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RE: ATA ACTION SUPPORT OF AND RECOMMENDATION REGARDING OUT-OF-STATE TELEHEALTH PROVIDERS RULEMAKING

Assistant Director Salow,

On behalf of ATA Action, I am writing you to express our support of the proposed rulemaking to Title 9, Chapter 16, Article 10, Out-of-State telehealth Providers and provide comments regarding a recommended change to the rule.

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 patients should be able to receive virtual care from their provider of choice, regardless of that provider's physical location, so long as the practitioners are utilizing the appropriate technology to uphold the established standard of care, are in good standing with their home states' regulatory boards, and are held accountable by the appropriate boards and state agencies should any issues arise from treatment. Permitting out-of-state licensed practitioners to acquire telehealth registration and deliver telehealth services to Arizona residents will help patients across the state connect with practitioners whenever and wherever their need for care arises, removing arbitrary geographical barriers that would limit Arizona patients' access to health care services. The ATA was supportive of Arizona HB 2454 in 2021, which codified the implementing statute, A.R.S. § 36-3606. We are likewise supportive of this proposed rule which will serve as a logical step forward for telehealth policy in Arizona by removing geographic barriers for otherwise qualified, licensed providers in the radiologic technology, licensed midwifery, audiology and speech-language pathology spaces. By allowing providers in these professions

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who are qualified and already licensed in other states to offer care in Arizona, the Board will leverage a national telehealth provider network and improve access to care in the state.

While ATA Action supports this proposed rule, there is a small language change that the Board should consider making to better align with interstate telehealth laws. In all fifty states, telehealth providers are subject to the laws of the “originating site,” which is where the patient is physically located, not where the practitioner is physically located. This ensures that states can regulate the care being provided to their own residents within their own state boundaries. As currently drafted, section R9-16-1006-C. states: “A registered health care provider is subject to state laws and rules governing scope of practice and practice guidelines established in Arizona and in the state of licensure.” While in practice this is a true statement, Arizona law can only enforce, and should only refer to, the practice laws of Arizona and not practice requirements in other states.

Without additional clarity, we anticipate potential issues with conflict of laws where other states' professional requirements might differ, causing confusion for telehealth providers. Furthermore, this requirement goes beyond the statutory intent of A.R.S. § 36-3606, which only requires that out-of-state providers seeking telehealth registration need to maintain professional liability insurance in both Arizona and their home state. Therefore, we encourage the Board to amend R9-16-1006-C. to remove the final part of the sentence reading “and in the state of licensure.”

Thank you for the opportunity to comment. We urge you to adopt this proposed rule and consider the change suggested above in order to expand Arizona patients' access to high-quality, affordable health care. Please do not hesitate to let us know how we can be helpful in your efforts to advance common-sense telehealth policy in Arizona. 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 rectangular background.

Kyle Zebley
Executive Director
ATA Action