

As we head closer to the public health emergency (PHE) end date of May 11, 2023, recent actions and releases by both Congress and federal agencies paint a clearer picture of what the post-PHE federal telehealth policy landscape will look like. In December 2022 with the passage of the [Consolidated Appropriations Act of 2023 \(2023 CAA\)](#), several major federal telehealth policy questions were addressed. Temporary telehealth policies in Medicare such as a waiver of the geographic requirement were extended to December 31, 2024 (Read CCHP's write up on [preparing for the end of the PHE](#)). However, in recent days the [Centers for Medicare and Medicaid Services \(CMS\)](#) as well as the [Drug Enforcement Administration \(DEA\)](#) have released several fact sheets or proposed rules that address other temporary telehealth policies that were not touched upon by the 2023 CAA.

CMS FACT SHEETS

CMS [released a series of provider-specific fact sheets](#) as well as an [Overview Factsheet](#) that addresses what will happen to specific temporary PHE waivers after May 11, 2023. Among the items discussed were telehealth-specific waivers. Some of the issues noted were not only ones included in the 2023 CAA or previous actions taken through the regulatory process, but also waivers made during the PHE, the fates of which in a post-PHE environment were unknown until now. For example, during the PHE providers are able to provide telehealth delivered services from their homes without reporting their home address. This waiver will continue through December 31, 2023, at which time policy will likely revert back to pre-COVID policy which requires providers to report to CMS the address of where they are when delivering services via telehealth, even if it is their home address.

One other significant clarification made in the [Physician and Other Clinicians fact sheet](#) involves the list of eligible providers who may continue to provide services via telehealth and be reimbursed by Medicare. Language in the 2023 CAA indicated that the list of eligible providers would be smaller than what it was during the PHE. The 2023 CAA specified certain provider types such as physical therapists and occupational therapists would still be allowed to continue to provide services during the post-PHE grace period. During the PHE, CMS allowed all Medicare providers to be eligible telehealth providers. In the [newly released Physician and Other Clinicians](#) fact sheet, it appears that CMS will be continuing this policy of allowing all Medicare providers to be eligible to provide services via telehealth during this post-PHE grace period that will end on December 31, 2024. Specifically, the fact sheet says:

CMS has waived the requirements of section 1834(m)(4)(E) of the Act and 42 CFR § 410.78 (b)(2), which specify the types of practitioners who may bill for their services when furnished as Medicare telehealth services from a distant site. The waiver of these requirements expands the types of health care professionals who can furnish distant site telehealth services to include all those who are eligible to bill Medicare for their professional services. As a result, a broader range of practitioners, such as physical therapists, occupational therapists, and speech language pathologists can use telehealth to provide many Medicare services. After the PHE ends, the Consolidated Appropriations Act, 2023 provides for an extension for this flexibility through December 31, 2024.

CCHP has created an [At-A-Glance chart](#) of some of the CMS fact sheets that detail the status of the temporary telehealth post-PHE for your use.



Center for Connected
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AT-A-GLANCE:

MEDICARE TELEHEALTH/CONNECTED HEALTH WAIVERS POST-PHE

The chart below shows what the status will be for a temporary telehealth-related policy in a post-public health emergency (PHE) landscape. This resource provides an at-a-glance overview of the federal telehealth waivers that were made in response to COVID-19 and is meant to be a summary. Footnotes have also been provided where more explanation may be needed. More detailed information can be found through the [Centers for Medicare and Medicaid Services \(CMS\) fact sheets](#) for each individual provider type. Please note that this at-a-glance chart is divided by provider type, and the page number for each entry refers to that specific CMS fact sheet, which has been hyperlinked in the heading for each section where you can read the full information. The same policy may appear in multiple fact sheets, but the At-A-Glance may only reference it in one fact sheet as the status of that policy post-PHE does not change from fact sheet to fact sheet. The information for this chart was pulled from the CMS fact sheets dated February 24, 2023. Keep in mind that CMS may provide future updates to these documents.

COVID POLICY	PERMANENT ¹	ENDS WITH PHE	ACTIVE THROUGH 2023 ²	EXPIRES 12/31/24 ³	FACT SHEET PAGE
FACT SHEET: PHYSICIAN & OTHER CLINICIANS					
Allowing all eligible Medicare providers to provide services via telehealth.				X	5
Temporarily continue to allow the use of audio-only to provide certain services.				X	5, 8
Temporarily waive site requirements such as patient needing to be in a rural area or in a specified health care site when receiving services via telehealth.				X	5
Temporarily suspend in-person visit requirement for delivery of mental health services via telehealth when patient is not located in a geographically and/or site eligible location.				X	5

PRESCRIBING CONTROLLED SUBSTANCES

The [Drug Enforcement Administration](#) (DEA) issued proposed rules for addressing the prescribing of controlled substances with telehealth in a post-PHE environment. Federal law that existed before COVID-19 allowed for an exception to the requirement of seeing a patient in-person before telehealth is used to prescribe a controlled substance if a public health emergency was declared (there are other narrow exceptions that allowed the use of telehealth to prescribe without a prior in-person visit and these exceptions continue to remain an option). With the PHE expected to end May 11, 2023, many were concerned patients would lose access to needed medications.

The DEA has published two proposed rules addressing the issue. The rules would essentially allow for the prescribing of a 30-day supply of Schedule III-V non-narcotic controlled substances and buprenorphine without first having an in-person visit with the prescribing telehealth provider. However, all subsequent prescriptions via telehealth (which includes audio-only in some circumstances) would have to follow at least one in-person visit between the patient and a DEA registered practitioner. There will also be additional documentation required for telehealth prescriptions. Patients who have already started medications during the PHE would have a 180-day grace period to meet the new requirement for non-narcotic Schedule III-V drugs. The grace period does not appear to be applicable to buprenorphine. The DEA has prepared a [summary chart of the proposed rules](#).

These are proposed rules and as such, there will be time for comments from the public. Comments can be made 30 days after the proposed rules are published in the Federal Register. The rules were published on March 1, 2023. For more information, please refer to the two proposed rules: [“Telemedicine Prescribing of Controlled Substances...”](#) and [“Expansion of Induction of Buprenorphine via Telemedicine Encounter”](#). The DEA has also provided an [information page](#) where these items can also be found.
