

# DEA Proposed Regulations

March 20, 2023



Center for Connected  
Health Policy

THE NATIONAL  
TELEHEALTH POLICY  
RESOURCE CENTER



## CENTER FOR CONNECTED HEALTH POLICY (CCHP)

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is a non-profit, non-partisan organization that seeks to advance state and national telehealth policy to promote improvements in health systems and greater health equity.

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# DEA – PRESCRIBING CONTROLLED SUBSTANCES

- DEA proposed two new rules
  - Expansion of induction of buprenorphine via telemedicine encounter
  - Telemedicine prescribing of controlled substances when the practitioner and patient have not had a prior in-person medical evaluation
- Published in Federal Register March 1, 2023
- 30 Day comment period
- Another limited option in using telehealth to prescribe & what to do after the PHE



# DEA – PROPOSED RULES FOR PRESCRIBING

- As for March 2023, these are **proposed** rules for prescribing controlled substances post- PHE. These rules are not yet finalized.

WHAT IS CURRENT LAW	WHAT THE PROPOSAL WILL DO
<p>Under current federal law, seven exceptions exist that allow the use of telehealth to prescribe a controlled substance without an in-person evaluation taking place first. These exceptions are:</p> <ol style="list-style-type: none"> <li>1. Treatment in a DEA-registered hospital or clinic</li> <li>2. Treatment in physical presence of a DEA registered practitioner</li> <li>3. Treatment by Indian Health Services or Tribal practitioners</li> <li>4. Treatment by a practitioner who is on a special registry (not created yet)</li> <li>5. During a public health emergency</li> <li>6. Treatment by a VA practitioner during a medical emergency</li> <li>7. <b>Other circumstances specified by HHS &amp; DEA</b></li> </ol>	<p>Relying on #7, the DEA proposes to create other narrow exceptions which are:</p> <ul style="list-style-type: none"> <li>• A DEA-registered practitioner may prescribe a 30 day supply of non-narcotic Schedule III-V medication without an in-person evaluation OR meeting one of the 6 exceptions listed in current law OR if it was a VA practitioner prescribing.</li> <li>• In order to continue to prescribe to that patient, the telehealth provider must either have completed an in-person evaluation of the patient, meet one of the six exceptions in current law, OR have a qualified telemedicine referral.</li> <li>• A qualified telemedicine referral is where a DEA-registered provider has an in-person evaluation with the patient and sends in their referral to the telehealth provider all of the information all necessary information regarding the patient, the exam, etc. Look at it as an asynchronous option to existing exceptions.</li> </ul>
<p>There is nothing in current law or regulations stating what happens to relationships formed entirely in a PHE and no in-person visit has taken place.</p>	<p>DEA proposes to address this by providing 180 day grace period to practitioners to meet this requirement by either completing an in-person evaluation, meeting one of the six exceptions in current law OR having a qualified telemedicine referral.</p>



# DEA – PROPOSED RULES FOR PRESCRIBING

- What else do these proposed rules do?

WHAT IS CURRENT LAW	WHAT THE PROPOSAL WILL DO
<p>An exception is created for buprenorphine being prescribed for treatment of OUD (Keep in mind that the previous proposal discussed was ONLY for non-narcotic Schedule III-V drugs).</p>	<ul style="list-style-type: none"> <li>• A DEA-registered practitioner may prescribe a 30 day supply without an in-person evaluation OR meeting one of the 6 exceptions listed in current law.</li> <li>• In order to continue to prescribe to that patient, the telehealth provider must either have completed an in-person evaluation of the patient, meet one of the six exceptions in current law, OR have a qualified telemedicine referral.</li> <li>• A qualified telemedicine referral is where a DEA-registered provider has an in-person evaluation with the patient and sends in their referral to the telehealth provider all of the information all necessary information regarding the patient, the exam, etc. Look at it as an asynchronous option to existing exceptions.</li> </ul>
<p>Current law does not contain specificity on documentation or additional conditions a prescribing telehealth provider needs to meet.</p>	<p>DEA proposes to address require:</p> <ul style="list-style-type: none"> <li>• Review of the Prescription Drug Monitoring Program Data</li> <li>• Certain record keeping requirements</li> </ul>

