

## VA Authority of Health Care Providers to Practice Telehealth (Proposed Rule)

Authorizes healthcare providers within the Department of Veterans Affairs to provide telehealth services without limitation across state borders.

Updated last **November 30, 2017**  
for the 10/02/2017 proposed rule.

### WHAT IT DOES

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The Department of Veterans Affairs (VA) proposes a new rule (noticed via [82 FR 45756](#)) to amend current regulations on telehealth services. The rule defines telehealth as “the use of electronic information or telecommunications technologies to support clinical health care, patient and professional health-related education, public health, and health administration.” Such technologies can [include](#) email, mobile phone applications, and videoconferencing. The proposed rule aims to improve veterans’ access to mental health care, specialty care, and general clinical care among rural and other medically underserved populations. The rule notes that groups with conditions that limit mobility, including traumatic brain injury (TBI), have great potential to benefit from implementation.

The proposed rule would create a new regulation within [38 CFR 17](#) – Pensions, Bonuses, and Veterans’ Relief. The rule establishes that VA health care providers could treat VA patients via telehealth technologies across state borders and outside of VA facilities regardless of location. For example, implementation will allow physicians to provide telehealth services to patients within their homes or preferred location. [Federal preemption](#) is evoked by the VA—a federal department—allowing policies of the proposed rule to take precedence over state restrictions. Even if a state’s law may prohibit aspects of telehealth, VA healthcare providers acting in accordance with this rule’s provisions could still legally provide telehealth services.

The proposed rule’s provisions dictate who can provide telehealth and to what extent they can do so. The rule applies only to healthcare providers employed by the VA and excludes all VA-contracted employees. The rule does not grant healthcare providers additional powers beyond what they receive from state licensure, registration, or certification. Additionally, healthcare providers are still required to follow any limitations in prescribing medications subject to the [Controlled Substances Act \(21 U.S.C. 801 et seq.\)](#)

### RELEVANT SCIENCE

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Telehealth is currently comprised of [three categories](#):

1. Store-and-Forward: collection and delivery of a patient’s medical data for later access by a healthcare provider. Providers can respond in the future with a report electronically, via telephone, or in person.
2. Remote Monitoring: Technologies that allow continuous transfer of data by monitoring a patient’s condition to facilitate more prompt responses by physicians. Mobile phones are often used within this category.
3. Interactive Telemedicine: Real-time communication and exchange of information between provider and patient in remote locations using telephones and videoconference technologies.

The demonstrated [benefits](#) of telehealth include:

- Expanded access to underserved populations, such as rural areas, prisons, or the military;
- Decreased resource utilization through fewer hospital visits; and
- Reduced healthcare spending through greater monitoring of chronic conditions and fewer instances of acute inpatient hospitalization and emergency room care.

The potential [limitations](#) of telehealth include:

- Further fragmented medical infrastructure;
- Concerns regarding access in poor and rural areas, due to the potential lack of internet services and inability to afford the technology telehealth requires; and
- Potentially diminished quality of patient-physician relationships and limited physical examination, as telehealth is traditionally utilized in fields that rely heavily on visual, as opposed to physical, examination, such as dermatology or mental health.

Of the conditions that telehealth can potentially address, treatment of [traumatic brain injury](#) is particularly important to the healthcare objectives of the VA. TBI is an impairment of brain functioning caused by a forceful impact, such as falls, vehicle collisions, sports injuries, explosive blasts, and combat injuries. [According to the CDC](#), 2.8 million cases of TBI occurred within the United States in 2013. Military service members have a [greater risk](#) of TBI due to training and combat-related injuries. According to a [study](#) evaluating TBI incidence within the military, an estimated 20% of service members sustained TBI between 2000 and 2016.

[TBI symptoms](#) can affect physical, cognitive, and psychological states. Severity is categorized into mild (i.e., concussions), moderate, and severe. Greater severity is associated with longer duration of symptoms, loss of consciousness, post-traumatic amnesia, and long-term disability. [Studies](#) have found significant correlations between TBI and development of psychiatric comorbidities, such as major depressive disorder and post-traumatic stress disorder, resulting in significant reduction in quality of life. Due to the variety of symptoms and associated co-morbidities, TBI screening, diagnosis, and treatment requires a multifaceted approach through primary care physicians, neurologists, mental health specialists, pharmacists, rehabilitation therapists, and social work.

