutory authority to do so. In fact, the Legislature explicitly embraces the use of asynchronous technologies within telehealth as a method of reducing disparities between rural and urban populations and to allow for continuity of care for patients, further noting that it is critical “that health care practitioners licensed, certified, or otherwise authorized by law to provide health care services be allowed in Maryland to provide those services through telehealth, provided that they are held to the same standards of practice that are applicable to in person healthcare settings.” No language within the Act seems to permit the Department to strip away any of the clinical decision-making discretion the Legislature afforded to Maryland providers practicing through telehealth technologies.

Regarding statutory authority, the Department appears to incorrectly refer in part to the Health General Article 15-105.2(b) as the authority for the proposed rules. However, the Preserve Telehealth Act struck this section of the code as of July 1, 2021. Notably, this outdated statute defined “Telemedicine” as the use of “interactive audio, video, or other telecommunications or electronic technology” [read: synchronous technology] which may be the source of the Department’s confusion in developing an exclusively synchronous interpretation of telehealth within the proposed rules. As mentioned previously, the Department should take note that the legislature replaced this section and included the new definition of “Telehealth” which specifically includes asynchronous care delivery at 15-141.2(a).

Furthermore, the Department’s proposed limiter of telehealth to only include synchronous modalities counters existing law and practice. Maryland law clearly permits the formation of a patient relationship via synchronous *or asynchronous* telehealth technologies. Indeed, the Federation of State Medical Boards (“FSMB”), which represents the expert opinion of 71 state medical and osteopathic boards across the country, recently issued updated telemedicine guidelines that defines telehealth to include asynchronous technology and explicitly permits the clinician to choose the appropriate clinically modality.

#### ATA ACTION

901 N. Glebe Road, Ste 850 | Arlington, VA 22203  
Info@ataaction.org



Telehealth Policy to Transform Healthcare

ATA Action has concerns the proposed regulation to require synchronous telehealth will now graft new telehealth practice requirements on providers for their patients in Medicaid, making further distinctions in access to care for this group. We urge the Department not to pre-emptively restrict the modalities which practitioners may use when providing care to patients, and instead permit licensed health care professionals to determine which technologies are sufficient to meet the clinically appropriate standard of care for the condition presented by the patient.

Thank you for your support for telehealth. We encourage you and your colleagues not to move forward with these rules 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 New Mexico. 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".

Kyle Zebley  
Executive Director  
ATA Action

**ATA ACTION**

901 N. Glebe Road, Ste 850 | Arlington, VA 22203  
[Info@ataaction.org](mailto:Info@ataaction.org)