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Drug Enforcement Administration Extends Telemedicine Treatment and Prescription Flexibilities

By: [Meghna Parikh](#)

The expiration of the COVID-19 Public Health Emergency (“PHE”) on May 11, 2023 could have created a “prescription cliff” leaving patients without access to controlled substances. During the PHE, telemedicine flexibilities allowed patients to have access to Schedule II and narcotic controlled substances via telemedicine without a prior in-person medical evaluation. To avoid this, the Drug Enforcement Administration (“DEA”) and the Substance Abuse and Mental Health Services Administration (“SAMHSA”) issued the [“Temporary Extension of COVID-19 Telemedicine Flexibilities for Prescription of Controlled Medications”](#) – a rule that extends temporarily certain telemedicine flexibilities initially adopted during the PHE.

The temporary extension permits continuity of care for patients following the expiration of the PHE. Taking effect on May 11, 2023, this rule extends the full set of telemedicine flexibilities adopted during the PHE for six months, through November 11, 2023. It also extends the flexibilities through November 11, 2024 for any practitioner-patient telemedicine relationships established through November 11, 2023.

Anne Milgram, the DEA Administrator, [acknowledged](#) the “record 38,000 comments on its proposed telemedicine rules” indicating the DEA recognized “the importance of telemedicine in providing Americans with access to needed medications”. Further, Miriam E. Delphin-Rittmon, the HHS Assistant Secretary for SAMHSA [indicated support](#) for “policies that promote access to effective and safe treatment for opioid use disorder, including through telemedicine platforms, and ensuring continued access to necessary controlled medications past the COVID-PHE.”

The [proposed DEA rule](#) released in March received a negative reaction from multiple state agencies and several high-visibility stakeholders. Commenters described the rules as more restrictive than necessary and as imposing unwarranted limitations and burdens on providers and the patients they treat. In their current form, the proposed rules would reinstate strict limitations on the virtual prescribing of controlled substances and bring back in-person medical evaluation requirements for treatment and prescription of controlled substances, among other restrictions.

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The extension gives the DEA additional time to refine its future telemedicine prescribing policies. The DEA and SAMHSA appear to be closely reviewing comments from the public in developing a permanent rule.

If you have any questions, please contact the author or your Buchalter relationship attorney.



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