

June 27, 2025

Jordan Fisher Blotter
Director, Office of Regulation and Policy Coordination,
Maryland Department of Health,
201 West Preston Street, Room 534
Baltimore, Maryland 21201

RE: ATA Action Comments on Proposed Action [25-096-P]

Dear Director Fisher Blotter:

On behalf of ATA Action, I am writing you to comment on the proposed telehealth rules promulgated by the Maryland Board of Physicians in Proposed Action Notice [25-096-P].

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 Board of Physicians for promulgating updated rules which establish telehealth procedures for the state. These updated guidelines will provide additional clarity to patients and providers who wish to utilize telehealth to deliver and receive care, contributing to greater flexibility and healthcare outcomes for Maryland patients. However, ATA Action has concerns with certain provisions of the proposed regulations and recommends the Board address these issues before concluding the rulemaking process.

First, ATA Action is concerned that the proposed exclusion of audio-only telephone interactions from the definition of telehealth under Section .02(c)(i) would unnecessarily restrict access to essential health care services for many Maryland residents, particularly those in underserved, rural and digitally marginalized communities.

We strongly advocate for modality-neutral telehealth policies that empower providers to use any communication method that meets the standard of care for the condition presented by the patient. Audio-only telehealth has been proven an effective and often indispensable tool, especially in behavioral health, and it allows patients without reliable broadband, video-capable devices or digital literacy to receive timely, quality care.

Moreover, there is currently a discrepancy between the Board's proposed definition of telehealth, which excludes audio-only calls, and the recently passed Preserve Telehealth Access Act of 2025 (HB869/SB372), which explicitly includes audio-only telephone services as billable telehealth



service, creating confusion and regulatory inconsistency. By simply aligning the proposed definition with existing law, the Board would promote clarity and enable providers to continue offering audio-only services with confidence.

ATA Action is also concerned that Section .03 B of the proposed rule would seek to impose Maryland regulations on telehealth care provided in states beyond Maryland. This section reads “Telehealth practitioners licensed in the State are subject to the jurisdiction of the State and shall abide by the telehealth requirements of this chapter if either the practitioner or patient is physically located in this State.” Practically speaking, the proposed rule seems to indicate that a practitioner located in Maryland will be subject to Maryland healthcare practice laws and regulations even when treating a patient outside Maryland via the use of telehealth, pursuant to the laws and regulations of that state. To be clear, such a rule would be in conflict with the treatment of telehealth practice in all other states, which apply the practice laws of the jurisdiction where the patient is located and receiving treatment, not the location of the practitioner.

This would also contradict the legislative intent of the Maryland General Assembly. Maryland Health Occupations Code §1-1005 makes clear that telehealth practitioners must follow the laws and regulations that govern health care services in the State where the patient is located. This is in congruence with the Federation of State Medical Board’s Appropriate Use of Telemedicine Technologies in the Practice of Medicine guidance which reads “A physician must be licensed, or appropriately authorized, by the medical board of the state where the patient is located. The practice of medicine occurs where the patient is located at the time that telemedicine technologies are used. Physicians who diagnose, treat, or prescribe using online service sites are engaging in the practice medicine [sic] and must possess appropriate licensure in all jurisdictions where their patients receive care.”¹

Requiring Maryland-located telehealth practitioners to meet the requirements of both Maryland and the states in which they provide virtual care, even if no care is provided in Maryland, could have unintended consequences. The administrative burden and potential conflict in meeting dual requirements could dissuade telehealth providers from practicing out of state, negatively impacting patients in other states and providers based in Maryland. ATA Action encourages the Board to follow the path of several other Maryland boards (the Boards of Occupational Therapy Practice; Dietetic Practice; Examiners for Audiologists, Hearing Aid Dispensers, Speech-Language Pathologists, and Music Therapists; Podiatric Medical Examiners; and Examiners in Optometry) which proposed rules including similar regulations on outbound care and were withdrawn and repromulgated in 2023.

Additionally, we recommend that the Board update the proposed rule's language on prescribing opioids via telehealth to reflect the recently enacted Health Occupations §1–1003(c)(1)(III). This statute, as amended by the Preserve Telehealth Access Act of 2025, permits prescribing a Schedule II opiate for pain treatment through telehealth when there is an established bona fide practitioner-patient relationship in which the practitioner has ongoing responsibility for the assessment, care, and treatment of the patient, and the practitioner, or another provider in the same group practice, has previously conducted an in-person assessment of the patient. This important statutory update is

¹ Report of the FSMB Workgroup on Telemedicine, April 2022.

<https://www.fsmb.org/siteassets/advocacy/policies/fsmb-workgroup-on-telemedicineapril-2022-final.pdf>



Telehealth Policy to Transform Healthcare

absent from the proposed regulations, and its omission creates a risk of confusion or unintended regulatory noncompliance.

Finally, we wish to acknowledge the positive improvements made in the proposed rules regarding asynchronous care. The clearer definitions of asynchronous telehealth modalities reflect an understanding of evolving telehealth practices and offer important flexibility for providers and patients alike. This language represents a constructive step forward in modernizing Maryland's telehealth framework.

Given these concerns and the inconsistencies with recently enacted laws, we respectfully encourage the Board to reconsider the current proposed rulemaking and explore opportunities to revise the framework. A refreshed approach that more closely aligns with Maryland statute and reflects telehealth best practices would better serve patients, support providers and strengthen the state's health care system.

Thank you for your support for telehealth. Please let us know if there is anything that we can do to assist you in your efforts to adopt practical telehealth policy in Maryland. 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", with a stylized flourish at the end.

Kyle Zebley
Executive Director
ATA Action