September 17, 2024

The Honorable Cathy McMorris Rodgers
Chair
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Frank Pallone
Ranking Member
2125 Rayburn House Office Building
Washington, D.C. 20515

Re: ATA Action Statement for the Record for House Energy and Commerce Mark-up

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 full committee 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 bipartisan Telehealth Modernization Act of 2024 (H.R.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. **ATA Action strongly supports these provisions, recognizing the essential role they play in expanding access to care for patients regardless of geographic location and allowing a broader range of healthcare professionals to provide 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. **ATA Action firmly endorses this postponement, as it maintains flexibility for patients and providers in delivering and receiving critical mental health services via telehealth.**

Lastly, the innovative and critical Acute Hospital Care at Home Program would be extended for five more years. **ATA Action strongly supports the extension of this program, recognizing its value in reducing hospital overcrowding and providing patients with the comfort and safety of receiving hospital-level care in their homes.** Although ATA Action would prefer to make these provisions permanent, we understand the current dynamics and support a two-year extension.

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

- Telehealth Expansion Act (S.1001, HR 1843)**:** Permanently allows individuals with HDHP-HSAs to access telehealth services before meeting their deductible.
- Medicare Telehealth Privacy Act of 2023 (HR 6364): Ensures the privacy of providers by keeping their home addresses confidential.
- Telehealth Benefit Expansion for Workers Act of 2023 (HR 824): Permanently classifies telehealth as an excepted benefit, enhancing access for workers.

We support the Preserving Telehealth, Hospital, and Ambulance Act (HR 8261), which unanimously passed out of the Ways and Means Committee (see ATA Action's statement of support here). ATA Action hopes that whichever telehealth package passes out of Congress this year includes critical policies outlined above including first dollar coverage of HDHP-HSAs. This important flexibility was extended in the 2022 omnibus along with the other Medicare telehealth flexibilities through the end of CY2024. Millions of employees are currently receiving this benefit and therefore, it cannot be left behind or a major gap in access will occur.

An additional, critical telehealth priority supported by ATA Action, which, like many other flexibilities, has been in place for nearly half a decade, is the remote prescribing of controlled substances. If left unaddressed, this issue could create a significant gap in care.

- Before the pandemic, the Ryan Haight Act required an in-person visit before controlled substances could be prescribed via telehealth. This requirement was waived during the pandemic and is set to expire at the end of 2024, significantly improving access to essential treatments for millions. The DEA is expected to propose rules this year for a special registration process for telehealth prescriptions of controlled substances, which could verify providers' credentials and protect against misuse.
- Even if this provision is not included in the current legislation, it is essential that the committee works with fellow House and Senate members and the White House to prevent a foreseeable and preventable public health crisis when the current waiver ends. Countless American lives are at stake. The continuity of care for vulnerable Americans is threatened, potentially forcing providers to abandon patients mid-treatment due to federal inaction.
- We urgently request that Congress press the DEA to sustain these vital flexibilities by issuing a special registration proposed rule and extending the current waivers for two more years, alongside other Medicare telehealth flexibilities. With limited time left in the year, prescribers, patients, and stakeholders are not equipped to adapt to a new rule immediately. **ATA Action would strongly support an amendment that extends the current remote prescribing of controlled substances flexibilities for another two years.**

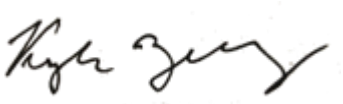
As Congress continues to contemplate telehealth policy post CY2024, we wanted to provide the Committee with key studies and research that dispel myths that telehealth leads to increased health care costs, overutilization, and is more suspectable to fraud, waste, and abuse than in-person care. For example:

- **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.[123]
- 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,



Kyle Zebley
Executive Director
ATA Action

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[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-Telehealth-Data.pdf (connectwithcare.org)
[3] Taskforce on Telehealth Policy Findings and Recommendations – Telehealth Effect on Total Cost of Care - NCQA
[4] Patients-Providers-and-Plans-Increase-Utilization-of-Telehealth-Recent-Stats-2.18-2.pdf (americantelemed.org)
[5] Telehealth-Integrity.pdf (americantelemed.org)