

# United States Senate

WASHINGTON, DC 20510-4606

January 17, 2020

COMMITTEES:  
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Mr. Uttam Dhillon  
Acting Administrator  
Drug Enforcement Administration (DEA)  
U.S. Department of Justice  
800 K Street NW Suite 500  
Washington, D.C. 20001

Dear Acting Administrator Dhillon,

I am writing regarding the Drug Enforcement Agency's (DEA) implementation of critical provisions in the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (Ryan Haight Act) (Public Law 91-513) and the recently passed SUPPORT for Patients and Communities Act (SUPPORT Act) (Public Law 115-271) that ensure individuals with substance use disorders can successfully access medical treatment via telehealth.

As you likely know – the Ryan Haight Act prohibits the delivery, distribution, or dispensing of a controlled substance online without first conducting an in-person exam. The intent of this law is to prevent illegitimate entities from selling dangerous controlled substances online while maintaining the ability for legitimate healthcare providers to treat patients in need.

The Ryan Haight Act also directed the DEA to promulgate rules exempting certain health care professionals from this requirement with the goal of ensuring patients have access to care via telehealth. However, in the 10 years since passage, the DEA has not promulgated rules to this effect. Congress further expressed its intent in passing the SUPPORT Act in 2018, which allows Medicare-eligible individuals suffering from substance use disorder to be diagnosed and treated via telehealth. The SUPPORT Act – similar to the Ryan Haight Act – mandated rulemaking by October 2019. Another deadline that has been missed.

Providers across the country have been frustrated in their inability to provide adequate care as they wait for Congressionally-mandated guidance from your agency to clarify the process whereby health care professionals can legally use telehealth to better treat patients suffering from substance use disorder. The DEA's failure to promulgate the rule has meant that – despite Congress' best efforts – many patients suffering from substance use disorders remain unable to access treatment via telehealth. These patients cannot afford to wait and we are concerned the DEA is standing in the way of treatment for individuals that cannot access a provider in person – particularly those in rural and underserved areas.

The opioid and addiction epidemic has devastated communities nationwide, with a particularly devastating impact on rural and medically underserved areas. According to the Centers for Disease Control and Prevention (CDC), there were more than 70,000 overdose deaths in 2017 –

a 9.6 percent increase from 2016.<sup>1</sup> Furthermore, the CDC cites opioid deaths as 45% higher in rural areas, compared to urban communities.<sup>2</sup>

Expanding telehealth services to individuals suffering from substance use disorder can bridge the distance between patients and care and ensure increased access to services they need.

As detailed above, Congress passed the SUPPORT Act in 2018 and instructed the Attorney General – in consultation with the Department of Health and Human Services (HHS) – to promulgate rules on health care professional exemptions for prescribing controlled substances via telemedicine. This rule will ensure providers can successfully use telehealth to treat patients with substance use disorders. HHS has previously published suggestions on the potential uses of telehealth to diagnose and treat substance use disorder, but until the DEA takes action, providers will continue to face significant barriers in using telehealth to treat patients with substance use disorders.<sup>3</sup>

I strongly urge the DEA to promulgate rulemaking on this issue as soon as possible so that patients suffering from substance use disorders can receive the care they need. Furthermore, I ask that if you do not intend to promulgate this rule in a timely manner you respond in writing with an explanation of your decision. Thank you for your consideration of this request and I look forward to your response.

Sincerely,



MARK R. WARNER  
United States Senator

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<sup>1</sup> <https://www.cdc.gov/drugoverdose/data/statedeaths.html>

<sup>2</sup> <https://www.cdc.gov/media/releases/2015/p0424-naloxone.html>

<sup>3</sup> <https://aspe.hhs.gov/basic-report/using-telehealth-identify-and-manage-health-and-substance-use-disorder-conditions-rural-areas>