

## Patient Remote Monitoring and Constitutional Rights: Avoiding a Slippery Slope

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Our digitally connected world has created new opportunities - and potential perils - at the nexus of medical care and patient rights. Telemedicine played a huge role during the COVID pandemic, helping medical providers at least stay nominally connected to their patients, allowing for remote exams, prescription checks, and the like.

But the same technology can become a tool that intrudes on the provider-patient relationship and medical privacy. Law enforcement can use it to monitor patients to whom doctors prescribe legal pain medication for legitimate purposes under the false presumption that patients will misuse them. That can inflict even more harm on a population of patients already collateral damage in America's war on drugs.

Of course, advances in telemedicine technology and techniques were one of the few bright spots during the pandemic, and those provider-patient relationships remained voluntary and took place under the privacy protections afforded under the Health Insurance Portability and Accountability Act (HIPAA).

But now, the ongoing controversy over opioid prescriptions and use has fueled interest by some in Congress to ask the Government Accountability Office (GAO) to study the possibilities on the "use of remote monitoring with respect to individuals who are prescribed opioids." That GAO study provision can be found in Section 118 of the [Support for Patients and Communities Reauthorization Act](#), which passed the House Energy and Commerce Committee by a 49-0 vote on July 19.

There has been a wealth of literature on remote monitoring of patients for the outpatient management of opioid use disorder, including addiction specialists tapering their methadone patients gradually off of the drug in a way that avoids withdrawal symptoms. This is because, with the advent of telemedicine, it is hoped that doctors can manage all sorts of conditions remotely using sensing devices without the patients having to come to the doctor's office.

The research is not limited to opioid monitoring. Technologies to remotely monitor blood pressure, EKGs, oxygenation, and more are either already available or soon will be. Private technology companies, funded by venture capital, continue to develop these devices, responding to the growing market for telehealth services.

The government's only role here is to remove the 19<sup>th</sup> and 20<sup>th</sup>-century regulatory relics that stunt the growth of telehealth services. These are welcome developments, but we must never lose sight of the potential for the compromise or even abuse of such collected and stored data.

The recent bill's GAO study requirement is a solution in search of a problem. There is no need for legislation to fund studies to remotely monitor opioid use since these studies are already being done and are well underway. As such, the GAO study requirement in the bill appears to be a form of legislative political theater aimed at showing concern for the opioid overdose problem.

Moreover, the wording of the study language is too broad. It doesn't talk about remote monitoring for treating opioid use disorder or dependency, but just remote monitoring of patients on opioids. Such expansive language can lead to unintended and harmful consequences.

Despite abundant public data to the contrary, most lawmakers believe that all these people accessing fentanyl, cocaine, meth, and Tranq on the black market are the products of doctors prescribing opioids to their patients to treat their pain. That misinformation is, in many ways, at the heart of the problem in our public debate on how to deal responsibly with opioids.

A government-sanctioned study like the proposed one by GAO will no doubt show that, given current or projected technologies, it is possible to remotely monitor how patients use opioids through their physiological responses. With such data in hand, misinformed anti-opioid crusaders in Congress will then take the next "logical" step - legislation requiring all patients prescribed opioids for any reason to be remotely monitored (another example of "cops practicing medicine.")

This will intimidate health care practitioners into further curtailing opioid prescribing to their patients in pain. This simply exacerbates the misery that state and federal opioid prescribing policies have already inflicted on them that is driving many to suicide and some to homicide.

We already live in an over-surveilled country as it is, courtesy of draconian, sweeping laws like the PATRIOT Act and the FISA Amendments Act, along with the proliferation of automated license plate readers, facial recognition technology, etc. Such laws and technologies have badly compromised our privacy in our personal communications, and the last thing we need is a perversion of telemedicine technology to further compromise the already-endangered medical provider-patient relationship.

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