

Administrator's Decision on Rural Health Care Program Appeal

Via Electronic and Certified Mail

June 14, 2018

Nate Coogan
Western New York Rural Area Health Education Center
20 Duncan St., P.O. Box 152
Warsaw, NY 14509

Re: Western New York Rural Area Health Education Center
Appeal of USAC Decision for Funding Request Number 16885101

Dear Mr. Coogan:

The Universal Service Administrative Company (USAC) has completed its evaluation of the June 7, 2017 letter of appeal (Appeal) submitted by Western New York Rural Area Health Education Center (R-AHEC), health care provider (HCP) number 17268.¹ USAC previously denied a portion of R-AHEC's funding request for support under the federal Universal Service Healthcare Connect Fund Program (HCF Program) for funding year 2016 (FY 2016). Specifically, USAC denied funding for Expense Items 1, 5 and 8 (Expense Items) of R-AHEC's funding request number (FRN) 16885101. The Appeal requests that USAC reverse the denial of funding for these Expense Items.²

USAC has reviewed the Appeal and the facts related to this matter and has determined that R-AHEC complied with the Federal Communications Commission (FCC) rules for Expense Items 1 and 5. Therefore, USAC reverses its decision for these two Expense Items and will proceed with its review of R-AHEC's funding request for these Expense Items. However, with respect to Expense Item 8, USAC has determined that the information on the FCC Form 460 (Eligibility and Registration Form) for the health care provider associated with Expense Item 8, Noyes Mental Health Service, did not match the information provided on the supporting documentation submitted with the FCC Form 462 (Funding Request Form) because R-AHEC did not submit an updated

¹ Letter from Nate Wilson, Western New York Rural Area Health Education Center (R-AHEC), to Rural Health Care Division, USAC (June 7, 2017) (Appeal). Although the letter of appeal is dated June 7, 2017, R-AHEC submitted its appeal to USAC, via email, on June 9, 2017. *See* Email from Nate Wilson, Western New York Rural Area Health Education Center (R-AHEC), to Rural Health Care Division, USAC (June 9, 2017).

² *Id.*

FCC Form 460 within 30 days of the material change.³ As a result, USAC denies R-AHEC's request to reverse the funding decision for Expense Item 8.

The FCC requires applicants to file a Form 460 (Eligibility and Registration Form) to obtain an eligibility determination from USAC.⁴ USAC reviews this information and determines whether the HCP is an eligible entity under FCC rules and requirements.⁵

Additionally, eligible health care providers (HCPs) or consortia of HCPs applying for HCF Program support are required to submit requests for funding by filing a Form 462 (Funding Request Form).⁶ The HCP or consortium uses the Form 462 to provide information about the services selected, including information about the contract with the selected service provider, and to certify that those services are the most cost-effective option of the offers received.⁷ The Form 462 is also used to specify the length of the contract term with the service provider, and to identify the number of voluntary contract extensions available under the contract.⁸ If the HCP or consortium is requesting support for services associated with a Master Services Agreement (MSA) approved under the Healthcare Connect Fund, the entity may exercise voluntary options to extend the MSA without undergoing additional competitive bidding.⁹

HCPs are required to submit an updated Form 460, whenever there is a material change to the form previously submitted. Such updated form must be submitted to USAC within 30 days of a material change.¹⁰ A material change includes changes to the HCP's name, site location, contact information or eligible entity type.¹¹

³ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16773, para. 214 (2012) (*Healthcare Connect Fund Order*) ("All HCPs, however, are required to submit an updated Form 460 within 30 days of a material change, such as a change in the HCP's name, site location, contact information or eligible entity type, or for non-rural hospitals, an increase in the number of licensed patient beds such that the hospital goes from having fewer than 400 licensed beds to 400 or more licensed beds.").

⁴ See *Healthcare Connect Fund Order*, 27 FCC Rcd at 16773, para. 215. For each HCP, applicants are required to provide the HCP's address and contact information, identify the eligible HCP type, provide an address for each physical location that will receive supported connectivity, provide a brief explanation of why the HCP is eligible under the FCC's rules and orders, and certify to the accuracy of the information under penalty of perjury.

⁵ *Id.*

⁶ See Rural Health Care Universal Service, Healthcare Connect Fund, Funding Request Form, OMB 3060-0804 (July 2014) (*FCC Form 462*); FCC Form 462 Instructions, Rural Health Care Universal Service, Healthcare Connect Fund, Funding Request Form, OMB 3060-0804, at 2-3 (July 2014) (*FCC Form 462 Instructions*).

⁷ See Step 6 Submit Funding Requests, Universal Service Administrative Company, available at <http://www.usac.org/rhc/healthcare-connect/individual/step06/default.aspx> (last visited Apr. 16, 2018) (*Step 6*).

