Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of ) WC Docket No. 18-213

Promoting Telehealth for )

Low-Income Consumers )

COMMENTS OF CONNECTME AUTHORITY, STATE OF MAINE

August 29, 2019

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**INTRODUCTION**

**The ConnectME Authority supports a flexible and outcome-based Pilot program.**

The State of Maine (“Maine”) appreciates the opportunity to submit comments on the Federal Communications Commission’s (FCC) Notice of Proposed Rulemaking, WC Docket No. 18-213, *Promoting Telehealth for Low-Income Consumers*, adopted July 10, 2019 and published in the Federal Register on July 29, 2019. (“Notice”).[[1]](#footnote-1)

Maine supports the FCC taking a progressive view on the importance of Internet access and improved health outcomes with telehealth services. We agree that patients who cannot afford or lack robust broadband access do not get the benefits of innovative telehealth services.[[2]](#footnote-2)

Maine concurs with the FCC’s four goals which we believe can be best met through an outcome-based approach that allows applicants to craft flexible projects that meet the FCC’s driver of promoting connected care.[[3]](#footnote-3)

We support the objective of having closer collaboration with the Center for Medicare & Medicaid Services (CMS) and the Office of the National Coordinator (ONC) for Health Information Technology (HIT). CMS has well-established demonstration and waiver projects and pilots that focus on evidence-based services that result in better health outcomes and quality of life for patients.[[4]](#footnote-4) CMS’s evaluation process for these initiatives is thorough and includes goals, objectives, outcomes, detailed work plans, and ongoing reports and evaluation. Like the FCC programs, CMS has strict program requirements to guard against fraud, waste, and abuse. Further collaboration with CMS and ONC can be done by the agencies working together to identify commonalities for reporting and measuring the success of programs and allowing applications that involve joint efforts with CMS to submit documentation required by CMS to meet some of the FCC requirements (and vice versa).

**I. ConnectME supports the Pilot and agrees that the FCC should not limit the number of projects.**

28.36. The Notice proposes an initial $100 million 3-year Pilot program, which seems reasonable given the other worthwhile initiatives the FCC governs. Maine also agrees with the FCC that it should not limit the number of Pilot projects or place a dollar amount on each project. However, it also seems prudent for the FCC to establish some level of funding, above which an application must include additional rationale for the request including the expected dollar savings which would justify a higher level of funding.

30.31. The 85% discount seems to generally strike the right balance as other FCC programs recognize the importance of having “skin in the game.” However, it is important that low-income patients not be faced with a financial burden that becomes an obstacle for them. The State recommends that the FCC review and analyze existing consumer rates and consider placing a cap on patient rates. Maine also agrees that both fixed and mobile broadband should qualify for a connected care project.[[5]](#footnote-5)

**II. ConnectME believes the term “health” should include recognized and accepted “health” terms and services provided by an array of professionals.**

17. The Notice lists chronic health conditions such as diabetes, kidney disease, heart disease, and stroke recovery as qualifying for the Pilot. In keeping with the notion of flexibility, Maine recommends that the FCC allow applicants to identify additional conditions which would be improved through remote and telehealth efforts. For example, as a rural state, Maine emphasizes aging-in-place which brings both quantitative and qualitative benefits. The final rule should allow Pilot projects that promote this important health factor.

Similarly, the FCC recognizes that the term “health” moved from customary physical health conditions to incorporate mental health, and now includes social aspects of an individual’s life as part of health. These “Social Determinants of Health” factors fit it with the FCC’s “Connected Care” everywhere viewpoint and patient-centric care.

**III. The FCC should expand the ways in which progress is measured to meet the goals.**

78. 81. Maine concurs with the four goals the FCC has chosen for the Pilot project. The Notice includes several ways in which Goal 1. *Improving health outcomes through connected care through telehealth* can be accomplished by the Pilot. In addition, telehealth increases patient satisfaction by allowing them to receive health services in convenient places, including their homes.[[6]](#footnote-6) Also, primary care providers and specialists can be scarce in rural states such as Maine, and expanding the use of remote and telehealth services results in more effective and efficient care which bring improved health outcomes.[[7]](#footnote-7)

