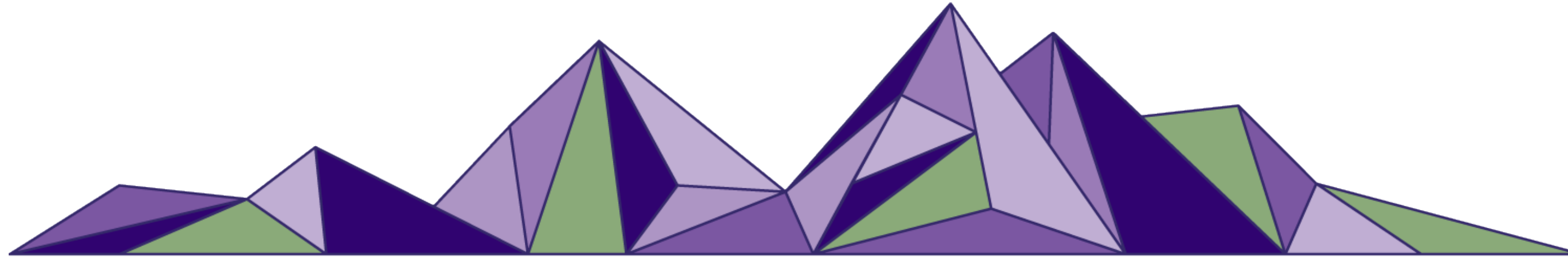


THE TeleBehavioral Health Summit

Welcome!

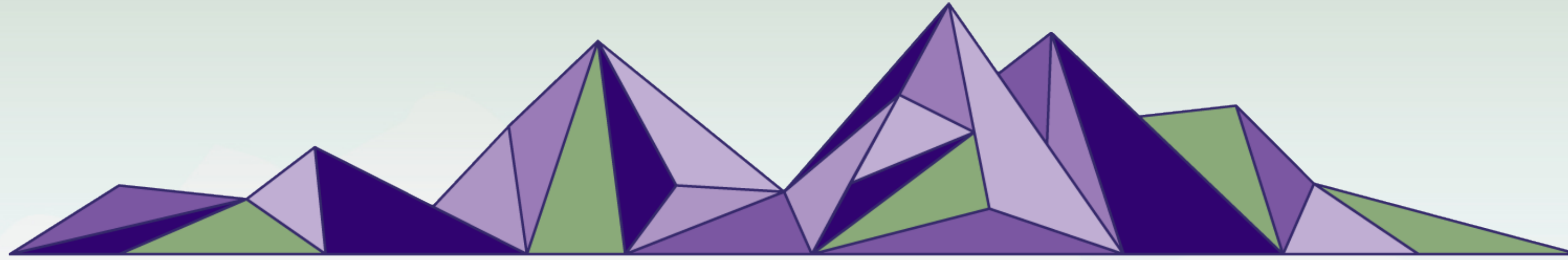
TeleBehavioral Health Policy: What's Next for TeleBehavioral Health, a State and Federal Review

Mei Kwong JD, CCHP
Christa Natoli, CTeL
Kyle Zebley, ATA

A few notes……

- ✓ No TeleBH Summit speakers or planners have any relevant conflicts of interest to disclose. Other disclosures have been mitigated.
- ✓ Today's talk is purely for informational purposes; and is not to be regarded as legal advice. Please consult with legal counsel, as well as current legislative and regulatory sources, for accurate and up-to-date information.
- ✓ WHOVA Q&A for content questions for speakers.
  - ✓ WHOVA chat for logistics questions and technical support.
- ✓ Evaluation → Certificate of Attendance and/or CME credits.

