

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
COVID-19 Telehealth Program) WC Docket No. 20-89
)
)

PETITION FOR PARTIAL RECONSIDERATION

Eligibility for participation in the COVID-19 Telehealth Program should be extended to all types of hospitals and other direct patient care facilities regardless of their size, location or for-profit or not-for-profit status, including but not limited to rural and urban short-term acute-care, long-term acute care, critical access hospitals and skilled nursing facilities. All of these health care providers (“HCPs”) are incurring expenses in treating COVID-19 patients and are expanding the capacity of the health care system during this crisis. The American Hospital Association (“AHA”)¹ therefore submits its petition for partial reconsideration (“Petition”) of the Commission’s *Report and Order* in the above-captioned proceeding.²

¹ AHA is a national organization whose membership includes nearly 5,000 member hospitals, health systems, and other health care entities; clinician partners (including more than 270,000 affiliated physicians, two million nurses and other caregivers); and 43,000 individual members. Through its representation and advocacy activities, AHA ensures that member perspectives and needs are heard and addressed in national health policy development, legislative and regulatory debates, and judicial matters. As such, AHA has standing to file this Petition on behalf of its members. *See, e.g., Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*, Memorandum Opinion and Order, 31 FCC Rcd 6157, 6159 n.7 (2015) and the cases cited therein.

² *COVID-19 Telehealth Program*, WC Docket No. 20-89, FCC 20-44 (April 2, 2020) (“*Report and Order*”). AHA files this Petition pursuant to section 1.429 or, in the alternative, section 1.106 of the Commission’s rules. 47 C.F.R. §§ 1.429; 1.106. To the extent this petition relies on facts or arguments not previously presented to the Commission, grant of the petition is proper because there was no public comment period for the COVID-19 Telehealth Program and, in any

AHA applauds the speed with which the Commission has moved to implement the COVID-19 Telehealth Program pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act.³ We agree with Chairman Pai that the Commission’s pro-telehealth policies have “taken on serious urgency.”⁴ The COVID-19 Telehealth Program will help give HCPs timely access to the tools they need to coordinate and deliver care at a time when their resources are being stretched to (and in some cases beyond) capacity.

COVID-19 does not discriminate on the basis of income or geography, and thus “represents extraordinary and unprecedented health challenges.”⁵ Simply put, anyone can be exposed to COVID-19, and the entire healthcare system – from the largest hospitals to individual caregivers – is engaged in the fight against this virus.

AHA therefore requests – in the most urgent terms – that the Commission immediately reconsider its decision to limit participation in the COVID-19 Telehealth Program to the categories of HCPs set forth in section 254(h)(7)(B) of the Communications Act of 1934, as

event, it is clear that “consideration of the facts or arguments relied on is required in the public interest.” 47 C.F.R. §§ 1.429(b)(3); 1.106(c)(2). AHA further requests that the Commission seek permission from the Office of Management and Budget to amend the information collection associated with the COVID-19 Telehealth Program, OMB Control No: 3060-1271, to the extent necessary to effectuate this Petition.

³ CARES Act, Pub. L. No 116-136, 134 Stat. 281 (2020). As discussed *infra*, the CARES Act appropriates \$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 . . .” *Id.*

⁴ Separate Statement of Chairman Ajit Pai re: *COVID-19 Telehealth Program*, WC Docket No. 20-89, FCC 20-44 (rel. April 2, 2020).

⁵ *Report and Order* ¶ 13.

amended.⁶ The CARES Act contained no such restriction,⁷ and eligibility for participation in the COVID-19 Telehealth Program should be extended all types of hospitals and other direct patient care facilities regardless of their size, location or for-profit or not-for-profit status, including but not limited to rural and urban short-term acute-care, long-term acute care, critical access hospitals and skilled nursing facilities.⁸

The Commission has previously recognized the important role that both for-profit and non-profit hospitals play in our healthcare system. In 2003, the Commission determined that emergency departments of for-profit hospitals that participate in Medicare should be deemed “public” health care providers within the meaning of section 254(h)(7)(B) of the Act.⁹ The Commission found that dedicated emergency departments in for-profit hospitals are required,

⁶ *Report and Order* ¶ 20. Eligible HCPs under Section 254(h)(7)(B) include (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; and (8) consortia of health care providers consisting of one or more entities falling into the first seven categories. 47 U.S.C § 254(h)(7)(B).

⁷ CARES Act, Pub. L. No 116-136, 134 Stat. 281 (2020) (“[T]he Federal Communications Commission *may* rely on the rules of the Commission under part 54 of title 47, Code of Federal Regulations, in administering the amount provided under the heading in this Act if the Commission determines that such administration is in the public interest.”) (emphasis added).

