



May 15, 2024

The Honorable Brett Guthrie
Chair of House Energy and Commerce Health Subcommittee
2125 Rayburn Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member of House Energy and Commerce Health Subcommittee
2125 Rayburn Office Building
Washington, DC 20515

Re: ATA Action Statement for the Record for House Energy and Commerce Health Subcommittee Markup

On behalf of ATA Action, the American Telemedicine Association's affiliated trade association focused on advocacy, thank you for your continued support of telehealth and holding this markup on important legislation that would extend many of the Medicare telehealth flexibilities, without inappropriate guardrails such as in-person requirements, ensuring access to lifesaving and effective care well after December 31, 2024. We also appreciate the Committee's tenacity to act on telehealth earlier this year rather than later to provide certainty for patients and providers across the country and provide U.S. healthcare systems enough time to implement appropriate virtual tools, technologies, programs, and processes moving forward.

ATA Action is supportive of the following bipartisan legislation up for consideration at the markup:

- **Amendment in Nature of a Substitute for Telehealth Modernization Act ([HR 7623](#))**
This legislation would extend many Medicare telehealth flexibilities through the end of CY2026 including audio-only coverage, waiving the originating and geographic site restrictions, allowing Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) to bill as distant site providers and be reimbursed at a fair rate, and allowing physical therapists, occupational therapists, speech-language pathologists, and audiologists to be covered for rendering telehealth services. The amendment would also further postpone the arbitrary in-person requirement for telemental health services. Reinstating this requirement could disrupt the 80% of Medicare beneficiaries who have chosen to see their providers virtually without an in-person visit. This is crucial, particularly at a time when our behavioral health providers are in short supply, and our communities are grappling with ongoing mental health challenges. Lastly, the innovative and critical Acute Hospital Care at Home Program would be extended for five more years. Although ATA Action would prefer to make these provisions permanent, we understand the current dynamics and support a two-year extension. We hope that as this bill progresses, the full committee will take a close look at the guardrails proposed, such

as the incident to modifier, to ensure they are feasible and will not lead to unintended consequences.

- **Amendment in Nature of a Substitute for PREVENT DIABETES Act ([HR 7856](#))** would allow all CDC-recognized delivery modalities, including virtual diabetes prevention platforms and suppliers, to participate in the Medicare Diabetes Prevention Program through the end of CY2026. Although ATA Action prefers the original legislative text, we do support this amended version. Enacting this legislation is imperative to help address the ongoing diabetes crisis in the United States which impacts 1 in 5 Medicare beneficiaries.
- **Expanding Remote Monitoring Access Act ([HR 5394](#))** A major hurdle for the remote monitoring industry over the past few years, specifically since the Public Health Emergency (PHE) ended on May 11, 2023, has been the 16-day data collection requirement over a 30-day period for remote patient monitoring and remote therapeutic monitoring technologies. During the PHE, CMS waived the 16-day requirement, lowering it to two days of data collection, which was found to be effective and cost-saving in many use cases. This legislation would extend the remote monitoring two-day data collection minimum over a 30-day period for two years. The remote monitoring industry is already on thin margins; therefore, we strongly urge the Committee to take the lead and advance this bill.
- **Amendment in Nature of a Substitute for Sustainable Cardiopulmonary Rehabilitation (CR) Service in the Home Act ([HR 1406](#))** would restore access to virtual cardiac and pulmonary rehabilitation services for hundreds of thousands of Medicare beneficiaries through CY2026. When many of the Medicare telehealth flexibilities were extended through the end of CY2024, this policy was unfortunately left behind, creating a tremendous gap in care. This flexibility allowed patients to complete cardiac and pulmonary rehabilitation programs from home rather than having to travel to a hospital, rehab center, or physician's office. Since its expiration at the end of the PHE on May 11, 2023, many of these virtual CR programs shut down. Unless Congress takes immediate action, these virtual CR programs will remain closed.
- **Supporting Patient Education and Knowledge (SPEAK) Act of 2023 ([HR 6033](#))** would require the HHS Secretary to publish guidance and best practices on services furnished via telehealth to individuals with limited English proficiency.

We urge immediate action to advance these bills out of the subcommittee and full committee to be considered on the House floor as soon as possible.

