

# PUBLICATION

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## Expanded Telehealth Coverage in New Opioids Legislation

October 11, 2018

On October 3, 2018, the Senate voted 98-1 to pass a compromise opioids response package that includes key provisions to expand telehealth coverage and reimbursement. The House had previously passed the opioids agreement legislation, H.R. 6, "the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act," on September 28, 2018. President Trump has stated that he will sign the opioids legislation into law shortly. [Update: President Trump signed the legislation on October 24, 2018.] Policymakers consider the legislative package to be an important step in expanding health care providers' ability to address opioids through increased access to treatment, in part by removing certain barriers to the use of telehealth.

### Waiver of Medicare Requirements for Substance Abuse and Mental Health Treatment

The provision of health services via telehealth expands a provider's reach and an individual's access to needed health care services. For mental health and substance abuse treatment, telehealth can also allow for privacy and confidentiality that a brick-and-mortar clinic or treatment location may not. Despite the increased awareness of mental health and substance abuse issues and efforts to increase available treatment, individuals still often feel there is a stigma around these conditions and may be reluctant to seek treatment as a result. Telehealth can offer a private and confidential option for these individuals, thereby increasing access for patients for whom the obstacle was not a lack of a treatment program, but rather a need for discreet care.

However, under current policy, Medicare only pays for a telehealth service if certain proscriptive elements are met as set forth at 42 U.S.C. 1395m(m). One such geographic requirement specifies that the patient must be located in a rural or shortage area. This geographic requirement has restricted access to health services via telehealth because many of these health needs are nationwide and not centered in one type of geographic location. Starting July 1, 2019, Section 2001 of the SUPPORT Act amends Section 1395m(m) to eliminate the geographic requirement for telehealth services provided to beneficiaries with a substance use disorder diagnosis for purposes of treatment of such disorder or co-occurring mental health disorder. Beneficiaries still have to be at a qualifying originating site, which for these purposes does not include the home or a renal dialysis facility.

### It's Here! Special DEA Registration for Remote Prescribers

Section 3232 of the SUPPORT Act establishes a key and long-awaited mandate to 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. Providers frequently use controlled substances as part of treatment for opioid-dependent individuals to assist with the withdrawal and weaning-off process. Further, individuals seeking assistance and treatment for their addictions and dependence are often located in rural areas or provider shortage areas without access to prescribers who can order these types of medications. Therefore, remote prescribing is viewed a critical tool in reaching those affected by these conditions and putting them on the road to recovery.

Current federal law, known as the Ryan Haight Act, only allows such prescribing in very limited circumstances, such as when a patient is in a DEA-registered facility or in the presence of a DEA-registered prescriber. Clinics providing substance abuse services and/or mental health services (often intertwined with substance and opioid

addiction issues) for the most part do not fall under DEA jurisdiction. These clinics are also commonly staffed with counselors and not DEA-registered prescribers. While the law also allows remote prescribing of controlled substances when issued by a practitioner who has "obtained from the DEA Attorney General a special registration," the DEA has not defined or addressed this special registration option thus far. The SUPPORT Act requires the DEA to establish such a special registration within one year of the bill's enactment into law.

### **Study of Telehealth as a Path to Increased Substance Abuse Treatment for Medicaid Beneficiaries, Especially Children**

Section 1009 of the SUPPORT Act requires the Department of Health and Human Services (HHS) Secretary to issue guidance within one year on state options for federal Medicaid reimbursement of states' expenditures for substance use disorder services and treatment via telehealth, including:

- Substance abuse treatment and services to high-risk groups (e.g., individuals with history of overdose and/or with a co-occurring mental illness);
- Provider education related to the delivery of substance abuse services and treatment via a hub and spoke model; and
- Substance abuse treatment and services in school-based clinics using telehealth.

The bill also directs the Comptroller General to evaluate children's access within Medicaid to services and treatment for substance use disorders, including an analysis of state options for improving children's access to such services in part by increasing the number of Medicaid providers and analyzing levels of reimbursement.

Finally, the bill requires the HHS Secretary to issue within one year a report identifying best practices and potential solutions for reducing barriers to using telehealth for treating substance use disorder pediatric patients. The report shall include identification and analysis of the differences (if any) between furnishing such services via telehealth vs. in person with respect to utilization, costs, avoidable in-patient admissions/readmissions, quality of care, and patient/provider/family satisfaction.

The SUPPORT Act illustrates the growing recognition among policymakers and stakeholders of telehealth's potential to expand access to health care, including for health care services needed to address critical and widespread public health challenges. We will continue to monitor and report on the impacts of the SUPPORT Act's expansion of telehealth coverage and reimbursement policy. If you have any questions regarding the content of this alert, please contact any member of the [Baker Ober Health Law Group](#).