

United States Senate  
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RULES AND ADMINISTRATION

May 3, 2021

The Honorable Merrick B. Garland  
Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Mr. D. Christopher Evans  
Acting Administrator  
United States Drug Enforcement Administration  
800 K Street NW Suite 500  
Washington, D.C. 20001

Dear Attorney General Garland and Acting Administrator Evans:

I am writing to follow up on my January 2020 letter to the Drug Enforcement Administration (DEA) regarding implementation of critical provisions in the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (Ryan Haight Act) (Public Law 91-513) that ensure patients can successfully access medical treatment via telehealth. I am very concerned that – despite repeated outreach from myself and others in Congress – the previous Administration did not take long-term action to address this issue. I also recognize that much of this delay has been the result of previous Administrations and I hope to work with you all on a new approach that best serves patients.

As you may know – the Ryan Haight Act prohibits the sale of controlled substances without at least one in-person examination by a health care provider, but also directs the DEA to draft rules exempting certain health care providers from this prohibition. The spirit and clear intent of this law is to prevent the illicit use and sale of dangerous controlled substances online while maintaining the ability for legitimate healthcare providers to treat patients in need.

In 2018, I worked with my colleagues in Congress to further clarify this intent by passing the SUPPORT for Patients and Communities Act (SUPPORT Act) (Public Law 115-271). That legislation includes a provision I authored to enable Medicare-eligible individuals suffering from substance use disorder to be diagnosed and treated via telehealth. However, providers treating many of these patients via telehealth are often handicapped by the DEA's delayed rulemaking and unable to use telehealth to prescribe them the medications they need.

It has now been more than 10 years since the Ryan Haight Act mandated the DEA establish a rule ensuring health care providers can successfully prescribe controlled substances via

telehealth, but the DEA still has not acted. The SUPPORT Act again mandated the DEA issue rulemaking by October 2019 and more recently the Fiscal Year 2021 final appropriations report requested DEA establish these rules.

In practice, the DEA's failure to address this issue means that a vast majority of health care providers that use telehealth to prescribe controlled substances to and otherwise treat their patients have been deterred in getting them the quality care they need. These restrictions have been temporarily waived during the COVID-19 public health emergency, and I welcome that, but patients and providers need a more permanent and long-term solution to this long-delayed rulemaking.

The COVID-19 pandemic has made clear the importance of increased access to telehealth services and providers across the country continue to be frustrated there is no long-term solution for them to provide adequate care to their patients. The DEA's failure to promulgate the rule has meant that – despite Congress' best efforts – millions of patients could be left without access to long-term treatment via telehealth.

I am requesting that DEA act as soon as possible to promulgate rulemaking on this issue. I am also requesting that, in the interim, DEA provide my office with an update on its plan and timeline to promulgate such rules. Thank you in advance for your attention to this request and I look forward to hearing back from you.

Sincerely,



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Mark R. Warner  
United States Senator

Cc: The Honorable Xavier Becerra, Secretary, United States Department of Health and Human Services