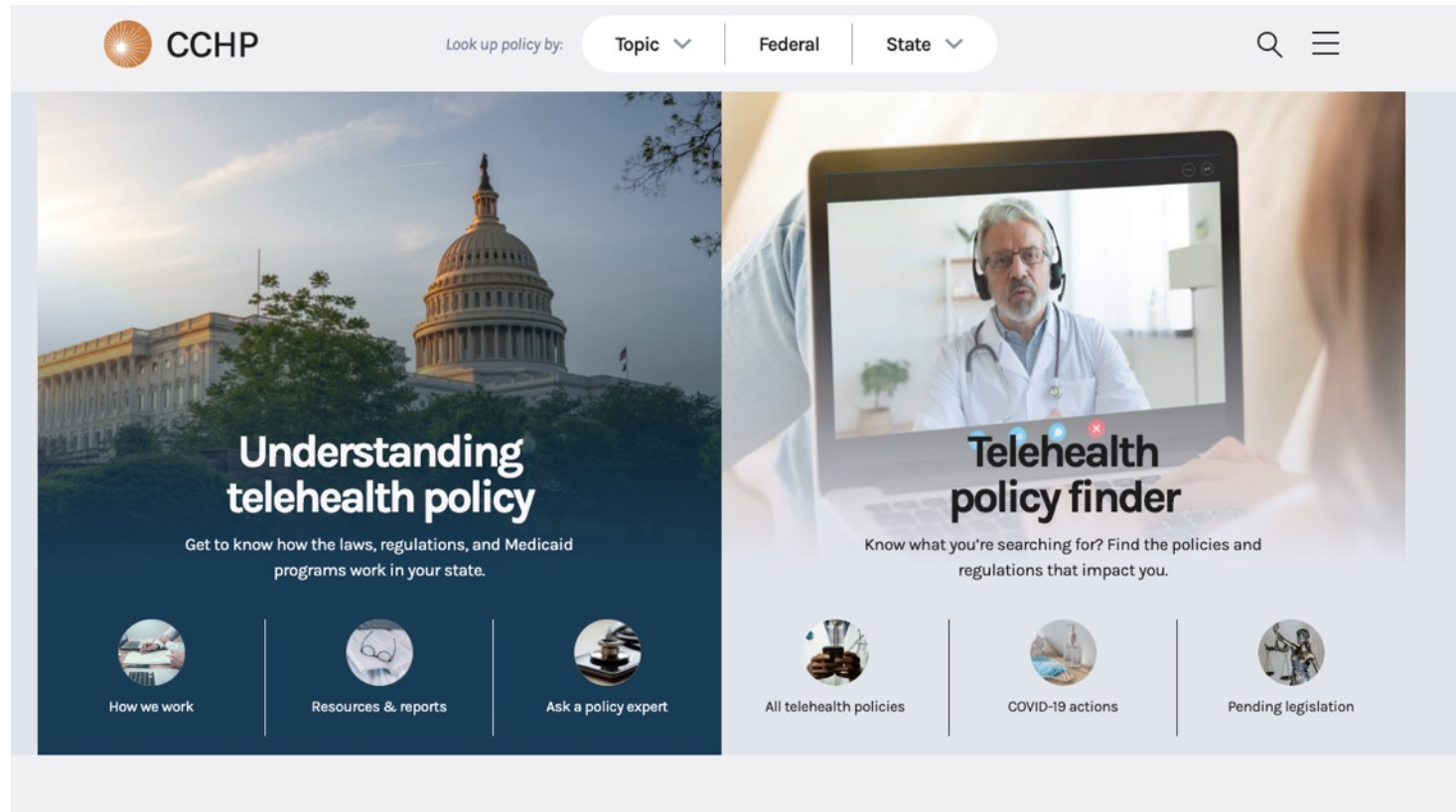


# PUBLIC COMMENTS

- You have until the end of the month to get in public comments
- We expect something to be finalized before May 11, 2023
- Prescribing using Telemedicine -  
<https://www.federalregister.gov/documents/2023/03/01/2023-04248/telemedicine-prescribing-of-controlled-substances-when-the-practitioner-and-the-patient-have-not-had>
- Prescribing of Buprenorphine after the PHE -  
<https://www.federalregister.gov/documents/2023/03/01/2023-04217/expansion-of-induction-of-buprenorphine-via-telemedicine-encounter>



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**Thank You!**

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