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DEA: Potential New Telemedicine Special Registration for Controlled Substances Prescribing to be Discussed in Special Listening Sessions

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At long last, the Drug Enforcement Administration (DEA) has signaled its consideration of a separate Special Registration for telemedicine prescribing for patients without requiring an in-person examination.

On August 4, 2023, DEA filed a pre-publication Notice of Meeting (published in the Federal Register on August 7th) to announce its intention to conduct public listening sessions this fall. These sessions will be designed to receive public input on the appropriate manner to establish a Special Registration for practitioners to prescribe controlled substances via telemedicine. This is notable because in its proposed rule published earlier this year, DEA had stated that the proposed rule "fulfille[d] DEA's obligation" to publish a Special Registration. A number of commenters, including Foley, disagreed that the proposed rule met the previous Congressional mandate. As a result, this current notice may represent a retreat from that position and is encouraging for parties who have long sought implementation of a Special Registration.

> *"DEA is open to considering—for some controlled substances—implementation of a separate Specia Registration for telemedicine prescribing for patients without requiring the patient to ever have had an in-person medical evaluation at all."*

As described in the quote above from the Notice, DEA is "open to considering" a revision to its prior policy. Specifically, DEA is seeking public input on the following questions:

- If telemedicine prescribing of schedule III-V medications were permitted in the absence of an in-person medical evaluation, what framework, including safeguards and data, with respect to telemedicine prescribing of schedule III-V medications would be recommended to help DEA ensure patient safety and prevent diversion of controlled substances?
- Should telemedicine prescribing of schedule II medications never be permitted in the absence of an in-person medical evaluation? Are there any circumstances in which telemedicine prescribing of schedule II medications should be permitted in the absence of an in-person medical evaluation? If it were permitted, what safeguards with respect to telemedicine prescribing of schedule II medications specifically would be recommended to help DEA ensure patient safety and prevent diversion of controlled substances?
- If practitioners are required to collect, maintain, and/or report telemedicine prescription data to

DEA, what pieces of data should be included or excluded? What data is already reported to federal and state authorities, insurance companies, and other third parties?

- If pharmacies are required to collect, maintain, and/or report telemedicine prescription data to DEA, what pieces of data should be included or excluded? What data is already reported to federal and state authorities, insurance companies, and other third parties?

This notice comes after years of public comment and advocacy from institutional stakeholders and patients alike calling for increased access to virtual care and remote prescribing. As Foley has previously reported, DEA has been under a statutory mandate to promulgate rules implementing a Special Registration for virtual practitioners to permit remote prescribing of controlled substances without an in-person examination and, up until now, has failed to do so. Indeed, DEA received 38,369 public comments in response to proposed rules published by the DEA earlier this year (many of which specifically requested the special registration approach). According to this notice, these were among the highest number of public comments received on a proposed rule in DEA's history.

While it still remains unclear when such a registration would become available, or to which controlled substances and practitioners it would apply, this notice reflects a broader trend by DEA of recognizing telemedicine as a fundamental aspect of health care innovation and access.

The public listening sessions will be held on Tuesday, September 12, 2023, and Wednesday, September 13, 2023, from 9 a.m. to 5:30 p.m. at the DEA Headquarters, 700 Army Navy Drive, Arlington, VA 22202 and will be live-streamed online. Interested parties are encouraged to attend and may submit a request to make an oral presentation during the listening session. Parties interested in attending in-person or making a presentation must register and submit a request at the DEA's website no later than August 21, 2023.

Want to Learn More?

- *DEA Extends Telemedicine Flexibilities for Prescribing of Controlled Medications*
- *2023 Telemedicine & Digital Health Trends*
- *DEA's Proposed Rules on Telemedicine Controlled Substances Prescribing after the PHE Ends*

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