ata ACTION
Telehealth Policy to Transform Healthcare

September 12, 2024

Catherine Houle, MD
Board Chair
North Dakota Board of Medicine
4204 Boulder Ridge Rd, Suite 260,
Bismarck, ND 58503

Sandra DePountis
Executive Director
North Dakota Board of Medicine
4204 Boulder Ridge Rd, Suite 260,
Bismarck, ND 58503
sdepountis@ndbom.org

RE: ATA ACTION COMMENTS ON AMENDMENTS TO CHAPTER 50-02-15

Dear Chair Houle and Executive Director DePountis,

On behalf of ATA Action, I am writing to you to comment on the proposed amendments to Chapter 50-02-15 regarding telemedicine exceptions.

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.

While the exceptions proposed in new rule Chapter 50-02-15-03 build upon the commonsense licensure flexibilities in N.D. Cent. Code § 43-17-02.3, there are several changes the Board should consider in order to align the rule with common telemedicine regulation.

First, 50-02-15-03(1)(a) would require that physicians licensed in other states conduct an "in-person" patient encounter prior to any continuation of care services via telehealth in North Dakota. ATA Action recommends that this requirement instead be modality neutral. So long as the foreign state physician meets the standard of care and adheres to the laws for establishing patient relationships in that state, whether through an in-person or telehealth encounter, that physician should be allowed to provide reasonable follow-up care to their patients temporarily located in North Dakota. Indeed, North Dakota itself allows for provider-patient relationships to be formed via telemedicine;[1] (1)(a) would therefore function as a stricter requirement on care delivery than what the North Dakota legislature has determined necessary for in-state physicians and residents.

[1] N.D. Cent. Code § 43-17-44.

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This higher burden could have unintended consequences. For example, if a college student from North Dakota is attending college in Minnesota and establishes a relationship with a Minnesota provider via telehealth, under the current version of this rule, that provider would not be able to treat the student when they are home in North Dakota for summer or winter break as they have not had an otherwise clinically unnecessary in-person encounter. To correct this section, we recommend adopting the following edit:

a. The provider-patient relationship must have been established ~~at an in-person encounter~~ in a state in which the physician is licensed;

Additionally, similar to (1)(a) above, 50-02-15-03(1)(b) and 50-02-15-03(1)(c) place an unnecessary in-person modality restriction on physician services that aren't otherwise required of North Dakota licensed practitioners. As in the aforementioned college student example, patients who receive care outside of North Dakota via telehealth should not be subject to clinically unnecessary, annual in-person examinations in order to receive continuation of care services while in North Dakota. A suggested redline to correct this issue, along with an important clarifying change, is below:

b. Subsequent care may be provided to the patient via telehealth while the patient is in North Dakota if the care is logical and expected continuation of care previously provided in ~~an in-person encounter~~ in the state where the physician is licensed. If the patient is presenting with new medical conditions, or conditions that the standard of care dictates an in-person encounter is needed, patient must either return to the state in which the physician is licensed for care or must be referred to a North Dakota – licensed health care provider; and

c. The telehealth care to a patient located in North Dakota may continue for up to one (1) year after establishment of the provider-patient relationship in another state, after which an ~~in-person~~ encounter must take place in a jurisdiction where the physician is licensed before the telehealth may resume for another one (1) year.

We otherwise appreciate the Board's effort to expand the licensure flexibilities for out-of-state providers utilizing telehealth to include subsequent care, temporary care, preparation and practitioner-to practitioner consultations, which is in the best interest of patient care and will ensure that patients are able to access the care they need via telehealth with greater convenience and less cost. If the redlines above are incorporated into these amendments, they will be especially impactful for those who need follow-up care from a provider or care team following treatment in a different state and for patients with rare conditions that may have difficulty accessing the care they need in North Dakota. ATA Action supports the adoption of this new rule language generally, with the aforementioned changes included.

Thank you for the opportunity to comment. Please do not hesitate to let us know how we can be helpful to your efforts to advance common-sense telehealth policy in North Dakota. 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,

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

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Kyle Zebley
Executive Director
ATA Action

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