

AMERICAN ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY

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What the End of the Federal COVID-19 Public Health Emergency Means for Telehealth

October 2023

May 11 marked the end of the COVID-19 Public Health Emergency (PHE), bringing an end to many regulatory flexibilities afforded to physicians since the start of the PHE in 2020. The COVID-19 PHE waived several regulations related to telehealth, which were scheduled to end May 12. However, some important flexibilities were temporarily extended beyond the COVID-19 PHE.

The role of telehealth has shifted the way many child and adolescent psychiatrists practice since the start of the COVID-19 pandemic. Psychiatrists generally continue to rely on telehealth at a greater rate than any other physician specialty, and AACAP members should be aware of some key changes to ensure patients have no disruption in care.

It is advisable that physicians check with their malpractice carrier and state board of medicine to ensure full compliance with both federal and state regulations related to telehealth and virtual care.

What does this mean for an in-person exam requirement prior to prescribing controlled substances?

The Drug Enforcement Administration (DEA) used its own discretion authority to waive the requirement of establishing a physician-patient relationship via an in-person exam prior to a DEA-registered prescriber prescribing a controlled substance during the COVID-19 PHE. Instead, the DEA allowed a DEA-registered prescriber to prescribe a controlled substance without an in-person exam if the prescriber conducted a telehealth communication via audio-visual, real-time, two-way communication.

On October 6, the DEA and SAMHSA temporarily extended the flexibility to prescribe a controlled substance via telehealth without an initial in-person exam through December 31, 2024. This was the [second such temporary extension](#) which follows the DEA public comment period on its proposed regulations on prescribing a controlled substance without an initial in-person exam. Prior to this, the flexibility to prescribe a controlled substance via telehealth without an initial in-person exam post-COVID-19 Public Health Emergency was set to expire November 11, 2023.

The DEA [proposed new regulations](#) related to prescribing controlled substances via telehealth, which aimed to create a new referral system to allow for limited prescribing of certain scheduled drugs via telehealth on a permanent basis. While AACAP appreciates DEA's willingness to create a permanent pathway to maintain patient access to child and adolescent

psychiatrists via telehealth, [AACAP expressed significant concerns](#) with what DEA proposed in a formal comment letter and found DEA's proposal unworkable for psychiatrists in several instances.

DEA's current extension of the COVID-19 flexibility is only temporary. It remains unclear as to when permanent regulations may be released. DEA cited the need to consider the 38,000 public comments submitted to the proposed rule related to prescribing a controlled substance via telehealth without an initial in-person exam as the need to offer the six-month continued flexibility. Significantly, the Substance Abuse Mental Health Services Administration is joining the DEA in reviewing the 38,000 comment letters received during the comment period which may ultimately yield a final rule that balances enforcement and mental health concerns more appropriately.

What happened to the special registration for DEA-licensed prescribers under the Ryan Haight Act?

The long-awaited DEA "special registration" proposed rule to allow clinicians to prescribe a controlled substance without an initial in-person exam, in certain situations, has been stalled despite Congressional and stakeholder pressure. In the recent proposed rule on prescribing a controlled substance via telehealth without an initial in-person exam, DEA expressed concern that a separate "special registration" would only confuse and add additional burden to DEA-registered prescribers. AACAP disagrees with this assertion and called on DEA to promulgate rules related to the Congressionally mandated "special registration" in its formal comment letter to DEA.

Under existing regulations related to the Ryan Haight Act, there are currently seven limited flexibilities to the DEA in-person exam requirement prior to prescribing a controlled substance, including a federal public health emergency, as outlined in this [Congressional Research Service](#) report. Other exemptions include conducting telemedicine with a patient located at a DEA-registered hospital or clinic in a state where the clinician is registered to prescribe a controlled substance, or during an in-person appointment with another clinician.

CMS Extends Virtual Supervision of Trainees Through 2023

The Centers for Medicare and Medicaid Services (CMS) [announced](#) physicians can continue to supervise residents virtually in all settings through Dec. 31, 2023. Supervising physicians can be present virtually through two-way, real-time audio/video communication for billing purposes. CMS also stated they expect to review its policy on this issue through future rulemaking.

