

## Blog Post

# Harmonizing Federal and Florida Laws on Prescribing Controlled Substances Through Telehealth

Practitioners who want to prescribe controlled substances via telehealth to patients in Florida must meet the requirements of both federal and state law. The federal Drug Enforcement Administration (DEA) and the Florida legislature have recently amended the applicable federal regulations and state laws, respectively, to allow the prescribing of controlled substances via telehealth[\*] without conducting an in-person evaluation under certain circumstances. There are key differences between federal and state law, so practitioners prescribing controlled substances via telehealth to patients in Florida should be aware of the particular requirements of each.

## Federal Telehealth Prescribing Requirements

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008, a federal law, allows a prescribing practitioner — subject to certain exceptions — to prescribe a controlled substance to a patient only after conducting an in-person evaluation of that patient. During the COVID-19 pandemic, the DEA temporarily loosened this requirement to allow the prescribing of controlled substances via telehealth without an in-person visit. The DEA has extended this flexibility through December 31, 2025. The DEA's temporary rule imposes several requirements to prescribe controlled substances without an in-person evaluation. Among other things, the practitioner

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must be registered with the DEA, the prescription must be issued for a legitimate medical purpose, the practitioner must be acting in the usual course of professional practice, and the prescription must meet all other federal requirements governing the prescribing of controlled substances. Additionally, the prescription must be issued pursuant to a communication between a practitioner and a patient using an “interactive telecommunications system” referred to in 42 C.F.R. § 410.78(a)(3).

Generally, an “interactive telecommunications system” means audio and video equipment allowing two-way, real-time interactive communication between the practitioner and patient. Audio-only communication technology (e.g., a telephone call) is allowed only if the practitioner is technically capable of using an interactive telecommunications system, but the patient is either not capable of or does not consent to the use of video technology.

The DEA has also proposed a new rule that, if adopted, would create three types of “Special Registrations for Telemedicine.” First, in addition to a regular DEA registration, practitioners would be required to apply for and obtain a “Telemedicine Prescribing Registration” from the DEA to prescribe schedules III through V controlled substances via telehealth without first conducting an in-person medical evaluation of the patient. Second, certain specialized practitioners would be eligible for an “Advanced Telemedicine Prescribing Registration,” which would be required, in addition to a regular DEA registration, to prescribe schedule II (in addition to schedules III through V) controlled substances via telehealth without conducting an in-person evaluation. Third, the proposed rule would require a “Telehealth Platform Registration” for certain telehealth platforms that facilitate connections between patients and practitioners that result in the prescribing of controlled substances.

**Florida Telehealth Prescribing Requirements**

Florida law allows practitioners to prescribe schedules III through V controlled substances to patients in Florida via telehealth (Section 456.47, F.S.). However, practitioners must designate themselves (register) as a “controlled substance prescribing practitioner” on their practitioner profile with the State and must conduct a physical examination and a complete medical history before *initially* prescribing any controlled substance listed in schedules II[†] through IV for the treatment of “chronic nonmalignant pain,” which the Florida statute defines as “pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery” (Section 456.44, F.S.). Similarly, Florida’s regulations governing the standards of practice for physicians and other practitioners require a physical examination to prescribe controlled substances for “acute pain,” which applies to pain associated with surgery, trauma, or acute illness but excludes pain related to cancer, terminal conditions, palliative care for incurable progressive illnesses or injuries, and certain traumatic injuries. Florida law does not require a physical examination before the *renewal* of such prescriptions via telehealth, however.

Florida law permits telehealth services to be provided via both synchronous (i.e., real-time information sharing, such as videocalls) and asynchronous (i.e., the relay of information with lag time, such as the secure transfer of digital medical imaging) telecommunications technology, including audio-only telephone calls since 2023. Conducting telehealth through email messages and fax transmissions remains impermissible in Florida. Florida law permits the use of telehealth to prescribe schedules III through V controlled substances, but the prescribing of schedule II controlled substances via telehealth is prohibited unless the prescription falls into one of the following categories:

1. The treatment of a psychiatric disorder;

2. Inpatient treatment at a hospital licensed under chapter 395, F.S.;
3. The treatment of a patient receiving hospice services as defined in s. 400.601, F.S.; or
4. The treatment of a resident of a nursing home facility as defined in s. 400.021, F.S.

No special registration is required for Florida-licensed practitioners to provide telehealth services to patients located in Florida, but practitioners without Florida licenses must register with the State to do so.

Florida law also specifically prohibits the use of telehealth to perform an abortion, including “medical abortions,” which are defined as the administration or use of an abortion-inducing drug to induce an abortion. Medications “intended for use in a medical abortion must be dispensed in person by a physician and may not be dispensed through the United States Postal Service or by any other courier or shipping service.” (390.0111, F.S.)

## Harmonizing the Federal and Florida Requirements

- Generally, both federal and Florida law allow for the prescribing of schedules III through V controlled substances to Florida patients without an in-person visit through telehealth conducted through two-way, real-time interactive audio and video equipment.
  - However, Florida law requires conducting a physical examination prior to initially prescribing any controlled substance listed in schedules II through IV for the treatment of chronic nonmalignant pain or acute pain.
- Because Florida law limits when schedule II controlled substances can be prescribed, practitioners may only prescribe schedule II

controlled substances to Florida patients via telehealth for the following:

1. The treatment of a psychiatric disorder;
2. Inpatient treatment at a licensed hospital in Florida;
3. The treatment of a patient receiving hospice services in Florida; or
4. The treatment of a resident of a licensed nursing home facility in Florida.

If prescribing schedule II drugs via telehealth, the practitioner should document the appropriate exemption in the medical record.

- The DEA's rules only permit telehealth prescribing via synchronous telecommunications technology (i.e., two-way, real-time interactive telecommunications technology), so practitioners treating patients in Florida are not permitted to prescribe controlled substances via asynchronous telecommunications technology (i.e., "store-and-forward" technology), such as the secure transfer of medical reports, lab results, digital medical imaging, or health histories, even though Florida law permits the delivery of telehealth services through such technology if it comports with the applicable professional standard of care for such services.
- The DEA's rules only allow the use of an audio-only telephone call for telehealth prescribing if the practitioner is capable of using two-way, real-time interactive audio and video communication technology but the patient either is not capable of such communication or does not consent to the use of video technology. Therefore, if an audio-only telephone call is used to treat a patient in Florida, compliance with this DEA requirement should be documented in the medical record.

- Abortion drugs may not be prescribed via telehealth to patients in Florida.

## Looking Ahead

The DEA's current temporary rule permitting telehealth prescribing of controlled substances expires at the end of 2025. This will likely be extended again unless the DEA's proposed rule creating new Special Registrations for Telemedicine takes its place. However, practitioners should keep an eye on the status of this extension and the proposed rule as it could add additional requirements related to telehealth prescribing of controlled substances.

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[\*] The DEA refers to this practice as “telemedicine,” and the State of Florida uses the term “telehealth”; this article generally refers to both as “telehealth.”

[†] Note that a telehealth renewal prescription for a schedule II controlled substance to treat chronic nonmalignant pain must meet an exception to Florida's general prohibition against telehealth prescribing of schedule II controlled substances as discussed further herein.

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