

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