Where the DEA and Telemedicine Intersect: The Ryan Haight Act

The Ryan Haight Online Pharmacy Consumer Protection Act, designed to safeguard the public from unethical internet pharmacies, took effect in 2009, along with new, relevant regulations by the Drug Enforcement Administration (DEA). The Act federally prohibits the prescribing of controlled substances via a form-only online platform.

Legitimate telehealthcare providers and rogue internet pharmacies have nothing in common, but when a physician prescribes a controlled substance for a remote patient, that practitioner needs to understand the Haight Act to be sure of compliance.

Telemedicine is a rapidly advancing and expanding sector of healthcare, in many fields and for many chronic or long-term conditions, including those that rely on pharmaceuticals for treatment (for instance, substance abuse disorders, psychiatric issues, medically-assisted weight loss, and diseases of the endocrine system).

Considering the fact that providers must comply with laws, rules and regulations at the state and federal levels, it may be unsurprising to hear that there is often confusion about telehealth prescription protocols for controlled substances and how to stay compliant within them. And at least one telemedicine organization thinks the current federal laws, when applied to legitimate providers, are too “restrictive.”

Currently, initial in-person exam required prior to prescription

The Ryan Haight Act requires any controlled substance delivered, distributed, or dispensed via the internet to be initiated by a valid prescription. (And in this case, “internet” includes the technology that makes telehealth possible.)

Additionally, in order for the prescription to be considered “valid,” it must be intended for a legitimate medical purpose, “in the usual course of professional practice” by a provider that has conducted an in-person evaluation of the patient.

The Haight Act makes it clear that any provider prescribing a controlled substance to a remote patient without having first seen the patient for evaluative purposes is committing a per se violation of the federal Controlled Substances Act (although there are some exceptions, depending on circumstance). The Haight Act does not require that initial in-person evaluation to be repeated or updated over time, but of course this is not to say that some patients or cases won’t need more frequent traditional medical visits during the course of treatment.

ATA asks DEA to make changes to remote prescribing rules

The American Telemedicine Association (ATA) sent the DEA a letter in 2015, applauding the DEA's efforts to curtail unethical behavior by "wayward prescribers," and going on to ask the Administration to make changes to federal rules for the prescribing of controlled substances for "legitimate, licensed providers who offer needed medical services to a highly targeted group of patients."

Included in the ATA's request was the suggestion (generated by a special workgroup made up of members of the ATA's Telemental Health Special Interest Group) that the DEA implement a special registration process that would allow physicians and psychiatrists to prescribe controlled substances without conducting the required in-person examination first. The letter opined that "the interpretation of the [Ryan Haight] Act's general prohibition of prescribing controlled substances by means of the internet has become overly restrictive." In light of that, the ATA called for "a structured yet flexible framework for appropriate online prescribing."

Last year the DEA announced the intention to release a new rule that would allow doctors to forego the in-person evaluation before prescribing controlled substances. Originally the Administration said the rule would be issued in January of this year; as of yet, it has not been published, though it is expected to be released at some point in 2017.

The impact telemedicine is having on healthcare is undeniable, and probably irreversible as well—which is one reason, among many, for providers to be sure their practices are aligned with the law. As the ATA's letter stated, "…telemedicine is increasingly leveraging the power of technology and the internet to offer new mechanisms for legitimate prescribers to obtain sufficient clinical information and work at the top of their professional scope."

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