

## A. COVID-19 Telehealth Program

15. The COVID-19 Telehealth Program is one piece of a comprehensive approach to reducing barriers to telehealth services for health care providers and their patients throughout the country in response to the COVID-19 pandemic.<sup>39</sup> The steps we take complement the work of other agencies addressing the pandemic as well. On March 17, 2020, the Centers for and Medicaid Services (CMS) announced that it will relax telehealth restrictions on Medicare and will allow program funds to be spent on telehealth services to broaden the number of patients who can be treated and reduce the need for sick patients to travel for treatment to or within major population centers.<sup>40</sup> The relaxed rules extend treatment to patients' homes, and do not limit the relief only to patients in remote areas, as was previously the case. This rule change to Medicare—a health care program supporting treatment for some of the country's most at-risk population—will have a meaningful impact on this country's coronavirus response. The Department of Health and Human Services (HHS) also announced that it will waive potential penalties for inadvertent and good faith violations of the Health Insurance Portability and Accountability Act, to encourage health care providers to use telehealth services to treat potentially sick patients.<sup>41</sup> HHS further encouraged the broader use of telehealth by notifying health care providers that they do not need to collect the usually required co-pays for patients receiving health care from an HHS program.<sup>42</sup> On March 24, 2020, HHS awarded \$100 million to 1,381 health centers funded through the Health Resources and Services Administration (HRSA) "to address screening and testing needs, acquire medical supplies and boost telehealth capacity" in response to the coronavirus pandemic.<sup>43</sup>

16. Working in step with these other federal efforts to provide relief related to the COVID-19 pandemic, the COVID-19 Telehealth Program will be open to eligible health care providers, whether located in rural or non-rural areas, and will provide eligible health care providers support to purchase telecommunications, information services, and connected devices to provide connected care services in response to the coronavirus pandemic. The COVID-19 Telehealth Program will only fund monitoring devices (e.g., pulse-ox, BP monitoring devices), that are themselves connected. The COVID-19 Telehealth Program will not fund unconnected devices that patients can use at home and then share the results with their medical professional remotely.

17. The COVID-19 Telehealth Program will provide selected applicants full funding for eligible services and devices. The COVID-19 Telehealth Program has a congressionally appropriated \$200 million budget, and these funds will be available until they are expended or until the current pandemic has ended. In order to ensure as many applicants as possible receive available funding, we do not anticipate awarding more than \$1 million to any single applicant.<sup>44</sup> We 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. However, in order to give each health care provider maximum flexibility to respond to changing circumstances during the pandemic, we do not require applicants to purchase only the services and connected devices identified in their applications. They may rather use awarded support to purchase any necessary eligible services



and connected devices. In addition, applicants that have exhausted initially awarded funding may request additional support.

## 1. Application, Evaluation, and Selection Process

18. Because of the urgency attendant in combating the COVID-19 outbreak, we establish a streamlined application process for the COVID-19 Telehealth Program, separate from the longer application process we adopt for the broader Connected Care Pilot Program. There are clear and important differences between the COVID-19 Telehealth Program and the Connected Care Pilot Program warranting differing treatment of applications. While the primary focus of the Pilot Program is to select projects that will help the Commission study how universal service funds can support connected care and telehealth generally over the long term, the purpose of the COVID-19 Telehealth Program is to take immediate steps that will have an immediate impact on health care providers and their patients dealing with the current pandemic.

Applications will be accepted after publication of this Report and Order and notice of OMB's approval of the COVID-19 Telehealth Program information collection requirements in the Federal Register.<sup>45</sup>

19. We direct the Bureau to review the applications, in consultation with the FCC's Connect2Health Task Force and its medical and public health experts, and announce selected participants and funding amounts for each selected applicant as rapidly as possible on a rolling basis, and continue reviewing additional applications and selecting participants until it has committed all COVID-19 Telehealth Program funding or the current pandemic has ended.<sup>46</sup> In reviewing applications, we have a strong interest in targeting funding towards areas that have been hardest hit by COVID-19.<sup>47</sup> In addition, given the public health emergency and widespread scope of the coronavirus pandemic, unlike the broader Connected Care Pilot Program, we will not target COVID-19 Telehealth Program funding toward specific medical conditions, patient populations, or geographic areas. However, we strongly encourage selected applicants to target the funding they receive through the COVID-19 Telehealth Program to high-risk and vulnerable patients to the extent practicable. We recognize that some health care providers may have been 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) and we encourage applicants to document such factors in their applications. While health care providers may use the COVID-19 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."<sup>48</sup> For instance, treating other types of conditions or patient groups through the Commission's COVID-19 Telehealth Program could 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. We will also consider as part of a health care provider's application 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 COVID-19 Telehealth Program must be integral to patient care.

