Remote Prescribing of Controlled Substances: Current Status & Policy Recommendations to Ensure Continued Access to Lifesaving Treatments

Background

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (Ryan Haight Act) amended the federal Controlled Substances Act by adding a requirement that a Drug Enforcement Administration (DEA)-registered practitioner must conduct at least one in-person medical exam of a patient before prescribing a controlled substance by means of the internet, including through telemedicine. The law contains seven "telemedicine exceptions" to the in-person exam requirement, but most of these exceptions have limited utility in contemporary telemedicine arrangements when the patient is located at home. One exception, referred to in the law as the special telemedicine registration, would provide more opportunities for safe telemedicine practice, but has yet to be implemented. (See here for more information)

Current Landscape of the Remote Prescribing of Controlled Substances

In 2020, in response to the COVID-19 public health emergency, the **DEA** in coordination with **Health and Human Services (HHS)**, authorized DEA-registered practitioners to prescribe **controlled substances via telemedicine** without first conducting an in-person medical evaluation.[1]

These flexibilities have been **extended three times, and are now set to expire on December 31, 2025**[2] unless the DEA or Congress acts to again extend these waivers or the DEA releases a final special registration telemedicine rule. In the final days of the Biden Administration, DEA released a proposed rule entitled "Special Registration For Telemedicine & Limited State Telemedicine Registrations Proposed Rule." While this draft rule creates a special registration process without in-person requirements, key provisions require clarification and adjustment to ensure workability and effectiveness. Below is a high-level summary of ATA Action's key recommendations in response to the proposed rule:

- **Ensure continuity of care** by urgently announcing an extension of the current telemedicine flexibilities beyond December 31, 2025, to prevent disruptions in access to critical treatments.
- **Streamline and clarify the special registration process**, including platform eligibility, application cycles, fees, and timelines.
- **Avoid operational burdens** like mandatory nationwide Prescription Drug Monitoring Program (PDMP) checks and new DEA verification numbers for pharmacists that could delay patient access.
- **Clarify ambiguous requirements** around telemedicine attestation, geographic "red flags," and patient identity verification.

Currently, stakeholders are in waiting mode to see how the current Administration proceeds with this proposed rule – whether they scrap it and start from scratch or release a final rule.

Policy Recommendations: What Can Congress Do?

- Urge the DEA to extend the remote prescribing of controlled substances flexibilities well in advance of the December 31 expiration date. At this point in the year, there will not be enough time for the DEA to release a final telemedicine special registration rule and implement it before the end of the year.
- Enact the TREATS Act which would permanently waive the in-person requirement for the remote prescribing of a schedule II-IV controlled substance specifically for opioid use disorders and substance use disorders. While ATA Action is supportive of this bill, additional actions will be needed to ensure patients receiving treatment for other conditions are not left behind.
- Act well before year end to extend flexibilities if DEA does not, ensuring patients have uninterrupted access to lifesaving care.

[1] DEA's response to COVID-19
[2] DEA and HHS Extend Telemedicine Flexibilities through 2025