




# COVID-19 & Telehealth Regulation (as of today)

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**Disclosures**


I am not an attorney.

Rules change daily.


Lots still unknown.

This is not comprehensive.


Compliance Department





"I'll be honest ... there are books by James Joyce that are easier to follow than these bad boys."




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# Medicare Changes




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## Congress: HR 728 (CARES Act)

- HHS Sec has authority to temp increase Medicare telehealth flexibility & uses
- FQHCs & RHCs can be distant sites for telehealth
- Opens door to telephone coverage rather than A/V only – up to HHS Sec
- Removes est. pt. requirement under COVID-19 Medicare telehealth waiver
- Temp waiver of in-person visits for ESRD telehealth pts.
- Qualified providers can temp. use telehealth for hospice F2F visits
- HHS Sec can waive additional 1834(m) restrictions
- Requires clarifying guidance from HHS on telecom & RPM for home health
- Increased funding for HRSA TRC grants
- High deductible plans may include telehealth services before deductible met
- VA telehealth, mHealth, broadband expansion
- IHS funding including mobile health units
- FCC gets \$200 million to support telecom for telehealth



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## So what does this mean in practice?

- CMS is putting out interim final rules & guidance documents & holding meetings & webinars
- CMS is still working on addressing many telehealth questions, especially:
  - billing
  - payment rates
  - eligible practitioners
  - telephone-only services



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## CMS: What's Great

- Waiver not restricted to COVID-19-related telehealth visits
- Pt location no longer restricted for Medicare "telehealth" services
- Added 80 telehealth codes
- Phones with A/V allowed
- Added E&M services conducted by telephone (audio only)
- RPM services may be furnished to new pts
- FQHCs & RHCs:
  - May now bill separately for eVisits (using pt portal)
  - May now serve as telehealth distant sites
- ESRD: Enforcement discretion on required monthly F2F encounter



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## More of What's Great

- "Brief communication tech-based services" (Virtual Check-ins, Remote Eval of Pt Images/Video):
  - May now be furnished to new pts as well as established
  - Consent can be obtained at same time as service
  - G2010 & G2012 can now be billed by practitioners who don't report E&M codes, including PTs, OTs, SLPs, LCSWs, clinical psychologists
  - "Pt initiated" = pt must consent but providers may let pts know of availability
- Nursing homes: waived requirement for in-person visit
- Hospice: HHS Sec may allow telehealth to be used for F2F eligibility assessments
- Physician supervision may be provided using live video



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## CMS: What's Not So Great

- Same list of qualified telehealth providers
  - PTs, OTs, SLPs still not able to provide their services via telehealth, though the CARES Act does include PT, OT, and SLP codes for reimbursement - CMS has authority to waive but has not done so
- "Telehealth" still must be live, 2-way, interactive, with A/V – CANNOT be audio only




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## CMS Billing Rules

- Bill with POS = what it would have been if furnished in person + Modifier 95 to indicate telehealth (except for CAH Method II & stroke)
- Can still bill POS 02 if you want to; will be paid at facility rate
- If practitioner & pt in same location but not same room, bill as an in-person visit
- FQHCs & RHCs bill G0071 instead of G2010 & G2012 for Virtual Check-Ins & Remote Eval of Pre-recorded Pt Images/Video – also use G0071 for eVisits




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# DEA Changes



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## Special Registration

MARK E. WATNER  
LEGISLATOR

**United States Senate**  
WASHINGTON, DC 20510-4608

January 17, 2020

Mr. Utam Dhillon  
Acting Administrator  
Drug Enforcement Administration (DEA)  
U.S. Department of Justice  
300 K Street NW, Suite 500  
Washington, D.C. 20001

Dear Acting Administrator Dhillon,

I am writing regarding the Drug Enforcement Agency's (DEA) implementation of critical provisions in the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (Ryan Haight Act) (Public Law 91-513) and the recently passed SUPPORT for Patients and Communities Act (SUPPORT Act) (Public Law 115-271) that ensure individuals with substance use disorders can successfully access medical treatment via telehealth.

