

United States Senate  
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COMMITTEES:

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INTELLIGENCE

RULES AND ADMINISTRATION

August 16, 2022

The Honorable Merrick B. Garland  
Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

The Honorable Anne Milgram  
Administrator  
U.S. Drug Enforcement Administration  
800 K Street, NW Suite 500  
Washington, D.C. 20001

Dear Attorney General Garland and Administrator Milgram:

As we await release of the proposed rule to create the Special Registration for Telemedicine, as directed by Congress first in 2008 in the Ryan Haight Online Pharmacy Consumer Protection Act and subsequently in the SUPPORT for Patients and Communities Act and appropriations legislation, I am writing today to request information about the Drug Enforcement Administration's plan to ensure continued patient access to care upon expiration of the COVID-19 public health emergency (PHE).

At the onset of the COVID-19 PHE, I was pleased to see the DEA act swiftly to ensure that patients could continue to access medically necessary controlled substances, including treatment for opioid use disorder, via telehealth by waiving the requirement that the patient have a prior in-person visit, regardless of their location, for the duration of the PHE. In the more than two years since that flexibility was put into place, patients have successfully continued and established treatment virtually, without reports of widespread harm. The pandemic has shown that telehealth is an appropriate modality for a great deal of health care services, and that health care providers and their patients should be at the center of modality decision-making.

I am concerned for patients who are at risk of having their health care interrupted or terminated when DEA PHE flexibilities end. As you know, the goal of the Ryan Haight Act was not to stymie appropriate access to care, but to prevent illicit use and sale of controlled substances. To that end, it is critical that Congress understands what DEA's plan is for the time between when the PHE expires and the Special Registration is implemented to ensure constituents receive the continued health care they need and deserve. Specifically, I would like to know:

- (1) Does DEA plan to extend any current waivers or flexibilities regarding prescribing controlled substances over telehealth beyond the expiration of the PHE?
  - a. If so, in what way(s)?
  - b. If not, why not? Would additional authorities from Congress be needed?

- (2) For patients who are under the care of a health care provider and are at risk of such care being interrupted or terminated upon PHE expiration, what flexibility or assistance will DEA provide such provider and patient to ensure appropriate continuity of care after the expiration?
- (3) As opioid overdoses and deaths continue to impact our communities, is DEA considering continuing some of these telehealth flexibilities under the ongoing nationwide opioid crisis Public Health Emergency designation?
  - a. If so, what are the agency's plans?
  - b. If not, why not?
- (4) It is unacceptable that Americans have waited 14 years for the Special Registration rule; as telehealth will continue to expand, what is DEA's plan to ensure appropriate access to legitimate health care services prior to the rule being finalized and implemented?

It is critical that the Department of Justice, the Drug Enforcement Administration, and Congress work together to ensure Americans receive the health care they need, both during the continuing COVID-19 pandemic and afterwards. I also urge you to expeditiously finalize the rulemaking for the Special Registration, as directed by Congress. Thank you in advance for your attention to this request and I look forward to hearing back from you.

Sincerely,



Mark R. Warner  
United States Senator

cc: The Honorable Shalanda D. Young, Director, Office of Management and Budget