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How Are Telehealth Laws Intersecting With Laws Addressing the Opioid Overdose Epidemic?

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Abstract

Opioid-involved drug overdose deaths have been a growing concern in the United States for several decades. The Centers for Disease Control and Prevention identified several strategies to address the opioid overdose epidemic, including increased availability of and access to medication-assisted treatment and guidance on safer opioid prescribing practices. Telehealth offers the potential for increasing access and availability to these strategies, and laws governing telehealth have implications for their utilization. To understand how state telehealth laws intersect with the opioid overdose epidemic, we conducted a legal mapping study, a type of legal epidemiological assessment, of statutes and regulations that intersect at telehealth and opioids. This search yielded 28 laws from 17 states. These laws intersect both telehealth and the opioid overdose epidemic in different ways including prescribing limitations, opioid treatment through medication and counseling, patient plan review, and professional collaboration. Continued legal and policy surveillance is needed to be able to evaluate the impact of law in addressing opioid overdose outcomes.

Keywords

law; legal epidemiology; opioid; telehealth; telemedicine

Opioid-involved drug overdose deaths have been a growing concern in the United States for several decades. Between 1999 and 2017, 399 230 people in the United States died as a result of an opioid-involved drug overdose.[1] Recently, the numbers have increased dramatically. In 2017 alone, 47 600 opioid overdose deaths occurred, a 12.0% increase since 2016 and a 400% increase since 1999.[1] Opioid-involved overdose deaths continued to increase through 2017 and 2018.[2,3] While the burden of opioid use, addiction, and overdose stretches into nearly all communities across the United States, rural communities are disproportionately affected.[4]

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The opioid overdose epidemic in rural communities is compounded by unique geographic challenges that disadvantage these communities when compared with urban or suburban communities with similar socioeconomic status.[5] 2015 National Vital Statistics System Mortality data show that the rate of drug overdose deaths in rural areas has been increasing since 1999 and, by 2015, had surpassed the drug overdose death rate in urban areas.[4] In addition, rural communities are sicker and poorer than urban and metropolitan communities generally.[6,7] When it comes to combatting poorer health and increased rates of opioid misuse, rural communities also face significant barriers including provider shortages, long travel times, and concerns about quality of care.[6]

Given the complexity of this epidemic, no single solution exists. The Centers for Disease Control and Prevention (CDC) identified several strategies to prevent and treat opioid overdose: (1) improving opioid prescribing (eg, prescribing guidelines); (2) treating opioid use disorder (eg, medication-assisted treatment [MAT]); (3) preventing opioid use disorder (eg, quantity limits and drug utilization review); and (4) reversing opioid use disorder (eg, access to naloxone).[8] Even where evidence-based approaches are implemented, however, provider shortages still disparately impact rural communities. For example, there is a national shortage of providers qualified to offer MAT, especially in rural areas,[9] with 60.1% of rural counties in the United States without any qualified MAT providers.[10]

Telehealth offers one potential tool for increasing access and availability to CDC-recommended strategies, and the laws governing telehealth have implications for how these strategies can be utilized. Telehealth can connect patients to qualified treatment providers, monitor a patient's progress from his or her homes, and deliver training for local providers.[5] Telehealth has become a widely accepted substitution for an in-person interaction.[11] Using telehealth to deliver substance abuse treatment services is effective and convenient for patients.[5]

Federal and state laws facilitate how telehealth can be optimized in the context of the opioid overdose epidemic. For example, the federal Controlled Substances Act requires the federal government to regulate the manufacture, distribution, and use of certain substances, including opioids.[12] The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 prohibited providers from prescribing controlled substances over the Internet unless the provider performed an in-person examination first or met one of several "practice of telemedicine" exceptions.[13] In 2018, both the Drug Enforcement Administration (DEA) and the Department of Health and Human Services reiterated that DEA-registered practitioners are exempt from the in-person examination requirement when engaged in the "practice of telemedicine" and provided a clinical case scenario as an example of exempted practice.[14] Also in 2018, the president signed the SUPPORT for Patients and Communities Act into law, requiring the DEA to promulgate final regulations to activate the "special registration" exception to the Ryan Haight Act's prohibition of prescribing without an in-person examination.[15]

State telehealth laws relevant to opioid use and misuse vary greatly by jurisdiction, but little is known about the impact this variation has on relevant health outcomes. To understand the role state telehealth laws play in the opioid overdose epidemic, we conducted a legal

mapping study* (a type of legal epidemiological assessment) of statutes and regulations that intersect at telehealth and opioids. Legal epidemiology is "the scientific study and deployment of law as a factor in the cause, distribution, and prevention of disease and injury in a population."[16] Legal mapping refers to the process for capturing important features of laws and identifying how they vary across jurisdictions.[16] In this study, the term "telehealth" refers broadly to laws including areas such as telemedicine, telenursing, telepsychology, and telepsychiatry. This brief report is limited to a description of our research and findings only in state laws.