Few studies have examined the effectiveness of treating TBI with telehealth. The [Cochrane Collaboration](#) assessed seven studies that evaluated the effectiveness of telehealth on treating mental health problems, substance abuse, and TBI. They found no significant differences between receiving therapy via telehealth versus standard, in-person care. In 2007, the [Defense and Veterans Brain Injury Center](#) produced a [review](#) of various military and VA telemedicine TBI programs and observed that the programs had benefits in the areas of TBI identification, acute and subacute care, rehabilitation, home care, and education. Yet the study also reports a need for further study of telehealth technologies for TBI due to the obstacles of distanced-limited clinical assessments, patient unfamiliarity with remote evaluation, and cognitive-impairment limiting patient participation.

The VA mentions potential benefits of telehealth on other neurological illnesses that significantly burden the veteran population, including amyotrophic lateral sclerosis (ALS), stroke, and seizures:

- [ALS](#), also called Lou Gehrig's disease, is an incurable neuromuscular disease causing the targeted degeneration of muscle motor neurons leading to the progressive weakening of muscle. Early symptoms include weakness, difficulty walking, slurred speech, and muscle cramps. ALS ultimately progresses to full-body paralysis and failure to speak, swallow, and breathe. [Multiple studies](#), including research performed at Harvard University and the National Academies's Institute of Medicine (now called the [Health and Medicine Division](#)), have demonstrated that military service is associated with an [increased risk](#) of developing ALS.
- A [stroke](#) is damage to the brain due to poor oxygen uptake by an interruption in blood flow resulting in changes to movement, speech, sensation, vision, and mobility. Stroke serves as a major cause of mortality and disability among both veteran and non-veteran populations resulting in various [VA initiatives](#) to curb its burden.
- [Seizures](#) are disturbances in the electrical activity of the brain that cause altered movement, behavior, or consciousness. [Epilepsy](#) is a collective term encompassing various seizure disorders and is defined as the occurrence of two or seizures not related to a known medical cause. Veterans are [prone to develop epilepsy](#) from seizures associated with TBI, PTSD, and [psychological non-epileptic seizures](#) as demonstrated by [various studies](#).

[Teleneurology](#) is the collective term for telehealth technologies applied to the treatment of neurological conditions. A [report](#) from the [American Academy of Neurology \(AAN\)](#) posits that patients with neurological conditions may particularly benefit from telehealth because they may have disabilities that cause limited mobility and restricted travel, and because of the need for time-sensitive care. The AAN report states that teleneurology is most commonly applied to emergency stroke and neurocritical care with increasing developments in managing chronic neurological diseases, including epilepsy and movement disorders; rehabilitation; and healthcare

provider communication through consultations and referrals.

[Telemedicine in stroke care](#)—coined [telestroke](#)—is the most established form of teleneurology with pursuits beginning as early as 1999. Recognizing the [demonstrated benefits](#) and [rapid growth](#) of telestroke programs, the [American Heart Association](#) and [American Stroke Association](#) released a 2016 [statement](#) detailing quality and outcome recommendations to standardize telestroke programs.

Telemedicine for care of epilepsy and ALS are still within nascent stages. Studies report high patient satisfaction for telemedicine in [pediatric epilepsy care](#). The [VA Epilepsy Centers of Excellence](#) sought to [broaden epilepsy telehealth](#) in 2014 through developing [pilot programs](#) and expanding their Specialty Care Access Network-Extension for Community Healthcare Outcomes ([SCAN-ECHO](#)), which allows healthcare providers to consult an epilepsy specialty team through video teleconferencing. [Pilot telehealth program](#) research for ALS has shown promise with patient satisfaction, but researchers note improvement is needed for successful implementation. The [Duke University ALS clinic](#) has developed a [Telemedicine-in-the-Home program](#). The director of the clinic, [Dr. Richard Bedlack](#), is also coordinating [VISN6](#), otherwise known as the Mid Atlantic Veterans Affairs Health Care Network, which connects veterans suffering from ALS who live in rural areas with neurologists and rehabilitation physicians via telemedicine.

#### BACKGROUND

As the VA points out in the rule's preamble, the agency has no direct Congressional mandate to provide telehealth services, but a few related policies suggest Congressional intent for such a program.

