

Electronic Prescribing of Controlled Substance (EPCS)

DEA Policy: [Questions and Answers for Prescribing Practitioners \(EPCS\)](#)

DEA Guidance: [Use of Mobile Devices in the Issuance of EPCS](#)

Telemedicine

On January 31, 2020, the Secretary of the Department of Health and Human Services issues a public health emergency ([HHS Public Health Emergency Declaration](#)).

Question: Can telemedicine now be used under the conditions outlined in Title 21, United States Code (U.S.C.), [Section 802\(54\)\(D\)](#)?

Answer: Yes

While a prescription for a controlled substance issued by means of the Internet (including telemedicine) must generally be predicated on an in-person medical evaluation ([21 U.S.C. 829\(e\)](#)), the Controlled Substances Act contains certain exceptions to this requirement. One such exception occurs when the Secretary of Health and Human Services has declared a public health emergency under 42 U.S.C. 247d (section 319 of the Public Health Service Act), as set forth in 21 U.S.C. 802(54)(D). Secretary Azar declared such a public health emergency with regard to COVID-19 on January 31, 2020 (<https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>). On March 16, 2020, the Secretary, with the concurrence of the Acting DEA Administrator, designated that the telemedicine allowance under section 802(54)(D) applies to all schedule II-V controlled substances in all areas of the United States. Accordingly, as of March 16, 2020, and continuing for as long as the Secretary's designation of a public health emergency remains in effect, DEA-registered practitioners in all areas of the United States may issue prescriptions for all schedule II-V controlled substances to patients for whom they have not conducted an in-person medical evaluation, provided 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 laws.

Provided the practitioner satisfies the above requirements, 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) or by calling in an emergency schedule II prescription to the pharmacy, or by calling in a schedule III-V prescription to the pharmacy.

The term "practitioner" in this context includes a physician, dentist, veterinarian, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which s/he practices to prescribe controlled substances in the course of his/her professional practice ([21 U.S.C. 802\(21\)](#)).

Important note: If the prescribing practitioner has previously conducted an in-person medical evaluation of the patient, the practitioner may issue a prescription for a controlled substance after having communicated with the patient via telemedicine, or any other means, regardless of whether a public health emergency has been declared by the Secretary of Health and Human Services, so long as the prescription is issued for a legitimate medical purpose and the practitioner is acting in the usual course of his/her professional practice. In addition, for the prescription to be valid, the practitioner must comply with applicable Federal and State laws.

JOINT NOTICE OF ENFORCEMENT DISCRETION BY THE ALABAMA
STATE BOARD OF MEDICAL EXAMINERS AND THE ALABAMA STATE
BOARD OF PHARMACY

The Alabama State Board of Medical Examiners (“BME”) and the Alabama State Board of Pharmacy are both charged with regulating and enforcing the prescribing and dispensing of controlled substances by Alabama health care providers. During the state and national public health emergency brought on by the rapid spread of the Severe Adult Respiratory Syndrome-Coronavirus-2 (SARS-CoV-2), health care providers subject to the Alabama Controlled Substances Act are being encouraged to communicate with patients, and provide telehealth services, through remote communications technologies.

The [DEA has recently relaxed prescribing rules](#) to permit the prescribing of controlled substances using telemedicine. The DEA has stated that, so long as the public health emergency remains in effect, DEA-registered practitioners in all areas of the United States may issue prescriptions for all schedule II-V controlled substances to patients **for whom they have not conducted an in-person medical evaluation**, provided 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 laws.

The DEA noted that if a prescribing practitioner has **previously conducted an in-person medical evaluation of the patient**, the practitioner may issue a prescription for a controlled substance after having communicated with the patient via telemedicine. In other words, the DEA's requirement that practitioners utilize a real-time audio and visual telemedicine methodology only applies to the prescribing of controlled substances to new patients who have not been physically examined by the practitioner. A performance of an audio-only telemedicine consult with an existing patient by a practitioner would satisfy DEA's guidelines, provided at all times that the controlled substances are prescribed for a legitimate medical purpose and in the usual course of the practitioner's professional practice.

The DEA further stated that practitioners could electronically transmit or call in the controlled substance prescription to the pharmacist. This guidance included calling in Schedule II controlled substance prescriptions, subject to state and local laws. Alabama does not currently permit a Schedule II prescription to be called in as DEA's guidance provides.

Coextensive with the DEA's guidance, the BME and BOP will exercise their enforcement discretion and will not impose penalties for noncompliance with state controlled substance-related regulatory requirements on health care providers who, in good faith, utilize telemedicine to care for their existing patients during the COVID-19 nationwide public health emergency. This notification is effective immediately.

In particular, the BME and BOP will allow for the communication of a Schedule II controlled substance prescription by a practitioner to a pharmacist via telephone where the practitioner or pharmacist is not equipped or otherwise impeded from utilizing electronic prescribing. Similarly, BME Rule 540-X-4-.08(2)(a) requires that a physical examination be conducted when prescribing a controlled substance for the treatment of chronic pain. For a limited time, and to allow for health care providers to keep themselves, their staff, and their patients safe, the Board will not enforce this physical examination requirement so that health care providers can continue to care for their chronic pain patients. This use of the BME and BOP's enforcement discretion is aimed at removing regulatory barriers to the use of telemedicine to meet the legitimate health needs of Alabama patients in a time when people are being directed to avoid in-person contact. This notice will expire [on April 6, 2020](#), but may be extended as this public health emergency evolves.