

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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
Telehealth Program.)
) Entered: January 5, 2021

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 NUSF Telehealth Program, but the program criteria and funding mechanism has stayed largely the same.

However, 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:

1. Whether to restructure its funding mechanism to account for changes made by the FCC in its 2012 Healthcare Connect Fund Order.

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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.
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

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- 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 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

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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 a similar reporting requirement 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 considering the comments received, the Commission released a proposal for further comment in an order dated October 20, 2020. The Commission proposed the following:

Support Supplemental to Federal Funding

First, the Commission proposed to structure the funding mechanism for the Nebraska telehealth support program to provide funding to health care providers receiving federal support under the newer HCF structure. The Commission proposed that 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. The Commission proposed it should be mandatory that applicants are receiving federal support for the services in which they seek state support.

Eligibility for State Support

The Commission proposed that all projects eligible for federal support should also be eligible for state support. Both monthly

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recurring and non-recurring costs should be considered as eligible for funding on the state level so long as they are a cost category deemed an eligible service or equipment on the federal level.

The Commission proposed to mirror the federal program in 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 health center, (d) a local health department, (e) skilled nursing facility, or (f) a consortium with sites as noted above.¹

For consortium applications, the Commission proposed 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 would 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 would 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

As far as the process for obtaining funding, the Commission proposed 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 January 4, 2021 through April 1, 2021. The Commission proposed to develop

¹ The Commission proposed 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. The Commission stated that it believed these facilities would be more likely able to find matching state support through other means. These entities were also not supported through our original Telehealth mechanism. However, the Commission proposed to consider these entities eligible on a case-by-case upon request in the future.

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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 would 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 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, the Commission proposed that a copy be provided to the Commission to finalize the state award amount and issue a state support schedule. A copy of this state support schedule, showing the maximum amount available for reimbursement, would 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. Once the state support credits have been placed onto the HCP or Consortium's account, a copy of the invoice showing the credits would be provided to the Commission to request payment of the support amounts.

Calculation of Support

Under the federal HCF, 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 proposed 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 would 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 proposed to leave open the option to fund these projects if there is a gap between revenues and their required 35 percent match.

The Commission proposed 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

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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 proposed to leave open the option to provide additional funding to HCPs for telehealth costs that may not have received the full amount of expected federal support based on federal requests reaching the support cap. Additional state funding would only be available for these instances if there is funding that remains below the annual state Program Support 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 proposed 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. An individual funding request would not include costs for services that span over a 12-month period. 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. Final requests for reimbursement would be required to 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 proposed that total support for the Nebraska Telehealth program be set at \$1.5 million

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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 exceeded the \$1.5 million in the first year, the Commission proposed to explore options such as implement a rurality test similar to what is done on the federal level, implement proration of funding, or elect to increase the total amount of funding available.

Certificated Carrier Requirements

The Commission reiterated that support from the Nebraska Universal Service Fund must be provided through payment to a Nebraska eligible telecommunications carrier (NETC). The Commission proposed that consistent with its findings in NUSF-35², 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 Commission proposed to include a section in the application where an applicant would 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 would be required to 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 would 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 would be required to 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.

² 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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Reporting Requirements

The Commission proposed that HCPs and consortia receiving state support be required to submit an annual report. The Commission indicated that it would develop 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 proposed to 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.

Other Issues

The Commission solicited additional comment surrounding membership fees that are collected from member hospitals within a consortium. Specifically, the Commission sought 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. The Commission asked how these fees be taken into consideration, if at all, when calculating state support for a consortium.

In addition, the Commission sought 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, the Commission questioned whether it should consider requests for support for projects that have already been approved for federal funding through the HCF and where a planned match source was already in place. If the Commission did approve support for multi-year projects that receive federal support, the Commission asked how it should consider the planned match source if it was not in year one of a multi-year commitment.

Further Comments and Hearing

No comments responsive to the Commission's October 20, 2020 proposal or additional questions were received by any interested party.

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A public hearing was held on November 18, 2020 in the Commission Hearing Room and via videoconference. Mr. Cullen Robbins, Director of the Communications and Nebraska Universal Service Fund Department (Department) testified and generally described the Commission's proposal. In response to Commission questions, Mr. Robbins testified that telehealth has been a focus during the COVID-19 pandemic. He believed that allocating \$1.5 million to the telehealth program would meet the estimated needs at this time. However, he stated, that the Department cannot always predict which hospitals or consortia will participate in the state program.

