

Behavioral Health Law Ledger | December 2024



Welcome to the Ledger

The December 2024 issue of Greenberg Traurig’s quarterly Behavioral Health Law Ledger details two behavioral health legal developments: a new CMS regulation proposing limits on behavioral health cost-sharing for Medicare Advantage patients, and the DEA and SAMHSA’s third extension of COVID-19 telehealth flexibilities for prescribing controlled substances. These updates reflect ongoing efforts to improve access to mental health and substance use disorder (SUD) services.

CMS Publishes Regulation Limiting Behavioral Health Cost-Sharing for Medicare Advantage Patients

On Dec. 10, 2024, the Centers for Medicare & Medicaid Services (CMS) published its “[Medicare and Medicaid Programs; Contract Year 2026 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly](#)” (the Proposed Rule), which, in part, proposes to limit the cost-sharing amounts that Medicare Advantage (MA) patients who receive behavioral health services pay.

CMS proposes that MA plans’ in-network cost-sharing for mental health and substance use disorder (SUD) services, collectively referred to as behavioral health services, be no greater than traditional Medicare’s cost-sharing for these services. According to a [CMS factsheet](#), these changes are intended to “strike an appropriate balance between individual affordability and minimizing disruption to MA enrollees’ access to care and coverage options.” The proposed compliance deadline is Jan. 1, 2026.

CMS proposes the following cost-sharing standards for MA patients seeking behavioral health services:

- A 20% coinsurance limit for mental health specialty services, psychiatric services, partial hospitalization/intensive outpatient services, and outpatient substance abuse services.

- This represents a 10–30% reduction in existing coinsurance requirements, which are generally at 30–50% coinsurance rates now.
- 0% of cost-sharing permitted for opioid treatment program services.
 - The enrollee pays 50% coinsurance for these services under the current standard.
- A 100% limit for estimated Medicare fee-for-service (FFS) cost-sharing for inpatient hospital psychiatric services.
 - The current standard for these services is 100–125% Medicare FFS cost-sharing, depending on the plan’s maximum out-of-pocket type.

CMS also **clarifies** that “the extent to which organizations may shift costs to services utilized by certain groups of enrollees is limited by statutory and regulatory requirements that ensure beneficiaries can access needed health services regardless of their health condition.” Accordingly, MA plans may face additional federal regulatory scrutiny should they shift additional cost-sharing obligations to other MA patients.

The Proposed Rule seeks comments on multiple matters, including:

- Whether the deadline should be Jan. 1, 2026, or Jan. 1, 2027;
- Whether there should be a transition period for existing contracts compliant with certain existing standards;
- If there should be a transition period, how long that period should be; and
- What impact the Proposed Rule may have on MA plans’ ability to satisfy existing cost-sharing regulations.

Comments on the Proposed Rule are due Jan. 27, 2025.

DEA and SAMHSA Again Extend COVID-19 Telehealth Flexibilities Around Prescribing Controlled Substances

On Nov. 19, 2024, the Drug Enforcement Administration (DEA) and the Substance Abuse and Mental Health Services Administration (SAMHSA) published the “**Third Temporary Extension of COVID-19 Telemedicine Flexibilities for Prescription of Controlled Medications**” (Third Temporary Rule), extending once again the telehealth flexibilities originally adopted during the COVID-19 Public Health Emergency (PHE) that ended May 11, 2023. The Third Temporary Rule takes effect Jan. 1, 2025, and extends all telehealth flexibilities adopted during the PHE through Dec. 31, 2025. Importantly, the Third Temporary Rule further enables DEA-registered providers to prescribe certain controlled medications to patients without first having an in-person evaluation as required under the **Ryan Haight Online Pharmacy Consumer Protection Act of 2008** (known as the Ryan Haight Act).

For context, as first reported in the **June 2023 Behavioral Health Law Ledger**, DEA, in concert with the U.S. Department of Health and Human Services (HHS), published the “**Temporary Extension of COVID-19 Telemedicine Flexibilities for Prescription of Controlled Medications**” (First Temporary Rule), which extended the flexibilities established during the PHE around in-person medical evaluation for telehealth prescription. The First Temporary Rule enabled DEA-registered providers to prescribe certain controlled medications to patients without first having an in-person evaluation until Nov. 11, 2024.

As reported in the [October 2023 Behavioral Health Law Ledger](#), DEA and SAMHSA published the “[Second Temporary Extension of COVID-19 Telemedicine Flexibilities for Prescription of Controlled Medications](#)” on Oct. 10, 2023 (Second Temporary Rule), authorizing DEA-registered practitioners to prescribe schedule II–V controlled medications via telemedicine through Dec. 31, 2024, regardless of when the practitioner-patient telehealth relationship was formed. The Third Temporary Rule extends the flexibilities granted under the First and Second Temporary Rules through Dec. 31, 2025.

Many behavioral health treatment plans involve prescribing controlled substances, and the Third Temporary Rule extends access to tele-psychiatric services for patients who need controlled medications to address their mental and behavioral health conditions. Given the increasing reliance on telehealth and tele-psychiatric care across the United States, and especially in rural and tribal communities and incarcerated populations, DEA and SAMHSA may publish a new rule in the coming year. The Third Temporary Rule extends the prescribing flexibilities to provide DEA and SAMHSA additional time to promulgate new regulations.

Let’s Stay in Touch

GT’s Behavioral Health Law Ledger keeps behavioral health and integrated health providers current on behavioral health legal and regulatory developments. Each quarter we highlight recent legal developments, including but not limited to audit risks, significant litigation, enforcement actions, and changes to behavioral-health-related laws or regulations such as health privacy, confidentiality, and/or security issues, consent issues, data-sharing allowances, and other cutting-edge arrangements and issues facing behavioral and integrated health care providers.

If you know someone who would appreciate receiving GT’s Behavioral Health Law Ledger, please forward this newsletter to them, or they can [subscribe here](#).



Authors

Julie A. Sullivan

Shareholder

+1 303.685.7412

Julie.Sullivan@gtlaw.com

Tyler Strobel

Associate

+1 303.685.7453

Tyler.Strobel@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Berlin*. Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Kingdom of Saudi Arabia*. Las Vegas. London*. Long Island. Los Angeles. Mexico City*. Miami. Milan*. Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Diego. San Francisco. São Paulo*. Seoul*. Shanghai. Silicon Valley. Singapore*. Tallahassee. Tampa. Tel Aviv*. Tokyo*. United Arab Emirates*. Warsaw*. Washington, D.C. West Palm Beach. Westchester County.

This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer’s legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. *Greenberg Traurig’s Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. †Operates as a separate UK registered legal entity. ‡Greenberg Traurig operates in the Kingdom of Saudi Arabia through Greenberg Traurig Khalid Al-Thebity Law Firm, a professional limited liability company, licensed to practice law by the Ministry of Justice. †Greenberg Traurig’s Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ‡Greenberg Traurig’s Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. †Greenberg Traurig’s São Paulo office is operated by Greenberg Traurig Brazil Consultores em Direito Estrangeiro – Direito Estadunidense, incorporated in Brazil as a foreign legal consulting firm. Attorneys in the São Paulo office do not practice Brazilian law. ‡Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. †Greenberg Traurig’s Singapore office is operated by Greenberg Traurig Singapore LLP which is licensed as a foreign law practice in Singapore. †Greenberg Traurig’s Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. †Greenberg Traurig’s Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimubungoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. †Greenberg Traurig’s United Arab Emirates office is operated by Greenberg Traurig Limited. †Greenberg Traurig’s Warsaw office is operated by GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2024 Greenberg Traurig, LLP. All rights reserved.