

FCC Fast-Tracks COVID-19 Telehealth Initiative

Disbursements of \$200 million fund could start by end of April.

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TAKEAWAYS

- ⑒ Fund reimburses expenses for telecommunications service and equipment to provide COVID-19 related connected care services.
- ⑒ FCC's main goal is to rapidly disburse funds to hardest hit areas.
- ⑒ Funding should be available by end of April.

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The Federal Communications Commission is moving quickly to disburse the \$200 million set aside in the CARES Act for telehealth services and equipment. Just three days after Congress passed, and President Trump signed, the CARES Act, the FCC staff drafted and circulated for approval the rules and procedures to guide the disbursement of the emergency funds.

Eligibility Requirements: The FCC limited the eligibility for receiving funds to just non-profit entities and government agencies. In particular, the following entities will be eligible for receiving funds:

- post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;
- community health centers or health centers providing health care to migrants;
- local health departments or agencies;
- community mental health centers;
- not-for-profit hospitals;
- rural health clinics;

- skilled nursing facilities; or
- consortia of health care providers consisting of one or more entities falling into the first seven categories.

In limiting the funds to these entities, the FCC reasoned that these groups are also the eligible entities to receive funds through the FCC's existing Rural Health Care program funded by the Universal Service Fund.

Eligible Services: As discussed below, the FCC will require eligible entities to submit applications which describe the services for which funding is requested. The CARES Act requires that the funding be used by eligible entities for the "purchase of 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." While other programs run or overseen by the FCC typically require entities to engage in competitive bidding to obtain services or equipment, the FCC will not impose this requirement for recipients of the COVID-19 funds. However, the FCC warned parties that it will conduct audits of entities receiving funds, and the Commission strongly urged parties to select the most cost-effective service provider or equipment vendor.

Procedures: Once the Order is approved by the Office of Management and Budget, and the new rules become effective, the FCC will accept applications from interested parties. The FCC is in the process of developing the application form, which will be submitted electronically through the FCC's online filing system. The FCC noted that entities seeking funding will be required to supply, at a minimum, the following information:

- Names, addresses, county, and health care provider numbers (if available), 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 who 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 targeted area, the area's 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 COVID-19 Telehealth Program funding will be used to treat patients without COVID-19, describe how this would free up resources that will be used to treat COVID-19 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 their application, such as a vendor or service provider quote, invoice, or similar information.

In addition to this information, applicants will need to include certifications attesting to the applicant’s commitment 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.

Finally, applicants will need to retain records to demonstrate compliance with the FCC program, and these records will need to be maintained for three years following the last date of service. The FCC will retain the right to audit these records, and presumably, as it does with other funding programs, retain the right to claw back funds that were previously disbursed to entities acting in violation of the rules.

Selection Process: The FCC staff will review the applications expeditiously, and the FCC directed the staff to attempt to fully fund requests that comply with FCC’s rules. The main focus of the program is to provide immediate funding to the areas that have been hardest hit by the COVID-19 virus. To that end, the FCC will process applications on a rolling basis until the earlier of (i) \$200 million funding is fully committed, or (ii) the pandemic ends.

Funding Process: The FCC directed its staff to develop the process by which successful applicants will submit requests for reimbursement of previously-approved costs and expenses. It is anticipated that the requests will be submitted on monthly basis, with sufficient documentation to establish that reimbursement is appropriate.

It is worth noting that the FCC will not be reimbursing successful applicants for their costs in preparing and submitting the funding applications, the monthly invoices, or other time spent in connection with the applicant’s implementation of the funding. In addition, the FCC made clear that services or devices purchased through the program may not be sold or transferred to any third party for consideration or anything of value.

Timeline: The FCC voted to approve the COVID-19 Telehealth Program on March 31, 2020, and the rules were published on April 2, 2020. The FCC will be seeking emergency approval of the new rules and data collection requirements from the Office of Management and Budget. If OMB agrees to expedite processing, the new rules will be published in the Federal Register approximately one week thereafter. As

a result, the FCC could open the funding window by the end of April.