**20. Eligible Health Care Providers.** Consistent with the 1996 Act and the CARES Act, we 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: (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.<sup>49</sup> The Commission has more than two decades of experience administering its RHC Program for these types of health care providers, and limiting the COVID-19 Telehealth Program to public and nonprofit health care providers that fall within these statutory categories is in the public interest because it will facilitate the administration of this program and ensure that funding is targeted to health care providers that are likely to be most in need of funding to respond to this pandemic while helping us ensure that funding is used for its intended purposes.

21. We conclude that it is in the public interest to support connected care services being provided to patients by eligible health care providers even when provided from a temporary or mobile location that is operated by the eligible health care provider. During this unprecedented period, we expect there could be a need for eligible health care providers to expand beyond their traditional facilities to effectively treat patients.

22. 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).<sup>50</sup> We direct USAC to review and process eligibility forms for health care providers interested in participating in the COVID-19 Telehealth Program as expeditiously as possible. Health care providers that are interested in the COVID-19 Telehealth Program, but do not yet have an eligibility determination from USAC, can still submit applications for the COVID-19 Telehealth Program while their FCC Form 460 is pending.

23. *Application Process.* For purposes of the COVID-19 Telehealth Program, we establish a separate, streamlined application process in order to more expeditiously address the needs of eligible health care providers impacted by the coronavirus pandemic. Specifically, under the COVID-19 Telehealth Program, eligible health care providers must submit an application to the Bureau with sufficient information that will allow the Bureau to make selections and funding amount determinations.

24. To be considered for participation in the COVID-19 Telehealth Program, interested eligible health care providers must submit applications that, at a minimum, contain the information detailed below.<sup>51</sup>

- Names, addresses, county, and health care provider numbers (if available),<sup>52</sup> for health care providers seeking funding through the COVID-19 Telehealth 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 your area, your 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 you intend to use the COVID-19 Telehealth Program funding to treat patients without COVID-19, describe how this would free up your 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, as well as the total monthly amount of funding requested for each eligible item. If requesting funding for devices, 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 your application, such as a vendor or service provider quote, invoice, or similar information.
- A timeline for 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.

25. Additionally, COVID-19 Telehealth Program applicants will also be required, at the time of submission of their application, to certify, among other things, 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 COVID-19 Telehealth Program requirements and procedures, including the requirement to retain records to demonstrate compliance with the COVID-19 Telehealth Program requirements and procedures for three years following the last date of service, subject to audit. This document retention period appropriately balances the interests of program integrity while minimizing administrative burdens on health care providers during this emergency.

Health care providers that participate in the COVID-19 Telehealth Program must also comply with all applicable federal and state laws, including the False Claims Act, the Anti-Kickback Statute, and the Civil Monetary Penalties Law, as waived or modified in connection with the COVID-19 pandemic.<sup>53</sup> Further, applicants will also be required to certify that they are not already receiving or expecting to receive other federal or state funding for the exact same services or devices for which they are requesting support under the COVID-19 Telehealth Program. <sup>54</sup>



26. Applications for the COVID-19 Telehealth Program must be submitted through the Commission's Electronic Comment Filing System (ECFS) under **WC Docket No. 20-89**. The Commission will begin accepting applications for the COVID-19 Telehealth Program after publication of this Report and Order and notice of OMB's approval of the COVID-19 Telehealth Program information collection requirements in the Federal Register. Interested parties should not submit applications for the COVID-19 Telehealth Program prior to publication of notice of OMB's approval of the COVID-19 Telehealth Program information collection requirements and this Report and Order in the Federal Register. In order to facilitate the application process, the Bureau will provide, upon publication of notice of OMB's approval of the COVID-19 Telehealth Program information collection requirements and this 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. 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 its application be withheld from public inspection pursuant to the procedures set forth in section 0.459 of the Commission's rules.