82. 83.90. Maine agrees with the list of burdens identified under Goal 2. *Reducing health care costs for patients, facilities, and the health care system*. Our State has long recognized that low-income patients face budget constraints that prevent them from accessing remote and telehealth connected care services. As the Notice points out Medicare and Medicaid and in general, the Veterans Administration do not pay for Internet access for patients.[[8]](#footnote-8)

Maine places a strong emphasis on citizens being able to age-in-place and remain in their homes longer while also being safe and as healthy as possible.[[9]](#footnote-9) The alternative is typically moving to a long-term care facility which is expensive, and in a rural state such as Maine, may be many miles away from the person’s home, and family, and support network. Measuring the savings associated with telehealth allowing individuals to age-in-place can be done by calculating the difference between the cost of an average long-term care facility versus telehealth and home health services. We believe that the FCC should add aging-in-place as a recognized means of measuring the success of progress under Goal No. 2, and the other goals as well.

85. For Goal No. 3, supporting *the trend towards connected care everywhere*, Maine believes that the costs in terms of time and dollars spent on transportation and travel to facilities, likely results in poorer health outcomes. Patients may not have transportation and appointments are either not made or are not kept.

The CMS federal Meaningful Use Program (now termed Promoting Interoperability)[[10]](#footnote-10) spent considerable time asking health care providers why they were reluctant to adopt electronic health records (EHRs) and systems. The providers indicated that the costs of the EHRs was significant and created financial burdens. Subject to individual limits, CMS provides 100% federal funding for eligible hospital and professionals to implement EHRs.[[11]](#footnote-11) The Promoting Interoperability Program also provides 90% Federal/10% state match for connecting EHRs to clinical data warehouses[[12]](#footnote-12) and for administrative costs. The Promoting Interoperability Program got EHRs to HCPS; now the FCC Pilot can bring Internet access (remote and telehealth services) to both HCPs and their low-income patients.

78. We believe that Goal No. 4, *determining how USF funding can positively impact existing telehealth initiatives*, can be measured by considering the financial and health burdens the Notice identifies, and the benefits that Internet access brings to HCPs and low-income patients. A recent Maine survey on Broadband access and use showed that aging-in-place with Internet and telehealth services provides peace of mind for the individual, families, and care givers.[[13]](#footnote-13)

**IV. To promote market based approaches, the FCC should not require HCPs to only contract with ETCs.**

37. In terms of eligible health care providers, the FCC expressly recognizes that telehealth “includes a wide variety of remote health care services beyond the doctor–patient relationship.”[[14]](#footnote-14) Maine recommends that the FCC base its decision on who an eligible “provider” can be on what the proposed service is designed to accomplish. This is consistent with the FCC’s stated goals of increasing the use of telehealth and connected care.

69. Generally, Maine agrees that the competitive bidding process under the HCF Program is rational and allows HCPs some flexibility.[[15]](#footnote-15) However, small scale projects may be led by rural and smaller HCPs, where the Request For Proposal (RFP) process may not be suitable. Maine recommends that the FCC adopt a flexible approach where a “small project” can require an exemption to the competitive bid requirements. Otherwise, we believe a number of rural HCPs may not participate in the Pilot.

64. 48. Maine agrees with the FCC proposal that HCPs should not be restricted to purchasing broadband service from only Eligible Telecommunications Carriers. (ETCs). The broadband backdrop has changed significantly in the past several years, giving HCPs more service provider options.[[16]](#footnote-16) Some may argue that ETCs are directly regulated by the FCC; however, the FCC has already recognized other service providers, such as rural co-ops, as carriers and doing so does not hinder the FCC’s authority nor its ability to take regulatory action such as taking back money already disbursed. Limiting the participation in the connected care Pilot may have an adverse impact on the number and quality of the projects, particularly smaller projects serving the most rural low-income patients and HCPs.

**V. The FCC should not require in cost allocation--Internet access provides important secondary health benefits.**

34. Maine is strongly opposed to a cost allocation scheme for patients who may use their Internet access for purposes outside of receiving remote or telehealth services: 1. The Meaningful Use program brought Electronic Health Records to health care providers; 2. The HCF connects HCPs to each other; and 3.The Pilot will connect patients with their health care providers. Without all three, the Pilot would fall short.

