



November 14, 2023

Speaker Mike Johnson
United States Capitol
Washington, DC 20515

Minority Leader Hakeem Jeffries
United States Capitol
Washington, DC 20515

RE: ATA Action and American Telemedicine Association (ATA) Top Policy Priorities: Looking Ahead to Permanency

On behalf of ATA Action, the American Telemedicine Associations affiliated trade association focused on advocacy, thank you for your ongoing support for telehealth and extending these critical flexibilities through CY2024. As we quickly approach the end of CY2023, we urge Congress to begin preparing for next year's telehealth "super bowl."

ATA Action's top priority is to make permanent all of the Medicare telehealth flexibilities implemented during the COVID-19 public health emergency (PHE). Telehealth plays a critical role in our evolving healthcare system by expanding access to care, reducing costs, and mitigating the negative impact of provider shortages, effectively making the health care system more efficient.¹ We hope Congress will take permanent action to ensure patients across the country have access to safe, affordable, and effective health care where and when they need it.

To that end, we ask for your leadership in facilitating a pathway to comprehensive permanent telehealth reform that would provide certainty to beneficiaries and our nation's health care providers. Specifically, we ask that Congress:

Make Permanent the Medicare Telehealth Flexibilities Implemented During the PHE, including:

- **Removal of Antiquated Geographic and Originating-Site Restrictions**
Prior to the pandemic, a patient had to be in a designated rural area and in a healthcare clinic to qualify to receive reimbursable telehealth services under the Medicare program. During the PHE, the United States Department of Health and Human Services (HHS) waived these restrictions, thus allowing patients in any geographic area (not just rural) to receive telehealth services in any location, including in their homes. We urge Congress to permanently remove the Section 1834(m) geographic and originating-site restrictions to ensure that all patients can access care where and when they need it.
- **Ensure that Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) Continue to Furnish Telehealth Services**
FQHCs and RHCs provide critical health care services for underserved communities and populations across the United States. During the pandemic, FQHCs and RHCs served as distant sites and were reimbursed for telehealth services. ATA Action urges Congress to ensure that the roughly 1,400 FQHCs and 4,300 RHCs can continue offering telehealth services permanently while receiving fair reimbursement.

¹ [PRINT ATA-TAW-Hill-Day-handout_9.11.23.pdf \(americantelemed.org\)](#)

- **Permanently Expand the list of eligible Medicare providers**
During the pandemic, physician therapists, speech-language therapists, occupational therapists and audiologists were able to provide telehealth services and be reimbursed by Medicare. ATA Action is supportive of this flexibility and believes all practitioners should have the option to utilize virtual care when clinically appropriate and be reimbursed for the services rendered.
- **Maintain Audio-only Coverage**
Congress and the Centers for Medicare and Medicaid Services (CMS) have expanded access to care since the pandemic, specifically for those lacking broadband or elderly individuals, by temporarily covering audio-only services. ATA Action is modality, service, and provider neutral, meaning we believe any licensed provider should have the option to utilize different technologies to deliver care services so long as it meets the standard of care and is clinically appropriate. For this reason, we encourage Congress to ensure audio-only coverage is maintained permanently.
- **Repeal the Telemental Health In-person Requirement**
ATA Action applauds Congress for expanding access and allowing telemental health services to be a permanent part of the Medicare program through its passage of the Consolidated Appropriations Act, 2021, Pub.L. 116–260. However, also included was an unnecessary and unexpected guardrail, an in-person requirement. This provision, which would go into effect after 2024, requires providers to see their patients in person no more than six months prior to conducting a telemental health visit. ATA Action strongly opposes statutory in-person requirements, as they create arbitrary and clinically unsupported barriers to accessing affordable, quality health care. Requirements such as these could negatively impact those in underserved communities and populations who may not be able to have an in person exam due to provider shortages, work obligations, lack of childcare, and/or dearth of other resources. Over 160 million people in the US live in designated mental health professional shortage areas.² Many counties have no mental health professionals at all. We cannot ignore the importance of providing all Americans, regardless of whether they have seen a provider in person, with the opportunity to access life-saving health care. As a result, we strongly urge Congress to enact **the Telemental Health Care Access Act (H.R. 3432)**, which would remove the statutory telemental health in-person requirement, allowing patients to receive care where and when they need it, especially when they are most vulnerable.

