

COVID-19 RESULTS IN REMOVAL OF DEA CONTROLLED SUBSTANCE PRESCRIBING LIMITATIONS FOR TELEMEDICINE

Until today, the United States Drug Enforcement Agency (the “DEA”) has prohibited telemedicine prescribing of controlled substances unless the provider had previously seen the patient in a traditional in-person physical encounter, or under other various narrow circumstances.

But today, the DEA **invoked** their emergency authority at 21 U.S.C. § 802(54)(D) to permit telemedicine prescribing of controlled substances without a traditional in-person physical examination in light of the COVID-19 pandemic declarations.

Thus, as long as the Secretary of the United States Department of Health and Human Services designation of a public health emergency due to the COVID-19 pandemic remains in effect, DEA-registered practitioners may issue prescriptions for controlled substances to patients for whom they have not conducted an in-person medical evaluation, so long as all of the following conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice;
- The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system; and
- The practitioner is acting in accordance with applicable federal and state law.

If the above conditions are met and documented, the practitioner may issue the prescription using any of the methods of prescribing currently available and in the manner set forth in the DEA regulations. Thus, the practitioner may issue a prescription either electronically (for schedules II-V), by calling in an emergency schedule II prescription to the pharmacy or by calling in a schedule III-V prescription to the pharmacy.

If you have questions about this new development as applied to your particular health care providers or facilities or any specific state-controlled substance laws that you need assessed, please contact:

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