

Congress of the United States

Washington, DC 20510

December 13, 2023

The Honorable Anne Milgram
Administrator
Drug Enforcement Administration
U.S. Department of Justice
8701 Morrisette Drive
Springfield, VA 22152

Dear Administrator Milgram:

We write today to express support for the Drug Enforcement Administration (DEA) taking steps to publish updated rules on the remote prescribing of controlled substances via telemedicine. The pandemic has demonstrated the value of telehealth in increasing access to clinically appropriate care, and DEA now has the opportunity to continue the benefits of telehealth while ensuring operationally feasible guardrails. As DEA considers a permanent regulatory framework for telemedicine prescribing of controlled substances, we urge you to consider the full range of options Congress has authorized to enable the agency to build such a framework. Health care providers, pharmacists, and patients deserve to have a formalized process focused on patient access to clinically appropriate care while allowing DEA to fulfill its enforcement obligations.

We commend DEA for issuing temporary rules to allow patients to continue to be prescribed controlled substances via telemedicine as clinically appropriate, while the agency continues to develop a permanent regulatory framework. DEA's March 2023 proposed rules on telemedicine prescribing were widely panned by over 38,000 commenters. We are pleased that DEA hosted listening sessions in September to obtain additional stakeholder input. This approach reflects a willingness to collaborate and adapt to the changing health care landscape.

As you know, DEA has delayed creating a Special Registration for Telemedicine process, which was originally mandated by the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 and reinforced by the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act in 2018. The absence of a regulatory framework, despite the clear directives from Congress, will lead to uncertainty for both the health care community and patients if not resolved by December 31, 2024.

We urge DEA to finalize rules and guarantee their implementation before current flexibilities expire. We believe DEA, utilizing the range of regulatory options provided by Congress and stakeholder input, can create a regulatory structure that enables the agency to fulfill its law enforcement mission, while continuing to allow health care providers and patients the opportunity to meet virtually for clinically appropriate care that includes virtual prescribing of controlled substances.

As part of this rulemaking process, we believe it is important for DEA to give clear guidance to pharmacies and pharmacists. We encourage DEA to outline clear responsibilities for pharmacies

and pharmacists to abide by when dispensing controlled medications that are prescribed during a telemedicine visit. With telemedicine now allowing providers across the country to treat patients in different geographic locations, DEA should clarify what it classifies as a “red flag” on a prescription. We are confident that a permanent regulatory framework for telemedicine prescribing can increase access to care, however, these changes will not be useful to patients if pharmacies are unable to dispense their prescriptions due to outdated “red flag” policies.

We urge DEA to work diligently towards a finalized regulatory framework for the prescribing of controlled substances via telemedicine, understanding that time is of the essence. Congress is closely monitoring these developments and will consider necessary actions if these objectives are not met in a timely manner.

We are grateful for DEA's commitment to public safety and patient care as you work to draft a new regulatory model. We believe that the creation of a regulatory framework will be a significant step forward for patients and providers alike.

Sincerely,



Earl L. "Buddy" Carter
Member of Congress



Doris Matsui
Member of Congress