

**MEMO TO:** ATA Members

**FROM:** Kyle Zebley, Senior Vice President, Public Policy

**DATE:** August 10, 2022

**RE:** Updates on the ATA and ATA Action's Policy and Advocacy Work

*This is a memo to our valued members providing a summary of the latest [federal](#) and [state](#) policy updates for the second quarter of 2022. Throughout the memo we outline important legislative and regulatory actions regarding telehealth policies that have taken place this last quarter. We appreciate your continued support and dedication to the ATA and ATA Action to help ensure appropriate telehealth policies are implemented across the United States.*

## **FEDERAL UPDATES**

This year has been filled with continued uncertainty for the telehealth community as we have been consistently waiting for the COVID-19 Public Health Emergency (PHE) to be renewed or for permanent congressional action.

### **Administration**

#### ***Public Health Emergency***

As we eagerly await Congressional action, we have been keeping our eye on the PHE, which was renewed once again on July 15 through October 13, 2022. The PHE is expected to be renewed again in October, since this expiration will fall right before this year's midterm elections.

#### ***Ryan Haight***

The ATA and ATA Action have been actively engaged with the Drug Enforcement Agency (DEA), Substance Abuse and Mental Health Service Administration (SAMHSA) and other related agencies on ensuring patients continue receiving access to critical and lifesaving medications and treatments via telehealth post-PHE. The Administration has [publicly noted](#) their support for the continuance of Medication Treatment Assistance (MAT) via telehealth without an initial in-person requirement after the PHE expires. We applaud the Administration for this important support but urge policymakers to ensure access for those receiving other medications, such as controlled substances specifically schedules II (stimulants only), III, and IV.

In March, the DEA sent the special registration proposed rule over to the Office of Management and Budget (OMB). While we are unsure as to the timing of a final rule, we have been assured by conversations with related agencies that the Biden Administration will do everything in its power to ensure patients do not lose access to these flexibilities even if the PHE were to end before the final special registration rule is published.

### ***Physician Fee Schedule***

The ATA and ATA Action are also engaged in responding to the annual Physician Fee Schedule (PFS) draft rule. The PFS determines the rates of reimbursement for the upcoming year for Medicare Part B. The proposed rule was released on July 7 and the ATA and ATA Action have been meeting with our members and outside stakeholders to collect feedback and comments. The proposed PFS rule includes a few key proposed changes that we will be commenting on:

- There is no mention of Remote Physiologic Monitoring (RPM) or amending the 16-day requirement, a key barrier to broader RPM adoption in the Medicare program.
- While there are new Remote Therapeutic Monitoring (RTM) codes, they come with limitations similar to those found in RPM codes.
- The rule includes the addition of new Category 3 telehealth codes, which will be in effect through the end of 2023.
- The rule envisions the implementation of the telehealth provisions of the Consolidated Appropriations Act (CAA) of 2022. This will continue reimbursement of the current telehealth flexibilities for 151 days post-PHE.
- The rule proposes the discontinuance of direct supervision. CMS seeks feedback on whether these flexibilities should continue beyond the PHE.
- The rule proposes the discontinuance of audio-only telehealth post-PHE.

The ATA and ATA Action will be submitting our comment letter in the coming weeks. The final rule is expected in November and all policies will be implemented starting January 1, 2023.

### **Congressional Action**

In addition to the telehealth provisions included in the omnibus that was passed in March, which extended the telehealth flexibilities implemented during the PHE 151 days post-PHE, and Congress has been acting swiftly to provide even more certainty for the telehealth community. On July 27<sup>th</sup>, the Advancing Telehealth Beyond COVID–19 Act ([H.R. 4040](#)) led by Representatives Liz Cheney (R-WY) and Debbie Dingell (D-MI) passed the House. This legislation would extend the following telehealth flexibilities until December 31, 2024:

- Geographic and originating sites flexibilities
- Expanded eligible practitioners
- FQHC and RHC telehealth coverage and reimbursement
- Delay of the in-person telemental health requirement
- Furnishment of audio-only telehealth
- Use of telehealth to satisfy Medicare face-to-face requirements for hospice recertification

H.R. 4040 passed the House with near unanimous support. However, the path for this legislation moving forward in the Senate is uncertain. The ATA and ATA Action are doing everything possible to advocate for the passage of this critical legislation. The [White House issued a statement in support of the legislation](#) so if it were to pass the Senate President Biden would sign it into law.