As you likely know – the Ryan Haight Act prohibits the delivery, distribution, or dispensing of a controlled substance online without first conducting an in-person exam. The intent of this law is to prevent illegitimate entities from selling dangerous controlled substances online while maintaining the ability for legitimate healthcare providers to treat patients in need.

https://www.dea.gov/press-releases/2019/12/19/2019-12-19-dea-announces-advance-examination-contains-health-care

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**POLICY NEWS**

**Warner Tells DEA to Launch Registration for Telehealth Prescriptions**

Senator Mark Warner is taking the DEA to task for failing to launch a promised - and mandated - special registration process for care providers who want to use telehealth to prescribe controlled substances.


CONGRESSWOMAN ANN McLANE KUSTER Proudly Serving New Hampshire's 2nd

Home » Media Center » Press Releases


**Congresswoman Kuster, Senators Murray and Warren Press Drug Enforcement Administration on Long-Overdue Steps to Expand Access to Opioid Addiction Treatment**

Jan 21, 2020 | Press Release

Kuster, Murray and Warren send letter to Drug Enforcement Administration over delay in action to help people struggling with opioid addiction



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## Telemedicine Now Allowed for Controlled Substance Rx

**Telemedicine**

On January 31, 2020, the Secretary of the Department of Health and Human Services issues a public health emergency (**IHS 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.



COVID-19 Information Page



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## DEA Letter

- March 31 Letter: Buprenorphine can be prescribed to new & existing pts with OUD for maintenance or detoxification tx on the basis of a **telephone eval.**
  - Must meet obligation to ensure Rx is for a legit medical purpose
  - Must feel adequate eval can be accomplished via telephone
  - For practitioners registered with DEA as opioid treatment program if program physician, PCP, or authorized healthcare professional under supervision of program physician determines adequate eval can be done by phone
  - DATA-waivered practitioners complying with applicable standards of care
  - State laws override if more strict



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## HHS Changes

## HHS 1135 Waiver

- Waives requirements that healthcare professionals hold licenses in state in which they provide services if equivalent license in other state (for Medicare & Medicaid)
- Waives conditions of participation (determined by CMS) for providers
- Waives Stark Law sanctions (as deemed appropriate by CMS)
- Allows licensed providers to render services outside their state of enrollment
- States can request 1135 Waiver of additional provisions (AZ did)



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## OCR Enforcement Discretion: Telehealth

- No penalties for noncompliance with HIPAA rules for good faith provision of telehealth
- Can use any non-public-facing audio or video communication products
- Examples: FaceTime, FB Messenger video chat, Google Hangouts, non-healthcare Zoom, Skype
- Notify pts. of potential privacy risks, enable all possible encryption & privacy modes
- For any medical condition – not just COVID-19 related



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## OIG AKS & Civil Monetary Penalty Flexibility

- Ordinarily, if practitioners waive costs owed by federal healthcare program beneficiaries (coinsurance, deductibles, copays), implicates AKS & CMP law prohibition on “inducements to beneficiaries”
- Now, flexibility to reduce or waive beneficiary cost-sharing for telehealth visits paid for by federal healthcare programs
- CMS allowing waiver from FMV for equipment rental or physician services



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## FCC Changes

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## FCC Keep Americans Connected Pledge

- To keep US customers from being cut off from communications services during pandemic
- >650 ISPs & wireless providers have signed
- Companies will not terminate service to any residential or small biz customers due to inability to pay bills due to pandemic disruptions
- Will waive any late fees for residential or small biz customers related to pandemic circumstances
- Will open their Wi-Fi hotspots to any American who needs them



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## More FCC Actions

- Granted AT&T, Verizon, T-Mobile temp use of additional spectrum to help meet demand
- Temp waiver of Lifeline usage requirements (low-cost phone or internet for low-income Americans)
- Waived Gift Rules for Universal Service (RHC & E-rate)
- Rural Health Care Program – \$42.19M extra in funding, extending application window to 6/30



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## \$200M From CARES Act for Provider Broadband

- To purchase eligible services & connected devices
- No more than \$1M per applicant; awards on rolling basis; applications opened Monday so **APPLY NOW**
- Target funding to high-risk & vulnerable pts. (not ltd. to COVID-19 pts.)
- For nonprofit & public healthcare providers – teaching hospitals, medical schools, post-secondary healthcare programs; CHCs & migrant clinics; local health depts.; CMHCs; not-for-profit hospitals; RHCs, SNFs; consortia of providers
- <https://www.fcc.gov/covid-19-telehealth-program>



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## FDA Updates

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## Guidance on Digital Health Policies

