

ALERT

FCC Launches \$200 Million COVID-19 Telehealth Program; \$100 Million Connected Care Program

April 6, 2020

Approximately one week after the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law, the Federal Communications Commission (FCC) issued a Report and Order adopting a \$200 million telehealth program (Telehealth Program) to support health care providers responding to the ongoing coronavirus (COVID-19) pandemic. Congress appropriated the funds as part of the CARES Act, and the FCC's Telehealth Program will enable health care providers to purchase telecommunications services, broadband connectivity, and devices necessary for providing telehealth services. On April 8, 2020, the FCC issued guidance on the application process for the Telehealth Program.

The FCC also adopted final rules to stand up a separate Connected Care Pilot Program (Pilot Program), which will provide up to \$100 million of support from the Universal Service Fund (USF). The Pilot Program will defray health care providers' costs of providing connected care services and will help the FCC assess how the USF can be used in the long-term to support telehealth. Each of these programs are summarized below.

Telehealth Program

The Telehealth Program will immediately support health care providers responding to the COVID-19 pandemic by providing \$200 million in funding for telecommunications services, information services, and devices necessary to enable the provision of telehealth services, on a temporary basis. (¶ 2) This includes support for services and/or devices that generate and transmit patient-reported outcomes

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from patients to health care providers. Services can include an end-user device (e.g., a smartphone or tablet) that allows a patient to report their health condition directly to a provider, independent or in conjunction with other connected medical monitoring devices. (¶ 13)

The FCC broadly defines “connected care services” as a subset of telehealth that “uses broadband Internet access service-enabled technologies to deliver remote medical, diagnostic, patient-centered, and treatment-related services directly to patients outside of traditional brick and mortar medical facilities—including specifically to patients at their mobile location or residence.” Examples of such services include, but are not limited to, remote patient monitoring, patient health education, store and forward services (e.g., asynchronous transfer of patient images and data for interpretation by a physician), and synchronous video consultations and visits. (¶ 14) The Telehealth Program will only fund monitoring devices (e.g., pulse-ox, BP monitoring devices), that are themselves connected, but not unconnected devices (e.g., devices that patients use at home and then share the results with their medical professional remotely). (¶ 16)

The FCC will award support to eligible applicants based on the estimated costs of the supported services and connected devices they intend to purchase, as described in each health care provider’s respective application. To ensure as many applicants as possible receive available funding, the FCC states that it does not anticipate awarding more than \$1 million to any single applicant. (¶ 17)

Application and Evaluation Process. The application that the FCC adopts for this program is “streamlined,” since the purpose of the Telehealth Program is to “take immediate steps that will have an immediate impact on health care providers and their patients dealing with the current [COVID-19] pandemic.” (¶ 18) Applications will be accepted after publication of the order and notice of the Office of Management and Budget’s (OMB) approval of the Telehealth Program information collection requirements in the Federal Register. (¶ 18)

The Wireline Competition Bureau (Bureau) will review applications, in consultation with the FCC’s Connect2Health Task Force, and announce awards on a rolling basis, until the pandemic has passed or when all funding has been exhausted. (¶ 19) Funding will be targeted in areas “that have been hardest hit by COVID-19[.]” Additionally, applicants are encouraged to highlight factors such as “large underserved or low-income patient population; health care provider shortages; rural hospital closures; limited broadband access and/or Internet adoption.” (¶ 19)

The FCC will not target Telehealth Program funding toward specific medical conditions, patient populations, or geographic areas. However, the agency strongly encourages selected applicants to target the funding they receive through the Telehealth Program to high-risk and vulnerable patients to the extent practicable. (¶ 19) While health care providers may use the Telehealth Program to treat patients that have COVID-19, the program is not limited to treating those types of patients as long as program funds are used “to prevent, prepare for, and respond to coronavirus.” (¶ 19)

To be considered for participation in the Telehealth Program, interested eligible health care providers must submit applications that, at a minimum, contain detailed information such as a description of the anticipated connected care services to be provided, the conditions and estimated numbers of patients to be treated. (¶ 24) Applicants must also include a description of the telecommunications services, information services, or “devices necessary to enable the provision of telehealth services” requested, the total amount of funding requested, as well as the total monthly amount of funding requested for each eligible item. (¶ 24)

Applicants must also certify compliance with various federal and state privacy and medical laws and regulations. (¶ 25) Applications are to be filed in the FCC’s electronic filing system (Docket 20-89). In order to facilitate the application process, the Bureau will provide, upon publication of notice of OMB’s approval of the Telehealth Program information collection requirements and the Report in Order in the Federal Register, an application form titled “COVID-19 Telehealth Program Application and Request for Funding” that applicants must use when submitting their applications to the Commission. (¶ 26)

Eligible Health Care Providers. Consistent with the Telecommunications Act of 1996 (1996 Act) and the CARES Act, the FCC will limit the program to nonprofit and public eligible health care providers that fall within the categories of health care providers in section 254(h)(7)(B) of the 1996 Act, including: (1) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools; (2) community health centers or health centers providing health care to migrants; (3) local health departments or agencies; (4) community mental health centers; (5) not-for-profit hospitals; (6) rural health clinics; (7) skilled nursing facilities; or (8) consortia of health care providers consisting of one or more entities falling into the first seven categories. (¶ 20) Interested health care providers that do not already have an eligibility determination can obtain one by filing an FCC Form 460 with the Universal Service Administrative Company (USAC). (¶ 22) Applications for funding under the program can be submitted simultaneously as USAC considers underlying eligibility determinations. (¶ 22)

