

SPECIAL CIRCUMSTANCES FOR
TELEMEDICINE PRESCRIBING**§ 1306.51 Telemedicine prescribing of
schedule III-V medications for the
treatment of Opioid Use Disorder.**

(a) For purposes of this section, terms defined in part 1300 of this chapter, elsewhere in this chapter, or in 21 U.S.C. 802 and 829 shall have the definitions set forth therein.

(b) A practitioner may issue a prescription for schedule III-V controlled substances listed in 42 CFR 8.12(h)(2) as approved by the Food and Drug Administration (FDA) for use in the treatment of Opioid Use Disorder (OUD), defined as the use of an effective medication such as buprenorphine to treat OUD, pursuant to a communication between the prescribing practitioner and the patient using an interactive telecommunications system, including an audio-only telecommunications system, as described in 42 CFR 410.78(a)(3), if the following conditions are met:

(1) *Prescription drug monitoring program review.* The prescribing practitioner must be authorized to access the applicable prescription drug monitoring program (PDMP) data of the state in which the patient is located at the time of the telemedicine encounter. The prescribing practitioner shall review such data regarding any controlled substance prescriptions issued to the patient in the last year, or, if less than one year of data is available, in the entire available period. The prescribing practitioner shall ensure the date and time of such a review is annotated in the patient's electronic health record (EHR) or paper record. This review, or attempted review, must be conducted prior to issuing a prescription in a manner authorized under this section.

(2) *Time limit.* The practitioner may issue prescriptions to the patient pursuant to this section for a period not to exceed six calendar months beginning on the date the first prescription is issued. The practitioner may issue additional prescriptions to the patient for schedule III-V controlled substances approved by the FDA for use in the treatment of OUD either:

(i) After the prescribing practitioner has conducted at least one in-person

medical evaluation of the patient, as defined in 21 U.S.C. 829(e)(2)(B); or

(ii) As otherwise authorized by 21 U.S.C. 829(e), including pursuant to any other form of telemedicine as defined in 21 U.S.C. 802(54) or pursuant to practices as determined by regulation issued pursuant to 21 U.S.C. 829(e)(3)(B).

(3) *PDMP inaccessible or unavailable.* If the PDMP data is inaccessible or unavailable for any reason, the prescribing practitioner shall annotate in the patient's EHR or paper record the date and time that an attempt to view the PDMP data was made and the reason the data could not be reviewed. A practitioner may prescribe a seven-day supply of medication and must perform another PDMP review before prescribing another seven-day supply. Each time the PDMP is reviewed or attempted to be reviewed, the date and time must be annotated in the patient's EHR. A seven-day supply prescribed pursuant to this paragraph (b)(3) counts toward the time limit described in paragraph (b)(2) of this section.

(4) *Pharmacy identification requirement.* The pharmacist shall verify the identity of the patient prior to filling a controlled substance prescription issued under the authority of this section. The pharmacist shall verify the identity of the patient with a state or Federal Government-issued photographic identification card or other form of identification. For the purposes of verifying the identity of the patient, the pharmacist may accept identification in the manner described herein from any qualifying "ultimate user" as defined in 21 U.S.C. 802(27) prior to filling the prescription.

(5) *Prescription only for treatment of OUD.* Controlled substance prescriptions issued pursuant to this section may only be issued for the treatment of OUD, and subject to the requirements of this section.

(6) *Authorization to prescribe.* The practitioner must be:

(i) Authorized under §§ 1301.11, 1301.12(a), and 1301.13(e)(1)(iv) of this chapter to prescribe the basic class of controlled substance specified on the prescription; or

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(ii) Exempt from obtaining a registration to dispense controlled substances under 21 U.S.C. 822(d).

(7) *Consistent with general prescription requirements.* The issuance of the controlled substance prescription otherwise complies with the requirements set forth in this part.

EFFECTIVE DATE NOTE: At 90 FR 6522, Jan. 17, 2025, §1306.51 was added and delayed at 90 FR 9841, Feb. 19, 2025 and at 90 FR 13410, Mar. 24, 2025 further delayed until Dec. 31, 2025.

§ 1306.52 Other circumstances where Department of Veterans Affairs practitioners may prescribe controlled substances via the practice of telemedicine.

A practitioner may prescribe controlled substance(s) to a patient via the practice of telemedicine under §1300.04(i)(7) of this chapter if all the following conditions are met:

(a) The practitioner is:

(1) An employee or contractor of the Department of Veterans Affairs (VA) who is acting in the scope of such employment or contract, and registered under section 303(g) of the Act (21 U.S.C. 823(g)) (§1301.13 of this chapter) in any state or is utilizing the registration of a hospital or clinic operated by the VA registered under section 303(f);

(2) Prescribing to a VA patient who has previously received, at any time, an in-person medical evaluation by any VA practitioner who at the time of the in-person medical evaluation was acting within the scope of their VA employment or contract and had prescribing authority, or would reasonably be expected to have prescribing authority based on their credentials (*e.g.*, medical doctor) or organizational role (*e.g.*, primary care provider), as described in paragraph (a)(1) of this section;

(3) Not a contracted practitioner located outside a VA facility or clinic providing care via the community care network or conducting disability compensation evaluations; and

(4) Prescribing a controlled substance(s) for a legitimate medical purpose in the usual course of professional practice, and in accordance with applicable Federal and State law(s).

(b) Prior to prescribing, the practitioner must conduct a review of both

the VA EHR, to include the VA's internal prescription database, and the PDMP data of the state in which the patient is located at the time of the telemedicine encounter (if the state has such a program) for controlled substance prescription(s) for the patient's previous twelve (12) months preceding the controlled substance prescription(s), or if less than a year of data is available, for the entire prescription period.

(1) Should either the patient's VA electronic health record, to include the VA's internal prescription database, or the PDMP of the state in which the patient is located at the time of the telemedicine encounter (if the state has such a program) be unavailable or non-operational, for any reason, the VA practitioner must limit the prescription to a 7-day supply. Once the VA's internal prescription database and the PDMP are available or operational, a review of the databases as outlined in this paragraph (b) must be completed to continue prescribing the controlled substance(s) to the VA patient.

(2) If no PDMP exists in the state in which the patient is located at the time of the telemedicine encounter, the VA practitioner must review the VA internal prescription database prior to issuing a controlled substance prescription. A prescription may extend beyond 7 days under this circumstance.

(3) The VA practitioner must annotate in the VA patient's EHR their attempts to access the PDMP data of the state in which the patient is located, and VA internal prescription database data. If no PDMP exists in the state in which the patient is located at the time of the telemedicine encounter, the prescribing practitioner must annotate that in the VA patient's EHR. If the prescribing VA practitioner fails to access the PDMP data of the state in which the patient is located or VA internal prescription database data as described in paragraph (b)(1) of this section, the VA practitioner must annotate in the VA patient's EHR the dates and times that the VA practitioner attempted to gain access, the reason why the VA practitioner was unable to gain access, and any follow-up attempts made to gain access to the system. The