- The Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 ([Public Law 112-154](#); [38 U.S.C. 1709A](#)) requires the VA "to carry out an initiative of teleconsultation for the provision of remote mental health and traumatic brain injury assessments in facilities of the Department that are not otherwise able to provide such assessments."
- The Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 ([Public Law 112-154](#); [38 U.S.C. 1722](#)) authorizes the VA to "waive the imposition or collection of copayments for telehealth and telemedicine visits of veterans."
- The Faster Care for Veterans Act of 2016 ([Public Law 114-286](#); [38 U.S.C. 101 note](#)) requires the VA "to initiate a pilot program to provide veterans a self-scheduling, online appointment system" and to "support appointments for the provision of healthcare regardless of whether such care is provided in person or through telehealth services."

The VA has implemented [telehealth programs](#) to connect providers and patients between VA facilities. The VA [Home Telehealth](#) program connects care coordinators (nurses and social workers) using [store-and-forward technologies](#) to check on symptoms and measure vital signs; the program also facilitates the offering of services between hospitals and outpatient clinics. The VA notes in the proposed rule's preamble that for "fiscal year (FY) 2016, VA healthcare providers had 2.17 million telehealth episodes of healthcare... which served over 702,000 veterans (approximately 12 percent of the total patient population), with 45 percent of those veterans living in rural communities."

#### ENDORSEMENTS & OPPOSITION

Endorsements:

- American Medical Association ([AMA](#)), [statement](#), September 29, 2017: "The AMA supports expansion of clinically validated telehealth services within the VA, and this decision ensures that important patient protections are in place for the delivery of high quality and reliable care."
- American Psychological Association ([APA](#)), [article](#), June 2017: "The APA is helping to ensure that the VA secretary's goals become a reality by pushing Congress to expand resources for VA mental healthcare and research. 'We are thrilled that Dr. Shulkin was named VA secretary,' says Heather O'Beirne Kelly, PhD, who in March was named APA's first-ever director of veterans and military health policy. 'And we applaud all his newly announced priorities.'"

As the VA explains in the preamble to the rule, the agency reached out to various stakeholders as required by [Executive Order 13132](#) because this rule would preempt state laws. Of the groups consulted by the VA, the following offered their general support of the rule:

- North Carolina Medical Board
- Wisconsin Medical Examining Board
- Rhode Island Board of Medical Licensure & Discipline
- State of Utah Department of Commerce
- Florida Board of Medicine
- National Association of State Directors of Veterans Affairs
- National Council of State Boards of Nursing
- Association of State and Provincial Psychology Boards
- Veterans' Rural Health Advisory Committee - Supports the proposed rule, but cautions parties to recognize the infrastructure barriers in rural areas that limit internet or cellular access to support telemedicine applications.

The following organizations did not expressly offer support for the rule:

- West Virginia Board of Osteopathic Medicine
- Pennsylvania State Board of Medicine
- Michigan Department of Licensing and Regulatory Affairs

#### STATUS

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The proposed rule was published on October 2, 2017. The public comment period for the rule ended November 1, 2017; [approximately 82 comments](#) were submitted.

#### RELATED POLICIES

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The Servicemembers' Telemedicine and E-Health Portability (STEP) Act of 2011 ([HR 1832](#), 112th Congress) was introduced on May 11, 2011 by Representative Glenn Thompson (R-PA-5). This bill similarly sought to remove state restrictions on providing telemedicine to military servicemembers.

The 115th Congress has considered bills that would allow licensed VA healthcare professionals to practice telemedicine in any location regardless of the location of the professional or patient.

- Care Veterans Deserve Act of 2017 ([HR 1152](#)), introduced on February 16, 2017, by Representative Richard Hudson (R-NC-8).
- Veterans E-Health and Telemedicine Support (VETS) Act of 2017 ([HR 2123](#) / [S 925](#)), introduced on April 25, 2017, by Representative Glenn Thompson (R-PA-5) Senator Joni Ernst (R-IA), respectively.
- VA Care in the Community Act of 2017 ([HR 4242](#)), introduced on November 3, 2017, by Representative David P. Roe (R-TN-1).

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**RECOMMENDED CITATION**

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Duke SciPol, "VA Authority of Health Care Providers to Practice Telehealth" available at <http://scipol.duke.edu/content/va-authority-health-care-providers-practice-telehealth-proposed-rule> (11/30/2017).

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