

PUBLICATION

Changes for Telemedicine Policies in New Proposed Opioid Legislation

April 11, 2018

Key committees in Congress continue to work toward legislative responses to the opioid abuse problem. Several of the proposals under consideration include changes to telemedicine policies. Given broad interest in the opioid abuse problem and growing public pressure for action, Congress may likely advance legislation on this issue in the coming months.

On April 4, the Senate Health, Education, Labor and Pensions (HELP) Committee Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) released bipartisan draft legislation titled the "Opioid Crisis Response Act of 2018." Of note, the draft contains two telemedicine-related proposals.

First, the Senate HELP bill requires the Drug Enforcement Agency (DEA) to create a regulation allowing for the issuance of a special registration to enable practitioners to engage in telemedicine for prescribing controlled substances without a prior in-person exam. The bill would require this regulation to be issued within one year of passage.

Practitioners prohibited by the federal Ryan Haight Act from prescribing controlled substances remotely have long awaited the special DEA registration rules. While the Ryan Haight Act allows for the prescription of controlled substances via telemedicine, it does so only in certain very narrowly defined situations, such as when patients are located in a DEA-registered hospital or clinic. While the law also allows remote prescribing of controlled substances when issued by a practitioner who has "obtained from the Attorney General a special registration..." the DEA has not defined or addressed this special registration option thus far.

The second telemedicine policy change would specifically allow community mental health and addiction treatment centers to register with the DEA to administer controlled substances through the practice of telemedicine.

While the Ryan Haight Act already allows for remote prescribing of controlled substances to patients present at clinics registered with the DEA, not all community mental health and addiction treatment centers fall under DEA jurisdiction. Accordingly, this change in policy would open up the remote prescribing capability to an additional category of providers and clinics.

The Senate HELP Committee states that these policies are intended to improve treatment access for patients affected by opioids within rural areas that lack qualified providers, while maintaining proper safeguards.

The House Energy and Commerce (E&C) Committee has also proposed similar bills affecting telemedicine this year, including the "Special Registration for Telemedicine Clarification Act of 2018" and the "Improving Access to Remote Behavioral Health Treatment Act of 2018." These bills and the "Opioid Crisis Response Act of 2018" are scheduled for congressional hearings on April 11 in their respective committees.

With congressional activity ramping up and evolving legislation under consideration in both House and Senate, we may likely see an opioid package advance in Congress this year. Both House and Senate Committee leadership have suggested that they aim to mark-up bipartisan opioid legislation before the summer. It is

noteworthy that both Committees have included similar telemedicine proposals, which may help to support their inclusion as part of an opioid package should such legislation be enacted into law.

We will continue monitoring these proposals as Congress continues its consideration.

If you have any questions regarding the content of this alert, please contact any member of our [Baker Ober Health Law Group](#).