

Compliance Today – July 2018

Compliance issues when prescribing controlled substances via telemedicine

by Nathaniel Lacktman and Jacqueline Acosta

Nathaniel Lacktman (nlacktman@foley.com) is a Partner and Chair of the national Telemedicine Industry Team, and **Jacqueline Acosta** (jacosta@foley.com) is an Associate, both are with the law firm Foley & Lardner, LLP in Tampa, FL.

State laws and rules addressing prescribing controlled substances via telemedicine typically fall into three categories:

- States expressly “allowing” telemedicine prescribing of controlled substances without a prior in-person examination;
- States expressly “prohibiting” telemedicine prescribing of controlled substances or prohibiting it unless the prescriber conducted a prior in-person examination; or
- States that are “silent” and neither expressly allow nor prohibit telemedicine prescribing of controlled substances.

Currently, approximately 15 states fall into the first category and have laws or rules explicitly allowing prescribing controlled substances via telemedicine without a prior in-person exam. However, states that explicitly allow the practice often have limitations on the situations when such prescribing is allowed or other requirements that a prescribing physician must meet prior to prescribing controlled substances (e.g., informed consent requirements, patient disclosures). Although a state may allow telemedicine prescribing of controlled substances generally, or allow it in certain situations, there may also be drug-specific restrictions on prescribing, refills, and checking state prescription drug monitoring databases (e.g., suboxone, opioids).

Approximately 12 states fall into the second category and have laws or rules explicitly prohibiting telemedicine prescribing of controlled substances or prohibit it unless there is a prior in-person examination. For example, New Hampshire prohibits prescribing substances classified in schedule II through IV unless the “prescriber has an in-person practitioner-patient relationship,” with subsequent in-person examinations “at intervals appropriate for the patient, medical condition, and drug, but not less than annually.”^[1]

Georgia prohibits prescribing controlled substances “based solely on a consultation via electronic means with the patient.”^[2] Even in states, like Georgia, with prohibitions on prescribing controlled substances via telemedicine, there may be exceptions allowing it for up to a 72-hour supply (e.g., on-call or covering physicians, emergencies).^[3]

The remaining states, approximately 24, fall into the third category and do not have laws or rules expressly permitting nor prohibiting telemedicine prescribing of controlled substances. For example, Illinois law recognizes and allows the practice of medicine via telehealth.^[4] However, the Illinois Medical Board has not issued practice standards or guidance with respect to telemedicine prescribing of controlled substances, and

Illinois laws and rules are similarly silent. In the absence of express guidance, the best practice is to defer to the professional medical judgment of the prescribing physician in accordance with the applicable standards of care. Compliance professionals should review not only medical board rules, but also pharmacy board rules in this regard, and should frequently review the laws and rules addressing the telemedicine prescribing of controlled substances as these laws and rules are constantly and rapidly changing.

This document is only available to members. Please [log in](#) or [become a member](#).

[Become a Member Login](#)