⁸ See *FCC Form 462 Instructions* at 9-10.

⁹ See *Healthcare Connect Fund Order*, 27 FCC Rcd at 16790-91, para. 259-60.

¹⁰ See *id.* at 16773, para. 214.

¹¹ *Id.*

Background

On September 23, 2016, R-AHEC submitted a Form 460 seeking an eligibility determination for Noyes Mental Health Service (Noyes Mental Health, HCP 46166).¹² The Form 460 listed Noyes Mental Health's address as 1 Main Street, Dansville, NY 14437.¹³ R-AHEC also submitted, with its Form 460, a Community Mental Health Checklist, and a mental health license.¹⁴ The address for Noyes Mental Health noted on both of these documents was 1 Main Street.¹⁵ On September 30, 2016, USAC approved the Form 460.¹⁶

On November 15, 2016, R-AHEC submitted a Form 462 requesting FY 2016 support for eligible services from Windstream Communications, LLC (Windstream) for FRN 16885101.¹⁷ The MSA (service provider contract) submitted with this Form 462 contained language regarding the effective term of service for Expense Items 1 and 5.¹⁸ On January 4, 2017, USAC issued a notice to R-AHEC, informing the consortium that USAC was unable to identify the MSA contract extensions for the funding requested in the Form.¹⁹ That same day, R-AHEC responded to USAC's information request and provided the automatic contract extension language found in the MSA for the services covered by FRN 16885101, as well as the contract amendments that identified the services and terms for each HCP.²⁰

On April 12, 2017, USAC issued a Funding Commitment Letter (FCL) for FRN 16885101 which approved funding for the expense items listed in the FCL, except for Expense Items 1, 5 and 8.²¹ On that same day, R-AHEC emailed USAC to inquire about the three Expense Items that were denied.²² On April 13, 2017, USAC informed R-AHEC that Expense Items 1 and 5 were denied because the related contract expired prior to the beginning of FY 2016; and Expense Item 8, which is associated with Noyes Mental Health, was denied because the address given on the Form 460 for Noyes Mental Health did not match the address given for the HCP in the supporting documentation.²³ On June 9, 2017, R-AHEC filed the Appeal.²⁴

¹² FCC Form 460 for HCP 46166 (Sept. 23, 2016).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Community Mental Health Checklist for HCP 46166 (Nov. 11, 2015); see also New York State Office of Mental Health Operating Certificate Outpatient Facilities Class for HCP 46166 (June 24, 2015).

¹⁶ Email from the Rural Health Care Division, USAC, to Nate Wilson, R-AHEC (Sept. 30, 2016).

¹⁷ See FY 2016 FCC Form 462 for FRN 16885101 (Nov. 15, 2016).

¹⁸ *Id.* at 3-4; see also *id.* at Attachment (Service Agreement, Exhibit A) para. 2(a).

¹⁹ Email from Inna Malashenok, USAC, to Nate Wilson *et al.*, R-AHEC (Jan. 4, 2017, 11:23 am).

²⁰ Email from Nate Wilson, R-AHEC, to Inna Malashenok, USAC (Jan. 4, 2017, 02:23 pm).

²¹ FY 2016 Funding Commitment Letter (FCL) for FRN 16885101 (Apr. 12, 2017).

²² Email from Nate Wilson, R-AHEC, to RHC-HCP, USAC (Apr. 12, 2017).

²³ Email from RHC-HCP, USAC, to Nate Wilson, R-AHEC (Apr. 13, 2017).

²⁴ See generally Appeal.

In the Appeal, R-AHEC requests that USAC reverse the denial of funding for Expense Items 1 and 5, asserting that “the deficiency in question is not truly a deficiency,” because USAC calculated the contract end dates incorrectly, and the contract associated with Expense Items 1 and 5 allows for automatic contract renewals upon completion of the contract term.²⁵ With respect to Expense Item 8, R-AHEC asserts that it was not given an opportunity to correct the error with Expense Item 8 on the Form 460 for Noyes Mental Health, and that “an incorrect address was somehow entered onto the Form 460.”²⁶ With its Appeal, R-AHEC provided invoices from Windstream that specified the installation dates for Expense Items 1 and 5, and the Letter of Agency (LOA) it previously submitted with the Form 460 for Expense Item 8 noting the new address for Noyes Mental Health.