Fortunately, Congress agrees with the principles (above) in a bipartisan, bicameral fashion and have introduced numerous important pieces of legislation to make various flexibilities permanent. Our top priorities due to their comprehensive native and widespread support are the **CONNECT for Health Act (H.R. 4189, S. 2016)** and the **Telehealth Modernization Act** (re-introduction pending). We urge Congress to come together to pass permanency legislation well before the end of 2024.

² [Shortage Areas \(hrsa.gov\)](https://hrsa.gov)



Ensure Affordable Telehealth Services for the Commercially Insured

Americans with high-deductible health plans coupled with Health Savings Accounts (HDHP-HSAs) must meet minimum deductibles that are defined by statute before the cost of telehealth can be covered by their employer or health plan. Congress took swift bipartisan action as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 (P.L. 116-136) to ensure that more workers could receive covered telehealth services by allowing employers and health plans to provide pre-deductible coverage for such services. This commonsense policy helped ensure that families could access vital telehealth services — including virtual primary care and behavioral health services — prior to having to meet their deductible. In fact, according to a survey by the Employee Benefit Research Institute (EBRI), about 96 percent of employers adopted pre-deductible coverage for telehealth services as a result of this provision. We appreciate that Congress extended this flexibility through CY2024 but urge Congress to pass **the Telehealth Expansion Act (S.1001, HR 1843)**, which would permanently extend the exemption for telehealth services from certain high-deductible health plan rules. It is imperative that the 32 million Americans with HDHP-HSAs have the ability to continue using these lifesaving services. (See here for a [stakeholder letter](#) with over 90 signees in support of the legislation.)

Ensure Affordable Telehealth Coverage for Part-Time, Contracted Workers Who Don't Qualify for Health Care Coverage

On June 23, 2020, the Labor, HHS and Treasury Departments jointly issued an FAQ pertaining to the Families First Coronavirus Response Act, the Coronavirus Aid, Relief, and Economic Security Act (CARES) and other health coverage issues.³ Specifically, it stated that the agencies would take a non-enforcement position for employers wishing to provide telehealth or other remote care services to employees ineligible for any other employer-sponsored group health plan for the duration of the PHE. This flexibility expires at the end of the current plan year, which is the end of this calendar year. Therefore, we urge Congress to act swiftly to either **extend this flexibility for three years or pass the Telehealth Benefit Expansion for Workers Act of 2023 (H.R. 824)** which would treat telehealth services as an excepted benefit. Until this legislation is enacted, millions of workers are at risk of losing access to critical health care services at the end of this year, if they haven't already. (See here for a [stakeholder letter](#) signed by over 30 organization in support of this legislation.)

Support the Removal of the In-Person Requirement for the Remote Prescribing of Controlled Substances

The Ryan Haight Act of 2008 requires a Drug Enforcement Administration (DEA)-registered practitioner to conduct at least one in-person exam of a patient before prescribing a controlled substance by means of the internet, including through telehealth. (See here for [more background information](#) on the Act.) During the pandemic, the DEA, in conjunction with Substance Abuse and Mental Health Services (SAMSHA), waived the in-person requirement for the remote prescribing of controlled substances. The agencies have extended the flexibility through CY2024. While acknowledging that this falls under the DEA's jurisdiction, we strongly encourage Congress to support a comprehensive solution on the removal of the in-person requirement for the prescribing of controlled substances. ATA Action believes these

³ [FAQS ABOUT FAMILIES FIRST CORONAVIRUS RESPONSE ACT AND CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT IMPLEMENTATION PART 43 \(cms.gov\)](#)



requirements act as significant barriers to care, especially for those seeking mental health and substance use disorder treatment. One of the ways Members of Congress can engage is by supporting the bipartisan, bicameral **Telehealth Response to E-Prescribing Addiction Therapy Services (TREATS) Act (H.R. 5163, S. 3193)** which would permanently remove this in-person exam requirement for the prescription of controlled substances for the use of substance use and opioid use disorders. This crucial bill will enhance access to essential healthcare services, especially for those seeking addiction treatment.

Thank you again for continued support of telehealth. Please reach out to kzebley@ataaction.org if you have any questions. We look forward to working with you and your staff to ensure the appropriate telehealth policies are implemented in a timely manner to allow enough time for providers to come into compliance and ensure certainty to care for patients across the nation.

Kind regards,

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

Kyle Zebley
Executive Director
ATA Action