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## **Informational Bulletin from OMH Chief Medical Officer**

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

**February 2, 2023**

The Ryan Haight Act<sup>1</sup> 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, which is set to expire on May 11, 2023. Barring action by Congress or HHS to extend this flexibility, when the PHE ends, the initial in-person requirement will resume.

According to the DEA, as of March 16, 2020, and continuing for as long as the Secretary's designation of a PHE remains in effect, DEA-registered practitioners in all areas of the United States may issue prescriptions for all schedule II-V controlled substances to patients for whom they have not conducted an in-person medical evaluation, provided all of the following conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice;
- The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system; and
- The practitioner is acting in accordance with applicable Federal and State laws.

The DEA provided further flexibility during the PHE to allow authorized practitioners to prescribe buprenorphine to new and existing patients with Opioid Use Disorder by audio-only telephone communication, without requiring such practitioners to first conduct an examination of the patient in person or via telemedicine.<sup>2</sup>

The New York State Department of Health recently clarified that New York State laws and regulations are aligned with the DEA policy for the duration of the PHE.<sup>3</sup> This means that practitioners who are prescribing controlled substances using telehealth during the PHE must use an audio-visual, real-time, two-way interactive communication system to conduct the evaluation. Audio-only may not be relied upon to prescribe controlled substances, except buprenorphine.

Generally, controlled substances prescribed in ambulatory mental health programs include 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

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

<sup>2</sup> [https://www.deadiversion.usdoj.gov/GDP/\(DEA-DC-022\)\(DEA068\)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20%20\(Final\)%20+Esign.pdf](https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-022)(DEA068)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20%20(Final)%20+Esign.pdf)

<sup>3</sup> [https://health.ny.gov/professionals/narcotic/docs/2023-01-31\\_telemedicine\\_initial\\_exam.pdf](https://health.ny.gov/professionals/narcotic/docs/2023-01-31_telemedicine_initial_exam.pdf)

evaluation (other than an in-person medical evaluation) at the request of a practitioner who is temporarily unavailable to conduct the evaluation and 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.<sup>4</sup>

However, in certain situations,<sup>5</sup> the in-person medical evaluation requirement can be waived.<sup>6</sup> This includes situations where a practitioner has acquired a special registration<sup>7</sup> for the practice of telemedicine<sup>8</sup> from the U.S. Attorney General. The DEA has not issued further guidance on this process.

When the PHE ends on May 11, 2023, 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 using 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 on May 11, 2023 to manage practitioner workload and mitigate risk to patients.**
- 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 Ryan Haight Act can be found at:

- [https://www.deadiversion.usdoj.gov/mtgs/pract\\_awareness/conf\\_2019/dec\\_2019/ikner.pdf#search%3Dtelemedicine](https://www.deadiversion.usdoj.gov/mtgs/pract_awareness/conf_2019/dec_2019/ikner.pdf#search%3Dtelemedicine)
- <https://www.federalregister.gov/documents/2020/09/30/2020-21310/implementation-of-the-ryan-haight-online-pharmacy-consumer-protection-act-of-2008>

Lastly, Section 1262 of the 2023 Consolidated Appropriations Act removed the federal requirement for practitioners to submit a Notice of Intent (apply for a waiver) to prescribe buprenorphine for the treatment of Opioid Use Disorder. All practitioners who have a current DEA registration that includes Schedule III authority, may now prescribe buprenorphine for Opioid Use Disorder in their practice. More information on the elimination of X-waiver can be found at:

- <https://www.samhsa.gov/medication-assisted-treatment/removal-data-waiver-requirement>
- [https://www.health.ny.gov/professionals/narcotic/docs/2023-01-20\\_mat\\_act\\_commissioner\\_letter.pdf](https://www.health.ny.gov/professionals/narcotic/docs/2023-01-20_mat_act_commissioner_letter.pdf)
- [https://oasas.ny.gov/system/files/documents/2023/01/elimination\\_x\\_waiver.pdf](https://oasas.ny.gov/system/files/documents/2023/01/elimination_x_waiver.pdf)

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<sup>4</sup> 21 U.S.C. § 829(e)(2)(C).

<sup>5</sup> Explained in 21 C.F.R. § 1300.04(i) (<https://www.ecfr.gov/current/title-21/chapter-II/part-1300/section-1300.04>).

<sup>6</sup> 21 U.S.C. § 802(54)

<sup>7</sup> 21 U.S.C. § 831(h)

<sup>8</sup> 21 C.F.R. § 1300.04(i)(5)