27. *Instructions for Filing Applications.* COVID-19 Telehealth Program applications must reference **WC Docket No. 20-89**, and must be filed electronically using the Internet by accessing ECFS, <https://www.fcc.gov/ecfs>, see *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's hand-delivery filing location is closed for the foreseeable future and cannot be used to submit applications for the COVID-19 Telehealth Program. Applicants must also send a courtesy copy of their application via email to [EmergencyTelehealthSupport@fcc.gov](mailto:EmergencyTelehealthSupport@fcc.gov). For questions, please contact (1) Rashann Duvall at (202) 418-1438, [Rashann.Duvall@fcc.gov](mailto:Rashann.Duvall@fcc.gov) or (2) Hayley Steffen at (202) 418-1586, [Hayley.Steffen@fcc.gov](mailto:Hayley.Steffen@fcc.gov).

28. *Evaluation of Applications and Selection Process.* The Bureau, in consultation with the FCC's Connect2Health Task Force, will evaluate the COVID-19 Telehealth Program applications and will select participants based on applicants' responses to the criteria listed above. Our goal is to select applications that target areas that have been hardest hit by COVID-19 and where the support will have the most impact on addressing the health care needs. As indicated above, the funds for the COVID-19 Telehealth Program will be awarded on a rolling basis until they are exhausted or until the current pandemic ends. In selecting applicants, we direct the Bureau to consider the funding sought by each applicant compared to the total COVID-19 Telehealth 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 COVID-19 Telehealth Program's limited budget. Upon selection, the Bureau will provide additional guidance to program participants, as necessary, to facilitate the implementation of the COVID-19 Telehealth Program. Applicants who are selected for the COVID-19 Telehealth Program may later submit applications to participate in the broader Connected Care Pilot Program, but may not request funding for the same exact services from both programs at the same time.<sup>56</sup>



## **2. Administrative Matters**

29. *Requesting Funding, Invoicing, and Disbursements.* We direct the Bureau and the Office of the Managing Director (OMD) to develop processes for selected applicants to submit invoices and receive reimbursements for services and devices supported through the COVID-19 Telehealth Program, and any necessary subsequent filings. We also direct OMD and the Bureau to include in the application forms or subsequent filings by program participants any information necessary to satisfy the Commission's oversight responsibilities and/or agency-specific/government-wide reporting obligations associated with the \$200 million appropriation by Congress.<sup>57</sup> After receiving the eligible services and/or equipment, health care providers will submit invoicing forms on a monthly basis<sup>58</sup> 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 COVID-19 Telehealth Program. The Bureau and OMD shall 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. COVID-19 Telehealth Program health care provider participants will be required to make certifications as part of the invoicing form submission to ensure that COVID-19 Telehealth Program funds are used for their intended purpose.

30. This funding and disbursement process is designed to provide funds to participating eligible health care providers as soon as possible due to the rapid spread of COVID-19 across the country and the increasing need for connected care services to assist in the diagnosis, treatment, and prevention of the coronavirus disease. We recognize that more extensive administrative requirements could delay the provision and use of COVID-19 Telehealth Program funds to assist in combatting this pandemic and could result in serious harm to patients, and we desire to help health care providers proceed as rapidly as possible in addressing this public health crises. For this reason, we find that the benefit to the American public in using this streamlined invoicing process outweighs any administrative concerns in processing and distributing funds in this manner. The COVID-19 Telehealth Program will not provide funding for health care provider administrative costs associated with participating in the COVID-19 telehealth Program (e.g., costs associated with completing COVID-19 Telehealth Program applications and other submissions) or other miscellaneous expenses (e.g., doctor and staff time spent on the COVID-19 Telehealth Program and outreach). We emphasize that COVID-19 Telehealth Program funds may only be used for services and devices covered under the CARES Act. The costs of ineligible items must not be included in the reimbursement requests for the COVID-19 Telehealth Program. To guard against potential waste, fraud, and abuse, we make clear that participating health care providers are prohibited from selling, reselling, or transferring services or devices funded through the COVID-19 Telehealth Program in consideration for money or any other thing of value.<sup>59</sup>

31. *Procurement for COVID-19 Telehealth Program-Supported Services and Equipment, and Document Retention.* As detailed above, the COVID-19 Telehealth Program is funded through a congressional appropriation and not the USF. Given the immediate need to award and disburse the COVID-19 Telehealth Program funding to health care providers, we will not require COVID-



19 Telehealth 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 to the RHC Program and the broader Connected Care Pilot Program. We find that, in light of the coronavirus pandemic and ongoing community efforts to slow its spread, requiring COVID-19 Telehealth Program participants to seek competitive bids prior to requesting funding would cause unnecessary delays and pose an unreasonable burden on health care providers during this unprecedented time. Because we recognize the importance of connected care services during this pandemic, we do not believe that the public interest would be served by requiring health care providers to follow the competitive bidding requirements that we have traditionally required for the RHC Program, including submitting Request for Services and Request for Proposals (RFP) (as applicable) to USAC to post on its website, seeking bids,<sup>60</sup> waiting 28 days before selecting a service provider,<sup>61</sup> conducting a bid evaluation to select a service provider,<sup>62</sup> and then selecting the most-cost effective service<sup>63</sup> prior to providing essential health care support to patients.