Unfortunately, both the funding omnibus and H.R.4040 have left out a few critical flexibilities including extending the High Deductible Health Plan (HDHP) and Health Savings Account (HSA) telehealth tax provision, extending the Ryan Haight Act in-person waiver for the remote prescription of controlled substances and allowing for telehealth to continue to be treated as an expected benefit. The ATA and ATA Action continue to fight to ensure these flexibilities are not left behind.

## **Federal Second Quarter Activities**

### ***Legislative***

- [Stakeholder Letter](#) in Support of Permanently Expanding Telehealth Options for Employees
- [Letter](#) in Support of HRSA OAT Programs
- [Response](#) to Senate Telemental Health Discuss Draft

### ***Regulatory***

- [Response](#) to HHS OASH Primary Care Request for Information
- [Letter](#) Urging the Administration to Extend the Public Health Emergency
- [Comments](#) in Response to Medicaid and CHIP Request for Information
- [Letter](#) on RPM/RTM in Response to Meeting with CMS

### ***Other***

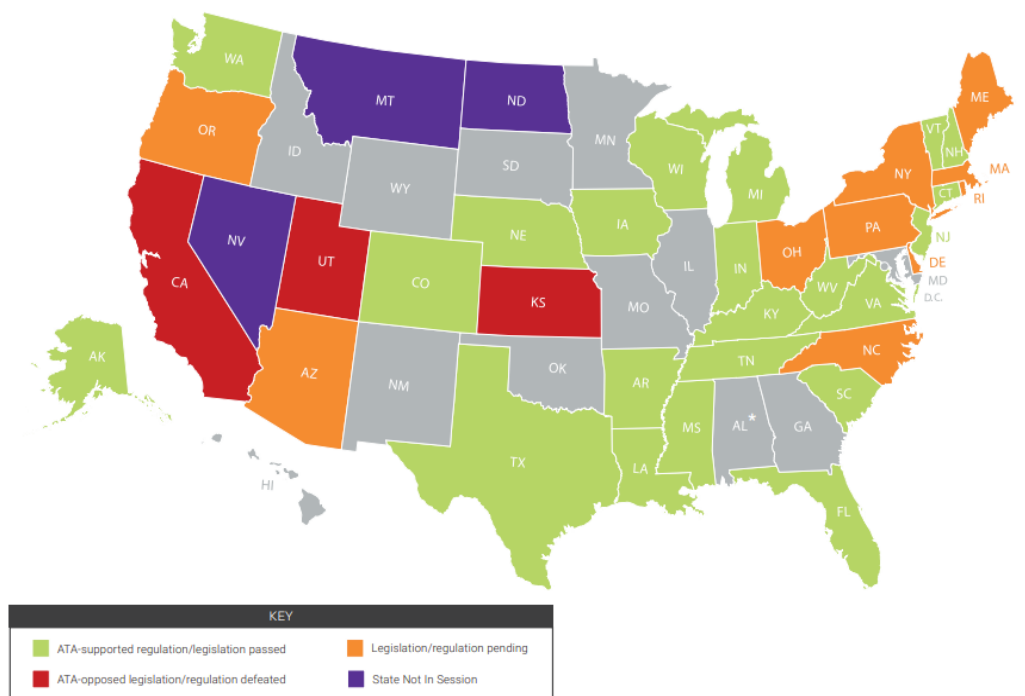
- ATA [Policy FAQs](#)
- [Recommendations](#) within the Medicare Advantage Program
- [Updated](#) ATA Recommendations on Ensuring Appropriate Treatment and Protecting Patients Through Online Prescribing
- Updated [Permanent Policy Chart](#)
- Updated [Federal Legislative Tracker](#) for 117<sup>th</sup> Congress

## STATE UPDATES

### ***Successes***

As many state legislatures are out of session for the year or as sessions are coming to an end, it has been yet another successful year for telehealth in many states. So far, this year over 1,500 telehealth bills have been introduced throughout all fifty states and 22 states with positive telehealth bills have been passed into law.

