



February 3, 2025

The Honorable Jonathan Warrey
Chairman, House Industry, Business and Labor Committee
North Dakota Legislative Branch
1321 Morningside Drive
Casselton, ND 58012-3716

RE: ATA ACTION COMMENTS ON HB 1267

Dear Chairman Warrey and members of the House Industry, Business and Labor Committee:

On behalf of ATA Action, I am writing to you to submit comments for your consideration regarding the telemedicine provisions of HB 1267. Our organization encourages the Committee to amend this legislation before advancing the bill.

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 North Dakota House of Representatives for considering legislation which will clarify the appropriate use of telemedicine in the delivery of optometric care. However, we have major concerns with section 43-13-12.2.3. of HB 1267 which would require the initial patient relationship to be established through an eye examination conducted by a licensed optometrist with a physical location in the state. Passing HB 1267 in its current form is anti-competitive and will significantly limit patient access to care on behalf of North Dakotan licensed optometrists.

First, HB 1267's requirement for a physical location in North Dakota in order to establish an initial patient relationship via telemedicine contradicts current state code. North Dakota Century Code Section 43-17-44 clearly outlines that patient relationships can be established via telemedicine with no requirement for a physical location in the state. Rather, current statute requires that the examination or evaluation be "equivalent to and in-person examination." 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 North Dakota law—he or she should be able to use any appropriate

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telehealth modality that is sufficient to evaluate and treat the patient for the condition presented, including the establishment of a patient relationship. Prohibiting patients and providers from establishing professional relationships using telemedicine modalities without an in state physical location will greatly restrict patient choice and make it far more difficult for North Dakota patients to access high-quality care from their preferred providers. If faced with the decision of establishing a physical location in North Dakota or not providing care to North Dakota patients, telemedicine optometric care providers are more likely to opt for the latter, creating arbitrary, geographic barriers to care.

Instead, HB 1267 should be amended to remove the requirement for a physical location in the state to establish an initial patient relationship and conform to the provisions in North Dakota Century Code 43-17-44. Removal of this provision will better conform this section to the rest of the bill by allowing the standard of care to guide provider and patient relationships, not a protectionist physical location requirement. The standard of care dictates that if a telemedicine provider determines at any point, be that when establishing a relationship or later, that in-person care is required to treat the condition presented by the patient, that the provider must take steps to see the patient in person or direct the patient to receive in-person care. If a patient is comfortable establishing a relationship with a provider with no physical location in North Dakota, knowing that they may need to seek in-person care from a different provider based on their condition, the Legislature should not interfere and set arbitrary barriers to patient care. Furthermore, a physical location in the state does not guarantee convenient or easy access to in-person care should the need arise. For example, if an optometrist based in Fargo is treating a patient in Minot and the standard of care dictates a need for in-person care, the patient will face a choice of the long, and potentially costly, trip to Fargo or seeking care from another provider.

Finally, ATA Action encourages consideration of the policy principles enumerated in the Federation of State Medical Board's ("FSMB") most recent update *Model Policy for the Appropriate Use of Telemedicine Technologies in the Practices of Medicine*,¹ which was ratified by the organization in April 2022. Founded in 1912, The FSMB comprises over 70 state medical boards across the country and develops policy recommendations for the practice of medicine stemming from the expertise of its membership. In its "Standard of Care" section of the previously mentioned report, the FSMB articulates that "a physician patient relationship may be established via either synchronous or asynchronous telemedicine technologies without any requirement of a prior in-person meeting, so long as the standard of care is met." Professional healthcare boards across the country have endorsed this view, with no mention of in-state physical location requirements, and HB 1267's proposal to restrict patient relationships using telemedicine would set care back in North Dakota.

Thank you for this opportunity to comment. We encourage you and your colleagues not to move HB 1267 forward until changes have been made to address the concerns we raised above. Please

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



Telehealth Policy to Transform Healthcare

let us know if there is anything that we can do to assist you in your efforts to adopt practical telehealth policy in North Dakota. 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.

Kind regards,

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

Kyle Zebley
Executive Director
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