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**To:** Medical Cannabis Policy Advisory Board

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**Subject: Telehealth renewals for medical cannabis recommendations (Updated)**

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## Introduction

Should the board want to make a recommendation on whether state statute should be amended in regard to telehealth renewals for medical cannabis recommendations, it may consider the following options:

1. Allow medical cannabis patients to renew their medical cannabis card with a different recommending medical provider through telehealth.
2. Continue to require that if a patient renews their medical cannabis card with a recommending medical provider different from their initial recommending medical provider, the new medical provider must conduct the recommendation in-person (status quo).

## Background

Utah Codes [26B-4-204](#), [26B-4-213](#), and [26B-4-202](#) require recommending medical providers to conduct an in-person consultation for all initial medical cannabis recommendation visits. Medical providers are allowed to conduct initial medical cannabis visits via telehealth in specific cases, such as an individual residing in an assisted living facility/nursing care facility, undergoing hospice care, or has a terminal illness.

Per [Utah Code 26B-4-213\(6\)](#), a medical cannabis patient card can be renewed via telehealth if the patient sees the same provider who made the initial

recommendation and the provider agrees to see the patient via a phone or video conference. However, if the patient renews their medical cannabis card with a different provider, the renewal must be conducted in-person.

## Analysis

### Clarifying federal law on telehealth prescriptions

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 states that a prescribing practitioner, with few exceptions, may prescribe controlled substances to a patient only if the practitioner has previously conducted an in-person evaluation of that patient. The Act, in letter and spirit, controls practitioner ability to prescribe a controlled substance when no previous in-person medical evaluation has been conducted. However, the Act allows exceptions to its in-person requirements, and a public health emergency is one of them. The Drug Enforcement Administration (DEA) and the Department of Health and Human Services (HHS) have temporarily allowed exceptions to the Ryan Haight Act due to the coronavirus pandemic.

In May of 2023, [DEA and HHS promulgated new temporary rules](#) (federal register number 2023-09936) which authorize “practitioners to prescribe schedule II–V controlled medications via audio-video telemedicine encounters.” This temporary rule has been continuously extended since the beginning of the pandemic and was set to expire on November 11, 2023. On October 10, 2023, both federal agencies agreed to extend the temporary rule until December 31, 2024.

[DEA proposed another rule in February 2023](#) (federal register number 2023-04248) that would allow for all medical practitioners to prescribe medication via telehealth if their patient has seen another medical practitioner in person and received a referral to the new practitioner. The media release announcing this proposed rule provided [a chart explaining when a prescription could be provided via telehealth](#) which was referenced at the board’s last meeting. As of the release of this

memorandum, this rule continues to be a proposal and isn't in effect. DEA reports that HHS supported the development of this proposed rule.

The board should also consider the potential DEA rescheduling of cannabis from a Schedule I controlled substance to a Schedule III. Last year, HHS recommended that the DEA move cannabis to Schedule III. Schedule III controlled substances have specific telehealth prescription rules separate from the current temporary rule in effect. Should the DEA choose to reschedule cannabis, recommending medical providers would likely be subject to federal telehealth prescription rules.

This memo includes a review of federal prescription laws because, in some respects, Utah medical cannabis law appears to allow medical providers to treat medical cannabis similar to other FDA-approved drugs. There is a question of if medical cannabis recommendations should be subject to similar allowances as prescriptions for non-narcotic schedule III-V controlled substances.

## Arguments for allowing patients to renew their card via telehealth with a different provider

### **1. In-person regulations are an unnecessary barrier for some patients.**

Some patients, particularly those who feel confident in their understanding of how to use medical cannabis for their qualifying condition, believe they should be able to meet with a new provider via telehealth. If an existing patient is renewing with a new provider due to moving, lower cost for card renewals, wanting to switch providers, or other reasons, requiring them to meet in-person could feel unnecessarily burdensome. In addition, telehealth can be more comfortable for patients who don't want to discuss medical cannabis with their primary care provider.

### **2. Due to the in-person visit requirement, the medical cannabis program may be losing patients who would otherwise benefit from medical cannabis use.**

Advocates against in-person renewal requirements argue that some patients leave the medical cannabis program due to having to

complete an in-person visit when they meet with a different provider. Patients who choose to switch providers for any reason may be disincentivized to renew their card by the in-person requirement. Without a card, these patients may resort to buying illegally from the black market or purchasing medical cannabis from other states.

- 3. Telehealth is a common practice.** Telehealth is an increasingly common practice and advocates believe it should be integrated into medical cannabis renewals when a patient is meeting with a different provider. Should medical cannabis be treated differently when it comes to telehealth renewals?

## Arguments against allowing patients to renew their card via telehealth with a different provider

- 1. In-person examinations better ensure an accurate assessment.** The DHHS Center for Medical Cannabis has received complaints from patients and pharmacists regarding a lack of information provided to patients in telehealth medical cannabis evaluations, as these visits are often brief and do not provide sufficient time and resources for medical assessment. Recommending medical providers often complete a full in-person medical assessment during their first appointment with a new patient. A full medical assessment may include a physical evaluation, running tests on biological samples, and evaluating the patient's medical history. Many medical providers believe conducting a full medical assessment is necessary for the provider to understand the patient's medical needs and recommend the best treatment to the patient. This is because a new provider often has no access to information collected during the patient's previous appointments with other providers or doesn't secure a release of the patient's medical records. If the law changes to no longer require a provider to meet with a new patient in-person, it's likely that many providers will choose to meet virtually with a patient for the first time for their renewal. If the law changes, a recommending medical provider that requests an in-person visit for a

renewal may have prospective patients meet with a different provider who doesn't request an in-person appointment.

2. **Cannabis contains psychoactive substances and recommending its medical use should require at least one in-person visit with a new recommending medical provider.** Cannabis isn't a standard medicine, nor a standard treatment. Some medical providers argue that an in-person visit with a new provider better prepares a provider to support the patient in their use of this unique psychoactive substance that has not been studied as thoroughly as other drugs. Additionally, medical clinics routinely require new and returning patients to come in-person for Schedule II-III prescriptions and refills, such as every 30 or 90 days.
3. **Telehealth renewals are already allowed after an initial in-person appointment.** Utah law already allows a patient to meet with their existing recommending medical provider via telehealth for follow-up and renewal appointments.

## Options

Should the board want to make a recommendation on whether state statute should be amended in regard to telehealth renewals for medical cannabis recommendations, it may consider the following options:

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2. Continue to require that if a patient renews their medical cannabis card with a recommending medical provider different from their initial recommending medical provider, the new medical provider must conduct the recommendation in-person (status quo).