

The Federal Communications Commission (FCC) has released a Report and Order establishing two telehealth support programs totaling US\$300 million designed to support connected care services.

The COVID-19 Telehealth Program (Program), a separate program based on authority and funds provided in the CARES Act, totals US\$200 million. The Connected Care Pilot Program, which the FCC has been considering since 2019 as part of the existing Rural Health Care Program, totals an additional US\$100 million.

The FCC defined connected care services broadly 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 connected care services delivered to patients at their residence or mobile location rather than a health care provider’s physical location include, but are not limited to, remote patient monitoring (e.g., use of patient reporting outcome platforms, glucometers, pulse oximeters, sphygmomanometers, chest straps, wearables, passive sensors, or other devices to consistently monitor patient vitals), 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.”

This analysis is intended to provide an overview of key aspects of the US\$200 million Program, which presents the most immediate opportunity for obtaining financial assistance. Note, it is not intended to be exhaustive or a substitute for consultation with the specific terms of the Report and Order.

The COVID-19 Telehealth Program

The purpose of the emergency Program is to “ensure access to connected care services and devices in response to the ongoing COVID-19 pandemic and surge in demand for connected care services.”

1. Eligible Applicants

Eligible applicants include nonprofit and public health care providers, whether located in rural or non-rural areas, that fall within the following categories of health care providers in section 254(h)(7)(B) of the 1996 Act: (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.

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). Health care providers that are interested in the Program, but do not yet have an eligibility determination from USAC, may still submit applications for the Program while their FCC Form 460 is pending.

2. Eligible Services and Devices and Procurement Thereof

The support provided through the Program will help eligible health care providers “purchase telecommunications services, information services, and devices necessary to provide critical connected care services, whether for treatment of coronavirus or other health conditions during the coronavirus pandemic.” This includes “support for services and/or devices that generate and transmit patient-reported outcomes from patients to health care providers.” Such services could include an “end-user device, such as a smartphone or tablet, that allows the patient to report his or her health conditions directly to a provider, independent or in conjunction with other connected medical monitoring devices.”

- The Program will only fund monitoring devices (e.g., pulse-ox, BP monitoring devices) that are themselves connected. It will not fund unconnected devices that patients can use at home and then share the results with their medical professional remotely.
- The Program will not provide funding for health care provider administrative costs associated with participating in the Program (e.g., costs associated with completing Program applications and other submissions) or other miscellaneous expenses (e.g., doctor and staff time spent on the Program and outreach).

- The Report and Order does not require Program participants to conduct a competitive bidding process to solicit and select eligible services or devices, or otherwise comply with the competitive bidding requirements that apply, for example, to the Connected Care Pilot Program. However, applicants are encouraged to purchase cost-effective eligible services and devices to the extent practicable during this time.
- The rules do not prohibit participating health care providers from receiving gifts or things of value from service providers valued at over US\$20, including, but not limited to, devices, equipment, free upgrades or other items.

3. Funding Support Awards Per Applicant and Flexibility of Use

The Program will provide full funding for eligible services and devices. To ensure that as many applicants as possible receive available funding, the FCC does not anticipate awarding more than US\$1 million to any single applicant. Applicants that have exhausted initially awarded funding may request additional support

Support to eligible applicants will be 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. However, in order to give each health care provider maximum flexibility to respond to changing circumstances during the pandemic, the FCC does not require applicants to purchase only the services and connected devices identified in their applications. They may use awarded support to purchase any necessary eligible services and connected devices.

4. Application, Evaluation and Selection Process

Application Timing

Applications will be accepted after publication of the Report and Order and notice of OMB's approval of the Program information collection requirements in the Federal Register. In view of the emergency nature of the Program, we would expect this could occur as early as within the next week, but the FCC has set no specific date at this point.

Application Processing and Awards

The FCC's Wireline Competition Bureau (Bureau) will receive and review the applications, which will be filed electronically through the commission's Electronic Comment Filing System under WC Docket No. 20-89. The Bureau will make its review, in consultation with the FCC's Connect2Health Task Force and its medical and public health experts, and announce selected participants. It will make funding awards on a rolling basis until the funding is exhausted or until the current pandemic has ended, consistent with the process and criteria outlined in the Report and Order.

Evaluation Considerations/Guidance/Criteria

The Report and Order states that "in reviewing applications, we have a strong interest in targeting funding towards areas that have been hardest hit by COVID-19." However, the FCC will not target Program funding toward specific medical conditions, patient populations or geographic areas.