We gratefully acknowledge support from:



THE TeleBehavioral Health Summit

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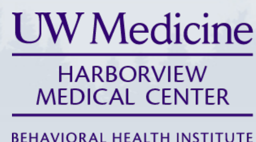


Learning Objectives

1. Understand high level state and federal laws and regulations impacting the delivery of digital health
2. How policies being evaluated by Congress, CMS, and state regulatory bodies impact the delivery of virtual mental and behavioral health care services
3. Prescribing controlled substances post PHE termination

THE **TeleBehavioral Health Summit**

State Telehealth Policy Post-PHE

Mei Wa Kwong, JD

Center for Connected Health Policy

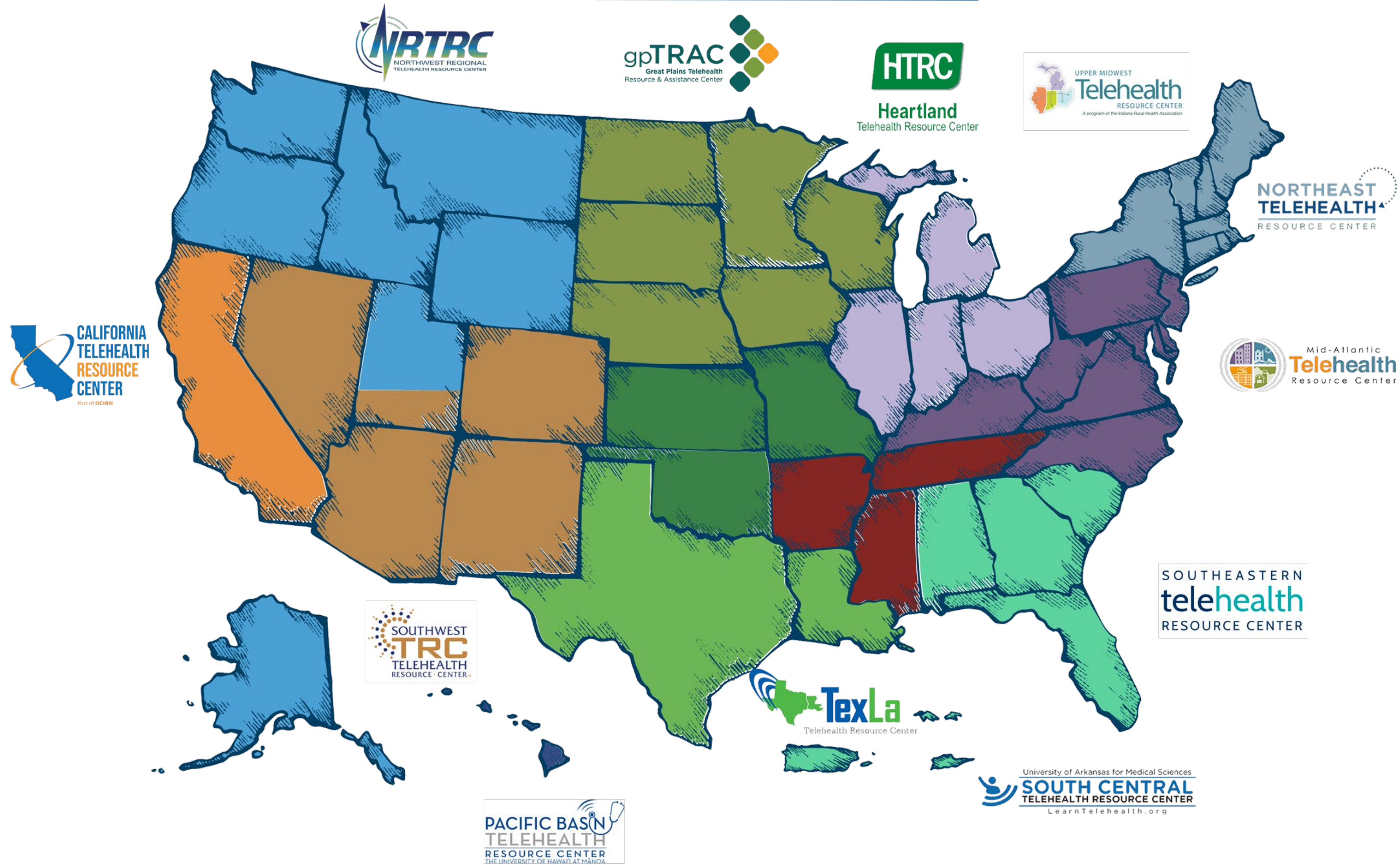
UW Medicine HARBORVIEW MEDICAL CENTER BEHAVIORAL HEALTH INSTITUTE

