

March 28, 2023

The Honorable Anne Milgram
Administrator
United States Drug Enforcement Administration
800 K Street NW Suite 500
Washington, D.C. 20001

RE: Telemedicine prescribing of controlled substances when the practitioner and the patient have not had a prior in-person medical evaluation (RIN: 1117-AB40)

Administrator Milgram:

Thank you for the opportunity to comment on the Drug Enforcement Administration rule on telemedicine prescribing of controlled substances. We are anxious to ensure continued access to care for patients with telehealth-based provider relationships that include a controlled substance, and appreciate finally having a proposal. However, as written we are concerned that it will substantially curtail access for patients.

As you know, the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 provides the Administrator, in conjunction with the Secretary of HHS with the authority to promulgate rules under which practitioners may prescribe controlled medications. It also permits the Attorney General to issue to a practitioner a special registration to engage in the practice of telemedicine if the practitioner demonstrates a legitimate need for the special registration and meets other DEA requirements.¹ The NPRM does not outline a registration process. In fact, it ventures into treatment decisions that should be up to a patient and their provider.

We write today to emphasize that there is a pressing and legitimate national need for the virtual provision of mental health treatment and request significant modifications to that effect. Connecting more Americans to mental health care is a key objective of President Biden's Mental Health Strategy,² which seeks to address the forty percent of American adults who report symptoms of anxiety and depression, and the thirty percent rise in the percent of children and adolescents with anxiety and depression.³⁴ Unfortunately, the broader behavioral health workforce is stretched (more than half of U.S. counties do not have a psychiatrist⁵), meaning that the goals of this plan are unlikely to be met without access to empowered virtual care.

Importantly, the Administration's work to address mental health and substance use disorder are closely linked, as 65 percent of all patients who had a substance use disorder or overdose diagnosis in 2021 had

¹ <https://www.law.cornell.edu/uscode/text/21/831>

² <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/01/fact-sheet-president-biden-to-announce-strategy-to-address-our-national-mental-health-crisis-as-part-of-unity-agenda-in-his-first-state-of-the-union/>

³ <https://www.kff.org/report-section/the-implications-of-covid-19-for-mental-health-and-substance-use-issue-brief/>

⁴ <https://www.hhs.gov/about/news/2022/09/01/back-to-school-hhs-announces-40-point-22-million-in-youth-mental-health-grants-awarded-in-august-plus-47-point-6-million-in-new-grant-funding.html>

⁵ <https://www.aamc.org/news-insights/growing-psychiatrist-shortage-enormous-demand-mental-health-services>

a preexisting mental health condition.⁶ Americans continue to rely heavily on telehealth for access to treatment for these mental health conditions, with it representing 62.5 percent of all telehealth treatment in December 2022.⁷

Recognizing the ongoing national need for more behavioral health access, the undersigned organizations request that the DEA make modifications to the proposed rule to ensure more flexible prescribing limitations for providers when a controlled substance is offered by a highly-trained clinician in conjunction with an ongoing mental health treatment plan.

Thank you for your consideration of this request. Please feel free to reach out to any signer of this letter for additional information and context.

Sincerely,

2020 Mom
Addiction Professionals of North Carolina
ADNP Kids Research Foundation
Advocacy & Awareness for Immune Disorders Association (AAIDA)
AlediumHR
Alliance for Connected Care
ALS Association
American Academy of Child and Adolescent Psychiatry
American Academy of PAs
American Association of Nurse Practitioners
American Association of Psychiatric Pharmacists (AAPP)
American Association on Health and Disability
American College of Clinical Pharmacy
American Counseling Association
American Foundation for Suicide Prevention
American Group Psychotherapy Association
American Psychiatric Association
American Telemedicine Association
American Urological Association
Amwell
Anxiety and Depression Association of America
Association for Behavioral Health and Wellness
Association of Children's Residential & Community services (ACRC)
AXYS, the Association for X and Y Chromosome Variations
Care Compass Network

⁶A Comparison of Substance Use Disorders before and during the COVID-19 Pandemic: A Study of Private Healthcare Claims <https://www.fairhealth.org/publications/whitepapers>

⁷ <https://www.fairhealth.org/states-by-the-numbers/telehealth>

Center for Freedom and Prosperity
Centerstone
Circle Medical - A UCSF Health Affiliate
Clinical Social Work Association
CLL Society
Depression and Bipolar Support Alliance
Encounter Telehealth
HD Reach
HealthLinkNow
IMPACT CAROLINA SERVICES, INC
IMPOWER
Integrated Telehealth Partners
International Society for Mental Health Nurses
Islamic Civic Engagement Project
Lakeshore Foundation
Let's Talk Interactive
Maternal Mental Health Leadership Alliance
Medical Group Management Association
Medical University of South Carolina
MedStar Health
Mend VIP, Inc.
Mental Health America
Michigan Neurological Association
Miles for Migraine
Minnesota Hospital Association
Mission: Cure
National Alliance of Healthcare Purchaser Coalitions
National Association of Pediatric Nurse Practitioners
National Health Care for the Homeless Council
National Health Law Program
National League for Nursing
New Jersey Association of Mental Health and Addiction Agencies, Inc.
Noma Therapy
One Medical
PAs in Virtual Medicine and Telemedicine
Prism Health North Texas
Psychiatric Medical Care
PursueCare
Senior Care Clinic House Calls
Sound Physicians
Stanford Health Care
Talkiatry

Telehealth Alliance of Oregon

The American Counseling Association

The Center of Opportunity LLC

The Local Health Council of East Central Florida, Inc.

URAC

UVA Health

Welliti

Western Interstate Commission for Higher Education - Behavioral Health Program

Cc: The Honorable Secretary Xavier Becerra, Department of Health and Human Services
Administrator Chiquita Brooks-LaSure, Centers for Medicare and Medicaid Services
Director Rahul Gupta, M.D. Office of National Drug Control Policy