Legal Mapping Study

We conducted a literature review to develop a search string containing telehealth terminology including, "telehealth," "telemedicine," and "tele[professions]" (eg, "telepsychiatry"), to collect laws ("telehealth laws").[17] To identify opioid-specific telehealth laws, we added opioid-specific terminology to the search string, including "opioid," "opiate," opioid medication terms such as "OxyContin," and terms related to treatment such as "buprenorphine" and "medication-assisted treatment."† On July 9, 2018, we entered the search string in the legal database WestlawNext to collect opioid-specific telehealth laws from 50 states, the District of Columbia, and all US territories. This search yielded 28 laws from 17 states. Each law was coded on the basis of the context of the connection between telehealth and opioids, highlighting variations in the ways that telehealth laws govern opioids, as described in the following text.

The collected telehealth laws interact with the opioid overdose epidemic in different ways. Although telehealth is a unique method for delivery of services, the 28 laws still enable states to take action in several of the CDC's categories for overdose prevention. For example, laws can improve opioid prescribing via telehealth, laws can facilitate treatment of opioid use disorder via telehealth, and laws can prevent opioid use disorder through quality improvement and patient education via telehealth. The study found no telehealth laws specific to reversing overdose by increasing access to naloxone (Table).

First, states use law to improve opioid prescribing via telehealth by implementing limitations on such prescribing practices. For example, North Dakota completely bans prescribing analgesic opioids through telehealth, without any exceptions. Even in states that allow opioid prescriptions through telehealth, there are express limitations. Hawaii allows opioid prescription via telehealth only if the prescriber holds an in-person visit with the patient first.

Second, states use telehealth laws to address the opioid overdose epidemic to increase access to treatment of opioid use disorder with medication and counseling. For example, Maryland law specifies that opioid treatment programs can be originating sites for telehealth treatment. New Hampshire allows telehealth prescription of opioids for treatment by providers "who are treating patients at a SAMHSA-certified state opioid treatment program" after an in-

*Human Participant Compliance statement: No approval needed.

†Search string used in WestlawNext (adv: SD((telemed or telehealth or telepsyc! or telemental or telebehav! or telerad! or teleneph! or telestroke! or telecare or telenur! or teledent! or telerehab! or telepractice or teletherap! or tele-clinic or telepharm! or tele-med! or tele-health) and (buprenorphine or codeine! or Demerol or morphine! or fentanyl or heroin or methadone or narcan or opiate or opioid or opium or opium or Oxycontin or "medication assisted treatment"))).

person examination by a licensed prescriber. States also require practitioners or facilities treating patients with opioid-based medications to register with state substance abuse offices. A recent Delaware regulation allows for telehealth MAT only in substance abuse programs and only if the program has successfully applied for a waiver from the Delaware Division of Substance Abuse and Mental Health.

In addition to medication, counseling is another component of MAT and an important tool in addiction recovery generally.[18] Tennessee's licensing standards for Nonresidential Office-Based Opiate Treatment Facilities specifically states, "[t]elehealth … may be utilized to facilitate counseling." Telehealth laws can also facilitate communication about treatment options between physicians and patients. In Nevada, a physician seeking to prescribe controlled substances beyond 90 days must meet with the patient to review the patient's treatment plan and "to determine whether [the] continuation of treatment using the controlled substance is medically appropriate," which can be accomplished via telehealth.

Finally, telehealth laws can support prevention of opioid use disorder through increasing quality of care by encouraging professional collaboration and facilitating drug utilization review. In office-based opioid treatment (OBOT) programs for opioid use disorder in Virginia, "credentialed addiction treatment professionals" must "work in collaboration [with a] buprenorphine-waivered practitioner." This "collaboration can be in person or via telemedicine as long as it meets the department's requirements both for the OBOT setting and for telemedicine." In Arizona, related to opioid prescribing for pain management, if a health professional believes that a patient needs "a controlled substance that is an opioid that exceeds ninety morphine milligram equivalents per day," then "the health professional shall first consult with a physician … who is board-certified in pain," and this "consultation may be done by telephone or through telemedicine."

This study is subject to several limitations. We limited our search to telehealth laws that contained express reference to opioids (brand, generic, and chemical variants) or express reference to "medication-assisted treatment." States might have laws that allow prescription of controlled substances that could implicitly impact telehealth and opioids but were not captured in the scope of this assessment. State and local agencies may have various policies relevant to both telehealth and opioids, and jurisdictions will vary in how they enact and implement law and policy. Therefore, further study of jurisdictional health outcome data paired with this collection of laws could assist in determining the impact of telehealth laws on the opioid overdose epidemic.

