

Client Alert: Telehealth Gets 11th Hour Federal Reprieve as the Public Health Emergency Ends May 11, 2023

Regulatory Update

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In response to the COVID-19 outbreak, the U.S. Department of Health and Human Services (HHS) declared a [public health emergency](#) (PHE) in early 2020 to ensure that healthcare services could continue while minimizing the risk of virus transmission. Pursuant to the PHE, the Centers for Medicare & Medicaid Services (CMS) instituted numerous regulatory waivers. Among other things, the CMS waivers facilitated a dramatic shift from in-person care to telehealth-based care for a significant portion of clinician-patient interactions.

These changes acted as a catalyst for the rapid growth of telehealth adoption by both patients and providers. By some accounts, telehealth usage increased a net 4,000% from the pre- to post-pandemic period. Recognizing the benefits of these adjustments, Congress passed the Consolidated Appropriations Act in 2023, which extended [some telehealth flexibilities](#) until December 31, 2024. That legislation ensured that Medicare recipients would be able to access telehealth services in any part of the United States, not just rural areas, and that Medicare will continue to reimburse providers for telehealth visits until the end of 2024.

However, several crucial waivers were scheduled to terminate on May 11, 2023. Among these was a HHS waiver exempting healthcare providers from penalties associated with HIPAA violations when employing widely-used video communication tools such as Facetime, Skype, or Zoom. (A list of HIPAA-compliant alternatives for these platforms can be found [here](#).)

Another important set of waivers related to the prescribing of controlled substances, including those under the Ryan Haight Act, were also on the brink of termination. These waivers notably included the suspension of the requirement for an initial in-person consultation before the telemedicine prescribing of a controlled substance. The potential expiration of these waivers posed significant challenges for many healthcare providers who had taken advantage of telehealth to reshape their service delivery models and workforces to a telemedical environment.

For every organization straining to adjust to the end of the waivers, a welcome turn of events occurred just [48 hours prior](#) to the deadline. After careful consideration of public input, the Drug Enforcement Administration (DEA), collaborating with the Substance Abuse and Mental Health Services Administration (SAMHSA), issued a significant extension. Published May 10, the [principal components](#) of this new direction are as follows:

- “The *full set* of telemedicine flexibilities regarding prescription of controlled medications as were in place during the COVID-19 PHE will remain in place through November 11, 2023.”
- “Additionally, for any practitioner-patient telemedicine relationships that have been or will be established on or before November 11, 2023, the *full set* of telemedicine flexibilities regarding prescription of controlled medications as were in place during the COVID-19 PHE will continue to be permitted via a one-year grace period through **November 11, 2024**. In other words, if a patient and a practitioner have established a telemedicine relationship on or before November 11, 2023, the same telemedicine flexibilities that have governed the relationship to that point are permitted until November 11, 2024.”

Telemedicine Stakeholders & Substance Abuse Treatment Providers

The DEA's decision to reverse course is largely attributed to the positive transformative potential of telehealth in combating substance abuse. The temporary waivers, in effect, have paved the way for more accessible treatment options for individuals



grappling with substance misuse. Crucially, these waivers have enabled healthcare providers to prescribe Schedule III detoxification medications, such as buprenorphine, through telemedicine platforms. This shift in policy underscores the critical role of telehealth in broadening access to vital treatments, particularly for those in remote areas or those who face other barriers to in-person care. The DEA's decision acknowledges these benefits and seeks to sustain this momentum in the fight against substance abuse.

Although substance abuse treatment serves as the primary rationale, the wider telemedicine industry is also benefiting from these policy adjustments. The decision to extend these waivers has inadvertently propelled the broader growth and reach of telehealth services, demonstrating the irrefutable significance and potential of virtual healthcare provision. This development suggests a promising path forward, where telemedicine stakeholders and substance abuse treatment providers continue to forge alliances. Such collaborative efforts can advance shared objectives and amplify the impact of telemedicine in improving health outcomes across the board.

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