It would be next to impossible to adopt and administer a cost allocation policy. And if patients get a secondary benefit from having an Internet connection, that is good thing. Access has additional health benefits of reducing isolation by staying in contact with family, friends, and caregivers; it promotes opportunities to incorporate Social Determinants of Health; and it can lessen mental health concerns. For Internet carriers, it’s likely to increase take rates and higher tiered services which in turn, can reduce costs for broadband expansion in rural areas.[[17]](#footnote-17)

**VI. The FCC should simplify the connected care process and make it electronic.**

103. 67. 70. 40. Although the current forms and processes may work well for those familiar with the FCC programs, the Pilot will likely draw new applicants who may view the administrative requirements as potential hurdles to participation. With that in mind, modifications to the forms or the Universal Service Access Company (USAC) process to reduce administrative burdens would be helpful, especially making the connected care Pilot process electronic.

67. The final rule should ensure that the entity that provides the Letter of Agency be allowed to be the administrative entity for a consortium. Given the FCC’s intent to further collaborate with CMS, and that state Medicaid agencies are responsible for much of the health care services provided to the elderly, disabled, and very low-income, the rule should allow collaborative efforts that permit a State agency (Medicaid, Telehealth, or Broadband Agency) on behalf of HCPs, to be the administrative entity.

The Notice asks whether applications that include five or more Health Professional Shortage Areas or Medically Underserved Areas should be given extra points.[[18]](#footnote-18) While it seems reasonable to award extra points, the FCC may want to consider a tiered approach for the number of Areas served. Maine believes that applications consisting of consortiums and/or collaborative efforts with CMS demonstrations or waivers should also be awarded extra points as they may have proven results of using remote telehealth services and would benefit from access to the Internet.

53. 70. The Notice asks whether a potential applicant should be required to submit a contract for Internet services with the application. If the FCC adopts a 120 day deadline, an applicant would have to conduct a full-blown RFP process, choose an Internet service provider, and negotiate a contract within that time period. That would be very difficult to accomplish in 120 days. The 120 days may be sufficient, however, if the application did not have to include an executed contract. Once again, we believe that a better approach would be to adopt a “smaller project” exception to the RFP requirements.

40.44. Requiring all HCPs to have prior experience with telehealth and long-term patient care limits the potential universe of Pilot projects. Some HCPs and professionals may have prior telehealth experience, while others have long-term care or experience delivering home and community based services. A more flexible approach would be for the FCC to consider the merits of the each application, including the experience of the health care or other professionals during the evaluation process.

**VII. The FCC should adopt an outcome-based approaches and should not require clinical trials.**

96. The Notice asks whether the Pilot should be conducted using randomized controlled trials. The four stated goals can be measured without the use of clinical trials. For example, reduced transportation costs, Emergency Department visits and hospital admissions can be measured through Medicare and Medicaid claims, VA claims, and Tribal medical claims which all HCPs get. CMS Medicare and Medicaid demonstration and waiver projects have sophisticated financial constraints and budget requirements which measure costs, health improvements, and savings.[[19]](#footnote-19)

Studies and clinical information demonstrate that there are many health benefits that are generally accepted and which a formal clinical trial study may not reap any significant information that would outweigh the “cost” of having a formal clinical trial.[[20]](#footnote-20) Other measures such as patient satisfaction can be achieved through the use of patient and family surveys, as well as HCP surveys and observations. Maine recommends that the FCC use an outcome- and evidence-based approach where applications include how progress toward meeting the goals will be measured with methodologies that are adequately defined to meet FCC requirements.

In terms of submitting raw data, the administrative burdens of doing so likely far outweigh any benefits associated with having raw data. There could be Health Insurance Portability and Accountability Act or other privacy concerns associated with transmitting and having access to raw data. The intent of the rule is to measure improvements in the efficiency and effectiveness of remote and telehealth services. The HCP and the patient would have expectations and would measure the improvement of an individual’s health, but the success of the Pilot project in terms of meeting the FCC’s goals, is at the higher project level. Any concerns about the accuracy of the information provided can be dealt with in targeted or random reviews and audits. Additionally, for applications that involve CMS/ONC, VA, or Tribal projects, the FCC could require the applicant to submit agency approval letters and reports to ensure that the Pilot meets FCC requirements and to guard against fraud, waste, and abuse.

