

## Practice Update

# Telehealth Continues to Gain Traction – Now Via FCC Proposed Funding

July 23, 2019

The growth of telehealth services took a significant step forward with the Federal Communications Commission's (FCC) [announcement](#) on July 10, 2019, of a three-year Connected Care Pilot Program (Pilot). The Notice of Proposed Rulemaking (the Notice) is in follow-up to the FCC's Notice of Inquiry [released](#) in August 2018.

The Pilot commits a \$100 million budget to provide financial support for eligible healthcare providers to offer connected care technologies to low-income patients and veterans. This proposal comes on the heels of the Centers for Medicare and Medicaid Services' addition of reimbursement for remote patient monitoring services for government insureds, evidencing the shift in the healthcare industry towards paying for innovative technologies that increase access to quality healthcare services, while reducing costs.

The FCC noted that the Pilot would help create a model for nationwide adoption of affordable and robust internet broadband needed to support connected care services where many patients lacked access to telehealth technology. Specifically, the Pilot would provide funding to a select group of healthcare providers to purchase broadband Internet access at an 85 percent discount for providing telehealth services directly to qualifying patients (no specific limit on the number of funding

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Pilot projects) giving these providers some “skin” in the game and incentivizing them to choose the most cost-effective services and equipment. The Pilot, however, would not fund end-user devices, medical devices, or mobile applications.

Healthcare providers eligible for the funding are limited to non-profit or public healthcare providers, including, for example, non-profit hospitals, skilled nursing facilities, rural health clinics, and community health centers. Notably absent from the list of eligible healthcare providers are physician practices. Although the FCC proposed the Pilot through its existing Rural Health Care Program authority, both rural and urban eligible healthcare providers may participate in the Pilot.

What’s the catch? There are a few. The Pilot would require participating healthcare providers to: (a) provide certifications that the funding is used only for the eligible Pilot program purposes; and (b) submit regular reports with anonymized, aggregated data to enable the FCC Commission to monitor the progress of each project and evaluate the success of the Pilot.

Healthcare providers seeking to participate must submit an application with certain information including, for example:

- Descriptions of the connected care services and how the proposed project would achieve the Pilot’s goals;
- Estimated number of eligible low-income patients to be served;
- Detailed breakdown of costs; and
- Description on how the healthcare provider will ensure compliance with applicable federal and state privacy and security laws including, HIPAA.

The Wireline Competition Bureau in coordination with the FCC’s Office of Economics and Analytics, Office of Managing Director, Office of General

Counsel, and the Connect2Health Task Force would review applications. The FCC Commission would make final approval decisions.

The Notice seeks public comment, on a variety of issues including, but not limited to, the following:

- Whether a specific definition of “health condition” should be adopted to guard against potential fraud, waste, and abuse.
- Input on the FCC’s definitions of certain key terms including:
  - “telehealth”, which the FCC defines as “a wide variety of remote health care services beyond the doctor-patient relationship such as services provided by nurses, pharmacists, or social workers.”
  - “telemedicine”, which the FCC defines as “using broadband Internet access service-enabled technologies to support the delivery of medical, diagnostic, and treatment-related services, usually by doctors.”
  - “connected care”, which the FCC defines as “a subset of telehealth focused on delivery remote medical, diagnostic, and treatment-related services directly to patients outside of traditional brick and mortar facilities.”
- How the funding provided under the Pilot would raise issues under other federal statutes including, for example, the Anti-Kickback Statute and Civil Monetary Penalties Act.
- Whether a monthly cap on the amount of financial support paid to a healthcare provider for each participant patient should be established.
- Whether cost-allocation for non-healthcare usage by the patient should be required – i.e., if the patient uses the supported broadband service for non-healthcare purposes.
- Whether to limit the Pilot to healthcare providers that are located within a Health Professional

Shortage Area or Medically Underserved Area, as designated by the Health Resources and Services Administration.

- Input on best metrics and methodologies to measure achievement of Pilot goals including, for example, reductions in emergency room or urgent care visits; decreases in hospital admissions or readmissions; and condition-specific outcomes.

Individuals or entities can submit comments electronically through the Commission's Electronic Comment Filing System available [here](#) or via paper file to the FCC's Office of the Secretary. Comments are due following the Federal Register publication and reply comments are due within 60 days following Federal Register publication.

If the Pilot moves forward, prior to submitting applications for participation, eligible healthcare providers should carefully consider what internal compliance and operational measures need to be reviewed, updated, and implemented to ensure compliance with Pilot requirements and address and mitigate potential fraud and abuse as well as privacy and security risks and considerations including, for example, the following:

- How will patients be selected for participation on the project in a manner to avoid implicating any Medicare beneficiary inducement risks (e.g., uniformly applied financial need policy)? Similarly, what financial support can the healthcare provider provide to patients for end-user devices within the parameters of applicable healthcare fraud and abuse laws?
- What updates are required to the healthcare providers' compliance program and HIPAA privacy and security policies?
- What guardrails should healthcare providers implement to ensure compliance with, and monitoring of, Pilot program requirements

including, for example, monitoring participating patients' use of funded technologies for healthcare-related use only and ensuring accurate certification are submitted to mitigate healthcare fraud and abuse risks including, for example, False Claims Act risks?

- What metrics and processes should healthcare providers establish to measure achievement of Pilot goals including, improved access to care, better health outcomes, and reduction in costs and mechanisms to report required data to the FCC?
- What will the additional administrative and operational burdens be to implement the Pilot?
- What regulatory risks exist for failing to comply with the Pilot requirements (e.g., receipt of funding based on false certifications resulting in potential False Claims Act risks)?

Akerman will continue to monitor updates to the implementation of the Pilot. If you have questions on the Pilot, need assistance on submission of specific comments to the Notice, or seek further information or assistance in the innovative areas of healthcare technology, including telehealth and remote patient monitoring, the authors and the Akerman team stand ready to assist you.

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