

November 11, 2022

The Honorable Merrick B. Garland
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

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

Dear Attorney General Garland and Administrator Milgram:

Thank you for your action to advance proposed rules on the Special Registration for Telemedicine under the Ryan Haight Act to the Office of Management and Budget (OMB). On behalf of the undersigned organizations, it is our hope that these rules can be issued expeditiously and in a way that expands access to medical treatment via telehealth.

We are writing to call your attention to an urgent issue that will occur as a result of the timing gap between the finalization of the aforementioned rules and the imminent expiration of the COVID-19 public health emergency (PHE).

At the onset of the COVID-19 PHE, the DEA acted swiftly to ensure that adults and children could continue to access medically necessary controlled substances via telehealth by waiving the requirement that the patient have a prior in-person visit, regardless of their location, for the duration of the public health emergency. It will have been 3 years this upcoming March, since that flexibility was put into place, allowing numerous patients to have both been able to continue treatment via telehealth as well as newly establish treatment relationships. The ability to seek treatment virtually allowed many patients to access treatment and establish clinical relationships for the first time. Virtual care isn't just a stopgap until patients can see their provider again in person; for some, virtual care is the only option either due to socio-economic factors, convenience, or preference, or because a physical location just isn't available where they are. Accordingly, many relationships that were newly established during the pandemic were with telemedicine providers who practice according to the clinical, ethical and safety standards of their relevant clinical specialty but do not have a brick-and-mortar presence at all or near the patient's location. Moreover, many patients have since moved from the location their provider resides but continue the care plan with their provider of choice, that they have built a relationship with and trust with clinical decision-making. When the COVID-19 PHE ends and the in-person requirement goes back into place, these patients will have nowhere to turn, and many will end up with delayed or no care, and negative outcomes.

Given that the COVID-19 PHE is renewed every 90 days and could end as early as the beginning of 2023, and that the Special Registration proposed rules have not yet been published and will take additional time to finalize once they are, what is the DEA's plan to ensure that patients do not lose access to necessary treatment and medications in the interim? In particular, is there a plan for patients who are currently in treatment with a provider that does not have a brick-and-mortar presence?

Today's urgency on this issue need not exist. When the Ryan Haight Act was signed into law, the DEA issued an interim final rule that took effect a mere nine days after it was published. This process allowed no public comment to the regulations, nor did the rule create the special registration contemplated in the Ryan Haight Act. In 2009, the DEA acknowledged the Act included developing "a special registration relating to the practice of telemedicine," and promised it "will issue a separate rule promulgating regulations consistent with this directive." However, despite years of requests, and at least 10 different federal notices that a proposed rule would be published, the DEA never activated the special telemedicine registration.

Eventually, both Congress and the White House agreed the delay was unacceptable and signed into law the Special Registration for Telemedicine Act as a part of the SUPPORT Act, mandating the rules be published before Oct. 24, 2019. And yet, more than two years after that deadline, no regulations have been published. All this occurred well before the COVID-19 pandemic, and providers and patients have waited nearly 14 years for the DEA to take action.

As we have outlined in previous letters, the COVID-19 pandemic has made clear the importance of increased access to telehealth services. Patients and providers need both a long-term solution, hopefully in the promulgation of the Special Registration for Telemedicine rules, as well as a short-term solution until those rules are finalized. At a minimum, the DEA should:

- 1) Update its guidance about telemedicine to waive the prior in-person requirement for the duration of the ongoing opioid epidemic public health emergency issued by the Department of Health and Human Services on October 26, 2017. This way, providers offering treatment of substance use disorder and medication for opioid use disorder can continue doing so via telemedicine without their patients fearing that care will be terminated when the COVID-19 PHE waiver ends.
- 2) Propose a solution for those patients who have established a valid provider-patient relationship via telemedicine during the COVID-19 PHE that allows them to continue receiving legitimate medical treatment including controlled substances (e.g., exercise enforcement discretion to "grandfather in" an exemption for those patients from the in-person exam requirement when the COVID-19 PHE ends).
- 3) Propose a solution for those patients who will establish a valid provider-patient relationship via telemedicine before the Special Registration for Telemedicine is published and in effect, allowing them to receive legitimate medical treatment including controlled substances (e.g., exercise the same enforcement discretion from an in-person exam until such time as the Special Registration is active).

- 4) Continue to allow physicians and other practitioners who have at least 1 valid, active DEA license per the DEA's guidance on March 23, 2020 [here](#) to prescribe controlled substances to patients until the Special Registration is finalized and effective.
- 5) Provide a concrete timetable for when the Special Registration for Telemedicine proposed rule will be published, as well as the timeframe for when DEA will take public comment, publish the final rule, and the corresponding effective date of when those applications will be live.

Thank you in advance for your attention to this request and we look forward to working with you on these matters moving forward. If you have any questions, please contact [Kyle Zebley](#), Executive Director, ATA Action, [Brooke Trainum](#), Director, Practice Policy, American Psychiatric Association or [Alexis Geier-Horan](#), Chief of Advocacy and Practice Transformation, American Association of Child and Adolescent Psychiatry.

