

California Department of Corrections and Rehabilitation (CDCR)  
California Correctional Health Care Services (CCHCS) Headquarters  
8260 Longleaf Drive, Bldg. C, Ste. 613  
Elk Grove, CA 95758

November 18, 2014

Federal Communications Commission  
Rural Health Care Support Mechanism  
WC Docket: 02-60  
445 12<sup>TH</sup> Street SW  
Washington, DC 20554

Attention: **REQUEST FOR REVIEW - LETTER OF APPEAL**

Re: **USAC DECISION – NON-RURAL HCP(S) DENIED  
PARTICIPATION IN HEALTHCARE CONNECT FUND**

*September 23, 2014 USAC Decision to Deny Site Eligibility*

Contact: Tammy Sullivan-King, Subject Matter Expert

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This Request for Review / Letter of Appeal is in response to an email Letter of Denial sent by the USAC dated Tuesday, September 23, 2014 regarding California Department of Corrections and Rehabilitation, California Correctional Health Care Services (CCHCS) Health Care Providers (HCPs) located in urban census tract codes state-wide participation in the Healthcare Connect Fund for Funding Year (FY) 2013.

Reason for Denial:

The CDCR HCP sites included in the attachments were determined to be ineligible to participate in the Healthcare Connect Fund Program on March 10, 2014, April 1, 2014, and April 10, 2014 because CDCR indicated that these sites were rural health clinics.<sup>1</sup>

The CDCR HCP sites included in the attachments to this request were determined to be ineligible to participate in the Healthcare Connect Fund Program on March 10, 2014, April 1, 2014, and April 10, 2014 because CDCR indicated that these sites were rural health clinics. However, the USAC asserts that these sites did not qualify as eligible rural health clinics for the Healthcare Connect Fund Program. Specifically, USAC determined that each CDCR HCP site included in the attachments was not located in a rural area and was not grandfathered as a rural entity for the HCF Program. Pursuant to FCC rules, to be eligible for HCF Program support, an HCP must be a public or non-profit health care

<sup>1</sup> September 23, 2014, USAC Administrator's Decision on Rural Health Care Program Appeal; Appeal of USAC's Decision to Deny Site Eligibility for CDCR HCP Sites.



provider and must qualify as one of the seven eligible HCP types set forth in the FCC rules. Non-rural eligible HCPs may apply for HCF Program support only if they are part of consortia that include eligible rural HCPs. To receive HCF Program funding, individual HCPs or consortia of HCPs must first submit FCC Form 460 for each HCP site and demonstrate that each HCP site is eligible to receive HCF Program support. On the FCC Form 460, the HCP or a HCP consortium indicates the category(ies) of eligible HCP(s) through which each site qualifies for HCF Program support. USAC reviews the information provided on the FCC Form 460 to determine whether each HCP site is eligible to receive HCF Program support pursuant to FCC rules. If an HCP or consortium indicates on the FCC Form 460 that the HCP site qualifies as a rural health clinic for the HCF Program, USAC determines whether the HCP is located in a rural area as defined by FCC rules or whether the entity is grandfathered as a rural entity for the HCF Program. While non-rural HCPs participating in consortia can request HCF Program support, the FCC Form 460 does not include an urban health clinic as a category of eligible HCPs for the HCF Program.

The denial stated that an HCP must meet two (2) criteria in order to be eligible to participate in the Healthcare Connect Fund:



1. The HCP must be a public or non-profit health care provider (see 47 C.F.R. § 54.601(a)).
2. The HCP must qualify as one of the following eligible entities as defined (see 47 C.F.R. § 54.600(a)):
  - Post-secondary educational institution offering health care instruction, teaching hospital, or medical school
  - Community health center or health center providing health care to migrants
  - Local health department or agency
  - Community mental health center
  - Not-for-profit hospital
  - Rural health clinic including mobile clinic
  - Dedicated emergency room of a for-profit hospital
  - Part-time eligible entity located in otherwise ineligible facility
  - *Consortia of one or more of the above entities.*<sup>2</sup>

An HCP that does not meet these two (2) criteria is not eligible to participate in the RHC Healthcare Connect Fund program. Based on the information provided on the submitted FCC Form 460, RHCD has determined that the HCPs referenced above are not eligible to participate because the HCPs have been identified as:

<sup>2</sup> This item is left off of the list of eligible entities provided by USAC on the Denial Letter; however is present in the defined legislation (See 47 C.F.R. § 54.600(a)).

