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Dr. Chaudry:

On behalf of the American Telemedicine Association (ATA) I want to express our appreciation for the efforts of the Federation of State Medical Boards (FSMB) to develop a broad nationwide approach to the regulation of physician-based telemedicine services. We agree that the time has come to put in place guidelines for the country's 70 state medical boards that protect the safety of patients receiving remote medical services.

Over the past fifteen years ATA's members have worked with medical societies, government agencies and other parties to develop a series of practice guidelines as a basis for uniform, quality patient care and safety, grounded in empirical research and clinical experience. This supports the mission of ATA to promote professional, ethical and equitable improvement in health care delivery through telecommunications and information technology. Our triple priority has been to promote patient safety, increase the quality of care and expand access and patient choice in health services.

After carefully reviewing the FSMB draft proposal the ATA Board of Directors has developed a series of recommendations, which we strongly urge the Federation to consider. These recommendations are attached.

As with our practice guidelines, these recommendations are based on years of clinical and research experience by most of the nation's leading health systems and thousands of providers. Our recommendations reference specific sections in the proposal and provide a brief explanation why we are suggesting the change. We believe that these changes will strengthen the proposal and align various sections with current safe practices in telemedicine.

Sincerely,

Jonathan D. Linkous
Chief Executive Officer
American Telemedicine Association

Attachment: ATA Proposed Changes to the Model Telemedicine Policy

American Telemedicine Association

Proposed Changes to the

Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine

1 - Page 3 line 24
Proposed Change: Delete the sentence "Where appropriate, a patient must be able to select an identified physician for telemedicine services and not be assigned to a physician at random."
Reason: While the proposed policy uses the term "where appropriate" it is unclear regarding in what cases this might apply. This requirement conflicts with the current practices in ERs, urgent care centers and community health centers where patients are not provided the option of choosing their own provider.

2 - Page 3 line 30 to Page 4 line 2
Proposed Change: Delete the reference to telephone and email consultations and amend the two sentences to read "Telemedicine typically involves the application of secure videoconferencing or store and forward technology to provide or support healthcare delivery by replicating the interaction of a traditional, encounter in person between a provider and a patient."
Reason: ATA appreciates the concern by state medical boards that in many cases a video-based physician-patient interaction is critical to maintaining patient safety. However, for decades, physicians have routinely provided telephone consults for weekend coverage, follow-up care and in many other circumstances. Also, a growing number of the nation's largest medical systems have approved the use of secure email (sometimes called e-Visit) for communication with patients, even though such communications may not be covered as a fee-for-service payment. At least three states have included coverage for telephone-based consults under their Medicaid plans. Although there is an important move toward the use of video in providing telemedicine consults, the fact remains that the telephone is an important tool for current patient interactions. This year it is estimated that approximately 250,000 telephone-based consultations will be made by two web-based providers alone. Use of the word "generally" in the existing language does not clarify the problem of a rigid policy disallowing any use of telephones or emails as telemedicine. State policies that prohibit any such use could set back the practice of medicine and significantly limit the delivery of care.

3 – Page 4 line 11
Proposed Change: Delete sentences "A physician must be licensed, or under the jurisdiction, of the medical board of the state where the patient is located. The practice of medicine occurs where the patient is located at the time telemedicine technologies are used."
Reason: This statement would prohibit a state medical board from entering into a reciprocal relationship with neighboring states or regions regarding state licensure whereby a license to practice medicine in one state is recognized by the other state. It is also in conflict with federal policy regarding physicians providing medical care for the nation's military.

4 – Page 4 line 29
Proposed change: Amend the existing sentence "Treatment, including issuing a prescription based solely on an online questionnaire, does not constitute an acceptable standard of care" to read "Treatment that includes issuing a prescription based solely on an online questionnaire should not be considered an acceptable standard of care without demonstrating the efficacy and patient safety of the process and maintaining a physician's responsibility for ultimate diagnosis and treatment."

Reason: A growing number of providers and health systems are incorporating evidence-based clinical pathways that incorporate a patient's information and relevant medical history and branch-tree logic software that guides the provider who maintains the ultimate responsibility for making a diagnosis and treatment plan. While such approaches are early in development it would appear inappropriate to limit the potential positive impact on patient care through fiat.

5 - Page 5 line 1
Proposed Change: Amend the section titled "Informed Consent" to read
"Disclosing Information and Informing the Patient"
Evidence documenting patient education prior to the start of a telemedicine encounter must be obtained and maintained. Appropriate information should include such items as:

- Identification of the patient, the physician and the physician's credentials;
- Types of transmissions permitted using telemedicine technologies (e.g. prescription refills, appointment scheduling, patient education, etc.);
- The patient understanding that the physician determines whether or not the condition being diagnosed and/or treated is appropriate for a telemedicine encounter;
- Details on security measures taken with the use of telemedicine technologies, such as encrypting data, password protected screen savers and data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy notwithstanding such measures; and
- Express patient consent for forwarding patient-identifiable information to a third party."

Reason: Informed consent is not required for patients seeing a physician within the office and the majority of state medical boards do not have any informed consent requirements. Therefore, this adds a new level of requirement that does not appear warranted. However, ATA believes it is important that the patient must be appropriately informed and limitations disclosed and, therefore, suggests the language included above.

6 – Page 7 line 31
Proposed Change: Delete sentence "To further assure patient safety in the absence of physical examination, telemedicine technologies should limit medication formularies to ones that are deemed safe by [Name of Board]."
Reason: Specifying medication formularies are, in some states, the responsibility of the pharmacy board, not the medical board. Further, no standards have ever been developed regarding what formularies are "deemed safe" for remote prescribing, aside from federal restrictions of controlled substances. It would appear prudent to allow an appropriate determination to be made based on the specific patient circumstances, in line with existing standards of practice for each medical specialty.

Finally, it should be noted that the proposed policy does not address physician-to-physician consultations. Such specialty consults occurs every day using telemedicine and do not involve the same procedures as a physician-to-patient consultation. ATA has developed many practice guidelines governing such services and will be happy to share our experience and expertise in this area.