



FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 20-89; DA 21-14; FRS 17428]

Wireline Competition Bureau Seeks Comment on Covid-19 Telehealth Program Application

Evaluation Metrics

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) seeks comments on the metrics the Commission should use to evaluate applications for funding and how the Commission should treat applications filed during the funding rounds for awards from the COVID-19 Telehealth Program using amounts appropriated under the CARES Act.

DATES: Comments were initially due by January 19, 2021. The Bureau will continue to accept comments on the metrics at any time.

ADDRESSES: You may submit comments, identified by WC Docket No. 20-89, by any of the following methods:

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
 - Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.
- People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Stephanie Minnock, Assistant Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, stephanie.minnock@fcc.gov or 202-418-7400 or TTY: 202-418-0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Public Notice in WC Docket No. 20-89; DA 21-14 released January 6, 2021. Due to the COVID-19 pandemic, the Commission's headquarters will be closed to the general public until further notice. The full text of this document is available at the following Internet address:

<https://docs.fcc.gov/public/attachments/DA-21-14A1.pdf>. The proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule §1.1206(b). In proceedings governed by rule §1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

I. INTRODUCTION

1. Telehealth is a critical tool in the fight against the ongoing COVID-19 pandemic. It can allow medical professionals to monitor non-critical COVID patients in a non-clinical

setting, reduce demands on hospital staff and supplies, and avoid potential exposure to the coronavirus for patients seeking treatment for other conditions. The Commission’s COVID-19 Telehealth Program awarded \$200 million Congress previously appropriated for that purpose, targeting applications from providers in the hardest hit areas that would have the greatest impact on the pandemic. However, demand for the program significantly exceeded available funding.

2. To build on the success of the Commission’s COVID-19 Telehealth Program, in the Consolidated Appropriations Act, 2021 Congress appropriated an additional \$249.95 million for the Program. The Act requires the Commission to seek comment on “the metrics the Commission should use to evaluate applications for funding” and “how the Commission should treat applications filed during the funding rounds for awards from the COVID-19 Telehealth Program using amounts appropriated under the CARES Act” Through the Public Notice, the Bureau seeks comments on these matters, as well as how to meet the Act’s other requirements for the COVID-19 Telehealth Program and other improvements to the application, review, and invoicing process.

II. REQUEST FOR COMMENT

3. **Prioritizing Round 2 Funding.** The Act directs the Commission to seek comment on the metrics used to evaluate applications for Round 2 Program funding. During Round 1, the Bureau evaluated the Program applications on a rolling basis, targeting funding to areas that were hardest hit by COVID-19 and where the support would have the most impact on addressing health care needs. Although Round 1 funding was not targeted toward specific medical conditions, patient populations, or geographic areas, the Commission strongly encouraged applicants to target the funding received to high-risk and vulnerable patients to the extent practicable. The Commission encouraged applicants under pre-existing strain (e.g., providing care for a large underserved or low-income patient population, facing health care

provider shortages, or dealing with rural hospital closures) to document such factors in their applications. The Commission directed the Bureau to select as many applicants as reasonably possible within the funding appropriated by the CARES Act. To ensure that as many applicants as possible receive available funding, the Commission did not anticipate awarding more than \$1 million to any single applicant.

4. The Bureau seeks comments on whether to continue to target funding to health care providers in areas “hardest hit” by COVID-19 at the time of the funding decision. During Round 1, the pandemic impacted some regions much more severely than others, thus allowing the Bureau to identify particular hotspots that were “hardest hit” in comparison to other parts of the country by referencing data published and collected by Johns Hopkins. Given the broader infection rate currently in the U.S., should the Bureau continue to target funding to hardest hit areas? If so, how should the “hardest hit” areas be defined?

5. Similarly, in Round 1 the Commission targeted funding to health care providers under pre-existing strain, which included health care providers that were facing difficulty providing telehealth services prior to the pandemic. In Round 2, what weight should the Bureau give pre-existing strain faced by applicant health care providers? Should pre-existing strains be distinguished from pandemic-related strains many providers now face?

6. During Round 1 of the Program, the Commission “did not anticipate awarding more than \$1 million” per applicant to ensure that as many applicants as possible receive funding. Should the Bureau maintain this approach? How should the Bureau address applications filed by statewide entities, large health care providers or health care provider systems with numerous sites?

