

March 31, 2023

The Honorable Anne Milgram  
Administrator  
Drug Enforcement Administration  
8701 Morrisette Dr.  
Springfield, VA 22152

**RE: RIN 1117-AB78/Docket No. DEA-948, Expansion of Induction of Buprenorphine via Telemedicine Encounter**

Dear Administrator Milgram:

On behalf of the undersigned organizations representing Advanced Practice Registered Nurses (APRNs) and advanced practice nursing education, we appreciate the opportunity to comment on proposed rule; Expansion of Induction of Buprenorphine via Telemedicine Encounter (88 Fed.Reg. 12890, March 1, 2023).

The APRN Workgroup is comprised of organizations representing Advanced Nursing Education, Certified Nurse-Midwives (CNMs), Clinical Nurse Specialists (CNSs), Certified Registered Nurse Anesthetists (CRNAs), and Nurse Practitioners (NPs). America's growing numbers of highly educated APRNs advance healthcare access, quality improvement and cost-effective healthcare delivery across all settings, regions and populations, particularly among the rural and medically underserved.

APRNs have been critical to addressing the opioid epidemic, and will continue to provide vital and medically necessary treatment to patients across the country. Authorizing APRNs to prescribe medication for opioid use disorder (MOUD) has been demonstrated to increase access to necessary health care, particularly in rural and underserved communities. For example, after the passage of the *Comprehensive Addiction and Recovery Act of 2016* (CARA), studies found that NPs increased access to medication-assisted treatment in rural and underserved communities. One study found that NPs and PAs were the first waived providers in hundreds of rural counties, representing millions of individuals.<sup>1</sup> The Medicaid and CHIP Payment and Access Commission also found that the number of NPs prescribing MOUD and the number of patients treated with MOUD by NPs increased substantially in the first year they were authorized to obtain their Drug Addiction and Treatment Act (DATA) waiver, particularly in rural areas and for Medicaid beneficiaries.<sup>2</sup> As providers of anesthesia, analgesia, and pain management care, CRNAs also frequently treat patients with opioid use disorder and develop patient-specific care plans with goals to support recovery, prevent relapse, and effectively and safely treat perioperative pain.

**Practice of Telemedicine**

The APRN workgroup supports DEA's adoption of the Centers for Medicare and Medicaid Services' (CMS) definition of "practice of telemedicine" in the proposed rule. The COVID-19 public health emergency (PHE) caused great upheaval in the healthcare system, but one positive that came out of the

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<sup>1</sup> <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2019.00859>.

<sup>2</sup> <https://www.macpac.gov/publication/analysis-of-buprenorphine-prescribing-patterns-among-advanced-practitioners-in-medicaid/>.

PHE was the implementation and increased use of telemedicine when clinically appropriate. Practitioners are familiar with the CMS definition and use of this definition which reduces administrative burdens as practitioners are already familiar with the regulations.

### **Prescription Drug Monitoring Review (PDMP)**

We agree with the DEA that PDMP data should be reviewed and considered prior to prescribing buprenorphine and support this provision. The DEA proposes to require a practitioner to review and consider PDMP data prior to prescribing buprenorphine under these regulations, along with providing a limited exception in certain circumstances when PDMP data is unavailable. The DEA's rationale is that this will support clinical decision-making and help practitioners identify patients who may have obtained a recent buprenorphine prescription from another source.

### **Recordkeeping**

The APRN Workgroup agrees with the DEA regarding the importance of comprehensive recordkeeping and generally agrees with the proposed regulations regarding recordkeeping of telemedicine encounters in this proposed rule. However, there is one clarification we seek regarding the maintenance of records.

On page 12900, the DEA provides analysis of the four recordkeeping requirements outlined in the proposed rule. We would like to highlight the fourth requirement in which the DEA states that practitioners must maintain records of all prescriptions issued pursuant to a telemedicine encounter "including the supervising physician name where applicable under state law and DEA number when the prescription is issued by a physician assistant or nurse practitioner." Later in the proposed rule, in the section describing information collections associated with the proposed rule, the DEA states that "[t]he proposed rule would also require practitioners to record the name and DEA registration number of a supervising physician, in cases where the prescription was issued by a nurse practitioner or physicians assistant." In the second description of this documentation requirement, there is no reference to state law as in the first description.

