

March 24, 2023

Submitted via regulations.gov

DEA Federal Register Representative
8701 Morrissette Drive
Springfield, VA 22152

Re: Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation [Docket No. DEA-407]

Dear Colleagues:

Fenway Health is a federally qualified health center and Ryan White Part C HIV clinic in Boston, MA that serves 35,000 unique patients each year. Half of our patients are LGBTQIA+, and about 5400 are transgender and nonbinary. About 2,300 of our patients are people living with HIV. Our key commitment is to address the specific health needs of sexual and gender minorities (SGM) and people affected by HIV. Honoring the intersectionality of identities and lived experience and taking action to advance racial equity and social justice, are central components of this commitment.

Throughout the COVID-19 pandemic, Fenway Health has utilized telehealth to ensure continuity of care, and we have seen first-hand the positive impact telehealth has on health outcomes and increased access to care, especially for our LGBTQIA+ patients.

The recent proposed rule by the DEA, which would prevent providers from prescribing controlled substances via telehealth visit without a prior in-person examination, has significant negative implications for access to quality health care, particularly for LGBTQIA+ patients. With the proposed rule, many transgender and gender diverse patients will face significant barriers in accessing the often lifesaving care they need. This rule would limit telemedicine prescribing for medically necessary treatments such as hormones for transgender people. This proposal inadvertently compounds the existing dangers faced by the LGBTQIA+ and racial and ethnic minority populations and the medical providers who serve them. Efforts to expand access to affirming care are even more critical with the current rise of anti-LGBTQIA+ and anti-transgender laws throughout the country. Telehealth is uniquely positioned to help meet the health care challenges many LGBTQIA+ patients face.

Despite progress in care guidelines and protocols for sexual and gender minority people, many LGBTQIA+ people remain largely invisible to their care providers, experience delays in access to care, and often face stigma and barriers to accessing care, resulting in greater health disparities.

During the pandemic when interstate telehealth restrictions were lifted, patients accessed our telehealth services from 38 different states. Many of these were existing patients, but we did

have new patients from out of state whose first appointment was via telehealth. For example, among the 446 new transgender and gender diverse (TGD) patients who came to us during the first six months of the COVID-19 pandemic, 17% were from out of state. From March through August 2020, a total of 3,189 TGD patients utilized our telehealth medical and behavioral health (BH) services. Many of these were existing patients, but we did have new patients from out of state whose first appointment was via telehealth.

Fenway Health cared for close to as many unique TGD patients during this 6-month period via telehealth as it did via in-person services during calendar year 2019 (3794 medical patients in 2019 vs. 3033 medical patients in March through August 2020). Fenway Health had 946 behavioral health patients in all of 2019 compared with 911 behavioral health patients in March through August 2020.¹

During the COVID-19 pandemic, Fenway has witnessed first-hand the significant benefits that access to quality telehealth services has in the patient populations it serves. This experience highlights an unmet need in an already overburdened health care system for a population experiencing unique challenges in access to care. Requiring an in-person examination prior to a telemedicine encounter with a qualified, licensed provider, where a controlled substance is prescribed based on clinical evaluation, will directly result in barriers to life saving care. Our approach to telehealth care mirrors our approach to on-site care delivery. We are mission driven in our efforts to reach patients where they are. It is of the utmost importance that we avoid implementing limitations on a modality of care delivery that is in direct opposition to its fundamental purpose and one that aligns well with the Biden Administration's focus on health equity.

Research consistently shows that LGBTQIA+ people face many barriers to accessing care. A 2022 national survey conducted by Center for American Progress found that 20% of LGBTQIA+ Americans, and nearly one third of transgender people, reported postponing or avoiding medical treatment due to discrimination.² LGBTQIA+ patients in the rural United States are less likely to disclose their sexual orientation and gender identity to providers, and are less likely to disclose same-sex behavior that could increase their risk for HIV and other STI infection.³

Fenway Health strongly and respectfully disagrees with the Drug Enforcement Administration's ("DEA") proposed changes to controlled substance prescribing when the PHE ends. It is vital to ensure access to medically necessary medications via telehealth. The DEA should work to create a regulatory approach that balances continued access to necessary prescription medications through

¹Chris Grasso, Juwan Campbell, Emily Yunkun, David Todisco, Julie Thompson, Alex Gonzalez, Amika Brewster, and Alex S. Keuroghlian. *Gender-Affirming Care Without Walls: Utilization of Telehealth Services by Transgender and Gender Diverse People at a Federally Qualified Health Center*. Transgender Health. April 2022. 135-143.

<https://doi.org/10.1089/trgh.2020.0155>

² Medina C, Mahowald L, *Discrimination and Barriers to Well-Being: The State of the LGBTQIA+ Community in 2022* Washington, DC: Center for American Progress, 2023, January 12.

<https://www.americanprogress.org/article/discrimination-and-barriers-to-well-being-the-state-of-the-lgbtqi-community-in-2022/>

³ Rosenkrantz, D. E., Black, W. W., Abreu, R. L., Aleshire, M. E., & Fallin-Bennett, K. (2017). Health and health care of rural sexual and gender minorities: A systematic review. *Stigma and Health*, 2(3), 229–243. <https://doi.org/10.1037/sah0000055>

telehealth services while balancing the DEA's need to prevent drug diversion. Additional restrictions on telehealth will only further undermine the benefits that our patients have experienced.

Thank you for considering this comment in response to Docket No. DEA-407, Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation.

Should you have any questions, please contact Emily Phillips, Telehealth Project Manager, at ephillips@fenwayhealth.org or 857-313-6868.

Sincerely,

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