7. Are there other equitable limitations that will help the Program spread funding to a greater number of health care providers without sacrificing the needs of larger health care providers struggling to treat patients during the pandemic? Should applicants from Round 1

that did not receive \$1 million be eligible to receive additional funding? Should applicants from Round 1 that did receive \$1 million be eligible to receive additional support in Round 2?

8. Are there any other metrics the Bureau should use to prioritize applications during the evaluation process? Should the Bureau prioritize health care providers serving a large percentage of COVID-19 patients? Are there specific types of telehealth and connected care services that should be prioritized? Should the Bureau prioritize applications from health care providers that seek funding to treat specific at-risk populations, such as Tribal, low-income, or rural communities? If so, how should those populations be defined? Should these applicants be prioritized only if a certain percentage of their patient base, i.e., the total amount of patients who visited a facility in a year, is at-risk? What percentage would be reasonable to achieve the goal of prioritizing funding for at-risk populations? Are there other criteria the Bureau should prioritize?

9. **Ensuring Nationwide Distribution of Funding.** The Act directs the Commission, to the extent feasible, to ensure “that not less than 1 applicant in each of the 50 States and the District of Columbia has received funding” from the Program since the program’s inception, “unless there is no such applicant eligible for assistance in a State or in the District of Columbia.” To fulfill this requirement, the Bureau proposes accepting Round 2 applications and establishing an application filing window rather than accepting applications on a rolling basis. Although accepting and evaluating applications on a rolling basis allowed the Bureau to quickly review applications and issue funding commitments for the funding appropriated by the CARES Act, this evaluation method will not ensure that funding will be available for applicants in each State and the District of Columbia. Establishing an application filing window would allow the Bureau to prioritize applications using pre-defined evaluation metrics and ensure that funding is provided, to the extent feasible, to at least one applicant in each of the 50 states and the District of Columbia. This approach would also provide all applicants the same period of time to

prepare and file applications. The Bureau seeks comments on this approach. If an application filing window is established, how long should the window remain open?

10. Is there an alternative approach that would ensure that the Commission meets this legislative provision? Should the Bureau instead continue to accept applications on a rolling basis, but set aside a portion of funding, e.g., \$1 million for each state and the District of Columbia, to ensure that an applicant from each State and the District of Columbia receive Round 2 funding?

11. Treatment of Round 1 Applications. The Act directs the Commission to seek comment on “how the Commission should treat applications filed during” Round 1 of the Program. The Act also requires the Commission to allow an applicant who filed an application during Round 1 “the opportunity to update or amend that application as necessary.”

12. The Bureau proposes to require applicants to update and resubmit applications that were filed during Round 1 if they want them to be considered for Round 2. The Bureau proposes that Round 1 applications that are not resubmitted during the filing window will not be considered for Round 2. The Bureau makes this proposal because many of the remaining Round 1 applications need to be refreshed and some require substantial amendments. From April to June 2020, the Commission received thousands of applications for Round 1, and committed funding to 539 applicants before the available funding was exhausted. Many of the remaining applications are from ineligible entities or require substantial supplementation to be considered materially complete. Some applicants no longer need funding because they received support for telehealth services from other sources. And, because these applications were filed between April and June 2020, all the remaining applications contain stale information—COVID-19 infection rates in many areas were dramatically lower at that time than they are today, the pandemic was less widespread, and health care providers have had time to refine their strategies for providing services during the pandemic, making it likely that these

applicants would, given the opportunity, request different amounts and types of connected devices and eligible services. The Bureau seeks comments on this approach.

13. The Bureau also proposes this approach because the application system used during Round 1 of the Program, which was developed quickly given the emergency situation, is functionally limited, and is not designed to let applicants amend or update their applications after they have been filed. In addition, certain information required to comply with the Act, such as the new evaluation criteria, was not collected in Round 1. Thus, it would be less burdensome for both Round 1 applicants and Commission staff to have Round 1 applicants submit new applications during the Round 2 filing window than to update Round 1 applications in the existing portal. Requiring Round 1 applicants to submit new applicants will increase the speed at which Commission or Universal Service Administrative Company (USAC) staff are able to process and award Round 2 funding. Therefore, the Bureau proposes requiring Round 1 applicants that continue to seek funding to update or amend their applications by submitting a new application for Round 2.

