

Connecticut Permits Prescribing Limited Controlled Substances via Telemedicine

Insights

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Connecticut Governor Dannel Malloy has signed SB 302, a new law reversing Connecticut's prohibition on prescribing controlled substances via telemedicine. SB 302 took effect July 1, 2018.

SB 302 and Prescribing Controlled Substances via Telemedicine. Under SB 302, qualified telehealth providers in Connecticut can prescribe certain controlled substances via telemedicine, within each provider's scope of practice and in accordance with the standard of care applicable to the profession, to treat individuals with defined psychiatric disabilities or substance use disorders. The new law allows some controlled substances to be prescribed for medication-assisted treatment, but does not allow opioids to be prescribed via telemedicine. Previously, Connecticut prohibited prescribing any Schedule I, II, or III controlled substances via telemedicine. SB 302 allows Schedule II and Schedule III controlled substances to be prescribed via telemedicine, except for opioids, and requires providers prescribing such controlled substances utilizing telehealth technologies to do so via electronic prescription.

Federal Law and Prescribing Controlled Substances via Telemedicine. Even with SB 302's passage, there are still important considerations for Connecticut providers under federal law. The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (Ryan Haight Act), which prohibits providers from prescribing controlled substances without conducting an in-person examination of the patient unless an exception applies, remains in effect. While there are telemedicine exceptions to the Ryan Haight Act, they are narrow and restrictive. For a provider to prescribe controlled substances via telemedicine in accordance with the most commonly used exception, the patient must be in the physical presence of a DEA-registered practitioner, or located at a DEA-registered health care facility (unless, for example, the provider is an employee or contractor of the Department of Veterans Affairs or the Indian Health Service). The telemedicine provider treating the patient must only issue the prescription for a legitimate medical purpose in the usual course of their professional practice acting in accordance with applicable State law.

Notably, the DEA has previously committed to creating a telemedicine registration process that would allow providers to prescribe controlled substances via telemedicine more broadly, but it has not issued proposed or final rules yet. The ongoing opioid epidemic has created pressure to compel the DEA to develop regulations creating the telemedicine registration, and Congress has considered establishing a statutory deadline for the DEA to promulgate regulations implementing a special telemedicine registration process. As it stands, however,

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the more restrictive telemedicine exceptions described above, such as that requiring the physical presence of a DEA-registered practitioner or the patient being at a DEA-registered health care facility, must be satisfied for providers to prescribe controlled substances via telemedicine.

Other Changes. SB 302 amends the definition of “telehealth provider” to include registered nurses and pharmacists, within the scope of practice and in accordance with the standard of care applicable to each profession, expanding the categories of providers who can provide services via telemedicine under Connecticut law. It also modifies Connecticut’s informed consent standards for telemedicine encounters, requiring telehealth providers to obtain the patient’s informed consent before the initial telehealth interaction between the patient and the telehealth provider, and allowing that consent to apply to subsequent telehealth interactions. Previously, Connecticut required telehealth providers to obtain the patient’s informed consent at the time of each telehealth interaction.

Practice-Oriented Takeaways. Connecticut telehealth providers can now prescribe certain Schedule II and Schedule III controlled substances to treat individuals with psychiatric disabilities or substance use disorders, including by way of medication-assisted-treatment, as long as such providers comply with scope of practice and standard of care applicable to the profession. However, this does not include opioids, and providers must remain in compliance with federal law under the Ryan Haight Act and State scope of practice laws. Connecticut’s definition of “telehealth provider” now includes registered nurses and licensed pharmacists providing services within the scope of practice and standard of care applicable to each profession. Connecticut telehealth providers can obtain a patient’s informed consent before their first telehealth encounter with the patient, and apply that informed consent to subsequent telehealth treatments.

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Hooper, Lundy & Bookman’s telehealth attorneys will continue to monitor telehealth developments at the state and federal levels.

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