

Comments Show Aligned Concerns with the Drug Enforcement Administration Proposed Telemedicine Rule

Over 35,000 Americans provided comments on the Drug Enforcement Administration's (DEA) proposed rule, *"Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation."*

In comment letters responding to the DEA's proposed rule, hundreds of key stakeholders highlighted the need for a special registration for telemedicine and the dangerous impact on patient access the proposed rule has on millions of patients.

Fails to Implement a Telemedicine Special Registration

"This Notice of Proposed Rulemaking does not outline a registration process allowing the consistent prescribing of controlled substances via telemedicine despite the DEA's legal obligation to do so. After years of requests, multiple congressional directives and the DEA acknowledging it would "issues a separate rule" consistent with this obligation, the DEA still has not activated the special telemedicine registration...."

- Alliance for Connected Care

"We strongly disagree that the rule meets DEA's Congressional mandate to create a special registration pathway... The failure to create a special registration process for health care providers will likely lead to limited access to care and for less effective methods of identifying legitimate providers."

- Foley & Lardner LLP

"Most importantly, we urge the DEA to expeditiously set forth a special registration process regulation to identify a pathway to waive in-person evaluations prior to the prescribing of controlled substances for practitioners who register with the DEA. Further, **we strongly urge the DEA to extend the waivers for the in-person visit requirement for prescribing of controlled substances until the agency, with significant stakeholder input, develops and proposes such a process for prescribing controlled substances via telemedicine.**"

- American Hospital Association

"The Proposed Rule fails to implement the "special registration" originally called for in the Ryan Haight Act that would allow practitioners to prescribe controlled substances via telemedicine in limited circumstances."

- National Council for Mental Wellbeing

"This NPRM should not be a substitute for the congressionally mandated special registration required under the Ryan Haight Act and the SUPPORT Act. **ABHW is concerned that this rule does not satisfy multiple congressional directives for the DEA to establish a special registration process for providers to prescribe controlled substances via telemedicine.**"

- Association for Behavioral Health and Wellness

"We encourage the DEA to move forward with the special registration process, and create this pathway for healthcare providers to ensure that clinically appropriate services are available via telemedicine. **Creating a special registration process will enable clinicians who have established a legitimate clinician-patient relationship via telehealth to continue that relationship via telehealth, with additional safeguards, as contemplated in the Ryan Haight Act.**"

- American Association of Nurse Practitioners

Restricts Patient Access

"We recognize that the DEA has the responsibility to balance public health concerns, ensuring access to mental health and substance use treatment during the ongoing mental health and substance use crisis, while preventing inappropriate usage of controlled substances. **This proposed rule does not appropriately strike that balance, as it imposes in-person requirements that are not consistent with medical standards of care and that will create tremendous administrative burdens and will have a devastating effect on access to care for people with mental health and substance use disorders.**"

- Mental Health America

"We caution DEA in taking too many steps backward, re-imposing unnecessary limitations on the practice of medicine during an opioid public health emergency and nationwide mental health and access to care crisis. Fifty-five percent of U.S. counties have no psychiatrists, and 130 million people live in areas with a shortage of mental health providers. DEA has the opportunity to get the balance right by finalizing rules that facilitate, rather than prevent, access to high-quality care."

- American Psychiatric Association

"Many patients will be left without access to care, especially given the ongoing drug overdose crisis, the growing mental health crisis precipitated by the pandemic, and the shortage of behavioral health care providers. **Requirements for in-person visits to receive controlled substances will particularly have an impact on individuals who reside in rural areas, those with transportation barriers, and those suffering from mental health and addiction issues.**"

- Association of American Medical Colleges

"**The proposed rule is overly restrictive and would likely create more harm than benefit.** Specifically, the evidence to date does not support concerns about substantial medication diversion or misuse associated with prescribing of buprenorphine via telemedicine. We are concerned that the new rule would cut off access to buprenorphine for many patients and decrease the number of patients initiating MOUD. In doing so, the new policy could lead to increased overdose deaths"

- Brookings Institute

"Even before the pandemic, many patients had trouble getting in to see physicians for in-person visits ... In addition to capacity constraints for physician practices, patients may need a caregiver to accompany them or have their own caregiver responsibilities; they may face transportation barriers, difficulty in getting time off from work, and have health-related social needs, physical and mental health challenges, or disabilities that make it hard to get to in-person visits. Patients in rural and underserved communities face even more hurdles to access in-person care. **We have grave concerns that requirements for an in-person visit within 30 days would prevent many patients from beginning medication therapy.**"

- American Medical Association

"Patients faced challenges obtaining timely in-person care and refilling medications after recent crackdowns by pharmacies and regulators on some telehealth companies' prescribing practices. While the prescribing practices of these companies may have been inappropriate, **patients should not be left without access to the care they need. These operational and logistical challenges will be particularly overwhelming for physician practices who provide, and patients who need, certain types of care that are only provided by a small proportion of clinicians across the country.**"

- American Academy of Family Physicians

"At a time of heightened mental health needs – with key national associations and the U.S. Surgeon General having declared a crisis in youth mental health – these restrictions fail to strike the right balance between sustaining and increasing access to medically necessary treatment and preventing inappropriate prescribing of controlled medications... **Access to mental health treatment, including medications, via telehealth has been critical to overcoming these barriers.** Among specialties, psychiatry has the highest telehealth utilization for outpatient office visits, with half of all appointments occurring via telehealth in February 2021."

- Kennedy Forum /Legal Action Center

Stakeholder Letter with more than 60 organizations



Ignores Three Years of Evidence

"Recognizing three years of safe telehealth prescribing, **it is imperative that DEA strike a patient-centered balance to ensure the most vulnerable members of our communities** have safe and secure access to the care they need."

- House Energy & Commerce Committee Ranking Member Pallone (D-NJ)

"**Throughout the COVID-19 pandemic, patients and providers have been able to use telemedicine to manage a range of medications to address ongoing conditions.** In fact, telemedicine played an outsized role in behavioral health during the pandemic, with nearly a third of behavioral health outpatient visits delivered over telehealth for opioid use disorder and substance use disorder (OUD/SUD) conditions, and with rural residents even more likely to use telehealth for behavioral health conditions."

- AHIP

"**[W]ork 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 a preexisting mental health condition. 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.** ...the undersigned organizations request that the DEA make modifications 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."

- Coalition of more than 80 Mental Health Stakeholders

"Throughout the COVID-19 Public Health Emergency, 85% of psychiatrists provided telepsychiatry and reported lower no-show rates, improved patient satisfaction with treatment, and improved patient access to treatment. Telepsychiatry is a mode of treatment delivery with outcomes comparable to in-person service delivery and is increasingly being integrated into provider's standard practices. **The proposed rules include requirements that are inconsistent with the current practice of medicine.**"

- American Academy of Child and Adolescent Psychiatry

"**Since the beginning of the pandemic, new evidence about the impacts of telehealth on behavioral health care has emerged,** suggesting that there are both benefits and risks associated with prescribing controlled substances via telehealth. Congress should request HHS complete a formal evaluation of controlled substance prescribing behavior via telehealth, including medications for opioid-use disorder, as an assessment of the evidence during the pandemic."

- Bipartisan Policy Center

"This rule, as written, **overlooks the key benefits and lessons learned during the pandemic, and could counterproductively exacerbate the opioid crisis and encourage more risky behavior** by pushing patients to seek dangerous alternatives to proper health care, such as self-medicating, if they cannot access an in-person appointment."

- Senator Warner (D-VA)