No other testimony was provided either in support of, or in opposition to, the Commission's proposal.

O P I N I O N A N D F I N D I N G S

Telehealth has assumed an increasingly critical role in our healthcare system, but its importance has been greatly amplified by the COVID-19 pandemic where the focus on telemedicine offerings and the development of virtual medical services has been essential to meeting health care needs. Broadband connectivity for telehealth is a necessity. Therefore, we find it to be a priority for the Commission to modernize its telehealth program in a way that will maximize the benefits Nebraskans receive from the federal HCF program. The measures included in the Commission's proposal released on October 20th were designed to accomplish just that. The Commission appreciates the input received from PHV which assisted the Department in developing these reforms. No one opposed the Commission's proposal. Accordingly, we find the proposal described in our October 20, 2020 Order should be adopted.

In response to the issues for further comment, we find that in instances where a consortium applies for and receives NUSF Telehealth Program support, and where membership fees are collected and used toward the 35 percent HCP contribution, we will ask consortium applicants to attest to the utilization of membership fees towards the match and to provide further details on how those amounts are calculated on the application. If approved for support available under this program and a consortium collects membership fees that go toward the 35 percent HCP contribution requirement by USAC, membership fees shall be adjusted so that membership fees used toward the 35 percent HCP contribution when combined with federal

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and state funding sources do not exceed 100 percent of total eligible costs. For instance, if a consortium receives 65 percent of the total network cost from federal funding and is approved for 25 percent of the total network cost in state funding, then only up to the remaining 10 percent can be collected from consortium members through membership fees. In the event where we cannot require adjustments to be made in advance, the Commission may require that amounts be refunded to member hospitals to ensure that there is no double recovery.

Additionally, we find that applicants with multi-year federal funding commitments already underway may apply for NUSF Telehealth Program support. The Commission will require applicants to provide further detail about the source of the match used in the multi-year application. To the extent that an applicant already has an external match source in place, the NUSF Telehealth Program support should be considered secondary to the match source. However, if state matching support is still needed, the Commission will consider NUSF Telehealth Program support for the request consistent with how it would treat single year requests where the maximum amount of support that would be paid would equal 25 percent of total eligible costs for monthly recurring and non-recurring costs.

Consistent with the Commission's earlier proposal, \$1.5 million will be allocated to the NUSF Telehealth Program in FY2021. Applicants will be required to demonstrate participation in the federal program in order to be eligible for NUSF Telehealth Program support. Applicants will be required to utilize the application form and file the accompanying documentation referenced in the application. The application form and instructions will be posted on the Commission's website. The application window will open on January 10, 2021 and will close on April 15, 2021.

All recipients of state support will be required to submit reports to the Commission on an annual basis, consistent with the Commission's proposal. For consortiums, the Commission will accept the annual reports filed with USAC to meet this requirement. Failure to file an annual report may result in ineligibility for NUSF Telehealth Program support in future years.

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the proposal set forth by the Commission on October 20, 2020 and the additional findings made herein shall be and they are hereby adopted.

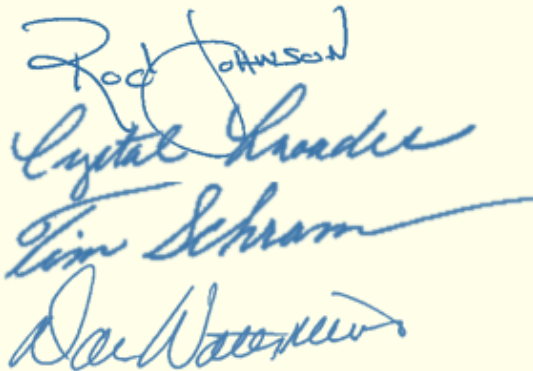
IT IS FURTHER ORDERED that the application window shall open on January 10, 2021 and close on April 15, 2021.

IT IS FURTHER ORDERED that applicants file their requests for Telehealth support using the application form provided by the Department and submit the required documentation in order to be considered eligible.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 5th day of January, 2021.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:




Chair

ATTEST:


Executive Director