- A for-profit HCP  
 An ineligible HCP type

Reason for Appeal:

The CDCR CCHCS believes that the above referenced HCPs meet the eligibility criterion as follows:

1. Based on the Federal Communications Commission (FCC) Rules and Guidelines stated within FCC Order 12-150, WC Docket 02-60 dated December 12, 2012 paragraphs 51, 56, 59, 61 and 62 as stated.
2. Denial of non-rural HCPs is based on USAC interpretation of the FCC's HCF Order (referenced above in #1).<sup>3</sup>
3. The Healthcare Connect Fund was created based on the Pilot Program which provided support to both rural and non-rural HCPs under section 254(h)(2)(A), which directs the Commission to "enhance... access to advanced telecommunications and information services for *all* public and non-profit . . . health care providers".

Supporting Evidence:

In the FCC Order 12-150, WC Docket 02-60, it states that non-rural HCPs may apply and receive support as part of consortia as long as the consortia is comprised of over fifty percent (50%) rural majority HCPs.<sup>4</sup> The Order also states that there will be additional limitations imposed to ensure that support provided for non-rural HCPs does not impose on the original intent of the RHCP which was to serve rural smaller communities. Those limitations were specifically stated as "*three simple limitations that should help ensure a fiscally responsible reformed health care program without unduly restricting non-rural participation*"<sup>5</sup>

1. Non-rural HCPs may only apply for support as part of consortia that include rural HCPs;

<sup>3</sup> Ref: Lukas, Nace, Gutierrez & Sachs, LLP, Notice of *Ex Parte* in WC Docket No. 02-60, *Request for Review of a Decision of the Universal Service Administrator, California Telehealth Network*, dated February 4, 2014, (See also 47 C.F.R. §54.702(c) ("[USAC] may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress.)).

<sup>4</sup> FCC Order 12-150, WC Docket 02-60, Paragraph 51 In section IV.B.2, we conclude that non-rural HCPs may apply and receive support as part of consortia in the Healthcare Connect Fund. To ensure that program support continues to benefit rural as well as non-rural HCPs, however, we require that in each consortium, a majority of HCP sites (over 50 percent) be rural HCPs.

<sup>5</sup> FCC Order 12-150, WC Docket 02-60, Paragraph 61, "First, non-rural HCPs may only apply for support as part of consortia that include rural HCPs; Second, non-rural HCPs may receive support only if they participate in consortia that include a majority (more than 50 percent) of sites that are rural HCPs. Third, we establish a cap on the annual funding available to each of the largest hospitals participating in the program (those with 400 or more beds)".



2. Non-rural HCPs may receive support only if they participate in consortia that include a majority (more than 50 percent) of sites that are rural HCPs.
3. We establish a cap on the annual funding available to each of the largest hospitals participating in the program (those with 400 or more beds)".

Of those three (3) limitations, none stated that a non-rural HCP must be one (1) of the Eligible Entity types as defined in Section 254(h)(7)(B).

For purposes of the majority rural requirement, the FCC "grandfathered" non-rural HCP sites into the HCF that met the old *de minimus* standard but that would not meet the new majority rural standard. The only requirement being that the HCP had received a funding commitment through a Pilot project that had fifty percent (50%) or more non-rural HCP sites with funding commitments as of the adoption date of the Order. In this instance, the FCC stated that the project may add new non-rural HCP sites *only if* the new sites maintain the majority rural requirement.<sup>6</sup> There is no mention of the non-rural HCPs meeting one (1) of the Eligible Entity categories as defined in Section 254(h)(7)(B) and there was no conceivable notice from either USAC or the FCC that a change in policy was imminent.



