State of California—Health and Human Services Agency

Department of Health Care Services

BRADLEY P. GILBERT, MD, MPP
DIRECTOR

GAVIN NEWSOM
GOVERNOR

DHCS COVID-19 Frequently Asked Questions: Medication-Assisted Treatment and Telehealth

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Please see the DHCS COVID-19 Response Website for more information.

1. **Due to the COVID-19 public health emergency, can DEA-waivered prescribers prescribe buprenorphine without an in-person visit?**

During the national state of emergency, the Drug Enforcement Administration (DEA) announced it will waive the Ryan-Haight act and allow the initial and ongoing buprenorphine prescription and all follow up care to be provided by telemedicine and telephone,[1] without an in-person medical evaluation. 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 his/her professional practice.
- The telemedicine communication is conducted between the DEA-registered practitioner and the patient, or a health care professional who is treating the patient, using an audio-visual, real-time, two-way interactive communication system or by telephone.
- The practitioner is acting in accordance with applicable Federal and State law (including the telemedicine requirements of 21 USC §802(54)).

If the practitioner satisfies the above requirements, 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. Buprenorphine is a schedule III medication.

[1] See SAMHSA's announcement allowing the initial evaluation and prescribing of buprenorphine to be done by telephone: https://www.samhsa.gov/sites/default/files/faqs-for-oud-prescribing-and-dispensing.pdf

Behavioral Health
1501 Capitol Avenue, MS 4000, P.O. Box 997413
Sacramento, CA 95899-7413
Phone: (916) 440-7800
Internet Address: http://www.DHCS.ca.gov

2. Has the COVID-19 public health emergency affected HIPAA regulations regarding communication technologies and telemedicine/telehealth?

The U.S. Department of Health and Human Services Office of Civil Rights (HHS-OCR) has clarified[2] that they will use enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules when providers use telehealth in good faith during the COVID-19 public health emergency. The HHS-OCR guidance states that providers can use any non-public facing remote communication product that is available to communicate with patients. Specifically, providers may use popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video or Skype to provide telehealth.

However, public facing applications such as Facebook Live, Twitch, TikTok, and similar video communication applications should not be used in the provision of telehealth. Additional guidance regarding HHS-OCR's HIPAA enforcement during the COVID-19 public health emergency can be found on HHS-OCR's webpage.[3]

SAMHSA has also issued guidance on 42-CFR Part 2 compliance during the emergency[4].

3. How can providers learn more about telemedicine/telehealth?

The California Telehealth Resource Center (CTRC) is dedicated to helping providers implement and sustain telehealth programs. Services include: program needs assessment for implementation or expansion, equipment selection, telehealth presenter training; operational workflow; contracting with specialists; billing; and credentialing and staff roles. In addition, CTRC also produces a Telehealth Program Developer Kit that can be downloaded from the CTRC website. It provides a step-by-step guide to help providers develop a telehealth program.

The Center for Connected Health Policy (CCHP) is a national telehealth resource center on policy. The CCHP works closely with all telehealth resource centers in the United States and provides technical assistance to state agencies and lawmakers on telehealth policy. For recent information on telehealth legislation and policy, visit the CCHP website. Other helpful websites are available on the DHCS Telehealth Resources webpage.

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[2] https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html

[3] https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html

[4] https://www.samhsa.gov/sites/default/files/covid-19-42-cfr-part-2-guidance-03192020.pdf

The California Office of Health Information Integrity released on March 18, 2020, CalOHII Disaster and Information Sharing guidance around the California medical privacy laws (e.g. Confidentiality of Medical Information Act). The Substance Abuse and Mental Health Services Administration also released applicable telehealth and MAT guidance.

4. **Can we provide delivery of medication to our patients if they cannot leave their home, or a controlled treatment environment?**

   There is nothing under federal law that prohibits this from occurring, although resources to offer this level of service may vary by program.

   Guidance for behavioral health providers to minimize the spread of COVID-19 has also been published in the Behavioral Health Information Notice 20-009 on the DHCS website. For information specific to NTPs, please see the DHCS COVID-19 FAQ: NTPs for the most recent updates. Also see the SAMHSA MAT website for up-to-date guidance on how to ensure patients continue to get treatment, despite illness or quarantine.

5. **Who decides whether or not to provide services via telehealth?**

   The health care provider determines if a benefit or service is clinically appropriate to be provided via a telehealth modality, subject to consent by the patient.

6. **Does the patient need to consent prior to receiving services by telehealth?**

   Yes. State law requires the health care provider initiating the use of telehealth to inform the beneficiary, obtain verbal consent, and document consent in the beneficiary's treatment file. Providers at both the originating and distant site, if applicable, should maintain documentation in the beneficiary's medical record in the event health records are not shared. If a health care provider or health care group/organization has a general consent protocol that specifically references use of telehealth as a modality, then this would satisfy the consent requirement if the beneficiary has signed the general consent and that signed consent is maintained in the beneficiary's treatment file.

7. **Does Medi-Cal pay a different rate for services provided through telehealth than it pays for the same service provided in-person?**

   No. Medi-Cal Fee for Service pays the same rate for professional medical services provided by telehealth as it pays for services provided in-person. Contract rates with county Drug Medi-Cal Organized Delivery Systems and Medi-Cal Managed Care Plans may vary. Please see the DHCS website on telehealth, payments and claims.