NRTRC NORTHWEST REGIONAL TELEHEALTH RESOURCE CENTER

Washington State Health Care Authority

TTAC
TelehealthTechnology.org
CCHP

2 NATIONAL RESOURCE CENTERS



https://telehealthresourcecenter.org/

Learning Objectives

1. Understand the changes states made to their telehealth policies in response to COVID-19
2. Understand what the state telehealth policy landscape looks like post-PHE
3. Understand what states might do next with their telehealth policies

TEMPORARY WAIVERS MADE IN RESPONSE TO COVID-19

FEDERAL	
MEDICARE ISSUE	**CHANGE**
Geographic Limit	Waived
Site limitation	Waived
Provider List	Expanded
Services Eligible	Added additional 80 codes
Visit limits	Waived certain limits
Modality	Live Video, Phone, some srvs
Supervision requirements	Relaxed some
Licensing	Relaxed requirements
Tech-Enabled/Comm-Based (not considered telehealth, but uses telehealth technology)	More codes eligible for phone & allowed PTs/OTs/SLPs & other use

- DEA – PHE prescribing exception/allowed phone for suboxone for OUD
- HIPAA – OCR will not fine during this time

STATE (Most Common Changes)	
MEDICAID ISSUE	**CHANGE**
Modality	Allowing phone
Location	Allowing home
Consent	Relaxed consent requirements
Services	Expanded types of services eligible
Providers	Allowed other providers such as allied health pros
Licensing	Waived some requirements

- Private payer orders range from encouragement to cover telehealth to more explicit mandates
- Relaxed some health information protections

