

March 31, 2023

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

RE: RIN 1117-AB40/Docket No. DEA-407, Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation

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; Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation (88 Fed.Reg. 12875, 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.

Definition of Telemedicine

The APRN workgroup supports DEA's adoption of the Centers for Medicare and Medicaid Services' (CMS) definition 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 PHE was the implementation and increased use of telemedicine when clinically appropriate. Practitioners are familiar with the CMS definition and use of this definition reduces administrative burdens as practitioners are already familiar with the regulations.

Workforce Shortage

There is a shortage of practitioners, especially in both primary care and mental health care, treating substance use disorder and mental health conditions nationwide. Allowing prescribing via telemedicine will help alleviate these shortages so that patients in need of treatment are able to receive medically necessary care.

These shortages are especially acute in rural areas, where the distances involved make it difficult for patients to see providers who may be hundreds of miles away. The proposed rule allows practitioners to prescribe in excess of a thirty-day supply of medication without an in person visit as long as the referring practitioner has conducted an in-person evaluation of the patient.

The DEA recognizes that telemedicine will help address accessibility issues and access to care. DEA cites the Substance Abuse and Mental Health Services Administration (SAMHSA) stating that over 75% of all counties in the USA are classified as mental health shortage areas and 50% of counties do not have any

mental health professionals. Additionally, DEA notes that the Health Resources and Services Administration (HRSA) states that as of December 2018 Mental Health Professional Shortage Areas cover a total population of over 115 million people. Prescribing via telemedicine when clinically appropriate has the potential to dramatically impact the lack of access to health care in a positive manner.

In Person Visit Requirements

The DEA proposes to require an in-person visit within 30 days of the original prescription if the patient will require additional prescribing of medication. While there are circumstances where this requirement, if finalized, could be met, the APRN Workgroup believes that a more flexible approach should be taken in this regard. Some patients may be unable to visit the prescribing practitioner within 30 days. Under the proposed rule, the resulting break in receiving medication would be extremely detrimental to the patient's health and recovery. To that end, the Workgroup appreciates that DEA considered this possibility and provided two exceptions. However, these exceptions still require in-person visits with other practitioners, either the original referring practitioner or a separate DEA registered practitioner, which may be difficult to arrange within that timeframe in certain circumstances.

Prescriptions

Proposed §1306.31(a)(3)(i) states that in addition to the practitioner being licensed to prescribe medication in the state both the practitioner and the patient must be physically located within that state. The APRN Workgroup requests clarity as to where the prescriber must be. There are times when the practitioner must travel to a state where they are not licensed, examples may include conferences or presentations being made by the prescribing practitioner, and this should not interrupt the continuum of care for the patient.

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.

Buprenorphine

DEA is seeking comment on whether the above captioned proposed rule should be combined with DEA's proposed rule "Expansion of Induction of Buprenorphine via Telemedicine Encounters" (RIN 1117-AB78). 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. 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
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