



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

July 7, 2023

The Honorable Anne Milgram
Administrator
Drug Enforcement Administration
U.S. Department of Justice
8701 Morrisette 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 (DEA-407)

Dear Administrator Milgram,

On behalf of the Centers for Medicare and Medicaid Services (CMS) Tribal Technical Advisory Group (TTAG), I write to stress the importance of the Drug Enforcement Administration (DEA) hosting a formal Tribal Consultation and Urban Confer before promulgating its final rule, “Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation” (DEA-407). The TTAG is encouraged by the DEA’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.

In a previous comment on the proposed rule, we urged the DEA to comply with Executive Order 13175, and meaningfully consult with Tribal officials and confer with urban Indian health providers early in the process of developing its final rule.¹ The issue before us is a prime example of the need for Tribal Consultation and Urban Confer, 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 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.

The national opioid epidemic has disproportionately affected Indian Country, with American Indians and Alaska Natives (AI/ANs) experiencing the highest adjusted drug

¹ TTAG Comment on Docket No. DEA-407: Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation (March 31, 2023) available at: https://www.nihb.org/tribalhealthreform/wp-content/uploads/2023/03/2023-03-31_DEA_TTAG-Letter-on-DEA-407-1.pdf.

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overdose rates and the highest rates of increase in opioid overdose deaths over the past ten years of any group.² Tribes and Tribal organizations have taken measured 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. However, the impact that this temporary final regulation has on our communities cannot be overstated, as Tribal lands are some of the most remote and inaccessible across the nation. As you know, the majority of Tribal communities are in rural environments. AI/ANs are the only group that makes up a larger share of the rural population than the urban population,³ 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.⁴

Given the trend in these services, the importance of telemedicine regulations on our communities cannot be overstated, as Tribal lands are some of the most remote and inaccessible in the country. For example, most villages served in the Alaska Tribal Health system have no road or limited air or water access. The nearest community with a pharmacist, a physician, or a psychiatrist could be an hour or more away by airplane (assuming safe weather and available flights).

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 future rule making must include Tribal input through formal consultation as outlined in Executive Order 13175. We appreciate your consideration of the above recommendations and look forward to engaging with the agency further.

Sincerely,



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

² National Indian Health Board Resolution 22-08: Support for Partnership in a National Fentanyl and Opioid Summit in Indian Country (2022).

³ 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>.

⁴ 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.