



Department of Health

KATHY HOCHUL
Governor

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Acting Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

January 31, 2023

Dear Practitioners and Pharmacists:

Pursuant to Public Health Law § 3308(2), the Commissioner has hereby determined that for the duration of the federally declared public health emergency due to COVID-19, it is necessary for New York State patients to maintain access to controlled substance medications, including through the use of telemedicine.

New York State recognizes that certain differences between New York State laws and regulations and DEA federal public health emergency guidance may have created confusion among some practitioners. To provide maximum clarity for prescribers, pharmacists, and patients, this Commissioner's determination permits controlled substance prescribing through telemedicine pursuant to the same processes as Federal law and Drug Enforcement Administration (DEA) policy permit, limited to the duration of the federally-declared public health emergency due to COVID-19, and provided it occurs in compliance with all other applicable Federal and New York State laws. This includes permitting the evaluation by telephone of patients for buprenorphine for maintenance or detoxification treatment of an opioid use disorder, though not for any other controlled substance prescribing. Pursuant to Public Health Law § 3308(4), this determination shall have the force and effect of law.

DEA's [Covid-19 Information Page](#) is available [here](#). Some of the information DEA provides is as follows:

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. 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:

1. The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice;

2. The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system; and
3. The practitioner is acting in accordance with applicable Federal and State laws.

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.

The term "practitioner" in this context includes a physician, dentist, veterinarian, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which s/he practices to prescribe controlled substances in the course of his/her professional practice ([21 U.S.C. 802\(21\)](#)).

Important note: If the prescribing practitioner has previously conducted an in-person medical evaluation of the patient, the practitioner may issue a prescription for a controlled substance after having communicated with the patient via telemedicine, or any other means, regardless of whether a public health emergency has been declared by the Secretary of Health and Human Services, so long as the prescription is issued for a legitimate medical purpose and the practitioner is acting in the usual course of his/her professional practice. In addition, for the prescription to be valid, the practitioner must comply with applicable Federal and State laws.

Please also note that New York State's requirements to consult the Prescription Monitoring Program (PMP) Registry when writing prescriptions for Schedule II, III, and IV controlled substances, and to use electronic prescribing for all prescriptions, remain in effect.

For additional information, please see the following resources:

[DEA's COVID-19 Information Page](#)

[DEA's controlled substance prescribing decision tree](#), summarizing its policies, is available [here](#):

[New York State Prescription Monitoring Program information](#)

[New York State Guidance for Accessing Buprenorphine through Telemedicine \(PDF\)](#)

Please e-mail questions to narcotic@health.ny.gov.

Sincerely,

James V. McDonald, M.D., M.P.H.
Acting Commissioner of Health