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Derek S. Maltz  
Acting Administrator  
U.S. Drug Enforcement Administration  
8701 Morrisette Drive  
Springfield, VA 22152

RE: Docket No. DEA-407/RIN 1117-AB40

Dear Acting Administrator Maltz:

Thank you for the opportunity to comment on the *Special Registrations for Telemedicine and Limited State Telemedicine Registrations* proposed rule. Ensuring appropriate prescribing of controlled substances via telemedicine is critical to the health and wellbeing of millions of Americans who have limited access to in-person care.

As North America's largest technology trade association, CTA is the tech sector. Our members are the world's leading innovators – from startups to global brands helping support more than 18 million American jobs. CTA owns and produces CES® – the most powerful tech event in the world. CTA is the trade association representing more than 1200 companies in the U.S. technology industry. Eighty percent of CTA companies are small businesses and startups; others are among the world's best-known brands. We provide members with policy advocacy, market research, technical education and standards development.

CTA's Health Division drives the adoption of consumer-based, technology-enabled health solutions to improve health outcomes and reduce overall health care costs. Comprised of innovative small and large companies across the healthcare and technology sectors – including telemedicine providers, personal health wearable companies, health care payers, health systems, and biopharmaceutical innovators – the Division offers policy advocacy, market research, and standards initiatives to promote the effective use of consumer technologies in health care.

### **General Comments**

CTA appreciates the need for appropriate guardrails on the prescribing of controlled substances via telemedicine. However, these guardrails must be appropriately balanced and not create a system that mandates in-person interactions or is so burdensome for providers that it would drive all care to be delivered in person. During his first term, President Trump signed into law the *Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act*, which supports safe access to controlled substances through telemedicine. In President Trump's recent Executive Order establishing the Make America Health Again Commission, the president noted the rising number of Americans living with mental health disorders.<sup>1</sup> Ensuring continued access to treatment for the one in five Americans living with mental health disorders is critical and while we recognize the need for

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<sup>1</sup> [Establishing the President's Make America Healthy Again Commission – The White House](#)

guardrails to prevent diversion, unfortunately, many of the provisions of this proposed rule would hinder access by creating an overly complex process.

### ***Specific Comments***

#### *Special Registration*

DEA proposes three types of special registration despite the Ryan Haight Act only requiring the DEA establish a singular Special Registration. The proposed process of three different types of special registration is overly complex, costly and burdensome for providers. The DEA should recognize that many mental health providers are solo practitioners or a part of small practices and therefore have limited resources to comply with overly burdensome regulations.

The proposed processes would further hinder access to care by requiring that 50 percent of monthly Schedule II prescriptions be in-person, which essentially bars virtual-only providers from prescribing. CTA supports creating a single special registration process without overly burdensome in-person requirements which do not reflect how care is currently provided via telemedicine.

#### *Application Process and Fees*

The proposed special registration process is not only overly complex, but it would also be a long and costly application process. This would create barriers for providers in small and solo practices and would not be an effective guardrail against bad actors. The proposal to charge additional fees for each state registration would also further exacerbate mental health provider shortages by disincentivizing providers to practice across state lines. CTA urges the DEA to lower fees and create a streamlined application processing time of 10 business days or implement an expedited review process for providers in areas with acute workforce shortages, such as mental health and substance use disorder providers, to quickly enhance provider participation.

#### *Nationwide Prescription Drug Monitoring Program Check*

While CTA supports the concept of nationwide Prescription Drug Monitoring Program (PDMP) checks, the existing infrastructure would not be able to make this possible today. While all states have a PDMP, they are not yet at the point of allowing seamless interoperability across state PDMPs. We encourage the federal government to work with states to improve interoperability across states before implementing a nationwide PDMP check requirement.

#### *Audio-Only Prescriptions*

The DEA proposes that a clinician special registrant must utilize both audio and video components of an audio-video telecommunications system to prescribe under the Special Registration framework for every telemedicine encounter whether an initial visit or subsequent visit or follow-up. CTA does not support this requirement as it would create an additional barrier for patients to access care – particularly patients in rural areas who may not have access to high-speed broadband to support video interactions. Given this consideration, both the Centers for Medicare & Medicaid Services (CMS) and Congress have repeatedly acted to preserve patient access to audio-only telemedicine. We urge the DEA to allow clinician discretion to guide whether an audio-video encounter is necessary.

#### *Schedule II Controlled Substance Prescriptions*

CTA is also concerned with the proposed guardrails on prescribing of Schedule II Controlled Substances, including requiring that the special clinician special registrant be physically located in the same state as the patient when issuing a special registration prescription for a Schedule II controlled substance and requiring that the average number of special registration prescriptions for Schedule II controlled substances constitutes less than 50 percent of the total number of Schedule II prescriptions issued by the clinician special registrant in their telemedicine and non-telemedicine practice in a calendar month.

One of the great benefits of telemedicine is that it can bridge barriers in accessing care like time and distance to providers. The proposed guardrails do not reflect how care is provided today and would severely disrupt access to care for millions of Americans. As noted in President Trump's February 13<sup>th</sup> Executive Order Establishing the President's Make America Healthy Again Commission, an estimated one in five United States adults lives with a mental illness.<sup>2</sup> Nearly half of Americans live in areas with a mental health workforce shortage<sup>3</sup>, and nearly half of practitioners (46%) said they have been unable to meet the demand for treatment and nearly three-quarters (72%) have longer waitlists than before the pandemic<sup>4</sup>. Limiting telehealth and requiring in-person visits will only exacerbate these problems by limiting access. CTA strongly urges the DEA to not implement arbitrary geographic barriers and in-person requirements for Schedule II Controlled Substances prescriptions.

## Conclusion

CTA appreciates the opportunity to comment on the *Special Registrations for Telemedicine and Limited State Telemedicine Registrations* proposed rule. We look forward to continuing to work with the DEA and the Trump Administration to establish appropriate guardrails to prevent diversion of controlled substances while maintaining access to care for those in need.

Sincerely,

Michael Petricone  
Senior Vice President, Government and Regulatory Affairs  
Consumer Technology Association

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Vice President, Digital Health  
Consumer Technology Association

Catherine Pugh  
Director, Digital Health  
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<sup>2</sup> Ibid

<sup>3</sup> <https://www.kff.org/medicaid/issue-brief/a-look-at-strategies-to-address-behavioral-health-workforce-shortages-findings-from-a-survey-of-state-medicaid-programs/>

<sup>4</sup> <https://www.apa.org/news/press/releases/2022/11/mental-health-care-strains>