



May 24, 2023

The Honorable Four Price
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CC:

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ATA ACTION

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RE: ATA ACTION OPPOSITION TO HB 1771 SENATE SUBSTITUTE

Dear Representative Price,

On behalf of ATA Action, I am submitting the following comments in opposition to an amendment made to HB 1771 by the Senate. While ATA Action supports efforts to ensure clarity for providers and patients regarding telehealth records, we have concerns that the substitute made to the legislation in the Senate unfairly singles out telehealth providers and holds them to vague requirements, conflicts with established public health laws, and puts the accessibility of many telehealth services at risk. As amended, ATA Action now opposes 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 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.

While the Senate Health & Human Services Committee substitute made a series of changes to the legislation, the amendment our organization concerned about is the final clause added at the end of HB 1771. This clause states: “Rules adopted under this section must require that a health professional conduct an in-person examination of a patient before an irreversible medical procedure is initiated.” Not only does this language invite ambiguity into interpretations of its meaning, it risks Texans' well-established access to telehealth care as provided for in current Texas telehealth laws.

Requiring an in-person examination before any “irreversible medical procedure is initiated” is a clinically unsupported requirement that would place a new restriction on a wide swath of telehealth care, as not many patients seek temporary treatments for their health conditions. First, the language does not define irreversibility. From this ambiguity, the law may require in-person examinations for treatment for mundane conditions such as the common cold, treating hair loss, minor skin infections and any further litany of minor conditions which patients would want irreversibly treated. Second, it is uncertain what medical procedures the bill refers to. More often than not, actual medical procedures are performed in a medical facility, but this term may include innovative treatments related to hospital at home programs, remote patient monitoring, and other direct-to-consumer medical devices. Many providers, out of an abundance of caution, will limit their telehealth use of these services without conducting clinically unnecessary in-person visits with the patient.

ATA Action, as well as other organizations like the Federation of State Medical Boards, have adopted the position that licensed practitioners should be able to utilize the full range of available telehealth technologies while delivering virtual care, so long as the technologies being used are appropriate to meet the standard of care for the condition presented by the patient. It should be practitioners, relying on their extensive education and clinical experience, who should have the ability to determine if treatment can be conducted via telehealth or in-person. State governments should seek to empower licensed providers to be able to offer patients safe access to the full market of available healthcare services. We acknowledge that there are situations in which the standard of care for the condition presented by the patient cannot be met through telehealth modalities, synchronous or asynchronous. This could be due to any number of reasons such as inability to properly evaluate the patient's condition outside of an in-person setting or due to technological barriers such as requiring equipment that the patient does not have access to at their

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location. However, in such circumstances, it is the responsibility of the provider to take steps to treat the patient in-person or direct them to seek other treatment that does meet the standard of care.

Should HB 1771 become law in its current form with the Senate substitute included the patients of Texas would suffer a disruption of their continuity of care, with a potentially negative impact on patient outcomes. Millions of patients will have to choose between taking time away from work and their families to drive long distances to see their provider in person, find a new provider in their local area which may also be a designated shortage area, or stop receiving these services altogether. This is particularly challenging for those who live in rural and underserved communities.

Thank you for your support of telehealth. We encourage you to consider our concerns and make all efforts to see the Senate substitute to HB 1771 rejected to ensure easy and efficient access to high-quality health care services in Texas. Please do not hesitate to let us know how we can be helpful to your efforts to advance common-sense telemedicine policy. If you have any questions or would like to discuss the telemedicine 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 faint, light-colored circular watermark or background.

Kyle Zebley
Executive Director
ATA Action