Maine wants to caution the FCC that applications should include details on how patients will be transitioned off the Pilot projects should the program be discontinued. It is critical that patients not be left “stranded” and with potentially diminished health care services.

97.98.75. Throughout our comments, we have recommended flexibility and outcome-based approaches for the Pilot projects. We agree with the data elements the FCC proposes to include on reports.[[21]](#footnote-21) In terms of enforcement, if a Pilot project does not meet the reporting requirements, the FCC could require the project to enter into a remedial action plan; if that does not improve performance, the FCC could retain project funding until the project is in compliance.

**VIII. The FCC should add CMS/ONC on the evaluation team—they are experts in the field of low-income and rural patients.**

54. The Notice seeks comments on the evaluation team. Maine believes that involving federal Telehealth Resource Centers would benefit the evaluation process because of their expertise in telehealth services. Given the Pilot’s goals to reduce costs, improve healthcare outcomes, and increase the HCF’s contribution to telehealth, we recommend having CMS and ONC officials on the evaluation team. The focus of the Pilot is health care services and they are fundamental to low-income rural health care, including telehealth.

93. Maine believes that self-certification along with random or targeted audits are sufficient to guard against fraud, waste, and abuse.[[22]](#footnote-22)

71. 74. 75. 76. In terms of Pilot administration, Maine generally agrees with the timeframes for funding and reimbursement requests. To help ensure against fraud, waste, and abuse, Maine agrees that Pilot projects should be subject to random compliance audits by USAC similar to the HCF program.

**IX. The FCC has ample legal authority to adopt the Pilot program.**

106. The Notice seeks comments on whether section 42 U.S. Code §254(h)(2)(A) authorizes the creation of a Pilot program that supports patient broadband service connections for connected care. Maine believes that a connection from a health care provider to a patient falls within 254(h)(1)(A) (authorizing universal service support for “telecommunications services . . . necessary for the provision of health care services”) combined with 254(h)(2)(A) (directing the Commission to enhance access to advanced services by health care providers) provide the authority for the Commission to create the Pilot program. The telehealth services envisioned by the connected care Pilot program are a form of “advanced services” that Congress specifically directed the FCC to support.[[23]](#footnote-23) The FCC’s existing authority is sufficient to support the connected care Pilot Program.

**CONCLUSION**

Maine once again appreciates the opportunity to provide comments on this critical new Pilot program. We support the Pilot and encourage the FCC to adopt an outcome-based approach for projects that foster collaborative efforts between the FCC and CMS and VA demonstration projects, and tribal initiatives.

