

## DEA Extends Prescriber Telemedicine Flexibilities for Additional Six Months



By Gregory T. Measer

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With the COVID-19 public health emergency (“PHE”) set to expire on May 11, 2023, the [U.S. Drug Enforcement Agency \(“DEA”\)](#) issued a [temporary rule](#) extending telemedicine flexibilities for prescribing controlled substances through November 11, 2023.

Under the Ryan Haight Act, prescribing controlled substances via telemedicine without an initial in-person examination is generally prohibited, absent an applicable exception. There are several exceptions for the practice of telemedicine, including treatment during a PHE. During the COVID-19 pandemic, many providers relied on the PHE exception for establishing a provider-patient relationship and prescribing via telemedicine. However, the exception requires the existence of a declared PHE.

On March 1, 2023, the [DEA released a proposed rule](#) to address the post-PHE period which provided some additional flexibilities, but did not broadly permit providers to continue prescribing via telemedicine. Under the proposed rule, DEA provided two limited options for prescribing controlled substances without an in-person

examination:

1. Providers may prescribe an initial 30-day supply of Schedule III-V, non-narcotic controlled substances to new patients via telemedicine without conducting an in-person exam, *provided that* those prescriptions may not be renewed without an in-person examination; and
2. Providers may prescribe controlled substances via telemedicine if the patient had an initial in-person exam with another provider who referred patient to the telemedicine provider.

After receiving over 38,000 comments on the proposed rule, the [DEA stated in a press release](#) that they will need more time to consider each comment carefully. The temporary rule will take effect on May 11, 2023 and will extend the full set of telemedicine flexibilities adopted during the COVID-19 PHE for an additional six months. In addition, for any provider-patient relationship established via telemedicine prior to November 11, 2023, the same telemedicine flexibilities will be permitted until November 11, 2024. According to DEA, “the goal of this temporary rule is to ensure a smooth transition for patients and practitioners that have come to rely on the availability of telemedicine for controlled medication prescriptions, as well as allowing adequate time for providers to come into compliance with any new standards or safeguards.”

At this time, it is unclear when the permanent rule will be released.

The [Lippes Mathias Health Care Team](#) will continue to monitor developments related to telemedicine and the federal regulation of controlled substances. Should you have any questions, please contact a member of our Health Care Team.

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