



October 5, 2020

Washington Medical Commission  
P.O. Box 47866  
Olympia, WA 98504-7866

Dear Members of the Washington Medical Commission,

Americans for Vision Care Innovation is a bipartisan coalition of consumer and taxpayer groups, think tanks, and vision care companies who compete against each other in the contact lens marketplace. Together we represent the rights of the 46 million Americans who wear contact lenses, and we have worked closely with leading consumer, civic and medical organizations in states across the country to protect the rights of consumers to get prescriptions for contact lenses and glasses renewed online.

We are writing to express our concerns with the draft rule language for consideration released by the Washington Medical Commission (Commission) as part of the Telemedicine Rule Workshop Notice. Generally, we believe that the draft language aligns with the state's telemedicine payment law instead of general telemedicine practice law and guidance previously adopted by the Commission.<sup>1</sup> The intent of the telemedicine guidance is to allow practitioners to determine how best to deliver care to each individual patient, based on their unique medical history and needs. We agree that practitioners should use telemedicine as one of the tools in their tool box, and that any care delivered remotely should align with the standard of care for the same service provided in person. We believe that the draft telemedicine definitions and rules are tied too closely to reimbursement/coverage instead of appropriate clinical use.

The term telemedicine is generally accepted to include both the synchronous and asynchronous technologies. This includes recognition by both the American Medical Association (AMA) and American Telemedicine Association (ATA).<sup>2,3</sup> Additionally, the definitions of practice of medicine and store and forward technology should not include any reference to compensation. The Commission should expect practitioners to deliver quality care to a patient based on medical need and not on compensation. To this end, we propose the following changes in the definition section:

**Practice of medicine:** For the purposes of this rule, this is evaluation, diagnosis or treatment of a patient ~~for which the practitioner receives, or would reasonably be expected to receive, compensation in some form.~~ The practice of medicine occurs at the location of the patient.

**Telemedicine:** The practice of medicine and delivery of health care services through the use of ~~store and forward technology or~~ interactive audio and video technology, permitting real-time communication interaction between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. Telemedicine does not include the use of audio-only, telephone, facsimile, or email.

**Store and forward technology:** means use of an asynchronous transmission of a ~~covered person's patient's~~ medical information from an originating site to the health care provider at a distant site which results in medical

<sup>1</sup> "Appropriate Use of Telemedicine," Washington Medical Commission, <https://wmc.wa.gov/sites/default/files/public/Telemedicine%20Guideline.pdf>.

<sup>2</sup> "AMA Telehealth Quick Guide," American Medical Association, <https://www.ama-assn.org/practice-management/digital/ama-telehealth-quick-guide>.

<sup>3</sup> "Telehealth: Defining 21<sup>st</sup> Century Care," American Telemedicine Association, <https://www.americantelemed.org/resource/why-telemedicine/>.

diagnosis, and **management, or referral** of the **patient covered person**, and does not include the use of audio-only telephone, facsimile, or email.

We agree that a valid relationship must be established before a practitioner can deliver care to a patient through telemedicine services. As currently drafted, the proposed rule would require a real-time interaction even though this is not required under Washington State's telemedicine law. In fact, store and forward technologies can be used to establish a relationship, and are routinely used in many specialties. The AMA and ATA both recognize that a real-time interaction is not necessary for all services. The rule should recognize that synchronous and asynchronous technologies can be used to establish a relationship so long as the practitioner is meeting the standard of care for the delivered service. Finally, not all telemedicine technologies require approval by the Food and Drug Administration (FDA). Many technologies currently in the marketplace are predicated on a technology previously approved by the FDA and only require registration. We request that the rule be revised to recognize this distinction. As such, we propose the following changes to the draft rule language:

**1. Practitioner-Patient Relationship:** When practicing telemedicine, a practitioner ~~must~~ may establish a practitioner-patient relationship with the patient through direct and real-time communication **or store and forward technology** as defined in statute. Patient completion of a questionnaire does not, by itself, establish a practitioner-patient relationship. Treatment, including prescriptions, based solely on a questionnaire does not constitute acceptable standard of care.

We urge the Commission to make these simple yet necessary changes to the proposed telemedicine rule. Adopting these recommendations will allow Washington to continue to have the most flexible, forward thinking and pro-innovative telemedicine policies in the country.

Sincerely,

Americans for Vision Care Innovation

