March 31, 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 <u>https://www.law.cornell.edu/uscode/text/21/831</u>

² <u>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/</u>

³https://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-awardedin-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 **ACTNow for Mental Health** Addiction Professionals of North Carolina **ADNP Kids Research Foundation** Advocacy & Awareness for Immune Disorders Association (AAIDA) AlediumHR Alliance for Connected Care Alliance of Community Health Plans (ACHP) 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 Ambulatory Behavioral Healthcare Association for Behavioral Health and Wellness

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

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

Association of Children's Residential & Community services (ACRC) AXYS, the Association for X and Y Chromosome Variations **Care Compass Network** Center for Freedom and Prosperity Centerstone Children and Adults with Attention-Deficit/Hyperactivity Disorder Circle Medical - A UCSF Health Affiliate **Clinical Social Work Association CLL Society Collaborative Family Healthcare Association Depression and Bipolar Support Alliance Encounter Telehealth** HD Reach HealthLinkNow IMPACT CAROLINA SERVICES, INC IMPOWER **Integrated Telehealth Partners** Islamic Civic Engagaement Project Jewish Federations of North America 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 Disability Rights Network (NDRN) National Health Care for the Homeless Council National Health Law Program National League for Nursing Network of Jewish Human Service Agencies 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** Psychotherapy Action Network PursueCare Senior Care Clinic House Calls **SMART Recovery** 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. The Trevor Project 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