We also find that it would not be in the public interest during this national health crisis 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.<sup>64</sup>

32. While we will not require health care providers to conduct a competitive procurement process to receive COVID-19 Telehealth Program funding, we are committed to ensuring the integrity and fiscal responsibility of the COVID-19 Telehealth Program funds and will guard against waste, fraud, and abuse. We thus strongly encourage applicants to purchase cost-effective eligible services and devices to the extent practicable during this time. We also emphasize that health care providers and service providers must comply with the requirements applicable to the COVID-19 Telehealth Program. To help us guard against potential waste, fraud, and abuse, participants in the COVID-19 Telehealth Program must maintain records related to their participation in the COVID-19 Telehealth Program to demonstrate their compliance with the program requirements for at least three years from the last date of service under this program and must present that information to the Commission or its delegates upon request. Health care providers participating in the COVID-19 Telehealth Program may also be subject to compliance audits in order to ensure compliance with the rules and requirements for the COVID-19 Telehealth Program and must provide documentation related to their participation in the COVID-19 Telehealth Program in connection with any such audit.

33. *Outreach for COVID-19 Telehealth Program.* Upon release of this Report and Order, in order to ensure that health care providers are aware of available funding under the COVID-19 Telehealth Program, the Commission will, to the extent possible, coordinate with other federal agencies to distribute information about this program to the health care community. We also direct the Bureau to coordinate with the FCC's Connect2Health Task Force and USAC as necessary to promote and announce the COVID-19 Telehealth Program to interested stakeholders including service providers and health care providers. We are committed to doing our part in addressing the needs of health care providers as demand for connected care



services increases to address the coronavirus pandemic, and believe that such coordination and outreach will improve the overall efficacy of the COVID-19 Telehealth Program. We also encourage selected participants to contact the Bureau with any questions regarding their funding awards or the invoicing and disbursement processes.

34. *Post-Program Feedback.* Within six months after the conclusion of the COVID-19 Telehealth Program, COVID-19 Telehealth Program participants should provide a report to the Commission in a format to be determined by the Bureau on the effectiveness of the COVID-19 Telehealth Program funding on health outcomes, patient treatment, health care facility administration, and any other relevant aspects of the pandemic. Such information could include feedback on the application and invoicing processes, in what ways funding was helpful in providing or expending telehealth services, including anonymized patient accounts, how funding promoted innovation and improved health outcomes, and other areas for improvement. Specific information about how to provide feedback and associated deadlines will be provided to COVID-19 Telehealth Program participants at a later time. This information will assist efforts to respond to pandemics and other national emergencies in the future.

35. *Administrative Procedure Act Exception.* While all or nearly all of the COVID-19 Telehealth Program is a logical outgrowth of issues we sought comment on in the *Connected Care Notice*, we also determine, out of an abundance of caution, that using additional notice and comment procedures for this emergency relief, and thereby delaying its effectiveness by at least several months, would be impracticable and contrary to the public interest.<sup>65</sup> The good cause exception to the notice and comment procedures of the Administrative Procedure Act “excuses notice and comment in emergency situations, or where delay could result in serious harm.”<sup>66</sup> “In determining whether good cause exists, an agency should ‘balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.’”<sup>67</sup>

36. As a general matter, we believe that public notice requirements are an essential component of our rulemaking process. In this case, however, because of the unprecedented nature of this pandemic and the need for immediate action, we find there is good cause for foregoing the usual administrative procedures in this situation to the extent the *Connected Care Notice* does not provide the requisite notice. In light of the rapid spread of COVID-19 and the increasing need to address this public health crises, any further delay in the use of these funds to assist health care providers in meeting the health care needs of their patients could impede efforts to mitigate the spread of the disease. This emergency relief imposes a minimal regulatory burden on any parties but merely offers funds to help health care providers combat this global pandemic. Waiting an additional 30 days to make this relief available “would undermine the public interest by delaying” much needed expansion of telemedicine resources.<sup>68</sup> We further find good cause to make the rules granting this relief effective immediately upon publication of this Report and Order in the Federal Register.<sup>69</sup>