

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska	)	Application No. NUSF-57
Public Service Commission, on	)	Progression Order No. 6
its own motion, seeking to	)	
administer the Nebraska	)	ORDER SEEKING FURTHER
Telehealth Program.	)	COMMENT AND SETTING HEARING
	)	
	)	Entered: October 20, 2020

BY THE COMMISSION:

On June 27, 2006, the Nebraska Public Service Commission (Commission) opened the above-captioned docket establishing a procedure for administering the Nebraska Telehealth Program and approved a Telehealth Plan. Over the years, the Commission has made modest modifications to the Telehealth Program but the program criteria and funding mechanism has stayed largely the same.

In 2012, the Federal Communications Commission (FCC) expanded the Rural Health Care (RHC) Program to include the Healthcare Connect Fund (HCF). In doing so, the FCC provided a flat 65 percent discount for the cost of broadband services and facilities. The FCC also adopted three new goals for the RHC which were as follows:

1. Increase access to broadband for health care providers, particularly those serving rural areas;
2. Foster development and deployment of broadband health care networks; and
3. Reduce the burden on the Universal Service Fund (USF) by maximizing the cost-effectiveness of the health care support mechanisms.

In August 2019, the FCC made further modifications to the RHC program in an effort to improve transparency, predictability and efficiency; prioritize funding when total requests hit the established annual cap; increase effectiveness of the competitive bidding process; establish changes to filing windows and forms; and consolidating and simplifying RHC program rules between the Telecom program and Healthcare Connect Fund programs.

On February 19, 2020, in response to changes to the federal telehealth programs, the Commission opened this Progression Order to seek comment on potential changes to our state funding mechanism. The Commission sought comment on the following issues:

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1. Whether to restructure its funding mechanism to account for changes made by the FCC in its 2012 Healthcare Connect Fund Order.
2. Whether to consider the goals of these two programs and prioritize one over the other.
3. How the Commission should structure the provision of funding. If support is provided under both the RHC Telecom program and HCF program, how the Commission should prioritize funding of the two programs.
4. Whether the Commission should consider a proration of funding for consortia applications with health care providers that are not located in Nebraska and how the proration should be calculated.
5. Whether a deadline for applications should be established and available funding be awarded on a competitive set of standards.
6. Whether funding should be allocated on a first come first served basis.
7. The timing of the state filing window to enable health care providers to properly marry their funding plans with federal filing window.
8. Whether funding should be provided via a tiered support approach based on rurality and whether the Commission should adopt the same rurality test being employed on the federal level.
9. Whether the Commission should entertain applications for funding that were not fully funded at the federal level due to federal caps.
10. Whether an application cap should be established and how it would be administered.
11. Whether there be any technology type or service which should not be considered eligible for funding.
12. Whether the Commission should set the required percentage to match the yearly established federal threshold or consider a higher threshold or an increased amount of funding for consortium with higher percentages of rural health care provider sites.
13. The portion of the remaining 35 percent of costs that should be eligible for supplemental support and whether the Commission should deem some costs ineligible for funding.

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14. Whether support should be limited to providers serving non-profit hospitals and whether support for public health centers should be considered.
15. With the requirement that support must be provided to eligible telecommunications carriers (ETCs), how the Commission should consider funding for health care provider constructed and owned network facilities and whether such entities should be required to obtain certification as a Nebraska eligible telecommunications carrier (NETC).
16. Whether the Commission should consider funding only monthly recurring costs and what type of non-recurring costs should be considered.
17. The Commission questioned what reporting requirements should be placed on telecommunications companies that are bidding on and providing services and for health care providers receiving support for Telehealth services in Nebraska.
18. The Commission questioned whether it should be mandatory that support be provided only as secondary to federal funding so the Commission can ensure that services were subject to established competitive bidding requirements.

### **Comments Filed**

The Commission received comments from one commenter, Prairie Health Ventures, LLC (PHV) which is a regional health alliance owned and directed by 55 not-for-profit hospital members. PHV is based in Lincoln, Nebraska, and works with rural hospitals. PHV manages the Independent Health Network, Inc. (IHN). The IHN is a not-for-profit corporation that was created in 2015. The IHN currently files and receives funding from USAC's Healthcare Connect Fund, under the consortium model.

