



HEALTH LAW ALERT

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FEDERAL GOVERNMENT ISSUES EMERGENCY ORDER PERMITTING PRESCRIPTIONS FOR CONTROLLED SUBSTANCES WITHOUT LIVE FACE -TO- FACE ENCOUNTER DURING COVID 19 CRISIS

While a prescription for a controlled substance issued via internet must generally be predicated on an in-person medical evaluation, the Controlled Substances Act provides for exceptions in the face of public health emergencies. HHS Secretary Azar has declared such a public health emergency with regard to COVID-19. (<https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>). Now, and for as long as the Secretary's designation of such an emergency remains in effect, DEA-registered practitioners may issue prescriptions for 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.
- The practitioner is acting in accordance with applicable Federal and State law.

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.

Some practical advice:

- Clinical notes should reflect the fact that a real time two way audio-visual consultation took place.
- The HHS emergency declaration should be referenced in the note.
- All state laws and all other clinical standards must be followed and documented, particularly if there is a change in medication or dosage.
- Be sure to check I-Stop.
- Be wary of new patients and early renewals.
- E&M codes still require a face to face evaluation and this is not an assurance of payment for the encounter.

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