Tribal Technical Advisory Group

To the Centers for Medicare & Medicaid Services

c/o National Indian Health Board | 910 Pennsylvania Avenue, SE | Washington, DC 20003 | (202) 507-4070 | (202) 507-4071 fax

March 31, 2023

The Honorable Anne Milgram
Administrator
Drug Enforcement Administration
U.S. Department of Justice
8701 Morrissette Drive
Springfield, VA 22152

Submitted via regulations.gov

Re: Expansion of Induction of Buprenorphine via Telemedicine Encounter (Docket No. DEA-948)

Dear Administrator Milgram:

On behalf of the Centers for Medicare and Medicaid Services (CMS) Tribal Technical Advisory Group (TTAG), I write to provide a response to the Drug Enforcement Administration (DEA) proposed rule, "Expansion of Induction of Buprenorphine via Telemedicine Encounter" (DEA-948). While the TTAG typically responds to rules promulgated by CMS, the TTAG is encouraged by the agency's commitment to expanding access to medications used in treatment for those suffering from opioid use disorder (OUD) and hopes to provide its specialized input into the matter.

The national opioid epidemic has disproportionately affected Indian Country, with American Indians and Alaska Natives (AI/ANs) experiencing the highest adjusted drug overdose rates and the highest rates of increase in opioid overdose deaths over the past ten years of any group.[1] Tribes and Tribal organizations have taken steps to address this public health and public safety issue across Indian Country and recognize that, in order to achieve the overall goals, a collaborative approach is needed. This effort requires inter-agency subject matter expertise to ensure effective strategic planning, policy development, and program implementation that appropriately addresses the magnitude of this public health crisis. We view the proposed rulemaking as a critical opportunity to work across agencies in a manner that includes and considers the Tribal perspective and impacts outlined herein.

Buprenorphine and other approved medications used for continuous treatment as well as withdrawal management of OUD are paramount in the fight against the opioid epidemic. However, accessibility to these life-saving treatments is dramatically affected by the rural location of American Indian and Alaska Native (AI/AN) communities

[1] National Indian Health Board Resolution 22-08: Support for Partnership in a National Fentanyl and Opioid Summit in Indian Country (2022).

resulting in poorer outcomes due to reduced availability. As you know, much of Indian Country is rural. AI/ANs are the only group that makes up a larger share of the rural population than the urban population,[2] and the use of virtual care services to serve our population has rapidly ramped up from a pre-COVID average of under 1,300 per month to a peak of nearly 42,000 per month at the height of the pandemic surge.[3] Therefore, the impact of telemedicine regulations on our communities cannot be overstated, as Tribal lands include some of the most remote and inaccessible in the country.

Most villages served in the Alaska Tribal Health system have no road access, meaning the nearest community with a pharmacist, a physician, or a psychiatrist is, on average, an hour or more away by airplane. This is assuming adequate weather and available flights, which is not a guarantee. For patients undergoing treatment who must then travel hundreds of miles from their community to reach the closest prescribing practitioner, a 30-day initial prescription is not sufficient. Therefore, **we urge the DEA to increase the maximum supply permitted before an in-person visit is conducted to 180 days**, or in the alternative, that the DEA not impose such a limit at all.

The impact that this regulation has on our communities cannot be overstated, as Tribal lands are some of the most remote and inaccessible across the nation. By necessity, health care delivery must operate differently in these locations than healthcare systems in more populated and accessible regions of the United States. Most health care and pharmacy care in these remote regions depends on lower- or mid-level providers in village clinics, connected through technology to supervising providers in other locations. These unique health care systems successfully provide essential care for hundreds of Tribes.

We urge the Biden administration to carefully consider the uniqueness of the Indian Health System when it is proposing regulations with the stated priority of health equity and improving access. **We urge the DEA to provide an exemption when (1) the patient is an IHS-eligible person and/or (2) the prescribing practitioner is an Indian Health Care Provider (IHCP).** This way, the Tribes retain the appropriate level of control over their eligible patients, whether based on descendancy or other various flexibilities Tribes enjoy due to their inherit sovereignty. This is a necessary exemption for the DEA to honor Tribal sovereignty and self-determination.

The Indian health system and its patients will be profoundly affected by the proposed rule, given the great extent to which it relies on telemedicine to serve its beneficiaries. Given these facts, Tribal consultation on the proposed rule was clearly required under both agencies' Tribal consultation policies and Executive Order 13175. In order to comply with the Executive Order, **we recommend the DEA meaningfully consult with**

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[2] Rural America at a Glance. USDA, Economic Information Bulletin 200 (November 2018). Available at: https://www.ers.usda.gov/webdocs/publications/90556/eib-200.pdf.

[3] Indian Health Service Press Release: Indian Health Service Further Expands Telehealth Services to Meet Patient Needs (October 31, 2022). Available at: https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/IHSPressReleaseRingMDTelehealthExpansion.pdf.

Tribal officials early in the process of developing its final rule. The issue before us is a prime example of the need for Tribal consultation, in order for the DEA and other federal agencies to truly understand the unique impact its rules have on Tribal communities and to hear the innovative solutions that Tribal organizations and Tribal leaders have to offer. The Administration has committed to honoring Tribal sovereignty and including Tribal voices in policy deliberations that affect Tribal communities, such as this proposed rulemaking. The consideration of Tribal comments is crucial to honoring the unique legal and political relationship the United States has with Tribal governments and the trust responsibility it owes to ensure the health and well-being of Tribal citizens across the country.

Conclusion

We appreciate the seriousness of the work entrusted to the DEA. Preventing diversion of controlled substances is important to Tribal health organizations as well, but so is ensuring appropriate access to patients and their providers so as to support improved healthcare outcomes regardless of location. We appreciate your consideration of the above comments and recommendations and look forward to engaging with the agency further.

Sincerely,

W. Ron Allen, CMS/TTAG Chair
Jamestown S'Klallam Tribe, Chairman/CEO