COVID-19: Rules Relaxed for Prescribing Controlled Substances via Telehealth

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Amid responses to the COVID-19 emergency, telehealth has been a frequent area of development. The Secretary of Health and Human Services and the Drug Enforcement Agency (DEA) announced a major adjustment giving DEA-registered practitioners leeway to prescribe controlled substances via telehealth. Specifically, a practitioner no longer needs to conduct an in-person medical evaluation before prescribing a controlled substance if certain conditions are met.[1] The conditions are:

- 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 laws.

Although this announcement is welcome news, the complete landscape of federal and state laws surrounding telehealth is rapidly changing. At the federal level, the Centers for Medicare and Medicaid Services (CMS) recently announced an expansion, removing certain restrictions on using telehealth for Medicare beneficiaries.[2] In the same announcement, CMS declared its intention to exercise discretion when auditing established provider-patient relationships, signaling less scrutiny in certain circumstances. Further, state Medicaid agencies were given broad authority to adjust their own in-person requirements when using telehealth. This triggered different responses to the public health emergency. For example, Ohio and Indiana each suspended their own face-to-face requirements and loosened restrictions on behavioral health services provided through telehealth. Also, the Texas Medical Board recently allowed providers to use phone

consults for diagnosis, treatment and e-prescribing. These examples represent the various approaches telehealth providers may take in order to provide virtual care within different jurisdictions.

The DEA's announcement is just one of many changes in the telehealth space that present new opportunities for providers to use the technology at their disposal. Several state and federal agencies have also taken steps to expand access for patients in need of mental health and substance use disorder services.

For more information about telehealth reimbursement, please contact Andrew Johnson or any attorney on Frost Brown Todd's Health Care Innovation Team.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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[1] 21 U.S.C. 829(e)

[2] CMS released a Telehealth Toolkit to help practitioners who treat patients using telehealth.

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