

Publications

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Still in Telemedicine Limbo: DEA Issues Third Temporary Rule Extending Controlled Substance Prescribing Flexibilities Through December 2025

The Drug Enforcement Administration (DEA) has announced a third temporary extension of the telemedicine flexibilities originally implemented during the COVID-19 Public Health Emergency (PHE). This third extension continues the current controlled substance telemedicine prescribing rules, which allow practitioners to prescribe controlled substances via telemedicine without requiring an in-person visit. The provisions will stay in effect through December 31, 2025.

Background and Current Status

Since the PHE's expiration in May 2023, the DEA has issued a series of temporary extensions[1] to maintain telemedicine flexibilities while working on permanent rules. Under these flexibilities, practitioners can prescribe Schedule II-V controlled substances via telemedicine without an in-person evaluation, a policy credited with expanding access to care, particularly for those in rural and underserved areas. Practitioners can also prescribe schedule III-V narcotic-controlled medications approved by the Food and Drug Administration (FDA) for maintenance and withdrawal management treatment of opioid use disorder via audio-only telemedicine.

The DEA has signaled its intent to develop a long-term regulatory framework. However, its initial proposals in early 2023 faced significant backlash. Critics argued that the proposed rules—requiring in-person visits after 30 days for most prescriptions—would undermine the progress made during the PHE. Following an unprecedented volume of public comments, the DEA announced a commitment to further study the issue, resulting in the ongoing temporary measures.

In June 2024, the DEA submitted a Notice of Proposed Rulemaking (NPRM) to the White House Office of Management and Budget (OMB). While the specifics of the NPRM have not been made public, sources speculate that the DEA is considering rules that would significantly modify telemedicine prescribing practices.[2]

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- Laura D. Pone

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Stakeholder Responses

Public interest groups, medical associations, and patient advocacy organizations are actively shaping the debate:

- **Medical Organizations:** Groups such as the American Medical Association (AMA) and the American Telemedicine Association (ATA) have pushed for permanent telemedicine flexibilities, emphasizing the positive impact on patient outcomes.
- **Patient Advocacy Groups:** Mental health and substance use disorder advocates argue that restricting telehealth prescriptions could lead to treatment gaps for vulnerable populations.
- **Law Enforcement Concerns:** Some groups, including law enforcement representatives, have raised concerns about the potential for telemedicine to facilitate the diversion of controlled substances.

Likelihood of Permanent Flexibilities

There is growing speculation about whether the current telemedicine flexibilities will be made permanent. The DEA faces pressure to balance public health needs, particularly access to mental health and addiction treatment, with concerns about potential misuse of controlled substances. While the agency has not yet signaled a definitive direction, it is likely to issue a new proposed rule in 2025.

Next Steps for Providers

Providers relying on telemedicine should closely monitor developments and engage in advocacy efforts to shape the regulatory landscape. Legal and compliance teams should evaluate the implications of a return to stricter requirements and prepare for the possibility of more prescriptive frameworks in 2026.

[1] First Temporary Rule; Second Temporary Rule

[2] See DEA eyeing substantial limits to DEA prescribing, August 28, 2024, <https://subscriber.politicopro.com/article/2024/08/dea-eyeing-substantial-limits-to-telemedicine-prescribing-00176574>