A few other ATA Action legislative priorities that have advanced and await House floor consideration include the:

- Preserving Telehealth, Hospital, and Ambulance Act ([HR 8261](#)) – unanimously passed out of the Ways and Means Committee last week. [See ATA Action’s statement of support here.](#)
- Telehealth Expansion Act ([S.1001](#), [HR 1843](#)) – would permanently allow individuals with HDHP-HSAs to receive telehealth coverage prior to meeting a deductible.
- Medicare Telehealth Privacy Act of 2023 ([HR 6364](#)) – would ensure all providers home addresses remain private.
- Telehealth Benefit Expansion for Workers Act of 2023 ([HR 824](#)) – would permanently allow telehealth to be an excepted benefit.

An additional telehealth priority supported by ATA Action that hasn’t been acted on to date and we believe if left omitted would lead to a tremendous gap in care is the remote prescribing of controlled substances:

- Before the pandemic, the Ryan Haight Act mandated an in-person visit before prescribing controlled substances via telehealth. This requirement was waived during the pandemic and is set to expire at the end of 2024. This has significantly increased access to essential treatments for millions of patients. The DEA is supposed to release proposed rules this year outlining a special registration process for telehealth prescriptions of controlled substances. This process could verify providers’ credentials and history to protect against misuse, allowing qualified providers to receive DEA approval for virtual prescribing. We kindly request that Congress continues to urge DEA to maintain these critical and lifesaving flexibilities by either publishing a special registration proposed rule soon or extending the current flexibility post-2024.

As Congress continues to contemplate telehealth policy post CY2024, we wanted to provide the Committee with key studies and research that dispel myths that telehealth leads to increased health care costs, overutilization, and is more susceptible to fraud, waste, and abuse than in-person care. For example:

- **Telehealth is Cost Effective:** Telehealth has been proven to reduce costs for hospitals and provider organizations, as well as for consumers. Several recent studies have shown that a telehealth consultation is as good as, and in some instances better than, in-person care. Telehealth also enables consumers to receive care sooner, hence reducing disease progression and costs of care.^{1,2,3}

¹ Li, KY, Kim, PS, Thariath, J, Wong, ES, Barkham, J, & Kocher, KE. (2023). Standard nurse phone triage versus tele-emergency care pilot on Veteran use of in-person acute care: An instrumental variable analysis. *Acad Emerg Med.*;30: 310-320.

² Ascension. (n.d.). Task Force on Telehealth Policy. <https://connectwithcare.org/wp-content/uploads/2020/08/Ascension-Telehealth-Data.pdf>

³ National Committee for Quality Assurance. (n.d.). Findings and Recommendations: Telehealth Effect on Total Cost of Care.

<https://www.ncqa.org/programs/data-and-information-technology/telehealth/taskforce-on-telehealth-policy/taskforce-on-telehealth-policy-findings-and-recommendations-telehealth-effect-on-total-cost-of-care/>

- **Telehealth Does Not Lead to Overutilization:** Telehealth has proven to reach vulnerable and underserved patients who otherwise would never have received care in the first place due to limited transportation, childcare, time off of work, etc. Many studies have proven that utilization of telehealth has decreased and leveled off since the midst of the pandemic.⁴
- **Telehealth is Not More Vulnerable to Fraud, Waste, and Abuse (FWA):** Telehealth is not more susceptible to FWA than in-person services. The Office of Inspector General (OIG) recently released a report that found Medicare telehealth did not increase fraud, waste, and abuse. Specifically, during the first nine months of the PHE -- March 2020 to November 2020 -- Medicare practitioners correctly billed for telehealth evaluation and management services in 95% of cases. There have been a few recent OIG and Department of Justice (DOJ) Medicare cases that have been mislabeled as “telefraud” when it is traditional telemarketing scams which have been around for decades. ATA Action does appreciate and understand this valid concern but there are ample safeguards in place at the federal and state level that ensure program integrity and protect against fraud, waste, and abuse – [see list of state and federal regulatory frameworks here](#).⁵

ATA Action is here as a resource and looks forward to continuing to work with the Committee to ensure that the appropriate telehealth policies are implemented in a timely manner without arbitrary and unnecessary barriers to care such as in-person, brick-and-mortar, or geographic requirements. Thank you for all your historic and current work on telehealth. Please reach out to kzebley@ataaction.org if you have any questions.

Kind regards,

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

Kyle Zebley
Executive Director
ATA Action

⁴ [Patients-Providers-and-Plans-Increase-Utilization-of-Telehealth-Recent-Stats-2.18-2.pdf \(americantelemed.org\)](#)

⁵ [Telehealth-Integrity.pdf \(americantelemed.org\)](#)