March 31, 2023

Drug Enforcement Administration
Attention: DEA Federal Register Representative/DPW
8701 Morrissette Drive
Springfield, Virginia 22152

Subject: Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation Proposed Rule

Dear Administrator Milgram,

On behalf of our over 5,000 members and partners including mission-driven organizations representing the entire field of aging services, 38 state associations, hundreds of businesses, consumer groups, foundations, and research centers, LeadingAge is pleased to offer the following comments in response to the Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation Proposed Rule.

LeadingAge appreciates the opportunity to comment on this proposed rule and applauds the Drug Enforcement Administration (DEA) in working to fulfill its commitment to ensure all Americans can access needed medicine and use telemedicine consultations as a method of achieving that goal. Furthermore, we agree guardrails are needed around telehealth utilization broadly and most especially when there is a high-risk situation such as overprescribing of controlled medications.

In researching this issue for members of LeadingAge, we were not able to identify any published studies that prescribing controlled medications for hospice or residents in long-term care patients is a major source of the overprescribing in our country. Therefore, we do not believe prescribing controlled medications using telehealth for hospice patients or residents in long-term care is a high-risk situation that requires the guardrails outlined in DEA's proposed rule.

More than half, or 56 percent, of hospice patients received care in their homes in 2021.[1] These patients are typically too sick at the end of their lives to travel for any service, let alone an in-person consultation regarding medications necessary to support their comfort. This proposed rule has the potential to significantly restrict and even prevent patients from seeing their prescribing clinicans in a timely manner for palliative pain and symptom management by preventing the prescribing of controlled substances via telemedicine. Additionally, many of these patients may live in inaccessible locations either in rural areas or urban areas with limited transportation availability. These conditions make it more difficult for patients to leave their homes and for prescribing clinicians to travel to them.

Frequently new patients enrolled in hospice care are actively suffering and too often have a very short time between hospice enrollment and death. Prescribing clinicians may not be able to physically visit their patients in time. Instead, they can use telehealth to assess and prescribe medications to support their patients' comfort. There may also be a perception that hospice patients only need access to

[1] Medicare Payment Advisory Commission. Report to the Congress: Medicare payment policy [Internet]. Washington (DC): MedPAC; 2023 Mar . Chapter 11, Hospice services; p. 296 Available from: https://www.medpac.gov/wp-content/uploads/2023/03/Ch10_Mar23_MedPAC_Report_To_Congress_SEC.pdf

narcotic controlled substances to ease pain. However, common benzodiazepines, such as Alprazolam and Lorazepam, are often prescribed for hospice patients who are suffering from extreme anxiety.[2] The need for flexibility on prescribing medications like these is critical in hospice care. Clinicans do not have the ability to determine when the patient will decline and how quickly that decline will manifest. For many patients it is a short period of time and access to pharmaceutical interventions to promote comfort are critical in these crisis periods.

This same urgency of access often arises in patients receiving services from palliative care prescribing clinicians. Palliative care is a growing field of specialized medical care for people living with serious illnesses, such as heart failure or cancer. We heard from many LeadingAge members who have palliative care programs that incorporate telehealth visits, which can be critical to supporting patients in times of crisis. Palliative care is built on the philosophy of meeting the patient's needs quickly and efficiently. If the need arises from a telehealth visit and a patient is actively suffering, providers prescribe the appropriate supports, which look very similar to prescribing practices of scheduled drugs in hospice.

In addition, it is not a requirement in hospice for a physician or attending clinician to see a patient at time of enrollment or prior to prescribing controlled medications. In fact, the Consolidated Appropriations Act (CAA) of 2023 extended telehealth flexibilities authorized during the COVID-19 Public Health Emergency (PHE) through December 31, 2024. This extension included the ability to use telehealth for recertification of eligibility for hospice care after the end of the initial 90-day period, also known as the hospice face-to-face encounter. Under this proposed rule, that recertification conversation would far exceed the 30-day ability to prescribe controlled substances to patients during the recertification visit. This is in addition to the urgent changes in patient conditions often seen in hospice and palliative care described above. Given this hospice telehealth extension, and previous precedent for the utilization of telemedicine during routine home vists in hospice and for palliative care patients, clinicans serving terminally ill hospice and palliative care enrollees have historically had the ability to prescribe controlled medications via telehealth.

Many nursing home residents experience the same palliative care needs as patients on hospice and those enrolled in palliative care programs. Ensuring quick access to necessary pharmaceutical interventions, especially in underserved areas, will only help to promote better patient outcomes. A recent report from the National Academies of Sciences, Engineering, and Medicine (NASEM) found that nursing home residents often do not receive enough support in palliative and end-of-life care.[3] The Committee made recommendations in several areas to improve the quality of palliative and end-of-life care for nursing home residents. Allowing this rule to move forward without exempting nursing home residents could create additional, unnecessary barriers to improve care for nursing home residents.

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[2] Kamell A, Smith LK. Attitudes Toward Use of Benzodiazepines among U.S. Hospice Clinicians: Survey and Review of the Literature. J Palliat Med. 2016 May;19(5):516-22. doi: 10.1089/jpm.2015.0376. Epub 2016 Mar 22. PMID: 27002463; PMCID: PMC4860624.

[3] National Academies of Sciences, Engineering, and Medicine (NASEM). *The National Imperative to Improve Nursing Home Quality: Honoring Our Commitment to Residents, Families, and Staff.* Washington (DC): Available from: https://www.nationalacademies.org/our-work/the-quality-of-care-in-nursing-homes

LeadingAge respectfully requests that the DEA amend the proposed rule to allow patients enrolled in hospice and palliative care, as well as nursing home residents, to be included in the exemptions authorized under the Ryan Haight Online Pharmacy Consumer Protection Act of 2008.

There is additional precedent for these exemptions at the state level. Ohio introduced a similar regulation for e-prescribing and exempted both hospice and nursing home patients.[4] DEA should follow Ohio's decision-making process and create continuity across the health care system.

Thank you for the opportunity to share our recommendations with you on telemedicine prescribing of controlled substances. My contact information is below should you wish to discuss any of these comments.

Sincerely,

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[4] Rule 4731-11-09. Controlled substance and telehealth prescribing.