### **2022 SECOND QUARTER REPORT**



***Map as of 6/6/22***

There were many positive telehealth policies that different states implemented to expand access to care including:

- Modality neutral technology definitions
- Flexible cross state licensure models
- Expanding eligible provider types that can offer telehealth services
- Establishing a patient-provider relationship via telehealth (both sync & async)
- Expanded telehealth access for specific services
- Allowing the prescription of controlled substances via telehealth concurrent with federal law

A few exemplar states that have expanded access and implemented flexible telehealth policies are:

- **New Hampshire and Oregon:** Made clear that telemedicine includes asynchronous technologies and that practitioners may form clinically appropriate patient relationships via asynchronous technologies where clinically appropriate.
- **Florida:** Removed limitations to permit prescribing of certain controlled substances to new patients, where clinically appropriate and consistent with federal law

### ***Barriers to Expanding Telehealth***

Although, the ATA and ATA Action have had great success this year, we faced many headwinds and problematic trends brought to the forefront, including:

- **Modality Mandates:** Clinically unnecessary requirements stating that providers always use a certain technology to form a relationship or prescribe
- **Holding Telehealth to a Higher Standard with Clinically Unnecessary Barriers:** Imposing requirements on a telehealth care delivery setting that is not expected for in-person care
- **Not Considering Primarily Virtual Providers:** Certain state requirements (often in Medicaid) do not contemplate providers that -- even while licensed-- might not be in physical proximity to the patient
- **Prescribing of Controlled Substance Via Telehealth Requirements Exceeding Federal Law**
- **Limiting Providers Who Can Use Telehealth Consistent with Scope:** Limit the definition of telehealth providers or supervision requirements that don't account for technology

The ATA and ATA Action were able to successfully address many states trying to implement barriers to access, but we are prepared to continue our strong advocacy position for the rest of this year and into 2023 as more challenges arise.

