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FAQs: Temporary Rule to Extend COVID-19 Flexibilities on the Prescription of Controlled Substances Via Telehealth

May 22, 2023

What did the temporary DEA rule do?

On May 10, the Drug Enforcement Administration (DEA) in conjunction with Substance Abuse and Mental Health Services Administration (SAMHSA) issued a temporary rule, effective May 12, to allow the following:

- All telemedicine flexibilities regarding prescription of controlled medications as were in place during the COVID-19 public health emergency (PHE) will remain in place through **November 11, 2023**
- For any practitioner-patient telemedicine relationships that have been or will be established on or before November 11, 2023, all telemedicine flexibilities regarding prescription of controlled medications as were in place during the COVID-19 PHE will continue to be permitted through **November 11, 2024**

The COVID-19 Public Health Emergency came to an end on May 11th as planned.

Which DEA waivers are extended under this rule?

- The March 16, 2020 announcement and update to the [DEA's COVID-19 FAQ](#) that an in-person visit is not required for the prescription of controlled substances schedule II-V issued by the means of the internet within the U.S. during the COVID-19 PHE.
- A [March 25, 2020](#) "Dear Registrant" letter signed by William T. McDermott, DEA's then-Assistant Administrator, Diversion Control Division. Which states that:
 - o DEA-registered practitioners are not required to obtain additional registration(s) with DEA in the additional state(s) where the dispensing (including prescribing and administering) occurs. Thus, DEA-registered practitioners may prescribe clinically appropriate controlled substances to patients in states where they are not actively registered with DEA via telemedicine. The practitioner must continue to comply with all state laws and regulations in which they are practicing, if different
- A [March 31, 2020](#) "Dear Registrant" letter signed by Thomas W. Prevoznik DEA's then-Deputy Assistant Administrator, Diversion Control Division. Which states that:
 - o Practitioners can prescribe buprenorphine to new and existing patients with opioid use disorder (OUD) via telephone by otherwise authorized practitioners without requiring such practitioners to first conduct an examination of the patient in person or via telemedicine.

How does this impact you and your medical practitioner?

- **I have seen my medical practitioner in person:** my practitioner may prescribe any of my prescriptions via telehealth
- **I have had an audio visual, two-way real-time telehealth visit (on or before November 11, 2023) with my medical practitioner and need a schedule II, III, IV, or V medication:** prescriptions can be prescribed via telehealth until November 11, 2024
- **I have NOT established a relationship via telehealth or in-person with my practitioner before November 12, 2023 and need a schedule II-IV controlled substance:** Prescriptions cannot be prescribed via telehealth after November 11, 2023 unless the patient has had an in person visit with the medical practitioner. *(This is subject to change depending on future rulemaking)*
- **I am a practitioner; I have more than one license to practice medicine and only one active DEA registration:** Double check the state requirements in which you are licensed, even though additional DEA registrations are not required under the extension, certain states may still have state-specific registry requirements when prescribing clinically appropriate controlled substances.

What does this mean for pharmacies?

- Pharmacies should continue to dispense medications pursuant to a legitimate prescription, whether the prescriber issued the prescription based on a telehealth or in-person visit. Provider-patient relationships can be established via telehealth, and telehealth is a legitimate mode of clinical practice.
- For the prescription of clinically appropriate controlled substances, pharmacists should continue filling legitimate prescriptions issued after a telehealth encounter in the same way they would following an in-person visit through November 11, 2024. Guidance or rules following November 11, 2024, are pending.
- Pharmacists should dispense medications based on state laws and not withhold the dispensing of a legitimate controlled substance prescription when the prescriber does not actively have a valid DEA registration in the state wherein the medication is being prescribed.

What will the DEA do next?

- On March 1, 2023, DEA issued two proposed rules entitled “[Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation](#)” and “[Expansion of Induction of Buprenorphine via Telemedicine Encounter](#)”. These rules received over 35,000 public comments during the 30-day comment period.
- The proposed rules are intended to govern telemedicine prescribing of clinically appropriate controlled substances post PHE. However, given widespread concern about the impact of the rules and the volume of comments, DEA has used this temporary extension rule to postpone issuing the final version of these rules.
- The DEA said it plans to issue “one or more final rules ... based on the two proposed rules published on March 1, 2023”. DEA anticipates such final rule(s) will “extend certain telemedicine flexibilities on a permanent basis” to permit “the practice of telemedicine under circumstances that are consistent with public health and safety, while maintaining effective controls against diversion.”
- It would be expected that these final rules would be issued prior to the November 11, 2023 expiration to give providers time to comply after November 11, 2024.

**This does not constitute legal advice and the information is subject to change as new rules/guidance are released.*

Sources:

[2023-09936.pdf \(govinfo.gov\)](#)

[How to Prescribe Controlled Substances to Patients During the COVID-19 Public Health Emergency \(usdoj.gov\)](#)