February 4, 2021

The Honorable Chuck Schumer
Majority Leader
United State Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, D.C. 20515

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, DC 20515

RE: ATA Letter to Congress on Ensuring Access to Quality Health Care in COVID Relief Legislation

Dear Congressional Leaders,

On behalf of the American Telemedicine Association (ATA), thank you for your commitment to thoughtfully considering commonsense telehealth policy and for acting quickly at the beginning of the COVID-19 Public Health Emergency (PHE) to ensure access to telehealth services. We write today to urge Congress to include permanent telehealth reforms in any subsequent COVID-19 relief legislation. We further recommend a number of targeted provisions that should be passed into law now to ensure Americans do not lose access to care.

As the only organization exclusively devoted to expanding access to care through telehealth, the ATA appreciates the opportunity to share with Congress our federal policy priorities for 2021. During the COVID-19 PHE, telehealth has finally become a reality for millions of Americans out of necessity. This has been possible because of swift, decisive actions by Congress and the Department of Health and Human Services (HHS). However, unless Congress acts again before the end of the PHE, telehealth access will vanish for millions of Medicare beneficiaries overnight. As you consider how to address this looming telehealth cliff, we request that you review ATA's Permanent Policy Recommendations as well as ATA's Federal Legislative Priorities.

During the PHE, America's health care system has heavily depended on telehealth technology, and ATA members have been proud to help ensure the continuity of care for American patients. The ATA urges Congress to remove existing statutory barriers that limit access to care. For far too long, 1834(m) of the Social Security Act has categorically excluded too many patients from even having the option to access care via telehealth because of the law's antiquated and arbitrary barriers whose only purpose is to limit access. The 1834(m) restrictions are nearing 20 years old, and by allowing them to persist, Congress will only punish Medicare beneficiaries by banning their access to the technology on which they have relied during the PHE. Further, the ATA urges Congress to take great care in considering the consequences of having restrictions specifically codified in statute as opposed to allowing these issues to be decided at the regulatory level. By explicitly and arbitrarily limiting care in statute through so-called "guardrails," legislators will unnecessarily stifle innovation and tie the hands of regulators, providers, and patients.

While the ATA appreciates Congress's recent actions to expand access to care, specific restrictions on patients, providers, services, or the modality of care in statute only adds to complexities in the health care system. In summary, the ATA has prioritized the following policies for the 117th Congress which should be included in any moving COVID-19 relief legislation:

- Permanently remove the geographic and originating site barriers in statute.
- The originating site should be wherever the patient is located, including but not limited to, a patient's home.
- Enhance HHS authority to determine appropriate telehealth services and providers.
- Ensure Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) can furnish telehealth and receive equitable reimbursement.
- Make permanent HHS's temporary waiver authority for future emergencies.

The ATA further recommends that the following targeted provisions be considered for inclusion in a moving COVID-19 proposal to ensure millions of American do not have access to care curtailed in the immediate future:

- Ensure regulatory flexibilities that have increased telehealth availability to Medicare recipients during the PHE remain in place until the end of the calendar year *after* the year in which the PHE ends.
- Remove the recently passed provision requiring a prior in-person relationship between practitioner and patient before a Medicare patient can access telehealth services for mental health care. While we appreciate Congress's interest in expanding access to this essential service post-pandemic, this unprecedented requirement will ultimately limit patients' access to care. Congress should instead continue to allow state licensing boards and practitioners to determine the appropriate standards of care for patients. As you know, a similar in-person requirement was included in the Coronavirus Preparedness and Response Supplemental Appropriations Act, which passed in March of 2020, and was then subsequently rescinded in the CARES Act following concerns that this type of requirement unnecessarily restricts care.
- Expand the FCC COVID-19 Telehealth Program, one of the most successful and widely supported federal funding mechanisms that enables providers across the country to scale virtual care programs in response to COVID-19. Even with the additional $249 million provided under the Coronavirus Response and Relief Supplemental Appropriations Act of 2021, there are still tremendous unmet needs to facilitate provider adoption, especially in rural and underserved communities. An additional $200 million should be allocated to the FCC COVID-19 Telehealth Program to equip providers across the nation to offer telehealth services.
- Extend the Telehealth Safe Harbor for HSA's and HDHP's. Section 3701 of the CARES Act created a temporary safe harbor that allows high-deductible health plans (HDHP) with a health savings account (HSA) to cover telehealth services prior to a patient reaching their deductible. This safe harbor allows HDHPs to offer cost-free telehealth services to plan members before the annual deductible is met, ensuring that plans can better support patients that are leveraging virtual care to access a range of critical health care services during the pandemic. Currently the safe harbor expires December 31, 2021 and applies to plan years beginning before January 1, 2022. Efforts to fight the pandemic will extend into 2022 and the safe harbor similarly should be extended through the end of 2022 and apply to plan years beginning before Jan 1, 2023 which will provide Americans with HDHPs enhanced access to high quality virtual care.
- Congress should ensure OIG is staffed and resourced appropriately to enforce the current laws that are intended to prevent fraud, waste, and abuse, including through

existing mechanisms like the Health Care Fraud and Abuse Control Program. Congress should urge OIG to develop fraud detection models, systems, and audit mechanisms to catch illegal prescribing and billing.

The ATA urges Congress to include these policy priorities in COVID-19 legislation and to actively engage with telehealth stakeholders, including telehealth providers, health systems, and patient advocacy organizations as you consider any potential legislative vehicle related to the delivery of health care services in the 117th Congress.

Should you have any additional questions, please know the ATA is honored to continue to be a resource for you and your staff. We are always happy, too, to connect you directly with ATA members and experts to answer specific questions related to how telehealth is working for Medicare beneficiaries. If you have any questions or would like to further discuss the telehealth industry's perspective, please contact kzebley@americantelemed.org.

Kind regards,

Kyle Zebley
Public Policy Director
American Telemedicine Association