We strongly urge the DEA to clarify that the documentation of a supervising or collaborating physician is only required when required under state law. As of March 2023, twenty-seven states, the District of Columbia and two U.S. Territories have granted nurse practitioners full practice authority, where NPs are authorized to practice (including prescribing controlled substances) without a regulatory-mandated contract with a physician, and other states have removed supervision requirements. Imposing any additional supervision or collaboration requirements in excess of state law would unnecessarily restrict access to this life-saving treatment, which we do not believe is the intent of this rulemaking.

### **In-Person Visit Requirement**

The APRN Workgroup agrees with the DEA regarding the unmet need to facilitate patient access to treatment for OUD, and the need to increase access to medically necessary treatment for patients. We appreciate actions taken by the DEA and HHS to remove barriers to treatment in opioid treatment programs and through the removal of the DATA-waiver requirements for clinicians. We also support the inclusion of audio-only telemedicine encounters as qualifying encounters in this proposed rule.

However, we are concerned that the 30-day limitation on prescribing buprenorphine pursuant to a telemedicine encounter will hinder access to MOUD for patients in need of treatment. Many patients

who lacked access to MOUD were able to receive this treatment via telemedicine, leading to improved retention in care and reduced odds of medically treated overdose.<sup>3</sup> Accordingly, we encourage the DEA to provide additional flexibility to patients in need of MOUD in the final rule. That can be accomplished by extending the current in-person visit waiver utilizing the authority granted by the Opioid Epidemic Public Health Emergency declaration, lengthening the period before requiring an in-person visit beyond 30 days to provide patients more time to obtain treatment, and/or establishing a special registration pathway to enable clinicians who meet certain requirements to continue to prescribe buprenorphine via telehealth.

### **Mid-Level Practitioners**

The APRN Workgroup strongly objects to the term “mid-level practitioner” as used in 21 CFR 1300.01(b). Rather, the APRN Workgroup encourages DEA to fully transition to the use of the practitioner’s professional title or to utilize the term “advanced practice providers” when necessary and remove all references to “mid-level practitioner” within regulations, guidance and information collection instruments. The term “mid-level practitioner” fails to recognize the established scope of practice for advanced practice providers (APPs) and their authority to practice to the full extent of their education and clinical preparation. It is well established that patient outcomes for APPs are comparable to that of physicians. The DEA should fully retire the use of this term as it is outdated language that does not reflect the quality of care provided by APPs and their role in the health care system.

### **Combination of Proposed Rules**

DEA is seeking comment on whether this proposed rule should be combined with DEA’s proposed rule “Telemedicine prescribing of controlled substances when the practitioner and the patient have not had a prior in-person medical evaluation” (RIN 1117– AB40). The APRN Workgroup would support combining these two rules into one final rule as the requirements for prescription and subjects covered by the two proposed rules are substantially similar to each other.

### **Conclusion**

We appreciate the opportunity to provide our recommendations on this proposed rule and the continued focus of the DEA on addressing the opioid epidemic. We look forward to a continued constructive partnership to ensure that patients are able to receive medically necessary treatment for MOUD. Should you have any questions, please reach out to Frank Harrington, Director of Reimbursement and Regulatory Affairs, American Association of Nurse Practitioners, fharrington@aanp.org. Thank you for your consideration and we look forward to hearing from you.

Sincerely,

American Academy of Nursing  
American Association of Colleges of Nursing  
American Association of Nurse Anesthesiology

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<sup>3</sup> <https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2795953>.

American Association of Nurse Practitioners  
American College of Nurse-Midwives  
American Nurses Association  
National Association of Clinical Nurse Specialists  
National Association of Nurse Practitioners in Women's Health  
National Association of Pediatric Nurse Practitioners  
National League for Nursing  
National Organization of Nurse Practitioner Faculties