TEXAS MEDICAL ASSOCIATION

Physicians Caring for Texans

March 31, 2023

Anne Milgram
Administrator
Drug Enforcement Administration
Docket No. DEA-407
DEA Federal Register Representative
8701 Morrisette Drive
Springfield, VA 2212

Submitted Via *Federal Register*

Dear Administrator Milgram,

The Texas Medical Association (TMA), which represents our more than 57,000 physician and medical student members, appreciates the opportunity to comment on the Drug Enforcement Administration's (DEA) proposed rule on Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation as posted to the *Federal Register* on March 1, 2023.

TMA appreciates that DEA is preparing for the issuance of controlled substance prescriptions via telemedicine visits in a post-public health emergency health care environment. Telemedicine use has advanced significantly over the past three years, and patients now expect the conveniences offered via virtual visits. TMA recognizes DEA needs appropriate guardrails in place to continue its work in curbing the opioid epidemic that plagues our country. TMA offers the following comments in support of DEA's work as well as considerations to improve the final rule.

30-Day Supply of non-narcotic schedule III-V controlled medications for telemedicine visits (FR 12876)
DEA proposes limiting the amount and type of controlled substances that can be prescribed for patients via a telemedicine encounter when the physician has not seen the patient in person. DEA requires a check of the Prescription Drug Monitoring Program (PDMP) database in the state where the patient resides prior to issuing the prescription.

TMA Response

TMA agrees there should be controls in place when prescribing certain medications via a telemedicine visit. TMA also agrees the PDMP database should be consulted prior to prescribing a controlled substance. However, physicians should not be penalized if they are unable to check the PDMP. It should also be noted, a recent study shows states that have implemented a PDMP mandate decreased opioid prescriptions by 6.1%. The study further went on to state the following:

> However, despite the reduction in prescriptions, the policy did not reduce prescription opioid deaths. Perhaps more surprisingly, heroin-related deaths increased substantially – by 50.1% – following PDMP mandates. Since heroin is an illicit substitute for prescription opioids, our

finding suggests that placing supply restrictions for prescription opioids may have led patients to seek out a more dangerous, illicit alternative unaffected by the PDMP policy change.

DEA should consider allowing scheduled III-V narcotics to be permitted via telemedicine visits. Additionally, schedule II medications should continue to be permitted via a telemedicine visit for very limited circumstances such as for patients receiving hospice or palliative care.

Electronic notation of telemedicine visit (FR 12876)
DEA proposes requiring prescribing practitioners to include a notation within the electronic prescription order that the prescription was issued via a telemedicine encounter.

TMA Response
TMA supports the additional notation and encourages DEA to work with e-prescribing vendors to ensure there is a field that can accommodate the required notation that the prescription is being issued via a telemedicine encounter.

Qualifying telemedicine referral (FR 12879)
DEA proposes defining a qualifying telemedicine referral, which would be required for the prescribing practitioner to continue to issue prescriptions in excess of the 30-day limit. The referring practitioner would have to conduct at least one medical evaluation of the patient in the physical presence of a DEA-registered referring practitioner.

TMA response
TMA appreciates that a referring practitioner can conduct a physical visit with the patient, while complying with state scope-of-practice laws, that includes the prescribing physician who is virtually present. DEA should consider exclusions or exceptions for patients who may not be able to access a referring practitioner within the 30-day timeframe by allowing a six-month supply of medications to give additional time to schedule the physician exam.

Telemedicine prescription by mid-level practitioner (FR 12879)
DEA proposes a definition for "telemedicine prescription" that is a "prescription issued … by a physician, or a 'mid-level practitioner'… engaging in the practice of telemedicine." Under DEA's current rules for prescribing controlled substances, a "mid-level practitioner" is defined as "an individual practitioner, other than a physician, dentist, veterinarian, or podiatrist, who is licensed, registered, or otherwise permitted by the United States or the jurisdiction in which he/she practices, to dispense a controlled substance in the course of professional practice." The definition's examples include "nurse practitioners, nurse midwives, nurse anesthetists, clinical nurse specialists and physician assistants who are authorized to dispense controlled substances by the State in which they practice."

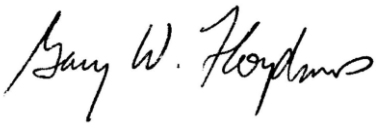
TMA Response
TMA has concerns that the definition for "telemedicine prescription" in the proposed rules does not incorporate individual state requirements for the types of health care professionals who may prescribe controlled substances through telemedicine. TMA recommends that the proposed definition be amended to include the following language: "to the extent permitted by the jurisdiction in which he/she practices."

Imposing certain additional recordkeeping (FR 12879)
DEA proposes additional recordkeeping for controlled substance prescriptions issued via telemedicine visits, including detailed information about the referring practitioner and communications shared. Additionally, the referring practitioner must maintain detailed records related to the prescribing practitioner.

TMA response
TMA agrees both the prescribing and referring physicians should maintain records related to the patient's visit. Physicians already have DEA-specific recordkeeping requirements when issuing controlled-substance prescriptions. The recordkeeping requirements and medical record documentation should be the same for in-person and virtual visits.

TMA appreciates the opportunity to comment on the proposal as DEA seeks to find the balance in allowing virtual care and appropriate prescribing for patients who legitimately need vital medications, as opposed to drug-seeking opportunists. Any questions may be directed to Shannon Vogel, associate vice president of health information technology, by emailing shannon.vogel@texmed.org or calling (512) 370-1411.

Sincerely,



Gary W. Floyd, MD
President
Texas Medical Association