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Informational Bulletin from OMH Chief Medical Officer

Prescription of Controlled Substances after the Federal Public Health Emergency for COVID-19

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The Ryan Haight Act¹ requires at least one in-person medical evaluation prior to issuing a prescription for controlled substances via telehealth. During the COVID-19 public health emergency (PHE), the U.S. Department of Health and Human Services has allowed telemedicine to be used in place of the in-person evaluation for the prescription of schedule II-V controlled substances. This flexibility will continue for the duration of the federally declared PHE. Barring action by Congress or HHS to extend this flexibility, when the PHE ends, the initial in-person requirement will resume.

A bill was recently introduced in Congress, known as the TREAT Act, that proposes to give practitioners (i.e. physicians and nurse practitioners), in certain situations, the option to prescribe Schedule III and IV controlled substances either through two-way, real-time telecommunications or through an in-person medical evaluation. It should be noted that the TREAT Act has not become law.

Generally, controlled substances prescribed in ambulatory mental health programs are benzodiazepines, stimulants, and buprenorphine. Under the Ryan Haight Act, in order for a prescription for controlled substances to be valid it must be issued by either a practitioner who has conducted at least one in-person medical evaluation of the patient or a covering practitioner.

For purposes of the Ryan Haight Act, a covering practitioner is a practitioner who conducts a medical evaluation (other than an in-person medical evaluation) at the request of a practitioner who has conducted at least one in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine, within the previous 24 months, and is temporarily unavailable to conduct the evaluation.²

However, in certain situations³, the in-person medical evaluation requirement can be waived.⁴ This includes situations where a practitioner has acquired a special registration⁵ for the practice of telemedicine⁶ from the U.S. Attorney General.

When the PHE ends, programs must ensure practitioner compliance with the Ryan Haight Act, as follows:

- Patients who have been seen in person prior to or during the PHE by the practitioner prescribing the controlled medication may continue to be prescribed such medications via telehealth.
- Patients who have never been seen in person must be seen in person by the prescribing practitioner at least once prior to the renewal or new prescription for a controlled substance after the PHE ends. **Programs are strongly encouraged to begin scheduling in-person appointments before the end of the PHE to manage practitioner workload and mitigate risk to patients.**

¹ Ryan Haight Online Pharmacy Consumer Protection Act of 2008, 21 U.S.C. §§ 802, 829.

² 21 U.S.C. § 829(e)(2)(C).

³ Explained in 21 C.F.R. § 1300.04(i) (<https://www.ecfr.gov/current/title-21/chapter-II/part-1300/section-1300.04>).

⁴ 21 U.S.C. § 802(54)

⁵ 21 U.S.C. § 831(h)

⁶ 21 C.F.R. § 1300.04(i)(5)

- Patients who were seen in person prior to or during the PHE, but have their medications prescribed by another practitioner (the covering practitioner), must be seen in person by the prescribing practitioner within two years of the last in-person visit.

Additional information regarding compliance with the Act can be found at:

- https://www.deadiversion.usdoj.gov/mtgs/pract_awareness/conf_2019/dec_2019/ikner.pdf#search=telemedicine
- https://www.deadiversion.usdoj.gov/fed_regs/rules/2020/fr0930_2.htm