In response to the specific questions posed, PHV recommended the Commission restructure its funding mechanism to account for changes made by the FCC. PHV commented that other than in Alaska, no one is using the Telecommunications Program for circuits any longer and all Internet access subsidies are now funded through the HCF. In addition, the HCF program has a broader scope to include network equipment and management. PHV recommended that supplementing the HCF program should be the priority. PHV recommended that the program should mirror the USAC program for

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commonality and fiscal years. The deadline for applications should mirror the existing USAC model. Funding should not be provided on a first-come-first-served basis. PHV further recommended that funding should be provided via a tiered support approach based on rurality.

Additionally, PHV recommended the Commission entertain applications for funding that were not fully funded at the federal level due to federal caps. An application cap should be established. However, the cap should be reviewed annually relative to demand. PHV recommended the application cap should be equal for individual applicants and consortiums so there is not bias, as long as there is no urban site funding included for the consortiums. As far as the amount of supplemental support, PHV recommended the Commission set a goal of funding the remaining 35 percent for all rural sites so that 100 percent of the costs are funded.

Prairie Health Ventures recommended that the Commission also support non-profit entities as that mirrors the federal program. Rules regarding non-recurring costs should also mimic the federal USAC rules and should include one-time costs.

Finally, PHV recommended implementing similar reporting requirements as USAC has for telecommunications companies. For health care providers they suggested using the reporting requirements that the USAC system has which would not include utilization reporting requirements for individual applicants. Currently, they file an annual consortium report with USAC.

### **Commission Proposal**

After consideration of the comments received, the Commission releases a proposal for further comment. The Commission has provided funding for telehealth services since 2005, however, in recognition of the substantial modifications to the federal telehealth funding programs and changes to the landscape of healthcare providers (HCPs) operating in Nebraska, we opened this proceeding to make similar modifications to the Commission's Telehealth Program. We agree with the commenter that the program should be reformed to largely mirror the FCC's Rural Health Care

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Connect Program. However, our proposal deviates in some respects as described further below.

### *Support Supplemental to Federal Funding*

The Commission proposes to structure the funding mechanism for the Nebraska telehealth support program to provide funding to health care providers receiving federal support under the HCF structure. HCPs in Nebraska have largely transitioned to applying for and receiving funding under the federal HCF and transitioned away from funding through the Rural Health Telecommunications program federal funding model. Provision of limited state funding for telehealth should be supplemental and secondary to receipt of federal funding and be focused on HCPs or consortia receiving support under the HCF.

With limited state funding, the Commission proposes it should be mandatory that applicants are receiving federal support for the services in which they seek state support. The Universal Service Administrative Company (USAC) administers the RHC Program on the federal level. USAC has extensive requirements in place for the eligibility of services and equipment through its HCF application process, as well as competitive bidding requirements that an HCP or consortium must follow. The USAC competitive bidding requirements are an important and rigorous part of ensuring that applicants are obtaining adequate services at the lowest possible rates.

### *Eligibility for State Support*

The Commission proposes that all projects eligible for federal support should also be eligible for state support. Both monthly recurring and non-recurring costs should be considered as eligible for funding on the state level as long as they are a cost category deemed an eligible service or equipment on the federal level.

The Commission proposes to mirror the federal program with regard to site eligibility. To be eligible to receive federal funding, sites must be a public or nonprofit entity and be one of the following types of facilities: (a) Not-for profit hospital, (b) rural health clinic, (c) community health or community mental

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health center, (d) a local health department, (e) skilled nursing facility, or (f) a consortium with sites as noted above.<sup>1</sup>

For consortium applications, the Commission proposes to follow the majority rural threshold of participation requirement that is in place on the federal level, which is currently that more than 50 percent of the sites within the consortium must be rural HCPs in order for the consortium to be eligible for funding.

Funding should be focused on participating HCPs located within the state of Nebraska. In the event that a consortium applicant includes member HCPs with eligible sites that are located outside of Nebraska, funding for the consortium should be prorated based solely on the funding provided to participating HCPs with sites located in Nebraska, utilizing calculations of federal funding by individual HCPs within the consortium to calculate the state proration amounts for funding.