In communications with the USAC regarding the non-rural HCP determination, the following statement was made as a basis for the denial:

*"I [USAC] believe the rural entities that CDCR has previously received funding for are eligible as "rural health clinic". The urban entities cannot be considered eligible as a "rural health clinic" because they are urban and not rural, thus they cannot be a "rural" health clinic."*

Non-Rural participants in the Pilot Projects were comprised of various types of entities where the term "clinic" was used generically and functionally, to designate a health care location in which clinical care was provided. This functional use of the term "clinic" was in keeping with earlier precedent in which the FCC held that "dedicated emergency departments in *for profit* rural hospitals constitute [eligible] "rural health clinics."<sup>7</sup> Of relevance here is the fact that the USAC and the FCC have long recognized as eligible HCP clinics that were not, strictly speaking, "rural health clinics". The CDCR CCHCS contends that, although located in an urban location, these clinics are in fact "clinics" providing comprehensive primary care services to the inmate population and that they meet the single requirement stated in the *FCC Order* of being participants in a consortium with a fifty-one percent (51%) rural majority.

<sup>6</sup> FCC Order 12-150, WC Docket 02-60, Paragraph 62.

<sup>7</sup> See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546, 24553-55, Paragraph 14 (emphasis added) (2003) (*2003 Report and Order*); see also *id.* Paragraphs 13-16.

The USAC has posted on their website documentation that shows the differences in the RHCP Telecommunications Program and the new Healthcare Connect Fund<sup>8</sup>. The documentation states, as does the FCC Order 12-150, "Highlights of the Healthcare Connect Fund Program", Eligible HCPs:

- Consortia of eligible rural and non-rural public/non-profit health care providers (HCPs)
- Individual rural public/non-profit HCPs.

No where in the documentation does it state that the HCPs had to be a specific entity type.

*The USAC asserts that "the CDCR HCP sites included in Attachment A were ineligible for HCF Program support because the sites indicated they were rural health clinics but were not located in rural areas. Although CDCR indicated on its FCC Forms 460 that each HCP site on Attachment A qualified as a "rural health clinic," CDCR indicated that these sites are urban HCPs in its appeal".*



The USAC My Portal application has displayed a number of discrepancies and inconsistencies from data entry to delivery of the printable documentation. The CDCR absolutely selected "Rural Health Clinic" in the My Portal application operated by the USAC due to the fact that it was the only available option. Although the Form 460 pdf printable shows a category selection of "Consortia of one or more of the above" listed, the My Portal application itself did not provide for a "Consortia" selection/radial button. The .pdf Form 460 is auto-generated and the CDCR CCHCS was unable to enter data directly into the form. The auto-generated .pdf is sent directly to the USAC. Therefore, the CDCR selected the "Rural Health Clinic" option and wrote in the comments section that these particular sites were "urban locations participating in a consortium meeting the 51% rural majority requirement". As stated above, the **Consortia of one or more of the above entities**, was not listed as an available option in the denial letter received from the USAC. The CDCR CCHCS is a consortium of thirty-five (35) HCPs meeting the fifty-one percent (51%) rural majority requirement. Twenty (20) of our HCPs are approved participants in the Healthcare Connect Fund.

Requested Outcome:

The CDCR CCHCS was denied because we were not given the proper mechanism to accurately categorize participating HCPs. The "Consortia" selection was not available at the time the CDCR CCHCS was applying for eligibility to participate in the Healthcare Connect Fund program. Nor was there a separate designated path for applying as a Consortium versus an Individual HCP site. The CDCR CCHCS requests that the FCC reverse the USAC decision and accept the HCPs listed in the September 23, 2014 denial letter into the Healthcare Connect Fund as eligible non-rural health care providers (HCPs) participating in a consortium meeting the fifty-one

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<sup>8</sup> Rural Health Care Program, What We Do For You (attached to this request)

CDCR CCHCS Headquarters

November 18, 2014

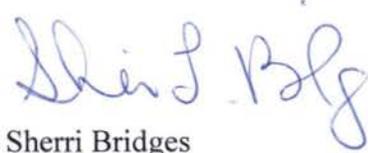
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percent (51%) rural majority. This would be consistent with the previous practices implemented under the Rural Health Care Pilot Program (RHCPP).

Sincerely,



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Task Consulting, Inc.



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