COMMON STATE POLICY TELEHEALTH CHANGES MADE IN RESPONSE TO COVID-19

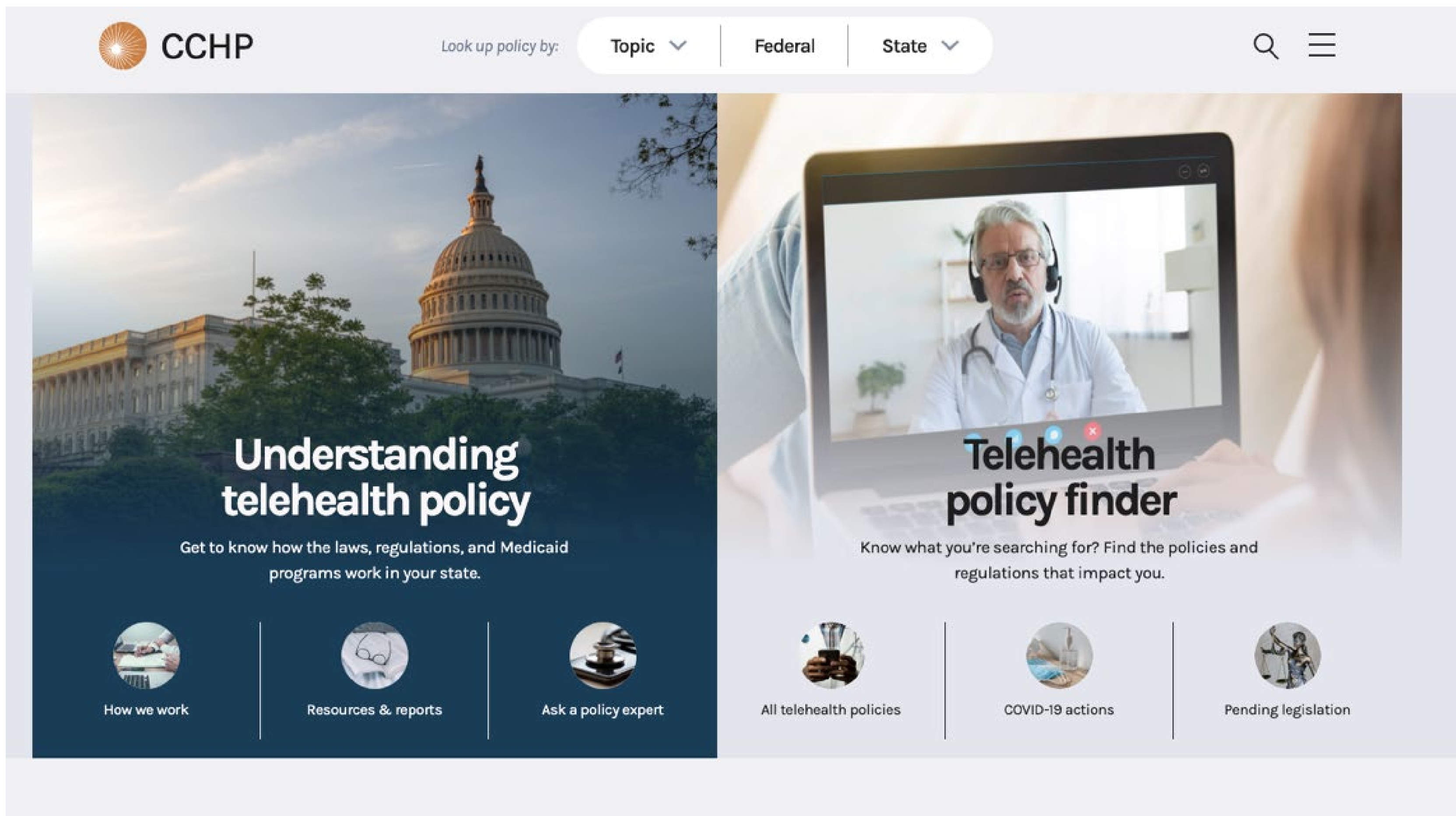
- **MEDICAID**
  - Expanding types of providers who could use telehealth
  - Allowed audio-only to be used to provide some services
  - More explicit policies around FQHCs/RHC
  - Expansion of types of services that will be covered if telehealth is used
  - Allowing home to be an eligible originating site
- **LICENSURE**
  - Some states created temporary waivers to allow out-of-state practitioners to provide services within state without obtaining a state license

PEMANENT STATE TELEHEALTH POLICY CHANGES

- **MEDICAID**
  - Expanded provider list
  - Expanded services list
  - Allow the home to be an eligible originating site
  - Audio-only policies
- **LICENSURE**
  - Registry
  - Certain exceptions to licensure such as if a prior relationship existed or limited amount of interactions
- **COMMERCIAL PAYERS**
  - More explicit payment parity laws

WHAT'S NEXT?

- **What to keep you eye on:**
- Licensure policy
- Medicaid Changes
  - More audio only policies?
  - eConsult
  - Interstate Telehealth and how do you deal with that?
  - More data/more scrutiny
- Broadband/Connectivity



- CCHP Website – cchpca.org
- Subscribe to the CCHP newsletter at cchpca.org/contact/subscribe
- info@cchpca.org

CTeL

TELEHEALTH | RESEARCH · POLICY · ACTION

TeleBH Summit

May 10, 2023

Christa Natoli, CTeL
Executive Director

Learning Objectives…

- A review of PHE-era Flexibilities Expiring at 11:59 PM ET on May 11, 2023
- A review of PHE-era Flexibilities Extended Through December 31, 2024
- Telemedicine Compliance Audit in a Post-PHE Legal and Regulatory Environment

PHE Flexibilities Expiring on May 11

1. Prescribing Controlled Substances Via Telehealth Directly Into the Home.

*Please note DEA's March 1, 2023, proposed rule "Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation"

