



PUBLIC NOTICE

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DA 19-1253

Released: December 10, 2019

WIRELINE COMPETITION BUREAU PROVIDES GUIDANCE ON THE IMPLEMENTATION SCHEDULE FOR REFORMS ADOPTED BY THE RURAL HEALTH CARE PROGRAM PROMOTING TELEHEALTH REPORT AND ORDER

WC Docket No. 17-310

On August 20, 2019, the Federal Communications Commission released a Report and Order reforming the rules for the Rural Health Care (RHC) Program to promote transparency and predictability, and further the efficient allocation of limited program resources.¹ The Commission stated the adopted reforms would generally become effective, unless otherwise indicated, 30 days after publication of both the *RHC Promoting Telehealth Report and Order* and final rules in the Federal Register. The Commission separately indicated when particular reforms would apply in funding year 2020 versus funding year 2021,² and provided an implementation schedule summary “to ease the burden on program applicants.”³ The Commission noted, however, that, to the extent reforms require review pursuant to the Paperwork Reduction Act (PRA) of 1995, such reforms would take effect immediately upon announcement in the Federal Register of Office of Management and Budget (OMB) approval.⁴

The Federal Register publication occurred on October 11, 2019, resulting in an effective date of November 12, 2019.⁵ To provide further guidance to RHC Program participants, we provide the following implementation schedule for the newly adopted reforms:⁶

Funding Year 2020 Competitive Bidding (January 1, 2020)

- Similar services evaluated based on advertised speeds 30% above or below the speed of the requested service. (*Order* at paras. 15-16)⁷

¹ *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335 (2019) (*Order*).

² *Order*, 34 FCC Rcd at 7407, 7409, 7413, 7415-16, 7420, 7423, 7425-26, 7427, 7430, 7433, paras. 155, 159, 169, 173, 176, 183, 190, 193, 195, 199, 206, 213-14.

³ *Order*, 34 FCC Rcd at 7433, paras. 213-14.

⁴ Paperwork Reduction Act of 1995, Pub. L. No. 104-13 (codified at 44 U.S.C. §§ 3501-21); *Order*, 34 FCC Rcd at 7433-34, paras. 213, 218-19.

⁵ *See Order*, 34 FCC Rcd at 7433, para. 213; *Promoting Telehealth in Rural America*, 84 Fed. Reg. 54592 (Oct. 11, 2019).

⁶ To access the rules in effect until the new rules are implemented, visit www.ecfr.gov, click on the “Browse/Search Previous” button, select November 8, 2019 as the “Select Date” and click the “GO” button.

⁷ Citations in the parentheses are to the revised rule sections published in the Federal Register on October 11, 2019, where pertinent.

- Revised and harmonized competitive bidding certifications. (*Order* at paras. 156, 157, 172, 200; 47 CFR § 54.622(e)(1)(i)-(ix))

Opening of Funding Year 2020 Application Window (February 1, 2020)

- Elimination of limitation on support for satellite services. (*Order* at paras. 92-97)
- All Healthcare Connect Fund consortia must comply with majority-rural requirement.⁸ (*Order* at paras. 147-49)
- Prohibition on directly or indirectly soliciting or accepting gifts. (*Order* at paras. 166-69; 47 CFR § 54.622(h)(1)-(4))
- Extension of Healthcare Connect Fund Program competitive bidding exemptions to the Telecommunications Program. (*Order* at paras. 163-65; 47 CFR § 54.622(i)(1)-(5))
- Revised and harmonized funding request certifications.⁹ (*Order* at paras. 156, 168, 170, 172, 200; 47 CFR § 54.623(a)(1)(i)-(x))

Start of Funding Year 2020 (July 1, 2020)

- Annual inflation adjustment of \$150 million cap on multi-year commitments and upfront payments.¹⁰ (*Order* at paras. 138-140; 47 CFR § 54.619(a)(1)-(2))
- Prioritization of funding if demand exceeds the annual funding cap.¹¹ (*Order* at paras. 107-143; 47 CFR § 54.621(b))
- Program-wide service delivery deadline. (*Order* at paras. 180-82; 47 CFR § 54.626(a))
- Program-wide invoice deadline. (*Order* at paras. 188-89; 47 CFR § 54.627(a))
- Revised and harmonized invoice certifications for applicants and service providers.¹² (*Order* at paras. 168, 170, 172, 192-93, 200; 47 CFR § 54.627(c)(3), (d))

