



April 11, 2023

The Honorable Lois Kolkhorst
Chair, Senate Committee on Health & Human Services
Texas Legislature
P.O. Box 12068
Capitol Station
Austin, TX 78711

The Honorable Charles Perry
Vice Chair, Senate Committee on Health & Human Services
Texas Legislature
P.O. Box 12068
Capitol Station
Austin, TX 78711

RE: ATA ACTION OPPOSITION TO SENATE BILL 2527 UNLESS AMENDED

Dear Chair Kolkhorst, Vice Chair Perry and members of the Senate Committee on Health & Human Services,

On behalf of ATA Action, I am writing you to express our opposition to Senate Bill 2527 relating to telehealth unless the legislation is amended.

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 provisions put forth in Senate Bill 2527 would serve as steps forward for telehealth access and care in the State of Texas. The emergency protocol requirements for telehealth providers grant clarity for practitioners and patients regarding emergency situations and will lead to stronger patient outcomes in emergent situations. Additionally, we are grateful to the legislature's continued commitment to the diverse range of telehealth modalities, recognizing that any technology platform that meets the standard of care can be used for the delivery of telemedicine medical services, teledentistry dental services, and telehealth services. This is in line with not only ATA policy, but policy from the Federation of State Medical Board's Model Telemedicine Guidelines.¹

However, ATA Action does have concerns with multiple aspects of the legislation that prevent us from supporting it, and urge you to consider the issues enumerated below before advancing this legislation.

¹ Report of the FSMB Workgroup on Telemedicine, April 2022.

<https://www.fsmb.org/siteassets/advocacy/policies/fsmb-workgroup-on-telemedicineapril-2022-final.pdf>



First, we have substantial concerns with the restrictions that SB 2527 would place upon the prescription of controlled substances using telehealth. This legislation would prevent the prescription of all Schedule II controlled substances and Schedule III and IV narcotics, with the exception of buprenorphine, without an in-person examination of the patient at least once with the 12-month period preceding the prescription or refill prescription. Further, a prescription for Schedule III, IV, and V controlled substances, other than narcotics, is permitted without an in-person examination up to a limited initial 30-day supply.

These restrictions on a practitioners' ability to practice at the top of their license would be a significant step backwards for Texas telehealth policy, and furthermore would impose far more prohibitive policies than what patients have grown accustomed to over recent years. The bill will cut off patients who are unable to meet in-person examination requirements from their crucial medication and erect an arbitrary geographic boundary to healthcare on practitioners located in distant part of the state, or fully licensed out-of-state healthcare professionals, who would have great difficulty performing the annual in-person examinations necessary for delivery of controlled substance prescriptions. This will be extremely problematic for Texans receiving behavioral and mental health treatments that are now predominantly offered virtually, as patients often struggle to find these services in-person due to a shortage of providers. The bill will also greatly restrict innovative telehealth companies that are capable of partnering with Texas licensed practitioners to safely prescribe Schedule III, IV and V controlled substances for the treatment of conditions like acne and hair loss. Importantly, it is practitioners who know best when a patient should be seen in-person in order to meet the standard of care. Texas law should avoid preempting Texas licensed, practitioner discretion and instead promote Texan's ability to access innovative, safe, and often lower-cost telehealth services.

ATA Action recommends the legislature adopt rules on the prescription of controlled substances via telehealth that are no more stringent than federal standards. The bill's proposals for controlled substances are also premature, considering the ongoing rulemaking by the Drug Enforcement Administration titled: *Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation* (Docket No. DEA-407). If Texas were to enact this legislation now, the state could have a more restrictive process for patients to access crucial medication than the Federal Government, restricting patient access to care and choice over care. In order to provide greater clarity to practitioners, and to ensure that burdens to care are not in excess of federal government regulations, ATA Action recommends postponing action on controlled substances until after the federal rulemaking process has concluded.

Additionally, we are opposed to the anti-competitive advertising restrictions placed upon telehealth providers which are not concurrently placed on in-person care providers, including the granting of a private cause of action. The legislation states that health professionals offering telemedicine medical or telehealth services cannot advertise to patients their ability to prescribe particular controlled substances as a telemedicine medical or telehealth service. This would, for example, prevent telehealth providers from communicating through advertisements that they are capable of prescribing buprenorphine, a crucial controlled substance for medically assisted treatment of substance use disorders, or other simple lifestyle drugs such as medication for hair loss or weight management. The legislation does not make any similar rules for in-person care providers, targeting the telehealth community. If the legislature desires more protections for advertising of controlled substances in healthcare, then such rules should equitably apply to all healthcare services.

ATA ACTION

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Thank you for the opportunity to comment. We urge you to consider significant changes to Senate Bill 2527 in the interest of not restricting Texas patients' access to high-quality, affordable health care. Please do not hesitate to let us know how we can be helpful to your efforts to advance common-sense telehealth policy in Texas. If you have any questions or would like to discuss the telehealth industry's perspective further, please contact me at kzebley@ataaction.org.

Kind regards,

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

Kyle Zebley
Executive Director
ATA Action