2. HIPAA HHS' Office for Civil Rights' (OCR) Telehealth HIPAA Enforcement Flexibilities.

*OCR's enforcement flexibilities will expire when the PHE ends on May 11. OCR is granting a 90-day additional grace period for telehealth providers to become compliant, from May 12 – August 9, 2023

These Notifications and the effective beginning and ending dates are:

- Enforcement Discretion Regarding COVID-19 Community-Based Testing Sites During the COVID-19 Nationwide Public Health Emergency, effective from March 13, 2020, to 11:59 pm May 11, 2023.
- Enforcement Discretion for Telehealth Remote Communications During the COVID–19 Nationwide Public Health Emergency, effective from March 17, 2020, to 11:59 pm May 11, 2023.
- Enforcement Discretion Under HIPAA To Allow Uses and Disclosures of Protected Health Information by Business Associates for Public Health and Health Oversight Activities in Response to COVID-19, effective from April 7, 2020, to 11:59 pm May 11, 2023.
- Enforcement Discretion Regarding Online or Web-Based Scheduling Applications for the Scheduling of Individual Appointments for COVID-19 Vaccination During the COVID-19 Nationwide Public Health Emergency, effective from December 11, 2020, to 11:59 pm May 11, 2023.

CY23 Consolidated Appropriations Act

On Thursday, December 29, President Biden signed the Fiscal Year 2023 Consolidated Appropriations Act. This legislative package extends most of the pandemic-era Medicare telehealth flexibilities for two years, through December 31, 2024.

Telehealth Flexibilities Extended through December 31, 2023

a. Removing Geographic Requirements and Expanding Originating Sites for Telehealth. This will continue to allow all Medicare beneficiaries, regardless of geographic location, to be able to utilize telehealth services. Medicare beneficiaries will also be able to continue to utilize telehealth services in the comforts of their home.
b. Extending Telehealth Services for Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs).
c. Delaying the In-Person Requirements Under Medicare for Mental Health Services Furnished Through Telehealth and Tele-Communications Technology. FQHC and RHCs will also be able to furnish telehealth services for mental health patients without an in-person requirement through January 1, 2025.
d. Allowing for the Furnishing of Audio-Only Telehealth Services for Medicare Beneficiaries.
e. Allowing for the Use of Telehealth to Conduct Face-to-Face Encounters Prior to Recertification of Eligibility for Hospice Care.
f. Expanding Practitioners Eligible to Furnish Telehealth Services. This provision will continue to allow physical therapists, occupational therapists, and speech-language pathologists to furnish telehealth services to Medicare beneficiaries.
g. Requiring the Secretary of the Department of Health and Human Services to Conduct a Study on Telehealth and Medicare Program Integrity by October 1, 2024.
h. Extending the Acute Hospital Care at Home Initiative.
i. *Virtual Supervision has been extended under the Medicare Physician Fee Schedule through December 31, 2023.
It is unclear at this time if Virtual Supervision flexibilities will be extended again into fiscal year 2024.

CY23 Medicare Physician Fee Schedule

CMS issued a fact sheet detailing the telemedicine service codes that will be extended through the end of Calendar Year 2023. The CAA, 2023 further extended those flexibilities through CY 2024. CMS updated and simplified the Medicare Telehealth Services List to clarify that these services will be available through the end of CY 2023, and they anticipate addressing similar updates to the Medicare Telehealth Services List for CY 2024.

View CMS List of Reimbursable Medicare Telemedicine Service Codes **HERE**.

May 11 2023: Post PHE Check List

If you have not already, CTeL recommends your organization prepares for the following questions:

The Federal PHE is Scheduled to end on May 11, 2023

- Is your telemedicine platform compliant with the Health Insurance Portability and Accountability Act of 1996 (HIPPA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act?
- Have you evaluated the implications of DEA's rule on prescribing controlled substances via telemedicine to ensure you are compliant with the Controlled Substances Act and Ryan Haight Act of 2008?
- If you prescribe controlled substances and DEA's proposed prescribing rules do not go into effect by May 11, 2023, are your telemedicine prescribing practices compliant with the Ryan Haight Act of 2008?
- Have you reviewed the list of CY23 Medicare telemedicine service codes that are eligible for reimbursement after the PHE expires to determine potential changes to billing practices for Medicare patients?
- Have you reviewed the list of CY23 Medicaid telemedicine services codes that are eligible for reimbursement in the states that you deliver medicine and determine potential changes to billing practices for Medicaid Patients?