FY 2021 Competitive Bidding (July 1, 2020)

- Competitive bidding begins on July 1 prior to the start of the applicable funding year. (*Order* at paras. 173-75)
- Applicants must list the services for which they are seeking bids rather than what they need services to do.* (*Order* at paras. 154-55; 47 CFR § 54.622(d))
- Applicants must specify minimum requirements for weighted bid evaluation criteria, including whether they require service level guarantees.* (*Order* at para. 158; 47 CFR § 54.622(d))

⁸ The majority rural requirement is located at 47 C.F.R. § 54.607(b) in the revised rules. The first year that the majority-rural requirement may be increased by 5% due to the need to prioritize funding will occur, if at all, for funding year 2021. *See Order*, 34 FCC Rcd at 7405, para. 150.

⁹ The additional certification requirement for Telecommunications Program applicants will be implemented for funding year 2021 applications. *See* 47 CFR § 54.623(a)(1)(xi).

¹⁰ The inflation adjustments will be announced within sixty days of the determination of the yearly Gross Domestic Product Chain-type Price Index (GDP-CPI) in the same Public Notice announcing the inflation adjustment for the overall RHC Program cap. *See Order*, 34 FCC Rcd at 7401, para. 139.

¹¹ If required, prioritization of funding will occur after the close of the funding year 2020 application window.

¹² The requirement that service providers in the Telecommunications Program certify that the rural rate on the invoice does not exceed the appropriate rural rate determined by the Administrator will be implemented for funding year 2021. *See* 47 CFR § 54.627(c)(3)(ii)(F).

- Applicants must specify any disqualification factors that may be used to remove bids from consideration.* (*Order* at para. 158; 47 CFR § 54.622(d))
- Applicants must provide details of aggregate purchase arrangements with other entities.* (*Order* at para. 157; 47 CFR § 54.622(e)(2))
- Applicants must submit declaration of third-party assistance with competitive bidding form.* (*Order* at paras. 158, 170; 47 CFR § 54.622(e)(4))
- Reformed method of determining urban and rural rates by the Administrator, including publishing median urban and rural rates for eligible services in a publicly available database. (*Order* at paras. 21-67, 76-91; 47 CFR § 54.604(a)-(b), 54.605(a)-(b))
- New standard of review for seeking a waiver of median rural rate determined by the Administrator. (*Order* at paras. 68-75; 47 CFR § 54.605(c))
- Establish expanded consultant registration process. (*Order* at paras. 170-71)

Opening of Funding Year 2021 Application Window

- Requirement that USAC open an initial application filing window with an end date no later than 90 days prior to the start of the funding year. (*Order* at paras. 176-79; 47 CFR § 54.621(a))
- Elimination of distance-based support in the Telecommunications Program. (*Order* at paras. 98-101)
- Revised and harmonized program-wide documentation requirements for competitive bidding and funding requests. (*Order* at paras. 156, 158, 172, 200; 47 CFR §§ 54.622(e)(3)-(5), 54.623(a)(3))

Start of Funding Year 2021 (July 1, 2021)

- Service providers must submit declarations of third-party assistance with invoices.* (*Order* at para. 170)
- Program-wide requirements for site and service substitutions and Service Provider Identification Number (SPIN) changes.* (*Order* at paras. 194-99; 47 CFR §§ 54.624, 54.625)
- One-time 120-day extension of the program-wide invoice deadline.* (*Order* at paras. 190-91; 47 CFR § 54.627(b))
- Ability to seek an extension of the program-wide service delivery deadline.* (*Order* at paras. 183-87; 47 CFR § 54.626(b))
- Requirement that all Healthcare Connect Fund applicants submit an annual report. (47 CFR § 54.618(b))

* The *Order* anticipated that these reforms would be implemented in funding year 2020. More time is required to obtain PRA approval of the rule changes from OMB, however.¹³ These reforms will, therefore, go into effect for funding year 2021 as stated above.

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¹³ *Supra* note 5.