

# COVID-19: FCC TELEHEALTH PROGRAM FUNDING FOR HEALTH CARE PROVIDERS

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## U.S. Health Care and Public Policy and Law Alert

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As the COVID-19 pandemic continues to put unprecedented strain on health care providers across the country, the federal government is establishing various programs to provide them immediate support. To this end, the Federal Communications Commission (the “Commission”) recently launched the COVID-19 Telehealth Program (the “Program”) to provide \$200 million in funding to eligible health care providers for telecommunications services, information services, and devices necessary to provide telehealth in response to the pandemic. The Commission has awarded \$6.94 million to date, noting that it continues to evaluate applications and will distribute funding on a rolling basis. In this vein, the Commission has indicated it anticipates making awards to individual providers of \$1 million or less.

This client alert provides interested health care providers with an overview of this opportunity, including eligibility requirements and the application process. Notably, eligible providers may retroactively apply for funding for eligible services and devices purchased on or after March 13, 2020, which was the date of the national emergency declaration, so health care providers may wish to evaluate funds expended already in expanding telehealth capabilities to determine if reimbursement may be available.

## BACKGROUND

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, a \$2 trillion measure aimed at providing economic relief from the COVID-19 pandemic.<sup>1</sup> Among other things, the CARES Act provides \$200 million to the Commission “to support efforts of health care providers to address coronavirus by providing telecommunications services, information services, and devices necessary to enable the provision of telehealth services during an emergency period.”<sup>2</sup>

In recognition of the immediate need for telehealth during the COVID-19 pandemic, the Commission established the Program through an order published on April 2, 2020.<sup>3</sup> The Program is designed to help eligible health care providers purchase items and services such as broadband connections, remote patient monitoring platforms, store and forward systems, and internet-connected devices, including smartphones and tablets, to facilitate remote health care services during the pandemic. The Commission noted that the Program complements the work of other agencies in expanding telehealth.

Given the \$200 million budget for the Program, the Commission has indicated that the funding will be available until expended or the pandemic ends.<sup>4</sup> In an effort to provide funding to as many eligible applicants as possible, the Commission states that it does not expect to award more than \$1 million to any single applicant.<sup>5</sup> Funding will be awarded based on the estimated costs of the services and devices identified by the applicant, though applicants will be allowed to spend the funding on any eligible service and device.<sup>6</sup>

## PROGRAM OVERVIEW

### Eligible Health Care Providers

Participation is limited to eligible nonprofit and public health care providers that fall within the categories of health care providers listed in section 254(h)(7)(B) of the 1996 Telecommunications 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 these entities.<sup>7</sup>

The Commission determined that limiting participation to these categories of providers 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.”<sup>8</sup>

### Eligible Services and Devices

Program funding is limited to telecommunications services, information services, and connected devices that are necessary to provide telehealth to patients. The Commission has specified that the Program will only fund devices that are connected and will not fund unconnected devices that patients use at home and then report the results to their health care provider.<sup>9</sup> In this regard, the Commission has offered the following examples of services and connected devices that are eligible for Program funding:<sup>10</sup>

- Telecommunications Services and Broadband Connectivity Services: Voice services.
- Information Services: Internet connectivity services; remote patient monitoring services; patient reported outcome platforms; and store and forward services, such as asynchronous transfer of patient images and data, as well as platforms and services to provide synchronous video consultation.
- Connected Devices: Tablets, smart phones, or other internet-connected devices to receive connected care services at home (e.g., broadband-enabled blood pressure monitors; pulse oximetry monitors) for patient or health care provider use or telemedicine kiosks/carts for health care provider sites.

Notably, even though the CARES Act was enacted March 27 and the Program was not implemented through Commission rulemaking until April 2, eligible providers may retroactively apply for funding for eligible services and devices purchased on or after March 13, 2020, which was the date of the national emergency declaration.<sup>11</sup>

## APPLICATION PROCEDURE

The Commission began accepting applications to the Program on April 13, 2020.<sup>12</sup> Interested health care providers must submit an application that contains information about the health care provider; the telehealth services to be provided and conditions to be treated; the telecommunications services, information services, or devices requested (including the total monthly amount of funding requested for each eligible item); supporting documentation for the estimated costs; and a timeline for deployment.<sup>13</sup>

Importantly, as part of the application process, health care providers must obtain an eligibility determination from the Universal Service Administrative Company (“USAC”) for each provider site included in the application, which can be obtained by filing a Form 460 through “My Portal” on USAC’s webpage.<sup>14</sup> Applications must be submitted

through the Commission's Electronic Comment Filing System under WC Docket No. 20-89.<sup>15</sup> Providers may submit applications while their eligibility determinations are pending.<sup>16</sup>

## STATUS OF THE PROGRAM

As of the date of this writing, the Commission has approved 11 funding applications from health care providers, totaling \$6.94 million in awarded funds.<sup>17</sup> The awards were provided to health care providers in eight states and range from \$192,500 to \$1 million.<sup>18</sup> They cover services and devices to care for various populations, including low-income, uninsured, and/or underinsured patients; geriatric and palliative patients; and children.<sup>19</sup> The Commission has noted that it continues to evaluate applications and will distribute funding on a rolling, first-come, first served basis.

## CONCLUSION

K&L Gates LLP has created a HUB webpage to address the legal implications of the COVID-19 pandemic, which includes a variety of updates from across the firm's platform. K&L Gates' health care and FDA practice can provide guidance to health care providers on this funding opportunity, including the eligibility and application process, as well as other funding programs available as a result of the COVID-19 pandemic.

## FOOTNOTES

<sup>1</sup> CARES Act, Pub. L. No 116-136, 134 Stat. 281 (2020).

<sup>2</sup> *Id.* at Division B, Emergency Appropriations for Coronavirus Health Response and Agency Operations, FCC.

<sup>3</sup> [Promoting Telehealth for Low-Income Consumers](#); COVID-19 Telehealth Program, WC Docket Nos. 18-213; 20-89, Report and Order (Apr. 2, 2020), [hereinafter "FCC Order"].

<sup>4</sup> *Id.* at 11.

<sup>5</sup> *Id.* at 12.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 13; *see also* 47 U.S.C. § 254(h)(7)(B).

<sup>8</sup> FCC Order at 13.

<sup>9</sup> *Id.* at 11.

<sup>10</sup> FCC, [COVID-19 Telehealth Program – Frequently Asked Questions \(FAQ\)](#), Eligible Services and Devices, FAQ 14..

<sup>11</sup> *Id.* at FAQ 17.

<sup>12</sup> *See* Wireline Competition Bureau Announces COVID-19 Telehealth Program Application Portal Will Open Monday, WC Docket No. 20-89, Public Notice, DA 20-403 (Apr. 10, 2020).

<sup>13</sup> FCC Order at 14.

<sup>14</sup> *Id.* at 13-14.

<sup>15</sup> *Id.* at 15

<sup>16</sup> *Id.* at 14.

<sup>17</sup> See FCC, [FCC Approves First Set of COVID-19 Telehealth Program Applications](#) (April 16, 2020); see also FCC, [FCC Approves Second Set of COVID-19 Telehealth Program Applications](#) (April 21, 2020).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

## KEY CONTACTS



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