Procurement Framework. Given the immediate need to award and disburse the Telehealth Program funding to health care providers, the FCC will not require participants to conduct a competitive bidding process to solicit and select eligible services or devices. (¶ 31) However, to ensure fiscal responsibility, the FCC “strongly encourage[s] applicants to purchase cost-effective eligible services and devices to the extent practicable during this time.” (¶ 32) To guard against potential waste, fraud, and abuse, participants must also maintain records related to their participation in the Telehealth Program to demonstrate their compliance with the program requirements for at least three years from the last date of service under the program. (¶ 32) The FCC also finds that it would not be in the public interest to prohibit participating health care providers from receiving gifts or things of value from service providers valued at over \$20, including, but not limited to devices, equipment, free upgrades or other items. (¶ 31)

Connected Care Pilot Program

The Pilot Program is a discrete, limited duration program that will provide USF support to help defray health care providers’ qualifying costs, and will target funding towards pilot projects involving “connected care” and “telehealth” services (defined in ¶ 39) that would primarily benefit low-income or veteran patients. The Pilot

Program will make available up to \$100 million over a three-year funding period and will be separate from the budgets of the existing USF programs. (¶ 38) Funding will cover 85% of the eligible costs of broadband connectivity, network equipment, and information services, necessary to provide connected care services to the intended patient population. The Pilot Program will not cover end-user devices or medical equipment. (¶¶ 38, 55-66) In addition, health care providers will be prohibited from using USF support to purchase equipment or services that are produced or provided by a company that the FCC has identified as posing a national security threat to the integrity of communications networks or the communications supply chain. (¶ 64)

Eligibility. Eligible nonprofit and public health care providers that fall within the statutory categories under 47 U.S.C § 254(h)(7)(B)—which is the same list of providers for the Telehealth Program— can apply for the Pilot Program, regardless of whether they are rural or non-rural. (¶¶ 38, 47) The FCC outlines a “strong preference for health care providers that have either (1) experience with providing telehealth or connected care services to patients (e.g., remote patient monitoring, store-and-forward imaging, or video conferencing) beyond using electronic health records, or (2) a partnership with another health care provider, government agency, or designated telehealth resource center with such experience[.]” (¶ 50) In order to provide flexibility and competition, eligible health care providers can receive support for qualifying broadband service from any broadband provider regardless of that provider’s status as an eligible telecommunications carrier (ETC). (¶ 54)

Budget, Discount Level, Supported Projects, Duration. The Pilot Program will make available up to \$100 million over three years for selected pilot projects. The FCC directs USAC to separately collect funds for the Pilot Program each quarter beginning with the demand filing for the fourth quarter of 2020. The FCC anticipates that the collection schedule would increase the quarterly contribution factor by approximately 0.11%. (¶ 42). The Pilot Program will provide universal service support for 85% of the cost of eligible services and equipment funded through the program. (¶ 43) The FCC declined to set a limit on the number of pilot projects selected for the Pilot Program or the amount of support requested per pilot project. However, it does not anticipate allocating all of the Pilot Program funds on one or two large projects. (¶ 45).

The Pilot Program will provide selected pilot projects to support a three-year funding period with separate transition periods of up to six months before and after the three-year funding period. (¶ 46) Specifically, selected pilot participants will have up to six months from the date of their initial funding commitment letter from USAC to organize and start their pilot projects (including, but not limited to procuring eligible services or network equipment), and up to six months after the funding end date on their final funding commitment letters to wind down their pilot projects and complete any necessary administrative tasks. (¶ 46)

Application Process. To qualify for the Pilot Program, applicants must first obtain an eligibility determination from USAC by submitting an FCC Form 460. (¶ 67) After confirming eligibility, the applicant must then submit its Pilot Program proposal to the FCC. The applicant must show how the pilot project will meet various criteria outlined by the FCC. These include, but are not limited to, the health care provider’s previous experience with providing telehealth services, a description of the plan for implementing and operating the pilot project, a description of the connected care services the proposed pilot project will provide, and an estimated number of patients to be treated. (¶ 68)

As with the Telehealth Program, applicants must also certify compliance with various federal and state privacy and medical laws and regulations. (¶ 69) Applications are to be filed in the FCC’s electronic filing system (Docket 18-213), and will be due 45 days from the effective date of the Pilot Program rules or 120 days from the release of the Report and Order, whichever comes later. (¶ 71) The Bureau will also establish a schedule to review submitted applications and coordinate with relevant FCC offices and other federal agencies. (¶ 74)

Evaluation Process. Health care providers will have the flexibility to identify the medical conditions to be treated through their proposed pilot projects, and whether to treat a single medical condition or multiple medical conditions. However, the FCC is most interested in targeting funding focused on treating public health epidemics, opioid dependency, mental health conditions, high-risk pregnancy, or chronic or recurring conditions that typically require at least several months to treat, including, but not limited to, diabetes, cancer, kidney disease, heart disease, and stroke recovery. (¶ 39) As noted above, the FCC will also favor projects that serve veterans or low-income individuals. (¶ 51)

Applications will be evaluated based on the criteria listed in paragraph 68 of the Report and Order and will consider the cost of the proposed pilot project compared to the total Pilot Program budget. (¶ 72) The FCC will also consider the applicant’s history of implementing telehealth programs and retains a “goal [] to select pilot projects that present a well-defined plan for meeting the health care needs of participating patients, with a particular emphasis on eligible low-income and veteran patients[.]” (¶¶ 72-73)

For additional details on either of these programs, or other telehealth related funding made available in the CARES Act, please contact one of the authors listed on this alert.

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