⁸ For the sake of clarity, healthcare systems also should be permitted to serve as consortium leaders, regardless of whether they would be otherwise eligible to participate in the Rural Health Care program under the Commission’s rules.

⁹ *Rural Health Care Support Mechanism*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546, at ¶¶ 13-44 (2003) (*Rural Health Care Order*).

pursuant to the Emergency Medical Treatment and Labor Act (“EMTALA”),¹⁰ to provide medical screening examinations to all patients who present themselves and to stabilize or arrange for appropriate transfer of those patients with emergency conditions.¹¹ Thus, such providers are “public” in nature by virtue of the persons they are required, pursuant to EMTALA, to examine and/or treat for emergency medical conditions. In the instant crisis, the fight against COVID-19 is not limited to emergency rooms. Entire floors, and even entire hospitals, have been dedicated to treating COVID-19 patients.¹²

Moreover, the Commission’s assertion that restricting participation in the COVID-19 Telehealth Program will “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” is not correct.¹³ The question of whether a HCP is impacted by the COVID-19 crisis or whether its participation in the COVID-19 Telehealth Program will achieve the goals of the program is in no way affected by the HCP’s status as a for-profit or non-profit entity. *All* HCPs touched by the COVID-19 crisis are affected financially, particularly

¹⁰ EMTALA was passed as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), which was signed into law in 1986. *See* Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, § 9121, 100 Stat. 82 (1986).

¹¹ *See* 42 U.S.C. § 1395dd; *Rural Health Care Order* at ¶ 13.

¹² *See, e.g.,* Andus Chen, *Emptied Clinics And Hospitals Prepare For New Purpose In COVID-19 Pandemic*, WBUR.org (Mar. 27, 2020), <https://www.wbur.org/commonhealth/2020/03/27/coronavirus-specialty-hospital-conversions-patient-beds>; Miguel Marquez and Sonia Moghe, *Inside a Brooklyn hospital that is overwhelmed with Covid-19 patients and deaths*, CNN.com (Mar. 31, 2020), <https://www.cnn.com/2020/03/30/us/brooklyn-hospital-coronavirus-patients-deaths/index.html> (“I can say that every corner every part of the hallway, every room, every space has been filled up to capacity with our patients . . .”).

¹³ *Report and Order* ¶ 20.

those that have to shut down regular operations while incurring substantial expenses for supplies, taking care of front line caregivers and building surge capacity.¹⁴ HCPs of all stripes are contending with severe supply shortages that materially affect their ability to give proper care to COVID-19 patients.¹⁵ The Commission should not unnecessarily prevent HCPs that may be in the most need of COVID-19 Telehealth Program funding – and best prepared to take advantage of that funding to serve patients – from doing so on the basis of their tax status or ownership structure.

Indeed, many small- and mid-size hospitals operate as part of a larger health system, participate in joint ventures between rural hospitals and for-profit health care systems, are managed by larger health systems, or operate under control of a joint operating company with a common board for multiple separately owned facilities. Through these arrangements the hospitals are able to maximize efficiencies, improve economies of scale, improve access to care in the community, and share management services. Yet, these very same small- and mid-size hospitals could be ineligible to participate in the COVID-19 Telehealth Program to the extent that the above-described arrangements connect them to for-profit providers.

The AHA has urged that all possible levers be used by both the government and the private sector to ensure front line heroic providers battling against COVID-19 have what they need for protection and to provide care for their patients and communities – countless lives are

¹⁴ See, e.g., Patti Neighmond, *Growing Costs And Shrinking Revenues Squeeze Hospitals As They Brace For Coronavirus*, NPR (April 6, 2020), <https://www.npr.org/sections/health-shots/2020/04/06/828108255/growing-costs-and-shrinking-revenues-squeeze-hospitals-as-they-brace-for-coronav>.

¹⁵ See, e.g., Amy Goldstein, *HHS watchdog finds severe hospital shortages in combating covid-19*, Washington Post (April 6, 2020), https://www.washingtonpost.com/national/health-science/hhs-watchdog-agency-finds-severe-hospital-shortages-in-combating-covid-19/2020/04/06/2906af7e-7811-11ea-a130-df573469f094_story.html.

depending on it. AHA deeply appreciates the Commission's efforts to date, and respectfully requests that it grant this petition for reconsideration to maximize the benefits delivered by the COVID-19 Telehealth Program.

Respectfully submitted,

By: _____/s/_____

Ashley B. Thompson
Senior Vice President
Public Policy Analysis and Development

AMERICAN HOSPITAL ASSOCIATION
Two City Center, Suite 400
800 10th Street, N.W.
Washington, D.C. 20001
(202) 638-1100

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