
5 THINGS TO KNOW ABOUT THE RYAN HAIGHT ACT

1. What the Ryan Haight Act (RHA) Is

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (RHA) amends the Controlled Substances Act (CSA). Congress enacted the RHA in response to internet pharmacies selling controlled substances on the internet, and the law basically was a federal prohibition on internet pharmacies filling prescriptions for controlled substances based only on an online form. As shown by the Act's title, it was focused on online pharmacies' activities; however, the unintended effect is a significant limitation on today's legitimate practice of telemedicine.

2. What the RHA Says

Under the RHA, it is illegal to deliver, distribute, or dispense controlled substances via the internet (which includes telemedicine technologies) without a "valid prescription." Note that the CSA defines dispensing to include prescribing.

The RHA defines a "valid prescription" as

- a prescription issued for a legitimate medical purpose, and
- in the usual course of professional practice, and
- by a practitioner who has either:
 - o conducted at least one "in-person medical evaluation" of the patient; or
 - o is a covering practitioner

The RHA defines "covering practitioner" as "a practitioner who conducts a medical evaluation (other than an in-person medical evaluation) at the request of a practitioner who:

- Has conducted at least one in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine within the previous 24 months; and
- Is temporarily unavailable to conduct the evaluation of the patient.

And under the RHA, "in-person medical evaluation" means an evaluation with the patient in the physical presence of the prescriber.

3. What the Limited Exceptions to the One In-Person Visit Rule Are

Telemedicine is listed as an exception to the one in-person visit requirement. However, telemedicine is defined very differently and very specifically, and excludes what most people think telemedicine is. For our purposes, there are two relevant definitions of telemedicine under the RHA:

- 1) Practice of telemedicine during a Public Health Emergency (PHE): The RHA includes in the definition of telemedicine - which is an exception to the in-person visit requirement - Public Health Emergencies declared by the Secretary of Health and Human Services. One such PHE for COVID was declared in January 2020 and has been renewed every 90 days thereafter. So until the COVID PHE expires, the federal requirement for one in-person visit prior to prescribing controlled substances is temporarily waived.
- 2) Practice of telemedicine pursuant to a Telemedicine Registration issued by the Attorney General: Despite being urged to create this Telemedicine Registration, the DEA has to date, failed to do so. Pursuant to legislation passed by Congress and signed into law in 2018, the DEA was required to put this telemedicine registration into place by October 2019. With that date having passed with no movement, Congress continues to pressure the Attorney General and the DEA to create this special telemedicine registration so that the in-person visit requirement does not impede care.

For a further discussion of this, including the other definitions of telemedicine / exceptions to the one in-person visit requirement, see this [article from Foley & Lardner](#).

4. What the RHA Does NOT Say

The RHA does not require subsequent in-person visits following the initial in-person visit (prior to prescribing controlled substances).

There is a misconception that the RHA requires an in-person visit every 24 months. That time period of 24 months is mentioned in the RHA, but limited only to definition of “covering” for another prescriber (see #2 above).

5. State Law Always Remains Relevant

Some states may not allow the prescribing of controlled substances via telemedicine. If states do allow it, the federal requirement of the in-person visit prior to prescribing controlled substances must be followed, even if state law does not require it.

Even though no subsequent in-person visit is required under federal law, states can require subsequent in-person visits. As an example, under NJ law NJSA 45:1-62(e), when prescribing Schedule II medications, after the initial in-person visit, subsequent in-person visits are required every three months (with an exception option for minors being prescribed Schedule II stimulants).

Here are two resources that may be useful as a starting point in determining a state’s requirements:

- [Center for Connected Health Policy's survey of state online prescribing requirements](#)
- [Epstein, Becker & Green's Telemental Health Laws app](#)

Final thought:

One in-person visit may not suffice. Psychiatrists are always responsible for ensuring their patients' clinical needs are met, and meeting the same standard of care as if in the physical presence of their patients. At a minimum federal and state law must be followed when prescribing controlled substances, but requirements related to in-person visits may need to be exceeded to meet the standard of care.

For more information:

- [Text of the RHA](#)

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