FCC Implements $100 Million Connected Care Pilot Program and $200 Million COVID-19 Telehealth Program

On April 2, 2020, the Federal Communications Commission ("Commission" or "FCC") released its *Promoting Telehealth for Low-Income Consumers* and *COVID-19 Telehealth Program* Report and Order ("*Order*").[1] The *Order* implements a three-year, $100 million Connected Care Pilot Program ("Pilot"), originally announced in August 2019,[2] that will provide selected telehealth pilot programs with an 85% discount on "broadband connectivity, network equipment, and information services necessary to provide connected care services."[3]

The *Order* also establishes a COVID-19 Telehealth Program ("CTP") to ensure access to connected care services and devices, pursuant to a $200 million emergency appropriation under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act").[4] This constitutes a vital weapon in the fight against the COVID-19 pandemic; as Chairman Pai remarked, "[c]onnected care can help us treat coronavirus patients, enable patients with other conditions to get care while maintaining social distancing, and protect health care professionals from greater exposure."[5]

This program provides significant new sources of funding for health care providers and communications service providers seeking to expand their offerings in the rapidly growing telehealth sector. The combined programs will have ramifications for the health care and communications industries that will extend far beyond the current COVID-19 crisis.

I. Connected Care Pilot Program

Under Section 254(h)(2)(A) of the Communications Act of 1934, as amended (the "Act"), the Commission is directed "to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit . . . health care providers."[6] The Commission carries out this statutory responsibility through the Universal Service Fund ("USF"), which ensures affordable, nationwide communications through targeted discounts and funding.[7] At present, the USF, as overseen by the Universal Service Administrative Company ("USAC"), supports the Rural Health Care ("RHC") program, which provides rural health care providers with discounted telecommunications service rates (the Telecommunications Program), and support for eligible services, equipment, and infrastructure related to high-speed broadband connectivity (the Healthcare Connect Fund Program, or "HCFP").[8]

---

[1] WC Docket No. 18-213, *Promoting Telehealth for Low-Income Consumers*; WC Docket No. 20-89, *COVID-19 Telehealth Program*, Report and Order (rel. Apr. 2, 2020).

[2] Federal Communications Commission, "FCC Seeks Comment on Proposed $100 Million Connected Care Pilot Program" (July 10, 2019), https://docs.fcc.gov/public/attachments/DOC-358399A1.pdf; *see* WC Docket No. 18-213, *Promoting Telehealth for Low-Income Consumers*, 34 FCC Rcd 5620 (2019) ("*NPRM*").

[3] *Order* ¶ 38.

[4] Pub. L. 116-136, Div. B, Tit. V (2020).

[5] WC Docket No. 18-213, *Promoting Telehealth for Low-Income Consumers*; WC Docket No. 20-89, *COVID-19 Telehealth Program*, Statement of Chairman Ajit Pai (Apr. 2, 2020).

[6] 47 U.S.C. § 254(h)(2)(A).

[7] *See* 47 U.S.C. § 254(b) (delineating principles of universal service).

[8] *See* 47 CFR § 54.602(a), (b).

Under the Pilot, the Commission will use USF funds to support recent advances in connected care services and address three major roadblocks to deployment and adoption: (1) "the costs of standing up, implementing, and providing connected care services," including costs associated with data transmission and storage; (2) a dearth of mobile or residential broadband Internet access service for patients; and (3) broadband service inadequate to the demands of connected care services in households that have it.[9] At the end of its three-year run, the Pilot is expected to generate "meaningful data about the benefits of connected care, and how and whether Universal Service Fund support could be used more broadly in the future to enable the adoption of connected care services among patients and their health care providers."[10]

A. Eligible Health Care Providers

The Pilot adopts the definition of "eligible health care provider" from the RHC program: a public or non-profit[11] entity that satisfies one of the following statutorily designated categories:[12]

(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;[13] and
(8) consortia of public or non-profit eligible health care providers.[14]

For-profit health care providers are not eligible unless part of a consortium, but limitations in funding apply.[15]

---

[9] *Order* ¶¶ 9, 12. The *Order* "define[s] '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 include remote patient monitoring, store-and-forward applications, and video consultation services. *Order* ¶ 14.

[10] *Order* ¶¶ 5, 37. Specifically, the Commission intends to measure "how USF support provided to health care providers for the costs associated with providing connected care services can enable them to: (1) improve health outcomes through connected care; (2) reduce health care costs for patients, facilities and the health care system; and (3) support the trend towards connected care everywhere." *Order* ¶ 83. Examples include "reductions in emergency room or urgent care visits in a particular geographic area or among a certain class of patients" or "reductions in premature births or acute incidents among sufferers of a chronic illness." *Order* ¶ 80.

[11] *See* 47 U.S.C. § 254(h)(1)(A), (h)(2)(A), (h)(4).

