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# Update on Developments with Ryan Haight and Online Prescribing

Those of us involved in Telepsychiatry have been living with the Ryan Haight Act (RHA) since 2009.<sup>1</sup> During this time, it has been more or less successful in achieving its original goal of reining in rogue internet pharmacies. However, uncertainties about the Act have been present from the beginning. Where those questions were not substantially clarified over the following years, it has created lingering difficulties about it within the telemedicine world. The requirement of an initial in-person evaluation has been a major barrier in some telepsychiatry applications—particularly direct to consumer. The Act did not specifically ban the use of telemedicine to prescribe controlled substances. Physicians were able to do so if they had conducted at least one in-person exam of the patient or met one of the seven "practice of telemedicine" exceptions to in-person exam requirement. However, the "practice of telemedicine" exceptions are very narrow, highly technical and have come to be outdated. For example, the Ryan Haight Act does not have a "practice of telemedicine" exception if the patient is at home, school or work. Telemedicine has progressed greatly in the time since the Ryan Haight Act was enacted.<sup>2</sup>

In 2015, several APA members involved with the American Telemedicine Association's Mental Health Special Interest Group sent a letter to the DEA, advocating for physician-friendly changes to federal controlled substance prescribing rules. That letter urged DEA to open a special registration process to allow physicians to prescribe controlled substances via telemedicine without the need for an in-person exam. The ATA letter noted that "the interpretation of the [Ryan Haight] Act's general prohibition of prescribing controlled substances by means of the internet had become overly restrictive." A group of us were able to have a series of meetings with DEA representatives and it seemed as though there was general agreement by all parties that this was a logical next step. A change in administration understandably delayed the process. However, the situation on the ground (particularly with the current opioid crisis) appears to have finally had the effect of renewing the focus on moving forward on the matter.

Three Republican senators (McCaskill, Murkowski and Sullivan) have asked the Drug Enforcement Agency (DEA) to "expedite" rulemaking that would allow providers to prescribe medication for opioid addiction via telemedicine. The lawmakers are also now asking the DEA to authorize the long-awaited "special registration" process to allow providers to prescribe controlled substances to support President Donald Trump's public health emergency declaration that expands telehealth treatment options.<sup>3</sup>

In their letter to the DEA, the senators address the Ryan Haight Act as the primary impasse in preventing physicians from prescribing medication-assisted treatments via telemedicine to patients seeking treatment for opioid dependence disorder. As noted, within the RHA, Congress delegated authority to the DEA to create a "special registration."<sup>4</sup> Through this registration, physicians and other prescribers would be able to practice telemedicine without being "subject to the mandatory in-person medical evaluation requirement."<sup>5</sup> As noted, until this latest push, the DEA had taken little concrete action to promulgate rules that would result in the issuance of such a special registration.

Please read the entire Privacy Policy of the American Psychiatric Association (APA). As described, this website utilizes cookies. By closing this message, continuing the navigation or otherwise continuing to view the APA's websites, you confirm that you understand and accept the terms of the APA's Privacy Policy. In conjunction with President Trump's statement declaring the opioid epidemic as a public health emergency, his "Commission on Combating Drug Addiction" recommended the use of telemedicine to assist in expanding access to treatments for patients with opioid dependence disorder. The letter from the Senators provides examples of how restrictions on telemedicine providers from prescribing anti-addiction medication continues to disadvantage rural Americans who lack access to dedicated treatment centers and mental health professionals. The letter directly calls on Acting Administrator Patterson and the agency to "immediately move to expedite the rulemaking process to create a special registration class of providers permitted to prescribe opioid-based medication-assisted addiction therapies via telemedicine." This is obviously a helpful recommendation though the senators stop short of asking for the agency to promulgate a rule that would allow general prescribing of controlled substances for pain management, pain treatment, or any other pain-related purposes.

Given the shortage of psychiatrists in the U.S., it is a positive development that some members of Congress representing states with acute shortages or geographic barriers to patients seeking addiction treatment are speaking out in support of employing telemedicine to help fight growing opioid addiction problems within their states. Some state legislatures are also in the process of passing legislation to help facilitate the prescription of controlled substances to treat opioid dependence disorder via telemedicine.<sup>6</sup>

If passed, the Special Registration for Telemedicine Clarification Act would legislatively mandate that the DEA promulgate interim final regulations for the special registration within 30 days of passage. This could have the effect of significantly expanding the ability to prescribe controlled substances via telemedicine and create expanded opportunities for direct-to-consumer models.<sup>7</sup>

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## About the Author

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