The FCC does provide the following guidance that is instructive as to what could be important in an application:

- Applicants are encouraged "to target the funding they receive ... to high-risk and vulnerable patients to the extent practicable."
- Applicants are encouraged to "document whether they were under pre-existing strain (e.g., large underserved or low-income patient population; health care provider shortages; rural hospital closures; limited broadband access and/or internet adoption)."
- Applicants may use the Program to treat patients that have COVID-19, but 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.'" This would include treating other types of conditions or patient groups through the Program to "free up resources, including physical space and equipment in a brick-and-mortar health care facility, allow health care providers to remotely treat patients with other conditions who could risk contracting coronavirus by visiting a health care facility, and could reduce health care professionals' unnecessary exposure to coronavirus."
- The FCC will consider "a showing that telemedicine directly aids in the prevention of pandemic spread by facilitating social distancing and similar measures in the community."
- "Connected devices and services like patient-reported outcome platforms funded through the ... Program must be integral to patient care."

Finally, in selecting awardees, the FCC directed the Bureau to consider the funding sought by each applicant compared to the total Program budget. This does not mean that the Bureau will evaluate applications based solely on requested funding, but the Bureau will seek to select as many applicants as reasonably possible within the Program's limited budget.

Minimum Application Content

At a minimum, applications must contain the following information:

- Names, addresses, county and health care provider numbers (if available), for health care providers seeking funding through the Program application and the lead health care provider for applications involving multiple health care providers.
- Contact information for the individual that will be responsible for the application (telephone number, mailing address and email address).
- Description of the anticipated connected care services to be provided, the conditions to be treated, and the goals and objectives. This should include a brief description of how COVID-19 has impacted the applicant's area and patient population, and the approximate number of patients that could be treated by the health care provider's connected care services during the COVID-19 pandemic. If an applicant intends to use the Program funding to treat patients without COVID-19, it must describe how this would free up resources that will be used to treat COVID-19 and/or how this would otherwise prevent, prepare for or respond to the disease by, for example, facilitating social distancing.

- Description of the estimated number of patients to be treated.
- Description of the telecommunications services, information services or “devices necessary to enable the provision of telehealth services” requested, the total amount of funding requested, and the total monthly amount of funding requested for each eligible item. If requesting funding for devices, provide a description of all types of devices for which funding is requested, how the devices are integral to patient care, and whether the devices are for patient use or for the health care provider’s use. As noted above, monitoring devices (e.g., pulse-ox, BP monitoring devices) will only be funded if they are themselves connected.
- Supporting documentation for the costs indicated in their application, such as a vendor or service provider quote, invoice or similar information.
- A timeline for the deployment of the proposed service(s) and a summary of the factors the applicant intends to track that can help measure the real impact of supported services and devices.

Certifications/Document Retention

At the time of the filing of the application, applicants will be required to make certain certifications, including that they will comply with the Health Insurance Portability and Accountability Act (HIPAA) and other applicable privacy and reimbursement laws and regulations, and applicable medical licensing laws and regulations, as waived or modified in connection with the COVID-19 pandemic, as well as all applicable Program requirements and procedures, including the requirement to retain records to demonstrate compliance with the Program requirements and procedures for three years following the last date of service, subject to audit.

Application Form

In order to facilitate the application process, the Bureau will provide, when the time for filing applications is opened, an application form titled “COVID-19 Telehealth Program Application and Request for Funding” that applicants must use when submitting their applications to the commission. Applicants will be required to complete each section of the application and make the required certifications at the end of the application. Applicants may request that any materials or information submitted to the commission in the application be withheld from public inspection pursuant to the procedures set forth in section 0.459 of the commission’s rules.

5. Funding Distribution

After receiving the eligible services and/or equipment, health care providers must submit invoicing forms on a monthly basis and supporting documentation to the commission to receive reimbursement for the cost of the eligible services and/or devices they have received from their applicable service providers or vendors under the Program. The Bureau and the FCC’s Office of Managing Director will develop a process for reviewing the monthly invoicing forms and supporting documentation, and for issuing disbursements directly to the participating health care providers rather than to the applicable service providers or vendors. Program health care provider participants will be required to make certifications as part of the invoicing form submission to ensure that Program funds are used for their intended purpose.

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