14. Should the Bureau review Round 2 applications filed by Round 1 applicants before evaluating applications from new entities during the Round 2 review process? Should the Bureau prioritize funding applications submitted during Round 2 by applicants that applied, but did not receive any or all of the requested funding, during Round 1? Relatedly, how should the Bureau treat applicants for Round 2 funding that received the full amount of their requested funding during Round 1?

15. Additional Program Improvements. During the process of standing up this Program, the Bureau learned valuable lessons about the unique needs of connected care and health care providers. To build on the lessons learned during Round 1, the Bureau proposes updating the Program's application and invoicing processes and seeks comments on implementing these proposed improvements during Round 2. Specifically, the Bureau proposes

using the Universal Service Administrative Company (USAC) to assist in administering the remaining work necessary to complete Round 1 of the Program as well as Round 2. The Bureau further proposes directing USAC to update the portal that will be used by Round 2 applicants, including Round 1 applicants that wish to renew their request for funding under the Program, to submit applications for the funding appropriated by the Act; to conduct an initial review of Round 2 invoices; and to provide outreach and guidance about the application process to applicants. Updating the portal will ensure that all applicants provide the information needed for review under the updated Round 2 application evaluation metrics, facilitate program administration, and reduce administrative burdens on both applicants and Commission staff. However, under this approach Commission staff would make final funding determinations, subject to the requirements of the Act. The Bureau seeks comments on this approach.

16. During Round 1, applicants were required to file FCC Forms 460 to obtain eligibility determinations for all participating health care provider sites. As part of the eligibility determination process, health care provider sites seeking an eligibility determination were assigned a health care provider number by USAC. The Bureau found that requiring health care providers to file FCC Forms 460 for each site delayed our ability to move quickly on many applications, especially those applications with a large number of sites in need of eligibility determinations. Using a different method to determine whether a site is eligible could reduce the administrative burden on applications, the Commission, and USAC during the application review process. Accordingly, the Bureau seeks comments on directing USAC to include eligibility review as part of the application process, but not requiring applicants to file FCC Forms 460. Are there other means of identifying health care providers and determining their eligibility for support in the program that should be considered?

17. Finally, are there additional improvements the Bureau should consider making to the application, review, and invoicing processes? For example, during the Round 1 application

process, applicants were required to submit documentation demonstrating that funding requests were for equipment and services eligible for Program support, and funding commitments were made based on the anticipated costs of the eligible services requested on their applications. After receiving Round 1 commitments, however, some health care providers seeking support for eligible services and equipment experienced supply chain disruptions and equipment shortages, while other health care providers determined that, due to shifting pandemic response strategies, they needed different services or equipment than those requested in their application. Anticipating these issues, the Commission gave health care providers flexibility to respond to changing circumstances by not requiring health care providers that received funding commitments to purchase only the services and connected devices identified in their applications. Accordingly, health care providers that received funding commitments may have been allowed to substitute vendors, eligible services, and/or eligible connected devices as long as the substituted items are eligible and the total amount sought for reimbursement does not exceed the commitment amount.

18. Should the Bureau maintain this flexibility, but streamline the application process by requiring applicants demonstrate the eligibility of the connected devices and services purchased using Round 2 support only during the invoicing process? Are health care providers still experiencing supply chain delays or noticing shortages of certain connected devices? Have health care providers' pandemic response strategies solidified to the point where they will be able to accurately identify the telecommunication services, information services, or connected devices needed on their application for Round 2? If the Bureau does not require applicants to demonstrate the eligibility of the services and connected devices for which they seek funding on their applications during Round 2, what documentation or demonstration should the Bureau require the applicant to submit to demonstrate that they will use the funding requested for services and devices that are eligible for support? What

safeguards should the Bureau consider implementing to ensure that this proposal does not lead to waste, fraud, or abuse of Program funding? Should additional certifications be required on applications and for each invoice to ensure applicants/awardees understand what is expected of them and the potential penalties for waste, fraud, or abuse? Relatedly, should a list of eligible and ineligible equipment and services to provide applicants with specific guidance on what may be requested for reimbursement be published?

FEDERAL COMMUNICATIONS COMMISSION.

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