- Most apps & software for public health surveillance & communication are not medical devices regulated by FDA, including contact & location trackers
- Software with educational info for providers or pts not regulated
- Videoconferencing software used for telemedicine not regulated
- Won't enforce requirements for lower risk devices like screening & preventative recommendations, checklist of symptoms, questionnaire & healthcare facility recommendation, software that calls nurseline or emergency services using broadband or cell phone tech; software that allow pt to send alert to first responders



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## Arizona Changes

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## Governor's Executive Order 2020-07

### "Proactive Measures to Protect Against COVID-19" / March 19

- [https://azgovernor.gov/sites/default/files/eo\\_2020-07.pdf](https://azgovernor.gov/sites/default/files/eo_2020-07.pdf)
- Requires that insurers cover telemedicine visits at a lower copay for consumers than the same in-person service to encourage the use of telemedicine



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## Governor's Executive Order 2020-15

### "Expansion of Telemedicine" / March 25

- [https://azgovernor.gov/sites/default/files/eo\\_2020-15\\_expansion\\_of\\_telemedicine\\_0.pdf](https://azgovernor.gov/sites/default/files/eo_2020-15_expansion_of_telemedicine_0.pdf)
- Implements SB 1089 early, broadening coverage to any service that would be covered in person
- Says telehealth parameters cannot be more restrictive than in-person parameters
- Implements payment parity!
- Allows telephone as a telehealth modality (countermanding SB 1089)
- Requires patient home to be a covered originating site



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## Governor's Executive Order 2020-15 (cont.)

- Adds to the list of healthcare provider types currently specified under Arizona statutory definition of telemedicine
- Makes AHCCCS require all Medicaid plans to cover all healthcare services that are covered benefits and to make all covered benefits accessible by telemedicine
- Prohibits boards from requiring an in-person exam prior to a prescription



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## Governor's Executive Order 2020-19

### "Telemedicine for Pets & Animals" / March 30

- <https://azgovernor.gov/file/34410/download?token=eyCXxQKH>
- 4/1/20 through duration of Public Health Emergency, licensed vets in AZ may use telemedicine
- AZ Veterinary Medical Board may establish reasonable requirements & parameters but may not be more restrictive than in person
- Vets cannot charge more for telemed than in-person
- All electronic means including phone & video allowed; patient's home allowed
- May be used to establish vet-client-patient relationship



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## Governor's Executive Order 2020-29

### "Increased Telemedicine Access for Workers' Compensation" / April 14

- Workers' comp plans must cover all healthcare services that can be provided through telemedicine if they would be covered in person
- Requirements & parameters cannot be more restrictive or less favorable to providers than for in-person
- All electronic means including phone & video calls
- Any AZ licensed healthcare provider type
- No in-person exam required 1<sup>st</sup>
- Plans may not require in-person exam or tx except in cases of suspected fraud



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## AHCCCS Updates

- Can enroll providers who are enrolled with another state Medicaid program or Medicare
- All services clinically able to be furnished via telehealth covered
- Telephonic code sets:
  - Temp: Use POS = originating site + use UD modifier
  - Permanent: Use POS 02, "telehealth"
- Health plans may not discount provider rates for telehealth & phone services
- Pays established FFS rate for FQHC/RHC telehealth services



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## AHCCCS Updates

- No limits on provider types per Exec Order
- Phone & telehealth visits OK for controlled & non-controlled substance refills when clinically appropriate



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What About the Future  
of Telehealth  
Regulation?

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**These regulation changes are for the duration of the COVID-19 Public Health Emergency Only!**



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**Lots of Speculation.  
No one knows.**



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Resources

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### ATP/SWTRC Telemed COVID-19 Web Page

- <https://southwesttrc.org/resources/covid19>
- **National Resources:** Alliance for Connected Care, American Academy of Family Physicians, AMA, Association of State & Provincial Psychology Boards, ATA, CCHP, CMS, DEA, FCC, HHS, FSMB, NCTRC, USDLA; demo videos & webinar
- **Consumer Resources:** CDC, GoodRx Telehealth Marketplace, Emory risk checker; instructions on setting up email accounts
- **State-Specific:** Council of State Governments, AZ Wi-Fi hotspots map, Arizona Together, Arizona 211, AHCCCS FAQs, AZ Executive Orders



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# Thank you!

For questions or more info:

[nrowe@telemedicine.arizona.edu](mailto:nrowe@telemedicine.arizona.edu)

<https://southwesttrc.org/resources/covid19>

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