



April 4, 2025

Deni Martin
Executive Secretary
South Dakota Board of Examiners in Optometry
13537 Dark Timber Ct.
Piedmont SD 57769
sdoptboard@outlook.com

RE: ATA ACTION COMMENTS ON PROPOSED AMENDMENTS TO 20:50:04:14

Dear Executive Secretary Martin and members of the South Dakota Board of Examiners in Optometry:

On behalf of ATA Action, I am writing you to submit comments for your consideration regarding proposed rule 20:50:04:14, the Rules for the Use of Telehealth in the Practice of Optometry. ATA Action strongly encourages the Board to consider changes before advancing this proposed rulemaking.

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 supports the enactment of state and federal telehealth policies to secure telehealth access for all Americans, including those in rural and underserved communities. 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.

ATA Action is supportive of many elements of the proposed rule which seeks to clarify requirements for the use of telehealth in the provision of optometric care to South Dakota patients. Specifically, ATA Action agrees that the same standard of care should be applied to the practice of optometry, whether the care is provided in-person or via telehealth. Our organization firmly believes that licensed providers should be able to use any modality that is sufficient to evaluate and treat the patient for the condition presented. Our organization also believes that patient consent to the use of telehealth is an essential step in the care process. However, despite the positive provisions of the proposed rule, the mandate for in-person care proposed within this rule needlessly limits patient access to care in a variety of ways.

South Dakota Codified Laws Chapter 34-52 “Telehealth Utilization by Health Care Professionals” clearly sets the parameters for health care professionals licensed in the state to practice using telehealth. Specifically, the statute permits the establishment of a provider-patient relationship “utilizing technology sufficient to evaluate or diagnose and appropriately treat a patient for the condition as presented in accordance with the applicable standard of care.”¹ The Board's proposed rule provision that requires a prior in-person consultation no more than three years prior to the date when telehealth services are provided is arbitrary, capricious and inconsistent with the governing telehealth statute. ATA Action—as well as the Federation of State Medical Boards and many other organizations—emphasize that health care professionals are best suited to diagnose and recommend treatment based on each individual patients'

¹ South Dakota Codified Laws [34-52-3](#). Provider-patient relationship required--Exceptions.



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condition. Unfortunately, the proposed rule would prohibit optometrists from using innovative new telehealth approaches that meet the same standard of care as in-person patients.

Moreover, prior in-person requirements will most adversely impact patients in rural and underserved communities who may not have convenient access to optometric care. Instead of being able to access care from licensed providers from convenient locations of their choice, many patients will be forced to take time out of their busy schedules and/or travel long distances to meet with those providers in person. This requirement also needlessly limits patient choice, restricting their care options to those to they have seen, or could easily see, in-person and preventing them from accessing the full menu of South Dakota licensed health professionals. Simply stated, it is anti-competitive.

In conclusion, we encourage you to remove the mandatory prior in-person care requirements of the proposed rule. Putting arbitrary in-person care requirements in place restricts patient choice, reduces patient access to care and takes care decisions out of the hands of licensed South Dakota providers.

Thank you for this opportunity to comment. We encourage you and your colleagues not to move forward with these rules until changes have been made to address the concerns we raised above. Please let us know if there is anything that we can do to assist you in your efforts to adopt practical telehealth policy in South Dakota. If you have any questions or would like to engage in additional discussion regarding the telehealth industry's perspective, please contact me at kzebley@ataaction.org.

Kind regards,

A handwritten signature in black ink, appearing to read "Kyle Zebley", written over a light gray circular background.

Kyle Zebley
Executive Director
ATA Action

ATA ACTION

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