

**Department of
Veterans Affairs**

Memorandum

Date: JUN 13 2016

From: Acting Deputy Under Secretary for Health for Operations and Management (10N)

Subj: Clarification on Telehealth Services Compliance with Provisions of the Ryan Haight Act (VAIQ 7688359)

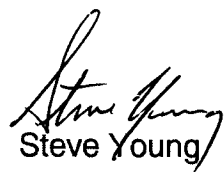
To: Network Directors (10N1-23)
Medical Directors (10N1-23)

1. The purpose of this memorandum is to notify Veterans Integrated Service Networks (VISN) and VA medical centers regarding new guidance for prescribing controlled substances through telehealth in accordance with the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (Ryan Haight Act). This is new interim guidance, until further clarification is provided from the Drug Enforcement Agency (DEA), to telehealth providers advising them on best practices to ensure compliance with the Ryan Haight Act. This guidance only applies to prescribing *controlled substances* through telehealth. Beyond this interim guidance, please be aware the Veterans Health Administration (VHA) is developing formal policy that will articulate the requirements of providers concerning the Ryan Haight Act.

2. The Ryan Haight Act contains specific provisions for prescribing controlled substances. The Ryan Haight Act requires, with limited exceptions, a provider, acting in the usual course of professional practice and in accordance with law, and with authority to prescribe controlled substances and a valid DEA registration, to have conducted at least one in-person medical evaluation before prescribing controlled substances. The Ryan Haight Act provides six relevant and specific exemptions for telemedicine practitioners. These include: (1) where the patient is physically located in and being treated by a registered VA hospital or clinic; (2) where the patient is in a location that is not registered (for example, an unregistered VA clinic) but is in the presence of a registered practitioner; (3) in a medical emergency that prevents the patient from being in a VA hospital or clinic or in the presence of the treating practitioner or telemedicine provider, the primary care or telemedicine practitioner is unable to provide care or consultation, and immediate intervention is required to prevent imminent and serious clinical consequences such as further injury or death; (4) where the practitioner has a special registration to practice telemedicine; (5) in a declared public health emergency; or (6) under any other circumstances determined jointly by the Attorney General and the Secretary of Health and Human Services (HHS). In 2009, information was distributed to the Telehealth Field, which, although not inaccurate, was open to ongoing interpretation. In addition, regional attorney-approved guidance had been issued, which may need to be updated.

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3. To clarify and update the previous guidance documents, the new interim guidance document and summary table (attached) was developed jointly by the Office of Connected Care's Telehealth Services and the Office of Patient Care Services, Pharmacy Benefits Management, Primary Care and Mental Health. VA's Office of General Counsel has provided formal concurrence with the attached guidance document, summary table, and flowchart. These documents identify the most likely exceptions to the requirement that the provider have conducted an in-person medical evaluation prior to the prescribing of controlled substances.
4. This guidance supersedes any prior guidance documents from Telehealth Services or individual VISN documents. Please ensure that each provider's actions are in compliance with the attached. I recommend that the guidance be communicated to all providers who will be prescribing controlled substances remotely through telehealth technologies.
5. Should you have any additional questions, please contact Dr. Kevin Galpin, Interim Chief Consultant for Telehealth, Office of Connected Care, at (678) 924-5711, or by email at kevin.galpin@va.gov.



Steve Young

Attachment