

February 28, 2022

Issue Brief: DEA Telehealth Rules

Background

The Drug Enforcement Administration released proposed regulations to clarify the rules around [telehealth prescribing of medications](#), including [buprenorphine](#), following the end of the COVID-19 public health emergency (PHE). During the PHE, DEA allowed flexibilities around telehealth prescribing to ensure continued patient access to critical patient care services, including treatment for behavioral health and substance use disorders. Specifically, the PHE flexibilities allowed clinicians to prescribe medications, including controlled substances and buprenorphine, via telehealth without an initial in-person patient visit. DEA is now proposing to reinstate in-person visit requirements based on the medication prescribed.

Proposed Changes to Telehealth Flexibilities for Prescribers

- Telehealth Prescribing of Schedule II and Schedule III-V Narcotic Controlled Substances: DEA is proposing to reinstate the requirement that patients have an in-person provider visit prior to receiving a prescription for a CII or CIII-V narcotic medication via telehealth. DEA notes that these medications are the most subject to misuse and carry patient risks that demand a higher degree of clinician oversight.
- Telehealth Prescribing of Buprenorphine and Non-Narcotic Schedule III-V Substances: Under the proposed rule, a clinician may still prescribe buprenorphine and non-narcotic Schedule III-V controlled substances without an in-person visit but only for a 30 days' supply of medication. An in-person visit would be required before any refills could be approved via telehealth.

The proposed rule also sets out a “qualified telemedicine referral” process that would allow a patient to be seen by one DEA-registered provider for an in-person visit, and then referred to a second provider for a telehealth prescription. In this situation, the telehealth provider would not need to conduct a second in-person visit before initiating a prescription. Note that under this telemedicine referral option, the telehealth clinician would also be allowed to prescribe of Schedule II and Schedule III-V narcotics without conducting a separate and additional in-person examination of the patient.

- Existing Telehealth Patients with Prescriptions for Controlled Substances: According to the proposed rule, for those patients who received a prescription for a controlled substance (even a non-narcotic) during the PHE without an in-person visit, the in-person visit requirements under the new rules will apply. However, patients with existing prescriptions will have an additional 180 days (before November 2023) to meet the in-person visit requirement.

What Isn't Impacted

The proposed rules do not impact telehealth requirements for prescribing of medications that are [not controlled substances](#) (e.g., insulin, statins, common blood pressure and asthma medications). These rules also do not apply in instances where a provider conducted an in-person visit with a patient before initiating a prescription via telehealth.

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Applicability and Timing

DEA has set out a 30 day window for comment on the proposed rule. The PHE will end on May 11, 2023, so we anticipate DEA moving quickly to finalize the rules to avoid regulatory uncertainty following the PHE's end.

ASHP will be submitting comments on the proposed rules. In particular, we are concerned about the degree of coordination between DEA, CMS, and other stakeholders regarding the implementation of the proposed telehealth changes. We are particularly concerned about whether the 30-day in-person visit requirement for buprenorphine prescribing is feasible given the access challenges that currently exist to accessing substance use disorder treatment.

We strongly encourage members to submit feedback, questions, or concerns to ASHP to assist in the development of our written comments on the proposed rule. Please send any input to Jillanne Schulte Wall at jschulte@ashp.org by August 29.