



July 18, 2023

Alison Warren, Administrator  
Delaware Board of Examiners in Optometry  
Cannon Building  
861 Silver Lake Blvd.  
Dover, DE 19904

Email: [customerservice.dpr@state.dpr.us](mailto:customerservice.dpr@state.dpr.us)

**RE: ATA ACTION COMMENTS ON THE BOARD OF EXAMINERS IN OPTOMETRY  
PROPOSED RULES REGARDING TELEHEALTH**

Dear Ms. Warren and Members of the Delaware Board of Examiners in Optometry,

On behalf of ATA Action, I am writing you to submit comments for your consideration regarding Section 5 of proposed rule 24 DE Admin. Code 2100 addressing telehealth care in the practice of optometry. ATA Action encourages the Board to consider changes to this proposed rule, specifically regarding the use of telehealth in “initial evaluations” for optometry.

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 is grateful to the Board of Examiners in Optometry for considering rules which will clarify the appropriate use of telehealth in the delivery of optometric care. However, we have concerns with sections of the proposed draft rule which could limit the ability of practitioners to utilize telehealth modalities in the delivery of optometric care and urge the Board to reconsider the initial evaluations section before proceeding. Enacting this rule in its current form could significantly limit patient access to care on behalf of Delaware licensed optometrists. Proposed section 5.2.4.4 as it is currently drafted in the proposed rules is below:

*5.2.4.4 All initial evaluations shall be performed face to face and not through telehealth or internet unless another Delaware-licensed optometrist or ophthalmologist is present at the originating site with the patient at the time of the diagnosis, or the provider meets the standard of service required by applicable professional societies in guidelines developed for establishing a health-care*

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*provider-patient relationship as part of an evidenced-based clinical practice in telemedicine.*

ATA Action's chief concern comes in the restrictions this rule would put in place on the ability of optometrists to perform initial examinations through telehealth by requiring these to be conducted "face to face." While this as a stand-alone requirement would allow for examinations to be conducted through synchronous telehealth modalities, the proposed rule goes even further to limit any initial examination "through telehealth or internet". We encourage the Board to confirm that optometrists have the same professional discretion to use telehealth and telemedicine to conduct initial examinations and establishing patient-provider relationships via either synchronous or asynchronous telehealth.

ATA Action believes that so long as the provider obtains the patient's consent for the use of telehealth services, verifies the patient's identity, and discloses his or her own identity and credentials—as already required by Delaware law—he or she should be able to use any appropriate telehealth modality that is sufficient to evaluate and treat the patient for the condition presented – whether it be a synchronous or asynchronous modality. Prohibiting patients and providers from establishing professional relationships using synchronous and asynchronous telehealth modalities will make it far more difficult for patients, especially the Delawareans who do not have access to internet speeds capable of operating synchronous video modalities reliably, to access high-quality care from their preferred providers. Instead of being able to establish new relationships with providers from convenient locations of their choice, many patients could be forced to take time out of their busy schedules and/or travel long distances to meet with those providers in person.

We also believe that this rule does not fully fulfill the intent of the legislature enumerated by the *Telehealth Access Preservation and Modernization Act of 2021* which amended the state health insurance code. Section 6003 (b) of the 2021 Telehealth Act reads "Health-care services delivered by telehealth and telemedicine may be synchronous or asynchronous using store-and-forward technology. Telehealth and telemedicine services may be used to establish a provider-patient relationship only if the provider determines that the provider is able to meet the same standard of care as if the health-care services were being provided in-person." State law requires group health insurance to reimburse for telehealth care conducted using asynchronous modalities, as long as the standard of care is met. ATA Action suggests that the Board follow the intent of the legislature to ensure that patients have access to services using asynchronous modalities when appropriate.

In addition to not conforming with legislative intent, this rule would also be more restrictive than recognized industry policy. In their *Position Statement Regarding Telemedicine in Optometry* the American Optometric Association (AOA) states: "The American Optometric Association defines telemedicine in optometry as the remote provision of eye, adnexa, visual system and related systemic health care services (collectively "eye, health, and vision services"). Asynchronous and synchronous technologies can be used to provide this type of care including videoconferencing, internet-based services, store-and-forward imaging, streaming media, and terrestrial and wireless

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communications.”<sup>1</sup> ATA Action believes the Board should heed the policy direction of the AOA and ensure that providers can utilize asynchronous modalities to care for their patients.

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 location. In these instances, 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. The proposed rule provides for one example of this by requiring the presence of a licensed eye-care provider at the originating site with the patient during a telehealth encounter if the standard of care cannot be fulfilled through telehealth alone. Our organization believes 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.

Thank you for this opportunity to comment. We encourage you and your colleagues to consider changes to these rules to address the concern above before moving forward. Please let us know if there is anything that we can do to assist you in your efforts to adopt practical telehealth policy in Delaware. 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

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<sup>1</sup> *Position Statement Regarding Telemedicine in Optometry*, American Optometric Association, 2022.  
[https://www.aoa.org/AOA/Documents/Advocacy/position%20statements/AOA\\_Policy\\_Telehealth.pdf](https://www.aoa.org/AOA/Documents/Advocacy/position%20statements/AOA_Policy_Telehealth.pdf)

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