### *Application for Funding*

The Commission proposes to align the application process to coincide with the federal filing windows each funding year. For FY2021 the federal filing window for funding requests under the HCF program is from January 4, 2021 through April 1, 2021. The Commission proposes to develop a state funding application form and require that copies of the federal funding request Form 462 be included with each application for state funding, along with the associated Network Cost Worksheet if applicable. All applications filed within the funding window should receive equal consideration for support.

If applying for state funding toward their required match, after an HCP or consortium selects a service provider through the bidding process and submits the Form 462 to USAC, the HCP or

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<sup>1</sup> Preliminarily, we propose removing two types of facilities from the eligibility list for state support as follows: (a) dedicated emergency room for a rural for-profit hospital and (b) post-secondary education institution offering healthcare instruction. We believe these facilities are more likely able to find matching state support through other means. They are also not currently supported through our Telehealth mechanism. However, we may consider these entities eligible on a case-by-case upon request in the future.

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consortium would complete the application for state funding and attach a copy of the Form 462 and Network Cost Worksheet. Once the HCP or consortium receives the funding commitment letter from USAC, a copy shall be provided to the Nebraska Commission to finalize the state award amount and issue a preliminary state support schedule. A copy of this state support schedule shall be provided to the participating HCP or consortium and the service provider(s).

When the HCP or consortium receives the invoice from the service provider(s) and the process for filing and approval of the Form 463 is complete, they shall provide a copy of the Form 463 and service provider invoice to the Nebraska Commission to issue a final state support schedule. Once the state support credits have been placed onto the HCP or Consortium's account, a copy of the invoice showing the credits should be provided to the Commission to request payment of the support amounts.

### *Calculation of Support*

Under the federal Healthcare Connect Fund, costs are paid at a rate of 65 percent of eligible costs with the remaining 35 percent to be matched by the HCP or consortium. The Commission proposes to provide funding toward that portion remaining after federal funding and provide up to a maximum of 25 percent of total eligible costs. The maximum amount of support that will be paid is 25 percent of total eligible costs for monthly recurring and non-recurring costs. For consortium applications that may have been built and structured with a self-sustaining revenue component to the network, the Commission proposes to leave open the option to fund these projects if there is a gap between revenues and their required 35 percent match.

The Commission proposes to refrain from setting an upfront total application cap or a cap specifically for non-recurring costs at this time. Funding caps are already in place at the federal level, as the Commission would be providing funding for a portion of the HCP or consortium's 35 percent match, an additional cap employed for state funding may be unnecessary, but reexamining a per site cap after the first year of applications may be prudent.

The Commission proposes to leave open the option to provide additional funding to HCPs for telehealth costs that may not have

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received the full amount of expected federal support based on federal requests reaching the support cap. Additional state funding should only be available for these instances if there is funding that remains available from the state funding cap after all awards have been provisioned following the initial state filing window. If federal funding is prorated based on requests exceeding the cap, the Commission should open a second filing window. However, additional state funding should not be considered for federal filing errors, or due to an HCP, consortium, or service provider missing deadlines for invoicing USAC for federal reimbursement.

### *Multi-Year Funding Commitments*

The HCF allows for funding requests that span up to a three-year timeframe, with the ability to invoice USAC and request reimbursement up to six months after the three-year funding commitment end date. The Commission proposes to consider funding applications that are filed with multi-year commitment amounts requested through the HCF. However, in consideration of cash flow efforts, the maximum length of invoicing and reimbursement requests allowed by the Commission should not be greater than one year for the Nebraska Telehealth Program. Once approved for state funding and issued a state support schedule, the deadline for invoicing should be within one year from the date of the state support schedule. In the case of subsequent funding requests for multi-year funding commitments, invoicing should occur no less than once every 12 months. An individual funding request should not include costs for services that span over a 12-month period. Final requests for reimbursement must be received within six months of the end date of the funding commitment.

### *Program Support Cap*

In recognition of the growing importance of telehealth services needed in healthcare settings, the Commission proposes that total support for the Nebraska Telehealth program be set at \$1.5 million per fiscal year, with a review of this amount after the first year of this new program structure. In the event that requests for state funding exceed the \$1.5 million in the first year, the Commission may explore options such as: implement a rurality test similar to what is done on the federal level,



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implement proration of funding, or elect to increase the total amount of funding available.