Discussion

Expense Items 1 and 5

Based on a review of the facts and documentation provided, we find that R-AHEC has demonstrated that it complied with FCC rules with respect to Expense Items 1 and 5. The contract covering Expense Items 1 and 5 is a MSA that provides the required information in compliance with HCF Program rules.²⁷ The MSA was signed on June 25, 2012 and could be extended through June 25, 2018.²⁸ During the review of the Form 462, R-AHEC provided USAC with contract addendums showing that services to the HCPs for Expense Items 1 and 5 had been extended through 2017.²⁹ With its appeal, R-AHEC provided invoices for the HCPs associated with Expense Items 1 and 5, showing that service began at the locations on June 26, 2014;³⁰ this service start date was within the term of the original MSA contract for the Expense Items.³¹ Accordingly, USAC reverses the funding decision for Expense Items 1 and 5, and will proceed with its review of these Expense Items.

Expense Item 8

With respect to Expense Item 8, R-AHEC’s appeal is denied. Applicants are required to submit an updated Form 460 within 30 days of a material change, such as a change in the HCP’s name or site location.³² On September 23, 2016, R-AHEC submitted the Form 460 and supporting documentation for Noyes Mental Health, located at the 1 Main Street address.³³ In January 2017, Noyes Mental

²⁵ *Id.* at 3-5.

²⁶ *Id.* at 3.

²⁷ *Id.* at 3-4; *see also id.* at Attachment (Service Agreement, Exhibit A) para. 2(a). The MSA provides the effective date, as well as the date that it is fully executed. Also, the contract will automatically extend for an additional term equal to the original contract duration.

²⁸ *Id.* at Attachment (Service Agreement), pg. 1.

²⁹ Email from Nate Wilson, R-AHEC to Inna Malashenok, USAC (Jan. 4, 2017).

³⁰ *Id.* at Attachment (Windstream Billing Invoice Nos. 5741007 and 57490427).

³¹ *See supra* note 17. R-AHEC may still exercise automatic contract extensions for an additional 36 months.

³² *Healthcare Connect Fund Order*, 27 FCC Rcd at 16773, para. 214.

³³ FY 2016 FCC Form 460 for Noyes Mental Health (Sept. 23, 2016) (R-AHEC Application).

Health moved from 1 Main Street to the 9221 Robert Hart Drive address.³⁴ When USAC reviewed the Form 462, USAC found that the address given on the supporting documentation for Noyes Mental Health did not match the address given on the Form 460 for the HCP, and USAC therefore denied funding for Expense Item 8.³⁵

In its Appeal, R-AHEC argues that Expense Item 8 should not be denied, because USAC did not discover the address discrepancy on the Form 460 and supporting documentation during its initial review and did not provide R-AHEC an opportunity to cure the error.³⁶ R-AHEC argues that it should have been allowed to correct Noyes Mental Health's address on the Form 460 without penalty in accordance with the ministerial and clerical errors guidance provided in the *Healthcare Connect Fund Order*.³⁷ R-AHEC's reliance on the limited ministerial and clerical errors provision of the *Healthcare Connect Fund Order* is misplaced. While the Order gives applicants the opportunity to cure ministerial and clerical errors that USAC discovers after its initial review, the Order also states that the applicant is solely responsible for submitting accurate information.³⁸ The FCC requires HCF Program participants to update the Form 460 with any material changes to the information on file with USAC.³⁹ R-AHEC did not file a revised Form 460 to note a change of address for Noyes Mental Health. Therefore, USAC denies R-AHEC's appeal with respect to Expense Item 8 which relates to services for Noyes Mental Health.

If you wish to appeal the decision or request a waiver, you can follow the instructions pursuant to 47 C.F.R. Part 54, Subpart I (47 C.F.R. §§ 54.719 to 725). Further instructions for filing appeals or requesting waivers are available at:

<http://www.usac.org/about/about/program-integrity/appeals.aspx>.

Sincerely,

/s/ Universal Service Administrative Company

³⁴ See UR Medicine Noyes Health opens new Mental Health and Wellness Building, UNIVERSITY OF ROCHESTER MEDICAL CENTER (Jan. 20, 2017) available at https://www.noyes-health.org/news_articles/ur-medicine-noyes-health-opens-new-mental-health-and-wellness-building (last visited Apr. 16, 2018).

³⁵ *Healthcare Connect Fund Order*, 27 FCC Rcd at 16773, para. 214.

³⁶ See generally Appeal.

³⁷ See *Healthcare Connect Fund Order*, 27 FCC Rcd at 16803, para. 300 (stating that USAC will notify applicants of any ministerial and clerical errors discovered in a funding request within 21 days of submission).

³⁸ *Id.* ("We allow applicants the opportunity to cure errors on their submissions after initial USAC review, although the responsibility to submit complete and accurate information remains at all times the sole responsibility of the applicant.")

³⁹ See *Healthcare Connect Fund Order*, 27 FCC Rcd at 16773, para. 214.