



March 7, 2024

Ohio Department of Mental Health & Addiction Services
30 East Broad Street, 36th Floor
Columbus, OH 43215-3430
MH-SOT-CertServ-rules@mha.ohio.gov

RE: ATA ACTION COMMENTS ON PROPOSED AMENDMENTS TO RULE CHAPTER 5122-26

On behalf of ATA Action, I am writing to provide comments on the Department's rulemaking to amend and reorganize its telehealth rule OAC 5122-29-31 as a new section OAC 5122-26-22.

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 coverage and fair payment 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 appreciates that the revised rule maintains positive telehealth rules for ensuring providers can establish a patient relationship without an in-person examination when appropriate and keeps modality neutral language for synchronous and asynchronous services available to Ohioans. Given that telehealth utilization rates for mental health services remain particularly high, it is vitally important that state regulations support access to these services while maintaining appropriate language around protecting patients.

However, section 5122-26-22(Q) places an overly restrictive barrier on care, requiring providers to have at least one physical brick and mortar location in Ohio or “have access to a physical site” in Ohio where patients may receive in person services. Although ATA Action fully supports the Department's intent to ensure patients have access to in-person services when preferred by the patient or required under the standard of care, the Department should consider there are many innovative, effective mental health and addiction treatment telehealth provider organizations that do not maintain brick and mortar patient treatment locations. Not maintain a brick and mortar location allows for a broader array of cost-effective treatment options available to patients (multiple such providers offer services to Medicaid patients). Unfortunately, subsection 22(Q) categorically excludes these options to Ohioans.

Instead, ATA Action recommends making a small language change to 22(Q) to require that providers have protocols in place to refer a patient to in-person services within the patient's geographic area. Indeed, this would align the rule with the recommendation on telemedicine best practices by the Federation of State Medical Boards, which states “If an evaluation requires additional ancillary diagnostic

ATA ACTION

901 N. Glebe Road, Ste 850 | Arlington, VA 22203
Info@ataaction.org



testing under the standard of care, the physician must complete such diagnostics, arrange for the patient to obtain the needed testing, *or refer the patient to another provider*” [emphasis added].¹

Thank you again for your consideration of these comments. Please let us know how we can be helpful in your efforts to adopt common-sense telehealth policy in Ohio. If you have any questions or would like to discuss further the telehealth industry’s perspective, 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 background.

Kyle Zebley
Executive Director
ATA Action

¹ *The Appropriate Use of Telemedicine Technologies in the Practice of Medicine*, Federation of State Medical Boards, page 7 (April 2022), <https://www.fsmb.org/siteassets/advocacy/policies/fsmb-workgroup-on-telemedicineapril-2022-final.pdf>.

ATA ACTION

901 N. Glebe Road, Ste 850 | Arlington, VA 22203
Info@ataaction.org