

DEA Extends Telemedicine Flexibilities for Prescribing Controlled Substances

Quick Tips and Need to Know

- The Covid-19 protocols for the Ryan Haight Act will remain in effect through December 31, 2025
- To date, legislators have promulgated three extensions to the Covid -19 Ryan Haight Act temporary rule.
- Legislators acknowledge that the temporary rule's flexible prescribing standards has expanded access to care and that allowing such flexibilities to expire on December 31, 2024, would significantly disrupt such access.
- Legislators are currently amending the Ryan Haight Act to allow for some, but not all, of the Covid-19 exceptions.
- Legislators have stated that the new rule will be issued with sufficient time to allow practitioners to become compliant.

Background

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (the "Ryan Haight Act") regulates how Providers may tele-prescribe controlled substances. Under the act, practitioners may prescribe controlled medications to patients only after the practitioner has conducted an in-person evaluation of the patient. In response to the Covid-19 public health emergency, the DEA, in collaboration with HHS, adopted exceptions to the Act's prescribing protocols for controlled medications to allow practitioners to utilize telehealth modalities when prescribing controlled medications without first evaluating the patient in person. *See generally* [Federal Register :: Second Temporary Extension of COVID-19 Telemedicine Flexibilities for Prescription of Controlled Medications](#). Though the Covid-19 emergency has ended, legislators have not finalized amendments to the Act, and, have issued temporary extensions of the pandemic protocols.

Current State of Affairs

On November 19, 2024, the DEA published its Third Extension of Covid-19 Telemedicine Flexibilities for Prescription of Controlled Medications indicating that, effective January 1, 2025, healthcare practitioners who maintain a DEA registration in at least one state may continue to prescribe controlled substances pursuant to the more flexible standards under the temporary rule. More specifically, the temporary rule will allow practitioners to continue to prescribe schedule II-V controlled substances via telemedicine, as defined in [21 CFR 1300.04\(i\)](#), to a patient without establishing an in-person physician-patient relationship provided that (1) the

prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice; (2) The prescription is issued pursuant to a communication between a practitioner and a patient using an interactive telecommunications system, (3) The practitioner is: (a) Authorized under their registration to prescribe the basic class of controlled substance specified on the prescription; or (b) Exempt from obtaining a registration to dispense controlled substances under [21 U.S.C. 822\(d\)](#); and (4) The prescription is consistent with all other requirements of [21 CFR part 1306](#).

Impact on YOU

Health care providers and entities who engage in the practice of telemedicine and prescribe controlled substances should rest assured that the current regime for tele-prescription of controlled medications will remain unchanged for the 2025 calendar year. However, healthcare providers and entities should continue to monitor DEA and HHS announcements on the impending amendments. Remaining compliant with prescribing protocols is vital for warranting against disciplinary action by federal and state agencies. As such, Providers must (1) maintain all requisite [state and federal licenses](#) required to prescribe controlled substances up to date and (2) satisfy the [condition precedents](#) required by the DEA before prescribing the controlled substance.

For more information on how the Ryan Haight Act and the temporary extension of the Covid-19 prescribing rules may impact your business, please contact Chase Howard at choward@bochner.law.