Controlled Substance Prescribing Exceptions During Public Health Emergencies

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In light of the novel coronavirus pandemic, health care practitioners should be aware of relaxed guidelines for prescribing controlled substance. This blog post describes when practitioners can prescribe controlled substances via telemedicine and exceptions available to opioid treatment programs.

Telemedicine Prescribing

Typically, an in-person medical evaluation must be conducted before a prescription for a controlled substance is issued through telemedicine or other internet means. However, when the Secretary of Health and Human Services has declared a public health emergency, as he recently did, prescribers may utilize an exception to the in-person evaluation requirement. For as long as the Secretary's designation of a public health 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 their 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 law.

As long as the practitioner satisfies all of these requirements, the prescription may be issued using any method of prescribing currently set forth in DEA regulations. Thus, the practitioner may issue a prescription either electronically (for schedules II-V), by calling in an emergency schedule II prescription to a pharmacy, or by calling in a schedule III-V prescription to the pharmacy.

Note that regardless of whether there is a public health emergency, a prescribing practitioner that has *previously* conducted an in-person medical evaluation of a patient may issue a prescription for a controlled substance after communicating with the patient

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via telemedicine. The prescription must still be issued for a legitimate medical purpose and comply with applicable Federal and State law. More information about the DEA-response to the coronavirus may be found here.

Medications for Patients with Opioid Use Disorders

Additionally, the Substance Abuse and Mental Health Services Administration ("SAMHSA") has also issued guidance regarding medications for patients with opioid use disorders in treatment programs. If a state has declared a state of emergency, the state may request blanket exceptions for all stable patients in an Opioid Treatment Program (OTP) to receive 28 days of take-home doses of the patient's medication for opioid use disorder. The state may request up to 14 days of take-home medication for those patients who are less stable, but who the OTP believes can safely handle this level of take-home medication.

In states that have not declared states of emergency, an OTP can provide a blanket exemption request for its clinic per the guidance above (i.e., up to 28 days for stable patients and up to 15 days for less stable patients). These requests do not have to be submitted on a per-patient basis. Programs and states should use appropriate clinical judgment and existing procedures to identify stable patients. SAMHSA notes that as an increased medication supply will likely accompany these requests, OTPs and states must ensure that there is enough medication ordered and on hand to meet patient needs.

We are continuing to monitor the federal response to the coronavirus pandemic and will continue to post updates. If you have any further questions, please contact the authors of this post or your regular Dorsey attorney.