May 11 2023: Post PHE Check List

If you have not already, CTeL recommends your organization prepares for the following questions:

The Federal PHE is Scheduled to end on May 11, 2023

Have you evaluated whether the states where you deliver medicine has policies on coverage parity, service parity, payment parity for Medicaid and commercial plan reimbursement?

Have you reviewed contracts with commercial payors to determine potential changes in reimbursement and covered services?

Have you engaged with your organization's payor strategy/revenue cycle leader to negotiate sustained reimbursement with your contracted payors?

Future Forecasting

CTeL Telehealth Cost Impact Research:

Making the case for permanency with agnostic data

In 2022, CTeL completed a large-scale telehealth cost impact study for the benefit of the Congressional Budget Office, Congress, and the Executive Branch.

CTeL's research analyzed cost, utilization, services provided, and access.

- 1.43 million telehealth encounters analyzed
- All 50 states represented in the dataset
- Every payor represented in the dataset: Medicare, Medicare Advantage, Medicaid, Commercial Plans, and Self-Pay

Key Findings:

1. Telehealth was cost-saving or cost-neutral to the federal government depending on service area.
2. No instances of fraud were found.
3. Top 5 diagnoses included: Mental/Behavioral Health, Neoplasms (e.g. cancer), Endocrine (e.g. diabetes), Circulatory (e.g. heart disease), musculoskeletal (e.g. arthritis).
4. Telemedicine patient demographics closely resembled U.S. Census data on age, gender, ethnicity/race, and geographic location (rural vs. urban).
5. Nearly one-third of encounters were for patients diagnosed with mental or behavioral health (including substance use disorder)
6. Children accounted for more than one-third of patients with mental or behavioral health diagnoses.

What is Next?

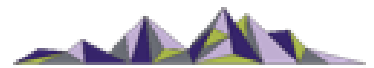
Working with the Congressional Budget Office and Congress to inform Legislation

Continue to work with the data set to explore specific cost savings in areas of nutrition, cancer, & mental health

Begin work on developing quality measures that are specific to telehealth using this data

Questions?

CHRISTA NATOLI
Executive Director, CTeL
ChristaNatoli@CTeL.org



History and Current Status of Ryan Haight Act

Kyle Zebley, SVP of Public Policy, ATA & Executive Director, ATA Action

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What is the Ryan Haight Act?

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 requires a practitioner to conduct at least one in-person medical evaluation of the patient before prescribing a controlled substance by means of the “Internet” (a broadly-defined term that includes telemedicine). The Act contains seven exceptions when a provider doesn’t have to examine the patient in-person first including:

1) treatment in a hospital or clinic

2) treatment in the physical presence of a DEA-registered practitioner

3) treatment by Indian Health Service or Tribal practitioners

4) treatment during a public health emergency as declared by the Secretary of Health and Human Services

5) treatment by a practitioner who has obtained a “special registration”

6) treatment by Department of Veterans Affairs practitioners during a medical emergency

7) other circumstances specified by regulation. *See* 21 C.F.R. § 1300.04(i)(1)-(7).

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Overview of the Ryan Haight Act

2001
Ryan Haight, a CA high school student, passes away from drug poisoning from a CS prescription he obtained from rogue online pharmacy

Oct 15, 2008
As a result, Ryan Haight Act was implemented, requiring a DEA licensed provider to see a patient in-person before prescribing a CS via telehealth. There were a few exceptions when an in-person visit was no required.

