

United States Senate
WASHINGTON, DC 20510-6200

April 1, 2022

Ms. Anne Milgram
Administrator
United States Drug Enforcement Administration
800 K Street NW Suite 500
Washington, DC 20001

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Administrator Milgram and Secretary Becerra:

We urge the Drug Enforcement Administration (DEA) and the Department of Health and Human Services (HHS) to use its authority under the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (Ryan Haight Act) (Public Law 91-513) to issue a rule that will ensure patients can continue to access vital medication via telehealth once the COVID-19 Public Health Emergency (PHE) is terminated. Prior to the PHE, patients could not access medication assisted treatment via telehealth, leaving gaps in access and exacerbating disparities in substance use disorder treatment. Waivers allowing telehealth prescribing during the pandemic have addressed these barriers and we encourage the agency to make them permanent.

According to provisional data from the Centers for Disease Control and Prevention, an estimated 105,752 Americans died from a drug overdose between October 2020 and October 2021—a new record.¹ Treatment for substance use disorder, including evidence-based medication-assisted treatment, can help move individuals towards recovery. However, a variety of factors, such as stigma and inadequate access to transportation, have historically limited access to treatment. The 2020 National Survey on Drug Use and Health found that, among individuals aged 12 or older in 2020 with a substance use disorder diagnosis in the past year, only 6.5% received any substance

¹ Ahmad, F.B., Rossen, L.M., Sutton, P. (2021). Provisional drug overdose death counts. *National Center for Health Statistics*.

use treatment. Of these individuals who received treatment, just under one-third received medication assisted treatment for opioid misuse.²

Consistent telehealth access can help overcome these barriers. The Ryan Haight Act generally prohibits health care providers from prescribing controlled substances—including drugs prescribed for medication-assisted treatment, such as buprenorphine—without at least one in-person examination. DEA and HHS can create an exception through joint regulation as long as it is “consistent with effective controls against diversion and otherwise consistent with the public health and safety.”³ Congress previously directed the agencies to issue such rules twice since the passage of the Ryan Haight Act in 2008—in the SUPPORT for Patients and Communities Act (Public Law 115-271) and the Consolidated Appropriations Act of 2021 (Public Law 116-68).

In March 2020, important action was taken by the Substance Abuse and Mental Health Services Administration and DEA to waive the Ryan Haight Act in-person examination requirement for the duration of the COVID-19 PHE, thereby permitting the initial consultation for the prescription of a Schedule II, III, or IV drug to be conducted via telehealth. This waiver increased access to buprenorphine and other drugs used to treat substance use disorder during the COVID-19 pandemic.

Emerging research shows that the use of telehealth to prescribe buprenorphine during the pandemic, as permitted under this waiver, increased access to substance use treatment.⁴ We have heard from countless substance use providers in our home states who describe this waiver as a “game changer” in expanding access to treatment for individuals with substance use disorder and combatting the current surge of drug overdoses. However, this important flexibility will end with the termination of the PHE in the absence of agency regulatory action to make this waiver permanent for Schedule III and IV drugs.

We appreciate the role that the DEA plays in preventing, detecting, and investigating the diversion of controlled substances. We continue to believe this waiver can be made permanent in a manner that mitigates the risk of diversion and maintains public health and safety as required by statute.

We ask that the DEA and HHS act as soon as possible to promulgate rulemaking on this issue. In the interim, we ask that you provide our offices with an update on the plan and timeline to promulgate such rules by April 15, 2022. Thank you in advance for your attention to this request and we look forward to hearing back from you.

² U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality. (2018). *National Survey on Drug Use and Health 2016* (NSDUH-2016-DS0001). Retrieved from <https://datafiles.samhsa.gov/>

³ 42 U.S.C. § 802(54)(E)

⁴ Wang, L., Weiss, J., Ryan, E.B., Waldman, J., Rubin, S., Griffin, J.L. (2019, Jan 15). Telemedicine increases access to buprenorphine initiation during the COVID-19 pandemic. *Journal of Substance Abuse Treatment*, 124, 108272. <https://doi.org/10.1016/j.jsat.2020.108272>

Sincerely,

Handwritten signature of Rob Portman in blue ink.

Rob Portman
United States Senator

Handwritten signature of Sheldon Whitehouse in blue ink.

Sheldon Whitehouse
United States Senator