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DEA's Expansion of Prescribing Controlled Substances Via Telemedicine

In response to the ongoing developments regarding the COVID-19 outbreak, the U.S. Drug Enforcement Administration (the "DEA") has temporarily permitted providers to prescribe controlled substances via telemedicine.

DEA's COVID-19 Information Page.

On March 16, 2020, the DEA published a COVID-19 Information Page that provides guidance to providers concerning certain topics relating to the COVID-19 outbreak including, but not limited to, a provider's ability to prescribe controlled substances to patients that they only have a telehealth relationship with (i.e. have never met in person), which is prohibited by the federal Ryan Haight Act. Please see <https://www.dea diversion.usdoj.gov/coronavirus.html> for the DEA's "COVID-19 Information Page."

The Ryan Haight Act

Pursuant to the Ryan Haight Act, and unless a certain exception applies, a provider may not prescribe a controlled substance to a patient unless he/she has first conducted at least one in-person medical evaluation of the relevant patient. Practically speaking, this prohibits providers from prescribing controlled substances for provider-patient relationships that are established and maintained exclusively via telehealth.

The New Exception

The Ryan Haight Act, however, provides for an exception in the event that the Secretary of U.S. Department of Health and Human Services ("Secretary") declares a public health emergency. As most are aware by now, the Secretary issued such public health emergency with regard to COVID-19 on January 31, 2020. As a result, the DEA published the following on its COVID-19 Information Page.

"Accordingly, as of March 16, 2020, and continuing for as long as the Secretary's designation of a public health emergency 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.

Provided the practitioner satisfies the above requirements, the practitioner may issue the prescription using any of the methods of prescribing currently available and in the manner set forth in the DEA regulations. Thus, the practitioner may issue a prescription either electronically (for schedules II-V) or by calling in an emergency schedule II prescription to the pharmacy, or by calling in a schedule III-V prescription to the pharmacy.”

Therefore, during this public health emergency providers are able to (in certain circumstances) prescribe schedule II-V substances to patients through telehealth.

Stay Informed

We expect to see additional changes as this outbreak continues, stay tuned and refer to our Coronavirus (COVID-19) Resource Center for ongoing guidance at: <https://shipmangoodwin.com/Coronavirus-COVID-19-Guidance>. If you have any questions, please do not hesitate to contact any member of our Health Law Practice Group listed on page 1.

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