



August 20, 2024

Tina Carpentier,  
113 State House Station,  
Augusta, ME 04333  
[tina.carpentier@maine.gov](mailto:tina.carpentier@maine.gov)

**RE: ATA ACTION COMMENTS ON PROPOSED RULE NUMBER: 2024-P213 to -P217**

Dear Ms. Carpentier,

On behalf of ATA Action, I am submitting the following comments regarding the Maine Board of Optometry Proposed Rule 2024-P213 to -P217, specifically the amendments to Chapter 3: License by Endorsements and Chapter 5: Telehealth Standards, Uses and Limitations.

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 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.

We believe that this proposed rule represents a step forward for Maine's telehealth policy and encourage the Board to adopt most of the rule without changes. The proposals in Chapter 5 align well with ATA Action's policy principles, embracing the same standards of care for in-person and telehealth patient encounters and not requiring an in-person examination if telehealth modalities can provide the information necessary to meet the standard of care. ATA Action also fully agrees with the Board that if the telemedicine modality is unable to provide the necessary clinical information, then the optometrist should advise in-person care for the patient. We appreciate the Board promulgating rules that will best facilitate patient access to care, allowing the standard of care and expert provider discretion to determine when or if an in-person exam is necessary. This flexibility will be especially beneficial for patients in rural and underserved areas, who are most susceptible to healthcare workforce shortages and care disparities, as the need to take time out of busy schedules and/or travel long distances to meet with providers in person will be reduced.

While the majority of the language in Chapter 5 is positive, there are two changes that we encourage the Board to consider in the interest of further expanding patient access to optometric care via telehealth and supporting provider discretion.

First, in section two of the proposed rule, audio-only telephone is explicitly excluded from the definition of telehealth. This does not align with Maine Statute, specifically Title 32 Chapter 34-A Subchapter 6 § 2447, which defines a synchronous encounter as being "conducted with interactive audio *or* video connection," meaning that audio-only telephone is included in the definition of synchronous telehealth services. While there may be limited circumstances where audio-only telephone care meets the standard of care for optometry, the decision over what modalities will meet the standard of care and best meet the needs of the patient should be left in the hands of licensed professionals. We encourage the Board to adjust the definition of telehealth in the proposed rule to reflect the permitted modalities by Maine's optometry statute.

**ATA ACTION**

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Second, ATA Action has concerns with Section 7 of Chapter 5 of the proposed rule which would require Qualified Technicians to be used if a licensed optometrist cannot see a patient in person. This would make it incredibly difficult for optometry care to be delivered via telehealth to patients receiving care from their home, work or anywhere other than a different optometry office where staff is already present. Licensed optometrists should be empowered to decide which patient encounters require in-person care by a licensed optometrist or physician, rather than having this decision directed by regulation. If the condition presented by the patient necessitates the assistance of a Qualified Technician for the delivery of telehealth care, then the optometrist should ensure that arrangements are made for such assistance or refer the patient to in-person care. However, in situations where that is not necessary to meet the standard of care, there is no reason to require certified staff to be present. The Board should rely on the judgement of professional optometrists to determine what personnel assistance is necessary to meet the standard of care in order to most effectively and efficiently serve the needs of patients.

Finally, ATA Action is happy to see the Board adopt language for a licensure by endorsement model which will help to break down arbitrary barriers to care along state lines and ensure qualified and licensed optometrists from across the country can easily treat Maine patients, increasing patient choice and helping to address healthcare provider shortages. However, we do have concerns with the Board's decision to grant itself "discretion" on issuing licenses to applicants via this model. Recently effective Maine Statute, 32 M.R.S.A. § 19303, grants the Board authority to establish a licensure by endorsement process but provides no mention of discretionary authority to approve or deny applicants. As detailed in statute, qualified optometrists that meet the requirements for licensure by endorsement should be granted licensure without the need for discretionary approval from the Board. We recommended the deletion of the text "at its discretion" from the proposed rule before it is finalized to best align Board regulation with established statute and procedure.

Thank you for your support of telehealth. We encourage you and your colleagues to adopt this proposed rule and consider the small changes outlined above better facilitate easy and efficient access to high-quality health care services in Maine. Please do not hesitate to let us know how we can be helpful to your efforts to advance common-sense telemedicine policy. If you have any questions or would like to discuss the telemedicine industry's perspective further, please contact me at [kzebley@ataaction.org](mailto:kzebley@ataaction.org).

Kind regards,

A handwritten signature in black ink, appearing to read "Kyle Zebley", written in a cursive style.

Kyle Zebley  
Executive Director  
ATA Action