2018
A law was enacted requiring the DEA to activate a special registration allowing DEA licensed providers to prescribe CS via telehealth without an in-person exam. The DEA had no more than a year to complete the task, which they did not do.

January 2020
Due to the COVID-19 pandemic, DEA announced they were waiving the in-person requirement for the prescription of CS via telehealth throughout the duration of the PHE.

March 1, 2023
The DEA released a concerning proposed rule on the prescription of CS via telehealth. Public comment period 30 days.

April 23, 2023
The DEA sent a final rule to extend the COVID-19 flexibilities to OMB for approval.

May 11, 2023
The PHE ends and patients will lose access to critical treatments unless the flexibilities are extended, or the DEA publishes the final rule.

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DEA proposed rule/ATA comments chart

DEA Proposes:	ATA Comments
A clinician is able to treat a patient via telemedicine schedule III-IV non-narcotic or buprenorphine for OUD without having seen the patient in person for 30 days	In-person requirements are clinically inappropriate and do not stop diversion. Remove the in-person requirement all together. The DEA could require that the telehealth clinician attest that an in-person visit wasn't necessary and document the information. 30-day prescription is not a clinically appropriate amount of time to treat a patient. We suggest extending to 180 days. DEA should use its authority to continue to waive the in-person requirement for buprenorphine for OUD treatment for the duration of the ongoing opioid epidemic PHE
No prescribing schedule II stimulants via telemedicine	We recommend that the ability to offer a short-term prescription be extended to schedule II stimulants.
Timeline is untenable	We urge DEA to extend exisiting flexibilities for such period of time that the rule is finalized and implementable or at least through calendar year 2023.
Prescribers must include a notation on the face of the prescription that it has been issued via telemedicine	Would lead to confusion and frequent denials to dispense legitimate prescriptions Use other exisiting mechanisms to determine legitimacy of prescriptions of controlled substances.
Allow patients to receive ongoing telehealth care from a referring in-person provider	We commend DEA for creating this option and, if in-person requirements are not removed entirely, urge DEA to maintain this option in the final rule.

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ATA/ATA Action Engagement

Hosted:

- DEA Proposed Rules Listening Session Breakfast at ATA2023
- DEA Proposed Rules Listening Session Webinar (3/21/23)
- Multiple stakeholder collaboration calls

Met with:

- DEA, HHS, 30+ key congressional offices in both chambers, and other members of the administration

Launched:

- Grassroots advocacy tool- which sent 200+ comment letters to the DEA
- Paid print and digital advertisement campaign: Politico, The Hill, Roll Call, Inside Health Policy

Submitted

- 2 comprehensive comment letters to the DEA with over 20 pages of content
  - Re: Expansion of Induction of Buprenorphine via Telemedicine Encounter
  - Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation (Docket No. DEA-407)

Featured in:

- Multiple media outlets
  - Wall Street Journal, Healthcare IT News, Behavioral Health Business, Fierce Healthcare, HealthExec, mHealth Intelligence, Medcity News

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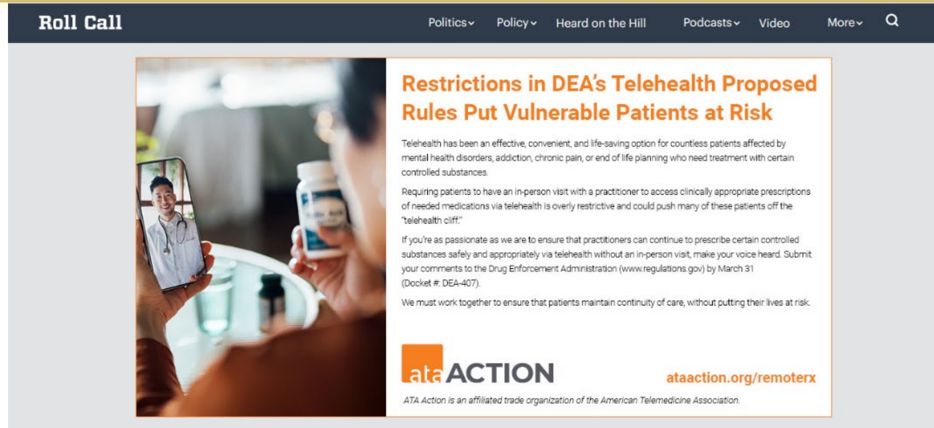
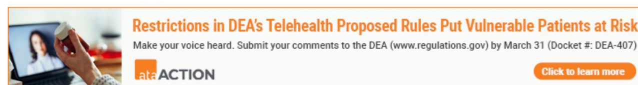


