CLIENT ALERTS & INSIGHTS

New Final Rules for Telemedicine Prescribing: Extending Telemedicine Flexibilities and What Substance Use Disorder (SUD) Treatment Providers Need to Know

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The Drug Enforcement Administration (DEA), together with the U.S. Department of Health and Human Services (HHS) published two final rules covering the prescription of controlled substances via telemedicine in limited contexts on January 17, 2025.[1] Specifically, these rules address prescriptions by the Department of Veterans Affairs (VA) providers to VA patients,[2] and the rule we will discuss in this article: the prescription of buprenorphine for treatment of opioid use disorder (OUD). The DEA also published a proposed rule on January 17, 2025 that seeks to establish a "special registration" framework for prescription of controlled substances via telemedicine, which would more broadly permit the prescription of controlled substances via telemedicine without an in-person evaluation.[3] We will continue to monitor this proposed rule, as the implications of this proposed rule could have wide-reaching effects on a prescriber's abilities to utilize telemedicine moving forward.[4] However, the focus of this article will be on the final rule on prescribing buprenorphine via telemedicine, which will go into effect February 16, 2025.

This final rule[5] makes permanent the buprenorphine-related telemedicine flexibilities that DEA and HHS had previously enacted during the COVID-19 Public Health Emergency. According to the final rule, the intention of the DEA and HSS in promulgating this rule is to "prevent lapses of care" for patients currently seeking treatment for OUD by continuing to make treatment accessible through such telemedicine flexibilities.[6]

What does this final rule mean for SUD providers? This final rule provides a licensed provider with the ability to prescribe buprenorphine via telemedicine, including through both audio-only and audio-visual appointments, in order to treat OUD. The final rule is a statutory exception to the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (Ryan Haight Act), which generally requires a provider to conduct an in-person medical evaluation before issuing a prescription to a patient.[7] The Ryan Haight Act sets forth certain exceptions to the requirement that a provider must engage in an in-person medical evaluation before they can engage in telemedicine. The final rule allowing the prescription of buprenorphine via telemedicine falls under a wide category of exceptions under the Ryan Haight Act which allow a telemedicine visit without a prior in-person medical examination "under any other circumstances that the Attorney General and the Secretary [of Health and Human Services] have jointly, by regulation, determined to be consistent with effective controls against diversion and otherwise consistent with the public health and safety."[8]

Notably, the final rule does not apply to situations in which the provider has previously done an in-person medical examination.

Therefore, there are different requirements for the telemedicine visit depending on whether the provider has previously met with the patient in person before the telemedicine visit. If a provider has never seen the patient in person before, there are additional requirements that must be complied with including checking the state's prescription drug monitoring system where the patient is located prior to prescribing, and documenting the date and time it was checked. If there is no data base available, the provider should document this in the patient's medical record. In addition, buprenorphine may only be prescribed for up to a six-month supply.[9] After the six-month period, the patient must have an in-person visit for additional prescriptions of buprenorphine. Pharmacists will also be required to confirm the identity of the patient before filling the prescription so recommending to your patients that they have a valid ID before heading to the pharmacy is important. **However, if you have met with the patient before for a medical examination, the final rule- and these special requirements- will not apply.[10]**

Notably, this final rule becomes effective February 16, 2025. However, the latest temporary extension of COVID-19 flexibilities continues to permit the prescribing of controlled substances via telemedicine through December 31, 2025 - which means that providers have until the end of the year to fully incorporate the requirements of this final rule into their policies and procedures moving forward.

Providers do not need any additional federal telemedicine registration or certification under this final rule beyond a current DEA registration that allows Schedule III-V prescribing. However, the state in which the provider is licensed may have additional requirements or registrations. Similarly, many states have additional telemedicine prescribing rules that may apply in tandem with, or that are more stringent than these federal rules. We encourage all providers to ensure that they understand and comply with all state laws regarding telemedicine - both in the state in which the patient is located and the state in which the provider is located, if different.

For more information on prescribing buprenorphine, please see SAMHSA's Treatment Improvement Protocol on Medications for Opioid Use Disorder (MOUD), which provides evidence and practice-based information regarding buprenorphine, methadone and naltrexone.

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[1] DEA and HHS Issue Final Telemedicine Rule for Buprenorphine Access | SAMHSA.

[2] Federal Register: Continuity of Care via Telemedicine for Veterans Affairs Patients.

[3] Federal Register: Special Registrations for Telemedicine and Limited State Telemedicine Registrations.

[4] DEA Announces Three New Telemedicine Rules that Continue to Open Access to Telehealth Treatment while Protecting Patients.

[5] 21 CFR Part 1306.

[6] The full text of the final rule can be found here.

[7] *See* 21 U.S.C. 829(e), which provides that "[n]o controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act may be . . . dispensed by means of the Internet without a valid prescription."

[8] See 21 U.S.C. 802(54)(G).

[9] Buprenorphine Telemedicine Prescribing: Questions and Answers | SAMHSA

[10] *See* 21 CFR Part 1306.