

4731-11-09

Controlled substance and telehealth prescribing.

(A) As used in this rule:

- (1) Hospice care means the care of a hospice patient as that term is defined in section 3712.01 of the Revised Code.
- (2) Palliative care has the same meaning as in section 3712.01 of the Revised Code.
- (3) Medication assisted treatment and substance use disorder have the same meanings as in rule 4731-33-01 of the Administrative Code.
- (4) Mental health condition means any mental health condition, illness, or disorder as determined by the diagnostic criteria in the “Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition” or DSM-5.
- (5) Emergency situation means a situation involving an “emergency medical condition” as that term is defined in section 1753.28 of the Revised Code.

(B) A physician or a physician assistant who holds a valid prescriber number issued by the state medical board and who has been granted physician-delegated prescriptive authority must comply with federal law governing prescription drugs that are controlled substances to prescribe, personally furnish, otherwise provide, or cause to be provided a prescription drug that is a controlled substance to a person.

(C) When the physician or physician assistant, who holds a valid prescriber number issued by the state medical board and who has been granted physician-delegated prescriptive authority, prescribes, personally furnishes, otherwise provides, or causes to be provided a prescription drug that is a controlled substance during the provision of telehealth services, the physician or physician assistant must comply with all requirements in rule 4731-37-01 of the Administrative Code.

(D) The physician or physician assistant shall conduct a physical examination of a new patient as part of an initial in-person visit before prescribing a schedule II controlled substance to the patient except as provided in paragraph (E) of this rule.

(E) As an exception to paragraph (D) of this rule, a physician or physician assistant may prescribe a controlled substance to a new patient as part of the provision of telehealth services for any of the following patient medical conditions and situations:

- (1) The medical record of a new patient indicates that the patient is receiving hospice or palliative care;
- (2) The patient has a substance use disorder, and the controlled substance is FDA approved for and prescribed for medication assisted treatment or to treat opioid use disorder.

- (3) The patient has a mental health condition and the controlled substance prescribed is prescribed to treat that mental health condition; or
- (4) The physician or physician assistant determines in their clinical judgment that the new patient is in an emergency situation provided that the following occurs:

 - (a) the physician or physician assistant prescribes only the amount of a schedule II controlled substance to cover the duration of the emergency or an amount not to exceed a three-day supply whichever is shorter;
 - (b) after the emergency situation ends, the physician or physician assistant conducts the physical examination as part of an initial in-person visit before any further prescribing of a drug that is a schedule II controlled substance.
- (F) When prescribing a controlled substance through the provision of telehealth services under one of the exceptions in paragraph (E) of this rule, the physician or physician assistant shall document one of the reasons listed in paragraph (E) for the prescribing in the medical record of the new patient in addition to the documentation already required to meet the standard of care in rule 4731-37-01 of the Administrative Code.
- (G) Nothing in this rule shall be construed to imply that one in-person physician examination demonstrates that a prescription has been issued for a legitimate medical purpose within the course of professional practice.
- (H) A violation of any provision of this rule, as determined by the board, shall constitute any or all of the following:

 - (1) For a physician:

 - (a) "Failure to maintain minimal standards applicable to the selection or administration of drugs," as that clause is used in division (B)(2) of section 4731.22 of the Revised Code;
 - (b) "Selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in division (B)(3) of section 4731.22 of the Revised Code; or
 - (c) "A departure from or the failure to conform to minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in division (B)(6) of section 4731.22 of the Revised Code.

(2) For a physician assistant:

(a) "A departure from, or failure to conform to, minimal standards of care of similar physician assistants under the same or similar circumstances, regardless of whether actual injury to a patient is established," as that clause is used in division (B)(19) of section 4730.25 of the Revised Code;

(b) "Failure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board," as that clause is used in division (B)(2) of section 4730.25 of the Revised Code; or

(c) "Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter, Chapter 4731. of the Revised Code, or the rules adopted by the board," as that clause is used in division (B)(3) of section 4730.25 of the Revised Code.

(I) This rule shall not apply to any prescribing situations specifically authorized by the Revised Code or Administrative Code.

(J) For purposes of this rule, "patient" means a person for whom the physician or physician assistant provides healthcare services or the person's representative.