AACAP members raised concerns with this supervision exception expiring at the end of the COVID-19 PHE on May 11. We anticipate advocating further to CMS the need to extend the virtual supervision of residents permanently. Recently, the Accreditation Council for Graduate Medical Education (ACGME) amended rules to allow for virtual supervision of trainees.

What PHE telehealth flexibility ended on May 11, 2023?

During the COVID-19 PHE, the U.S. Health and Human Services (HHS) Office of Civil Rights used its discretion authority to waive penalties associated with using non-HIPAA (Health Insurance Portability and Accountability Act) compliant teleconference platforms (such as Facetime) for telehealth services during the COVID-19 PHE. The HHS will once again have the authority to impose penalties on clinicians using non-HIPAA compliant telehealth platforms after May 11. Telehealth platforms are HIPAA compliant if a health care provider can enter into a HIPAA business associate agreement (BAA). This is possible on Zoom for Healthcare, VSee, Doxy.me, and other platforms.

What telehealth regulatory flexibilities were extended in the Consolidated Appropriations Act of 2023, signed into law by President Biden on Dec. 29, 2022?

The Consolidated Appropriations Act of 2023 extends Medicare COVID-19 PHE telehealth flexibilities through 2024, which includes telehealth services offered by federally qualified health centers and rural health clinics to Medicare beneficiaries, ensuring a continuity of care for Medicare patients using telehealth or audio-only services. Included in the extension are waivers of the geographic and originating site of service limitations.

Can a psychiatry practice remain fully virtual?

While Medicare is temporarily allowing certain telehealth billing through the end of 2024, other payers, including Medicaid, the Children’s Health Insurance Program (CHIP), and many private payers follow state regulations which may require in-person care delivery. While state telehealth regulations vary (*see Center for Connected Health Policy below*), DEA in-person exam flexibilities related to prescribing a controlled substance are currently temporary.

Can a provider no longer see a patient located in another state?

A common question among AACAP members is how to maintain care for a patient attending college in a state other than the one in which the DEA-licensed prescriber is located. The answer is not that simple, but to see a patient in another state, all states require a physician to be licensed or registered by the state medical board in the state in which the patient is physically located. State licensure flexibilities that were available at the start of the COVID-19 pandemic have largely expired, although a few states have allowed for permanent interstate telehealth (*see Federation of State Medical Board resources below*). A patient may need to travel to a state in which the prescriber is licensed in order to continue care. Should meeting these out-of-state license requirements not be possible, transitioning care to another clinician in the state where the patient is located may be necessary.

What coverage policies will change at the end of the federal COVID-19 PHE?

It is important to know that telehealth coverage policies for Medicaid/CHIP or state-regulated private payers vary by state. And while most states have state laws governing telehealth practices, including payment and/or telehealth networks, not all states mandate audio-only coverage or telehealth payment parity, for example. Some Medicaid and private payer coverage policies of telehealth and audio-only visits may be tied to the federal COVID-19 PHE. It is important to review what coverage policies may change at the end of the COVID-19 PHE.

See Center for Connected Health Policy below on state telehealth coverage policies across different payers.

Additional resources related to telehealth policy and regulations.

CMS: [FAQs: CMS Waivers, Flexibilities, and the End of the COVID-19 Public Health Emergency](#)

HHS: [Fact Sheet: End of the COVID-19 Public Health Emergency](#)

HHS [Fact Sheet: Telehealth Flexibilities and Resources and the COVID-19 Public Health Emergency](#)

Kaiser Family Foundation: [What Happens When COVID-19 Emergency Declaration Ends? Implications for Coverage, Costs, and Access.](#)

[Center for Connected Health Policy](#)

Federation of State Medical Boards [Telemedicine Policies by State, Comparison of States with Permanent Interstate Telemedicine](#)

White House Fact Sheet: [COVID-19 Public Health Emergency Transition Road Map](#)

CMS: [State Medicaid and CHIP Telehealth Toolkit: COVID-19 Version](#)