Finally, telehealth is a quickly changing area of the law, and at this time some states might not use telehealth-specific language in their laws. Professionals who are able to prescribe drugs for opioid addiction treatment within their normal scope of practice may not need express permission to use telehealth to do so. Therefore, there might be additional ways that state law governs opioids through laws on scope of practice, licensing, and reimbursement that are not specific to telehealth and are not within the scope of this assessment.

Conclusion

Law has had a "demonstrable role in the great public health achievements of the 20th century, such as improvements in motor-vehicle safety and immunization, meriting research into its potential use in other areas of public health."[19] Given the scope of the opioid overdose epidemic, together with telehealth's potential for increasing access, efficiency, and quality of care, this study sought to understand how states are employing telehealth laws to help address the opioid overdose epidemic. Ultimately, we found that telehealth laws are used to help address addiction and overdose through telehealth prescription limitations for pain management, telehealth-based access to medication and counseling for addiction treatment, and facilitation of professional collaborations. Telehealth laws show promise as a tool to increase access to care for opioid use disorder, particularly in rural communities where preventive mental health care and treatment, such as MAT, are not always accessible. This area of law is rapidly changing, so ongoing research is recommended, particularly on how broader, implicit authorities may be used to address the opioid overdose epidemic through telehealth.

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Implications for Policy & Practice

- State laws addressing the ongoing opioid overdose epidemic using telehealth technologies vary greatly but fit into several major categories: prescribing limitations, patient reviews, opioid treatment of opioid use disorder via medication and counseling, professional collaboration, and provider requirements.
- Across 17 states, relatively few state laws (28 in total) expressly aimed at the intersection of telehealth and opioids; continued legal and policy surveillance is needed to be able to evaluate these laws' effectiveness in addressing opioid overdose outcomes.

TABLE

State Telehealth Laws With Express Opioid-Specific Terminology, as of July 9, 2018

State	Citation and Title
Arizona	Ariz Rev Stat Ann §32-3248.01. Schedule II controlled substances; dosage limit; exceptions; morphine; opioid antagonist
Arkansas	Ark Code R §016.04.6 Appendix B. Supplemental Manual for Substance Abuse Treatment Services (SATS)
Connecticut	Conn Gen Stat Ann §19a-906. Telehealth services
Delaware	24 Del Code Regs §1700-19.0. Telemedicine
Hawaii	Haw Rev Stat §453-1.3. Practice of telehealth
Indiana	Ind Code §25-1-9.5-8. Issuance of prescription through telemedicine; requirements
Maryland	Md Code Ann, Health—Gen §8–1101. Availability of opioid addiction treatment prescribers Md Code Regs 10.09.49.07. Provider conditions for participation
Minnesota	Minn Stat Ann §151.37. Legend drugs, who may prescribe, possess. (Pharmacy Practice Act of 1988)
North Dakota	ND Admin Code 50-02-15-02. Prescribing. (Telemedicine chapter) ND Cent Code Ann §19-02.1-15.1. Requirements for dispensing controlled substances and specified drugs—Penalty
Nevada	Nev Rev Stat §639.23913. Requirements for prescribing certain controlled substances to patients who have used controlled substance for 90 consecutive days; revised treatment plan required for such prescription
New Hampshire	NH Rev Stat Ann §318-B:2. Acts prohibited. (Controlled Drug Act) NH Rev Stat Ann §326-B:2. Definitions. (Nurse Practice Act) NH Rev Stat Ann §329:1-d. Telemedicine
New York	NY Comp Codes R & Regs tit 14, §830.3. Definitions. (Office of Alcoholism and Substance Abuse Services Part 830. Designated Services) NY Comp Codes R & Regs tit 14, §830.5. Telepractice
Oklahoma	Okla Stat Ann tit 59, §478.1. Establishment of physician-patient relationship through telemedicine
Tennessee	Tenn Comp R & Regs 0940-05-35-.02. Definitions. (Minimum program requirements for nonresidential office-based opiate treatment facilities)
Virginia	12 Va Admin Code §30-130-5060. Covered services: Clinic services—office-based opioid treatment
West Virginia	W Va Code Ann §16-5Y-2. Definitions. (Medication-Assisted Treatment Program Licensing Act) W Va Code Ann §16-5Y-5. Operational requirements W Va Code R §69-11-2. Definitions. (Medication-assisted treatment—opioid treatment programs) WVa Code R §69-11-26. Counseling W Va Code R §69-12-2. Definitions. (Medication-assisted treatment—office-based medication-assisted treatment) W Va Code R §69-12-25. Counseling
Wisconsin	Wis Stat Ann §49.45. Medical assistance; administration