



## DEA TEMPORARILY EXTENDS TELEMEDICINE FLEXIBILITIES FOR PRESCRIBING CONTROLLED MEDICATIONS

May 17, 2023

On May 9, 2023, just before the expiration of the COVID-19 Public Health Emergency (“PHE”), the Drug Enforcement Administration (“DEA”) extended a policy permitting the prescription of controlled medications without an in-person medical evaluation of the patient. This [temporary rule](#) took effect on May 11, 2023, and runs until November 11, 2023. Any practitioner-patient telemedicine relationship established on or before November 11, 2023, will retain the ability to prescribe controlled medications over telemedicine for another year (through November 11, 2024).

### BACKGROUND

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (the “Ryan Haight Act”) amended the Controlled Substances Act (“CSA”) to require practitioners to conduct at least one in-person medical evaluation of a patient before prescribing controlled medications over telemedicine. When COVID-19 was declared a public health emergency by the Secretary of the Department of Health and Human Services (“HHS”) on January 31, 2020, the DEA allowed for temporary exceptions to the Ryan Haight Act. The DEA’s temporary exception to this act permits practitioners to prescribe schedule II-V controlled medications via audio-video telemedicine communication without the requirement of an in-person medical evaluation.

### REASONS FOR EXTENSION

On March 1, 2023, the DEA, in concert with HHS, promulgated two notices of proposed rulemakings (“NPRMs”) permitting the prescribing of controlled medications over telemedicine without having met the patient in-person and an expansion of starting patients on buprenorphine over telemedicine. The DEA and HHS will be reviewing 38,000 public comments regarding the future of using telemedicine to prescribe controlled medications.

This extension of a rule that existed during the PHE is to:

- Provide continuity of care for telemedicine relationships established during the PHE;
- Prevent backlogs of in-person medical evaluations in the months after the expiration of the PHE;
- Ensure the availability of telemedicine for practitioners and patients that rely on it;
- Address the urgent public health need for continued access to buprenorphine as a medication for opioid use disorder given the continuing opioid public health crisis;
- Allow patients and practitioners time to prepare for the implementation of future regulations; and
- Enable the DEA and HHS to review and respond to the public comments regarding the two NPRMs.

## NOTE ON CONTINUING RESPONSIBILITIES IN PRACTICE

While this extension allows for the prescribing of controlled medications over telemedicine without the requirement of an in-person medical evaluation of the patient, there are important conditions for practitioners to meet. The following are requirements practitioners must continue to meet to prescribe controlled medications:

- The prescription must be issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice.
- The prescription must be issued over telecommunication that meets one of the following:
  - Via audio and video equipment permitting a two-way, real-time interactive communication; or
  - Via a two-way, real-time audio-only communication if the physician or practitioner can use audio-video telecommunications, but the patient is not capable of, or does not consent to, the use of video.
- The practitioner must be authorized to prescribe the class of controlled medications or exempt from obtaining a registration to dispense controlled medications.
- Prescription must be consistent with all other requirements of 21 C.F.R. Part 1306.

## CONCLUSION

The DEA's extension of this PHE rule allows for the practitioner in any practitioner-patient telemedicine relationship established on or before November 11, 2023, to continue to prescribe controlled medications over telemedicine until November 11, 2024. Providers should remain mindful of the requirements of prescribing controlled medications over telemedicine and anticipate future regulations pertaining to the use of telemedicine in prescribing controlled medications. Upon review of public comments, the DEA anticipates a final set of regulations permitting the use of telemedicine under circumstances that align with public health, safety, and effective controls against diversion. For questions and assistance on telehealth or other regulatory or compliance matters, please contact a member of Hancock Daniel's [Compliance](#) team.

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