[12] 47 U.S.C. § 254(h)(7)(B); *see* 47 CFR §§ 54.600(b), 54.601(a).

[13] *See* 42 U.S.C. § 1395i–3(a) (defining "skilled nursing facility").

[14] While the *Order* does not discuss consortia regulatory requirements, they are likely to mirror those under the RHC, in which an FCC Form 460 is filed with USAC on behalf of each participating provider site, in order to verify its non-profit or public status, and a Consortia Leader is named through a Letter of Agency, designating the party responsible for legal, financial, and regulatory compliance throughout the competitive bidding and invoicing process, as described herein. *See NPRM* ¶ 41; *cf.* 47 CFR §§ 54.603(a), 54.609, 54.610, 54.614, 54.631(b).

[15] *See Rural Health Care Support Mechanism*, 27 FCC Rcd 16678, ¶¶ 178-184 (2012).

Unlike the RHC program, under the Pilot, non-rural eligible health care providers may obtain funding directly, a change the Commission believes will maximize meaningful data collection.[16]

B. Eligible Services and Equipment

The Pilot will cover 85% of the eligible services and equipment for selected pilot projects:[17]

(1) patient broadband Internet access services; funding may be used to purchase mobile or fixed Internet access for patients who lack it or whose existing service is inadequate;[18]
(2) health care provider broadband data connections;
(3) other connected care information services, such as data capture, transmission, and storage systems;[19] and
(4) network equipment used exclusively by a provider to operate, manage, control, or enable connected care services.

Funding will not be provided for administrative costs associated with participation in the Pilot or end-user devices and medical equipment, and providers are ineligible to receive funding for services expected to be or already covered by other federal support programs.[20]

C. Application Process

Any medical condition may be the subject of a proposed pilot,[21] though the Commission will prioritize those targeting "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" such as "diabetes, cancer, kidney disease, heart disease, and stroke recovery."[22] The Commission has also expressed its "strong preference" for applicants with demonstrable telehealth experience or those partnering with a similarly experienced entity.[23] Projects targeting veteran or low-income populations are preferred, though documentation of the number of such patients served must be maintained.[24]

---

[16] *Order* ¶¶ 38, 49. The Telecommunications Program is specifically directed to discounting telecommunications service rates paid by rural health care providers. 47 CFR §§ 54.602(a), 54.603(b). Non-rural eligible health care providers may receive funding under the HCFP, but only through a consortium that contains more than 50 percent eligible rural health care provider sites. 47 CFR § 54.607.

[17] *Order* ¶¶ 38, 40, 55. Qualifying broadband service may be obtained from any provider. *Order* ¶ 54.

[18] *Order* ¶¶ 56-57.

[19] *Order* ¶¶ 61-62.

[20] *Order* ¶¶ 59-60, 63-66, 69.

[21] *Order* ¶ 39 (defining "medical condition" as "any condition, whether physical or mental, including but not limited to any condition resulting from illness, injury (whether or not the injury is accidental), pregnancy, or congenital malformation"); *cf.* 45 CFR § 144.103.

[22] *Order* ¶¶ 39-40 (stating that non-emergent or short-term conditions are less likely to provide meaningful data).

[23] *Order* ¶ 50.

[24] *Order* ¶¶ 38, 52-53, 72-73 (defining a "low-income patient" as one who is Medicaid-eligible or has a household income at or below at or below 135% of the U.S. Department of Health and Human Services Federal Poverty Guidelines, and a

To apply for funding, a provider must first obtain an eligibility determination from USAC by submitting a FCC Form 460 and supporting documentation.[25] Next, it must tender a comprehensive application, via the Commission's Electronic Comment Filing System ("ECFS"), 45 days from the effective date of the Pilot Program rules or 120 days from the release of the *Order*, whichever is later.[26] This will detail such things as the identity of all participating health care providers, their prior experience with telehealth, and financial resources; goals of and the plan for implementing and operating the pilot project; patient populations to be served; and the connected care services to be provided, including "a clear research and evaluation strategy" for assessing how they meet the needs of patient populations.[27] If the provider seeks funding for patient broadband Internet access services, it must estimate the number of connections it intends to purchase and the metric by which it deems existing service inadequate.[28] If funding is sought for an information service, the provider must submit a "thorough description" of its function and how it facilitates connected care.[29] Finally, providers must certify their compliance with the Health Insurance Portability and Accountability Act, medical licensing laws and regulations, and federal anti-corruption statutes.[30]

D. Initiation of Pilot Projects

Upon being selected to participate in the Pilot, the provider must initiate a competitive bidding process for single- or multi-year contracts to obtain eligible services and/or equipment.[31] Following the end of this process (and no later than six months after its initial selection), the provider must submit a Request for Funding to USAC.[32] After receiving a funding commitment letter from USAC, the provider will have six months to launch its projects.[33]

II. The COVID-19 Telehealth Program

In comparison to the Pilot, the CTP is more targeted and streamlined, reflecting the immediate threat posed by the pandemic.[34] To this end, it offers rural and non-rural health care providers complete funding for eligible telecommunications, information services, and connected devices for connected care services provided from fixed, mobile, or temporary locations.[35] Beyond prioritizing those areas hardest hit by COVID-19, the Commission does not intend to direct funding toward specific patient populations or medical conditions.[36]

"veteran" as one who qualifies for Veterans Administration health care).