1. The comments are a result of a collaborative effort within Maine consisting of the ConnectMe Authority (the State’s broadband agency), Maine Department of Health and Human Services, MaineCare Services (the State’s Medicaid agency), Coastal Enterprises Incorporated, Mission Broadband, The Northeast Telehealth Resource Center, and other stakeholders. The Telephone Association of Maine participated in this stakeholder effort and will be filing separate comments, and will identify specific comments that may diverge from their views. [↑](#footnote-ref-1)
2. Notice of Proposed Rulemaking, WC Docket No. 18-213, *Promoting Telehealth for Low-Income Consumers*, at para. 1. [↑](#footnote-ref-2)
3. Ibid. at 3. [↑](#footnote-ref-3)
4. https://www.medicaid.gov/medicaid/section-1115-demo/about-1115/index.html [↑](#footnote-ref-4)
5. Notice of Proposed Rulemaking, WC Docket No. 18-213, *Promoting Telehealth for Low-Income Consumers*, at para. 19. [↑](#footnote-ref-5)
6. Ibid at para.15. [↑](#footnote-ref-6)
7. Ibid at para.57. [↑](#footnote-ref-7)
8. “The record indicates that the VA’s tablet program, which provides patient broadband connections for a small fraction of veterans who receive care through the VA, is the only federal agency program that currently funds patient broadband connections specifically for connected care.” Notice of Proposed Rulemaking, WC Docket No. 18-213, *Promoting Telehealth for Low-Income Consumers*, at para. 19. [↑](#footnote-ref-8)
9. *See,* e.g., <https://bangordailynews.com/2017/03/07/next/more-information-about-aging-in-place-strategies-in-maine/> More information about aging-in-place strategies in Maine**,** [Meg Haskell](https://bangordailynews.com/author/meg-haskell/), BDN Staff**,** March 7, 2017. [↑](#footnote-ref-9)
10. <https://www.cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/index.html?redirect=/ehrincentiveprograms/> and 42 CFR Part 495 – Standards for the Electronic Health Record Technology Incentive Program. [↑](#footnote-ref-10)
11. Ibid. [↑](#footnote-ref-11)
12. Under CMS’s Promoting Interoperability Program, every state is required to have an approved State Medicaid Health Plan (SMHP) which is a detailed five-year roadmap of Health Information Technology, including an inventory of all health systems and telehealth services The SMHP includes mission, goals, objectives, milestones, activities, and measurements along with deliverables and tracking. For Pilot projects that propose a collaborative approach with Medicaid, the VA, or other agencies, asking the applicant to submit current state Health Information Technology roadmaps would provide the FCC with even more assurances of program integrity, including measurement of improved health outcomes resulting from the proposed telehealth project. [↑](#footnote-ref-12)
13. The Island Institute and the Telephone Association of Maine recently conducted a survey of Maine households on access to Internet and its use, with the results showing that telehealth and remote services were key to aging-in-place and allowing individuals to remain in their homes. [↑](#footnote-ref-13)
14. Notice of Proposed Rulemaking, WC Docket No. 18-213, *Promoting Telehealth for Low-Income Consumers*, at para. 37. [↑](#footnote-ref-14)
15. *See* 47 CFR § 54.642(c). the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to choosing a method of providing the required health care services. [↑](#footnote-ref-15)
16. Cable companies and rural electric cooperatives are investing in the infrastructure in their communities--connecting homes, businesses and community anchor institutions, such as healthcare providers, with broadband connections capable of 100 Mbps, Gigabit and multi-gigabit solutions at much lower prices. In Maine, the USDA Distance Learning and Telemedicine grant program has been successfully awarded numerous times, to provide funding for telehealth equipment and broadband infrastructure. The Northeast Telehealth Resource Center assists applicants with similar state and federal proposals to help cover costs of equipment and implementation when requested, such as the USDA Distance Learning and Telemedicine grant program. [↑](#footnote-ref-16)
17. On a similar note, Maine agrees with the FCC assessment that the Pilot Program will not financially burden existing RHC programs for the same reasons as indicated in this paragraph. Notice of Proposed Rulemaking, WC Docket No. 18-213, *Promoting Telehealth for Low-Income Consumers*, at para. 29. [↑](#footnote-ref-17)
18. Notice of Proposed Rulemaking, WC Docket No. 18-213, *Promoting Telehealth for Low-Income Consumers*, at para.57. [↑](#footnote-ref-18)
19. CMS’s determination that a demonstration is expected to be budget neutral is based on forecasts, using reasonable projections of future spending and enrollment trends. SMD # 18-009 RE: Budget Neutrality Policies for Section 1115(a) Medicaid Demonstration Projects August 22, 2018 State Medicaid Director letter. [↑](#footnote-ref-19)
20. *See*, e.g., <https://bmcmedresmethodol.biomedcentral.com/articles/10.1186/s12874-017-0399-0>. Why statistical inference from clinical trials is likely to generate false and irreproducible results. [↑](#footnote-ref-20)
21. In terms of Broadband access and speeds, the FCC could ask projects to report on the number of patients that installed broadband that did not have it; the level of broadband installed (measured by up and down speeds, whether they have fiber network); and the number of patients that installed a higher tier of broadband than what they already had. [↑](#footnote-ref-21)
22. As a condition of each section 1115(a) demonstration approval, the Special Terms and Conditions require that state officials attest to the accuracy of the data provided to CMS, including the data supplied by the HCP. CMS also performs adjudication for every demonstration at the conclusion of each approval period. This method has proven to be very effective at avoiding fraud, waste and abuse and would serve the FCC well for the Pilot projects. <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/MedicareProviderSupEnroll/EnrollmentApplications.html> [↑](#footnote-ref-22)
23. [↑](#footnote-ref-23)