Sincerely,

2020 Mom
AlediumHR
Alliance for Connected Care
American Academy of Addiction Psychiatry
American Academy of Sleep Medicine
American Academy of Social Work and Social Welfare
American Association of Child and Adolescent Psychiatry
American Association of Nurse Practitioners
American Association of Psychiatric Pharmacists
American Group Psychotherapy Association
American Mental Health Counselors Association
American Psychiatric Association
American Telemedicine Association
Anxiety and Depression Association of America
Arizona Society of Child and Adolescent Psychiatry
Array Behavioral Care
Association for Behavioral Health and Wellness
Association of Puerto Rican Child and Adolescent Psychiatrists
ATA Action
Atlanticare
Babylon
Bay Rivers Telehealth Alliance
Bicycle Health
Bluebonnet Trails Community Services
California Academy of Child and Adolescent Psychiatry
Cancer Support Community
Care Compass Network
Centerstone
Child and Adolescent Psychiatric Society of Greater Washington

Circle Medical - A UCSF Health Affiliate
Colorado Child & Adolescent Psychiatric Society
Colorado Sleep Institute
Columbia University Irving Medical Center
Connected Health Initiative
Deerbrook Counseling Services
Delaware Council of Child and Adolescent Psychiatry
Digital Therapeutics, Inc. (d/b/a Quit Genius)
DreamCloud Psychiatry
EPOWERdoc, LLC
Faces & Voices of Recovery
Field Trip Health & Wellness Ltd.
FOLX Health
Georgia Council on Child and Adolescent Psychiatry
Greater Kansas City Regional Organization
Healing Maps
Healthcare Leadership Council
HealthyWomen
Hone Health
Illinois Council of Child and Adolescent Psychiatry
Included Health (Doctor On Demand + Grand Rounds Health)
Indiana Council of Child and Adolescent Psychiatry
Inflow
Inseparable
International OCD Foundation
Kentucky Academy of Child and Adolescent Psychiatry
Lifepoint Health
Lifespring Health Center
LocumTenens.com/LT Telehealth
Maine Council of Child and Adolescent Psychiatry
Marius Pharmaceuticals
Maryland Regional Council of Child and Adolescent Psychiatry
Mindpath Health
Mochi Health
NAADAC, the Association for Addiction Professionals
National Alliance on Mental Illness
National Association for Rural Mental Health
National Association of County Behavioral Health and Developmental Disability Directors
National Council for Mental Wellbeing
National Eating Disorders Association
National Health Care for the Homeless Council
National Network of Depression Centers
Nebraska Medicine
Nevada Council for Child and Adolescent Psychiatry
New Jersey Council of Child and Adolescent Psychiatry
New York Council on Child and Adolescent Psychiatry

Nicklaus Children's Health System
Nomi Health
North Central Florida Council of Child and Adolescent Psychiatry
North East Ohio Society of Child and Adolescent Psychiatry
One Medical
OpenLoop
Ophelia
Oregon Council of Child & Adolescent Psychiatry
Partnership to Advance Virtual Care
PAs in Virtual Medicine and Telemedicine
Plume Health, Inc
QuickMD
REDC Consortium
Rhode Island Council for Child and Adolescent Psychiatry
RI International
Sanford Health
SC HIMSS
Soho Medical Doctors, PLLC
South Carolina Council of the American Academy of Child and Adolescent Psychiatry
Southern Illinois University School of Medicine
Stanford Health Care
Telehealth Alliance of Oregon
Texas Council of Community Centers
Texas Society of Child and Adolescent Psychiatry
The Kennedy Forum
The Language Group, LLC
The Pew Charitable Trusts
TheraTec, Inc
Third Eye Health
THUNDRCLOUD
University of Michigan Health
URAC
UT School of Public Health & South Texas College of Law Houston
Washington State Council of Child and Adolescent Psychiatry
West Virginia Regional Council of the American Academy of Child & Adolescent Psychiatry
Willow Holistic Wellness, LLC
Wisconsin Council for Child and Adolescent Psychiatry
Workit Health
Zipnosis
Zoelife Psychiatric services

Cc: The Honorable Patty Murray, Chair, Senate HELP Committee
The Honorable Richard Burr, Ranking Member, Senate HELP Committee
The Honorable Dick Durbin, Chair, Senate Judiciary Committee
The Honorable Chuck Grassley, Ranking Member, Senate Judiciary Committee

The Honorable Frank Pallone, Chair, House Energy and Commerce Committee
The Honorable Cathy McMorris Rodgers, Ranking Member, Energy and Commerce
The Honorable Jerry Nadler, Chair, House Judiciary Committee
The Honorable Madeleine Dean, Vice Chair, House Judiciary Committee
The Honorable Jim Jordan, Ranking Member, House Judiciary Committee

The Honorable Sheldon Whitehouse, U.S. Senator
The Honorable Rob Portman, U.S. Senator
The Honorable Mark Warner, U.S. Senator
The Honorable Cindy Hyde-Smith, U.S. Senator

The Honorable David McKinley, U.S. Representative
The Honorable David Cicilline, U.S. Representative
The Honorable John Curtis, U.S. Representative
The Honorable Scott Peters, U.S. Representative
The Honorable Buddy Carter, U.S. Representative
The Honorable Cheri Bustos, U.S. Representative
The Honorable Doris Matsui, U.S. Representative