[25] *Order* ¶ 67.

[26] *Order* ¶¶ 70-71.

[27] *Order* ¶¶ 67-68.

[28] *Order* ¶ 58.

[29] *Order* ¶ 62.

[30] *Order* ¶ 69.

[31] *Order* ¶ 68.

[32] *Order* ¶ 77.

[33] *Order* ¶ 46. A similar six-month termination period follows the three-year funding period. *Id.*

[34] *Cf. Order* ¶¶ 35-36 (exempting COVID-19 Telehealth Program from Administrative Procedure Act's notice-and comment provisions under good cause exception for emergency situations, 5 U.S.C. § 553(b)).

[35] *Order* ¶¶ 16-17, 21. Store-and-forward technologies are ineligible for funding. *Order* ¶ 16.

[36] *Order* ¶¶ 19, 28.

Funding recipients will be afforded a considerable degree of flexibility. While the Commission intends to cap disbursements at $1 million per single applicant, in order to maximize the program's limited budget, recipients may "use awarded support to purchase any necessary eligible services and connected devices," not just those described in their applications.[37] Under the broad statutory language of the CARES Act,[38] recipients can purchase equipment and services to directly diagnose and treat COVID-19; treat other types of patient populations to redirect conventional resources toward the pandemic; or facilitate social distancing and similar prophylactic measures.[39]

Upon publication in the Federal Register of the *Order* and Office of Management and Budget approval of the CTP's information collection requirements, the Commission will begin accepting applications, which will be reviewed and approved on a rolling basis.[40] Any rural or non-rural eligible health care provider, as defined above, may participate in the program.[41] To apply, a provider must submit a FCC Form 460 to USAC (if it has not already done so); the provider must then submit through ECFS an application detailing the connected care services they intend to provide, documented costs for such services, desired funding level, target patient population, impact on COVID-19 treatment, and timeline for deployment.[42] Entities may not request funding for the same services from both the Pilot and the CTP simultaneously.[43]

In the absence of a competitive procurement process, funding recipients are encouraged to use "cost-effective eligible services and devices to the extent practicable;" they must retain records on program compliance for three years after the last date of service and are subject to compliance audits.[44] Recipients are also directed to provide feedback to the Commission on the effectiveness of the CTP within six months after its conclusion.[45]

III. Looking Forward

Connected care services are not only a powerful weapon in the fight to contain and treat COVID-19, but have the power to reshape the nation's health care system as a whole. Numerous barriers outside the scope of the Commission's regulatory authority remain, however, including cross-state licensing, incomplete health information exchanges, nebulous patient privacy laws, variable state Medicare and Medicaid policies, and a dearth of digital literacy amongst lawmakers.[46]

---

[37] *Order* ¶ 17. Administrative costs associated with CTP participation are not covered. *Order* ¶ 30.

[38] CARES Act, Div. B, Tit. V (directing the Commission to use its emergency appropriation "to prevent, prepare for, and respond to coronavirus").

[39] *Order* ¶ 19.

[40] *Order* ¶¶ 18-19.

[41] *Order* ¶¶ 20-21.

[42] *Order* ¶¶ 22-24, 26.

[43] *Order* ¶ 28.

[44] *Order* ¶ 32. Recipients may not sell, resell, or transfer connected care services funded by the CTP. *Order* ¶ 30.

[45] *Order* ¶ 34.

[46] *Order* ¶ 12; *see* Intergovernmental Advisory Committee, *State, Local Tribal, and Territorial Regulatory and Other Barriers and Incentives to Telemedicine*, Advisory Recommendation No. 2019-2 (Nov. 7, 2019), https://docs.fcc.gov/public/attachments/DOC-360696A5.pdf.

Despite these and other challenges, on balance the *Order* is a strong step forward in the quest to ensure that every American has access to telehealth, effectuating the Commission's longstanding vision of utilizing "advances in communications technology [to] enable millions of Americans to live healthier, longer lives."[47]

* * *

If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email authors Chérie R. Kiser at 202.862.8950 or ckiser@cahill.com; or Matthew L. Conaty at 202.862.8945 or mconaty@cahill.com; or email publications@cahill.com.

[47] Newton N. Minow and Ajit Pai, "In rural America, digital divide slows a vital path for telemedicine," *Boston Globe* (May 21, 2018).