### ***Model Policies***

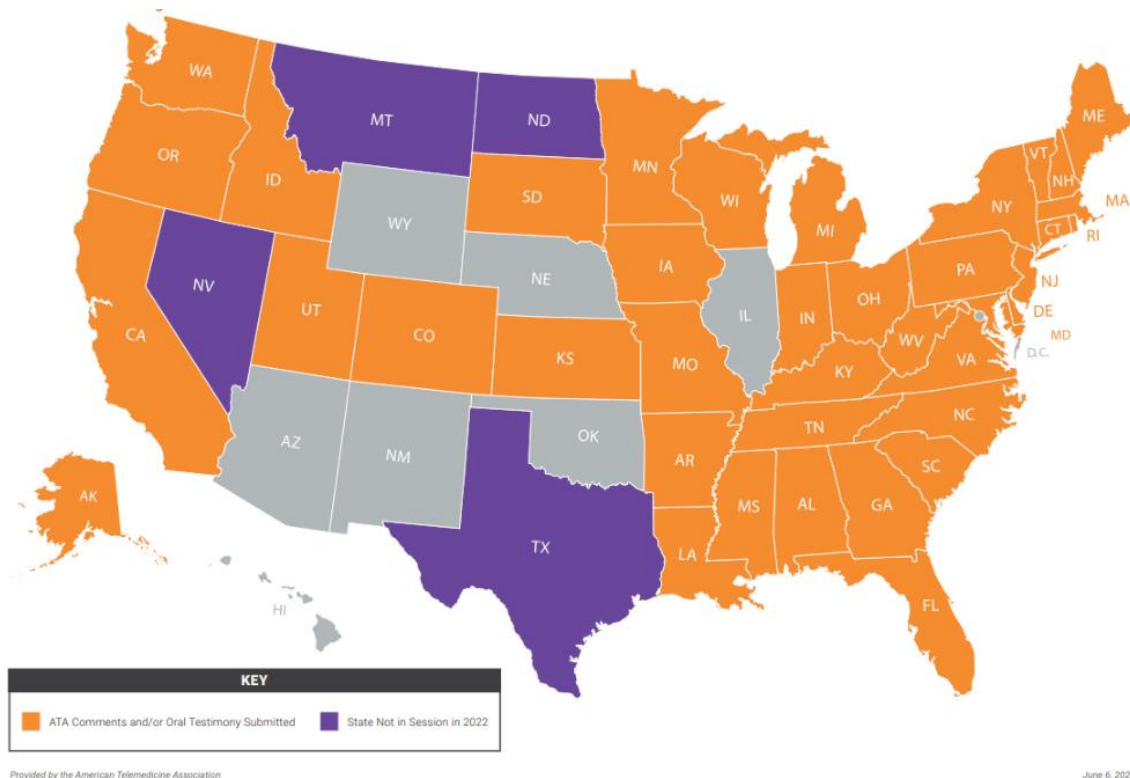
Two critical telehealth model policies were finalized this quarter: the Uniform Law Commission Uniform Telehealth Act and the Federation of State Medical Boards Model Policy for the Appropriate Use of Telemedicine Technologies in the Practices of Medicine. The ATA and ATA Action were key players in the development of these model policies and will use these as advocacy tools in the months and years to come.

- **[Uniform Law Commission Uniform Telehealth Act](#):** The Act includes many provisions that align with ATA's policy principles including technology and provider neutral language and a call for greater licensure flexibilities.

- **Federation of State Medical Board Updated Telemedicine Guidelines:** This model policy includes a technology neutral definition of telehealth, the ability to establish a patient/provider relationship via sync and async so long as the standard of care is met and additional technology-neutral policies, including prescribing medications via telehealth, that are in general agreement with ATA policy principles. For more details see the ATA's FSMB one-pager: [FSMB-Model-One-Pager.pdf \(americantelemed.org\)](https://www.americantelemed.org/FSMB-Model-One-Pager.pdf)

### State Second Quarter Activities

The ATA and ATA Action have submitted comments and/or orally testified in over 39 states so far this year.



*Map as of 6/6/22*

### ACTION ITEMS

- Please send any comments you'd like the ATA to include in our Physician Fee Schedule proposed rule letter to Alexis Apple ([aapple@americantelemed.org](mailto:aapple@americantelemed.org)) by Friday, August 12.

- The ATA will be commenting on the [Centers for Medicare and Medicaid \(CMS\) Medicare Advantage Request for Information](#). Comments are due August 31, 2022. Please send Alexis Apple ([aapple@americantelemed.org](mailto:aapple@americantelemed.org)) any comments you'd like us to consider.

## HOW TO STAY INVOLVED?

- ATA's Monthly Policy Webinar: The next policy webinar is coming up on August 18<sup>th</sup> at 1pm ET. You can sign up [here](#).
- Join the ATA's Government Relations SIG: The ATA launched our new Government Relations SIG earlier this year. This is a forum where likeminded stakeholders discuss the latest updates at the federal and state level. Click [here](#) to join now!

We hope you find this update helpful. You can also download this memo in .pdf format. We could not be as influential as we are on behalf of the industry without your continued support, and we extend our special thanks to our ATA Action partners, particularly the ATA Action Advocacy Council. Please contact Kyle Zebley or Alexis Apple should you have questions. You can reach us at [kzebley@americantelemed.org](mailto:kzebley@americantelemed.org) and [aapple@americantelemed.org](mailto:aapple@americantelemed.org).