On Friday, February 24, the Drug Enforcement Administration (DEA) released a proposed rule on prescribing buprenorphine via telehealth post-public health emergency (PHE). This proposed rule will update buprenorphine prescriptions once the PHE ends on May 11, 2023. Throughout the PHE, the DEA has allowed practitioners to prescribe buprenorphine for opioid use disorder (OUD) via telehealth, including audio-only, without an in-person component.

Overall, the DEA proposed rule is more restrictive than the policies in place during the PHE but still offer more flexibilities than prior to the PHE. Changes to this policy are below.

You can find a summary from the DEA here and a DEA chart explaining the proposed changes here. Comments are due March 31, 2023, via regulations.gov. If you have any questions or comments that you would like included in NRHA’s response, please contact Alexa McKinley (amckinley@ruralhealth.us).

Key provisions include:

**Prescribing buprenorphine via telehealth with no in-person examination would no longer be allowed after the PHE ends**, other than under the exceptions described below.

- Practitioners may prescribe buprenorphine via telehealth with no in-person exam if:
  - The practitioner prescribes an initial 30-day prescription before an in-person exam. However, the patient must have an in-person medical exam with the practitioner before the practitioner can prescribe again beyond the 30-day prescription.
  - The practitioner received a qualifying telemedicine referral from another practitioner that examined the patient. A qualifying telemedicine referral means that the other practitioner performed an in-person medical exam of the patient.
  - The practitioner uses telehealth to evaluate the patient if the patient is in the physical presence of another practitioner.

- **Practitioners may prescribe using audio-only as long as the requirements at 42 C.F.R. § 410.78(a)(3) are met.** These are the same requirements used for Medicare audio-only telehealth services –
  - The encounter is for the diagnosis, evaluation, or treatment of a mental health disorder.
    - This would be met because OUD is a mental health disorder.
  - The services are provided to a patient in their home.
  - The practitioner is capable of using audio/video technology.
  - The patient is not capable of or does not consent to using audio/video technology.

- **Patients that began seeing a practitioner during the PHE and received medications for OUD via telehealth would have 180 days after the final rule is published to complete the in-person exam.** If this rule is published on or around the end of the PHE in May the in-person waiver would extend until November.

- For the initial 30-day prescription before an in-person exam, the practitioner must review and consider the prescription drug monitoring program in the state to see if the patient received any controlled substances within the last year.
  - The DEA provides instructions on how a practitioner should proceed if there is less than 1 year of prescription drug monitoring data on a patient and if they are unable to gain access to the monitoring program.