

Remote Prescribing Trends in Telehealth

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The telehealth industry has experienced constant developments in the regulatory landscape at both the federal and state level over the past several years, and we are confident these changes will continue into 2019 as the utilization of telehealth services continues to evolve and mature. A notable area of activity is how regulators are approaching the telehealth industry, in particular remote prescribing applications of this platform.

On the federal level, we should expect to see promulgation of regulations by the U.S. Drug Enforcement Administration outlining the special registration exception as mandated by the SUPPORT Act passed in 2018, allowing a pathway for health care providers to prescribe controlled substances through telemedicine, [as detailed in our prior post](#).

On the state level, as telehealth becomes a mainstream mode of health care delivery, we are seeing states attempt to legislate telehealth services in more targeted, and potentially contentious, areas of health care. For example, the ability to remotely prescribe abortion drugs or medical marijuana are some of these areas:

- Kansas legislators passed the “[Kansas Telemedicine Act \(House Bill No. 2028\)](#), which includes a provision explicitly prohibiting the delivery of any abortion procedure ordered via telemedicine. The prescription of certain drugs would be involved in such a procedure. The Kansas legislature had attempted in prior bills to ban abortions conducted through telemedicine. However, in a recent legal challenge to the prohibition, on December 31, 2018 a state judge issued a ruling which struck down the prohibition of telemedicine abortions within HB 2028.
- Michigan legislators passed [Senate Bill 1198](#) (which was vetoed by the Governor) to extend a [law passed in 2012](#) prohibiting abortion procedures ordered via telemedicine. The original 2012 law, which was set to expire after December 31, 2018, prohibited physicians from diagnosing and prescribing drugs for abortion unless the physician performed a physical examination on the patient. The 2018 law would have made this prohibition a permanent law.
- In New Mexico, [Senate Bill 406](#), revises the state’s Lynn and Erin Compassionate Use Act, expanding access to medical marijuana. This bill increases the number of “debilitating medical conditions” qualifying access to medical marijuana. The bill also incorporates a definition of telemedicine into the proposed statute and allows the issuance of medical marijuana identification cards pursuant to diagnoses of “debilitating medical conditions” made in person or via telemedicine. This in effect would expressly allow remote prescribing of medical marijuana based upon telemedicine encounters.
- In Washington, [Senate Bill 5498](#) revises the medical marijuana laws to expressly accommodate telemedicine examinations in the remote prescribing of medical marijuana. However, this bill only allows for the renewal of medical marijuana prescriptions based upon telemedicine examinations. This bill keeps in place the state’s requirement of an in-person physical examination for initial access to medical marijuana. Furthermore, this bill makes available this telemedicine encounter option only to patients that would likely result in severe hardship due to the patient’s physical or emotional condition.



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Whether or not these move forward this year, these instances are nonetheless an indicator that telehealth is

maturing and becoming more ingrained in the discussion of modes of health care delivery.

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