### *Certificated Carrier Requirements*

Support from the Nebraska Universal Service Fund must be provided through payment to a Nebraska eligible telecommunication carrier (NETC). We remain consistent with our findings in NUSF-35<sup>2</sup> that a service provider receiving the funding must be certificated with the Commission for purposes of receiving state telehealth funding. For network facilities that are health care provider owned and operated, the consortium would need an agreement in place with a service provider that has been certificated in Nebraska for purposes of receiving state telehealth funding. The application should contain a section whereby an applicant will attest that they have verified that the service provider has been certificated in Nebraska for purposes of receiving telehealth funding.

Certificated carriers bidding on and providing services shall agree to place the state support amount on an HCP or Consortium's account. A copy of an invoice showing that the credit has been placed should be provided to the Commission prior to support being paid to the service provider. In cases where the state support amount credit creates a credit balance on an HCP or Consortium's account, the service provider shall agree to allow the HCP or Consortium to either utilize the credit for future service or issue a refund check at the HCP or Consortium's request.

### *Reporting Requirements*

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<sup>2</sup> See *In the Matter of the Nebraska Public Service Commission Seeking to Determine Nebraska Eligible Telecommunications Carrier Status for the Purposes of Receiving State Universal Service Support for Providing Lifeline/Link-up services and Telehealth services to Rural Hospitals; In the Matter of the Nebraska Public Service Commission, seeking to require all local exchange carriers to provide Lifeline and Link-up services*, Application No. NUSF-35/PI-69; Application No. C-2868/PI-69, FINDINGS AND CONCLUSIONS (April 29, 2003) at para. 21.

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To assess ongoing performance measures of the program, HCPs and consortia receiving state support should be required to submit an annual report. The Commission proposes developing guidelines for usage information to be reported on an annual basis. In an effort to not duplicate or create additional burdens for reporting, the Commission should accept a copy of the consortium annual report that is required by USAC and follow the established federal deadline whereby the reports are due by September 30 of each year, for the preceding funding year's information.

### **Items for Additional Comment**

The Commission solicits additional comment surrounding membership fees that are collected from member hospitals within a consortium. Specifically, we seek comment on the purpose of the membership fees and if any portion of the membership fees goes toward funding the 35 percent match that remains after federal support is received. How should these fees be taken into consideration, if at all, when calculating state support for a consortium?

In addition, the Commission seeks comment on whether it should consider funding for only new multi-year requests where year one would occur subsequent to the final Order in this docket and received in FY2021-2022? In the alternative, should the Commission consider requests for support for projects that have already been approved for federal funding through the HCF and where a planned match source is already in place? Please explain. If the Commission does approve support for multi-year projects that are already receiving federal support, how should the Commission consider the planned match source if it is not in year one of a multi-year commitment?

### **Further Comment Deadline and Hearing**

Comments responsive to the questions and issues set forth above and any other issue germane to this proceeding should be filed by interested parties on or before **November 6, 2020**. Interested parties should file one (1) original paper copy and one (1) electronic copy in Word or PDF format to [Cullen.Robbins@nebraska.gov](mailto:Cullen.Robbins@nebraska.gov) and [Brandy.Zierott@nebraska.gov](mailto:Brandy.Zierott@nebraska.gov).

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A hearing in this matter will be held on **November 18, 2020** at 10:00 a.m., central time, in the Commission Hearing Room and via videoconference. The link to the videoconference is as follows <http://tiny.cc/PSCWebex>. The telephone bridge for the audio connection is: 475-555-0003 Access Code 926 343 190.

If auxiliary aids or reasonable accommodations are needed for attendance at the meeting, please call the Commission at (402) 471-3101. For people with hearing/speech impairments, please call the Nebraska Relay System at (800) 833-7352 (TDD) or (800) 833-0920 (Voice). Advance notice of at least seven (7) days is needed when requesting an interpreter.

## O R D E R




IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the proposal set forth above be and it is hereby open for public comment. Comments responsive to the proposal set forth above and any other issue germane to this proceeding should be filed by interested parties on or before **November 6, 2020**.

IT IS FURTHER ORDERED that a hearing on this matter will be held on **November 18, 2020** at 10:00 a.m. central time, in the Commission Hearing Room and via video conference as described above.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 20th day of October, 2020.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
Chair

ATTEST:

  
Executive Director