the marketplaces created by the law.

The degree to which members of the Senate, their families and staff are impacted remains unclear. The Senate Sergeant at Arms could not immediately be reached for comment Thursday. The Associated Press reported that the Sergeant at Arms had emailed all Senate email account holders informing them that the stolen data included full names of the insured and family members.



House Administration Committee Republicans on Thursday tweeted that Chairman Bryan Steil, R-Wis., was "aware of the breach and is working with the CAO to ensure the vendor takes necessary steps to protect the PII of any impacted member, staff, and their families."

WHITE HOUSE
White House blueprint would raise taxes, boost spending

CONGRESS
Officials probe DC Health Link breach that exposed Hill staff data

POLICY
Noncompete rule puts doctors, hospitals at odds

POLITICO

House GOP's retreat turns into Trump defense

Senate absences multiply headaches for both parties

It's Maryland vs. Virginia on Capitol Hill, with billions on the line

Fear, burnout and insubordination: Insiders spill details about life at the highest levels of FBI

InsideHealthPolicy
MORNING ALERT

March 20, 2023

LATEST NEWS

No Surprises Implementation Problems Worry Advocates
Problems with the implementation of the No Surprises Act (NSA) are worrying advocates who supported the law, panelists said in a discussion of the law at AHIP's annual conference, particularly after lawsuits have created uncertainty over the independent dispute resolution (IDR) process that could drive up the cost of care. FULL STORY

Maternal Mortality Rates Spiked 40% During Pandemic; Racial Disparities Still Stark
Maternal mortality rates continued to increase during the pandemic, and racial disparities in those deaths remain vast, according to new data from the Centers for Disease Control and Prevention's National Center for Health Statistics, despite sustained efforts from the Biden administration to improve equitable access to maternal health care. FULL STORY

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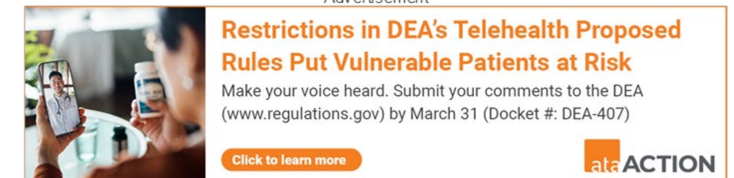

Top Insulin Makers For U.S. All Commit To Significant Price Reductions
All three drug manufacturers that supply insulin to the United States have launched efforts to significantly reduce the cost of their products. FULL STORY

LeadingAge Slams MA Plans For Impeding Post-Acute Care, Urges CMS Action
LeadingAge on Thursday (March 16) slammed Medicare Advantage plans for what it called "the critical and growing failures of Medicare Advantage (MA) to provide equitable access to needed post-acute services" and recommended steps CMS and Congress could take to rectify issues with reimbursement and contracting. FULL STORY

CMS, ONC Emphasize Importance Of Interoperability Across Health System
CMS and the National Coordinator for Health Information Technology (ONC) are emphasizing the importance of interoperability and coordination between their two offices...

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Looking Forward – What to Expect

The Office of Management & Budget (OMB) to approve the DEA's final rule to extend the COVID-19 flexibilities before the end of the Public Health Emergency on May 11 to ensure patients do not lose access to critical treatments.

For the DEA to publish its final rule on the prescription of controlled substances via telehealth before the deadline outlined in the final rule above expires.

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