

Where Does FCC Repeal of Net Neutrality Leave Telehealth?

Telemedicine has been lauded as a vital piece of modern healthcare, providing services to rural or underserved areas and connecting physicians with patients for whom travel might prove burdensome. Telehealth has been expanding its reach in recent years, and in light of both the demand for it and the demonstrable benefits of it, the future looked rosy for remote patient monitoring and other healthcare services provided via telemedicine.

However, recent telemedicine news raises more questions than it answers regarding the future of virtual healthcare: a decision by the Federal Communications Commission (FCC) has injected some uncertainty into telehealth's prognosis for 2018 and beyond.

Earlier this month, the FCC voted along party lines (3-2) to repeal net neutrality rules, Obama-era regulations that prevented internet providers from favoring certain content or websites and blocking or slowing down others. Those in support of the repeal of net neutrality say that just because broadband companies can now treat websites differently does not mean that they will; however, some internet providers have removed net neutrality pledges from their own websites of late.

Because there is still much uncertainty about how internet providers will use their new freedom (the repeal also allows them to impose surcharges for some services, like high-quality streaming), there is uncertainty regarding how this development will impact telehealth. Still, those in the industry have some concerns, and have their eyes on 2018.

Pai says paid prioritization can be good for telemedicine

During an address on aging and technology in the nation's capital in late November, former Associate General Counsel at Verizon Communications and current FCC chairman Ajit Pai told the audience that a repeal of net neutrality could buttress telehealth rather than weaken it. He touted the "flexibility it would give for prioritizing services that could make meaningful differences in delivery of healthcare. By ending the outright ban on paid prioritization, we hope to make it easier for consumers to benefit from services that need prioritization — such as latency-sensitive telemedicine."

Mei Wa Kwong, interim executive director and policy advisor for the Center for Connected Health Policy, disagrees with Pai's prediction. She points out the need for a "pretty robust connection" for telehealth platforms, and after the vote told *Modern Healthcare* that "[t]he last thing you want is for the interaction to suddenly freeze or the audio to go out or for the picture to be pixelated."

The FCC does have the power to put healthcare in its own category and circumvent the potential telemedicine shortcomings that concern critics, but the commission has not promised to wield its power in that way. And even that potential healthcare cocoon doesn't allay Kwong's worry about how the repeal might negatively impact the patients themselves. "What do you do then for individual who's at home and trying to get services at home?" she added.

AMIA classifies broadband access as a "social determinant of health"

Although the American Telemedicine Association has not offered an opinion on the reversal of net neutrality, the American Medical Informatics Association (AMIA) has. In a statement, the AMIA said that it "continues to advocate for principles of a free and open internet. It is critical that the digital divide and health disparities are not exacerbated by policy—or the lack thereof. We will continue to monitor this issue closely, as there will be various legal challenges, and likely interest from both Democrats and Republicans on the Hill."

And long before the FCC vote, the AMIA last spring stressed the importance of reliable access to the internet in a letter to the commission, going so far as to say that it "believes that access to broadband is, or soon will become, a social determinant of

health.” And because many aspects of telehealth require a great deal of bandwidth, low quality internet is not likely to get the done.

A new internet landscape has implications for other areas of healthcare as well

Over the summer, the American Academy of Family Physicians (AAFP) penned a letter warning Mr. Pai that the repeal of net neutrality could allow broadband companies to place restrictions on the transmission and receipt of health information (as in the use of electronic health records [EHRs]) and therefore could act as a detriment to healthcare.

The AAFP wrote: “The internet forms the backbone on which the healthcare industry is building capabilities for health information exchange. Lack of health information exchange is literally life-threatening. It is paramount for the health and well-being of U.S. citizens that no barriers be placed hindering the free and open appropriate exchange of health information.

Additionally, healthcare monitoring devices for personal patient use (like mobile health apps or fitness trackers) depend upon internet, and unreliable or inadequate broadband could interfere with their success.

This article is provided for educational purposes only and is not offered as, and should not be relied on as, legal advice. Any individual or entity reading this information should consult an attorney for their particular situation. For more information/questions regarding any legal matters, please email info@nelsonhardiman.com or call 310.203.2800.