

- (ii) Two off-site data centers,
- (iii) Two off-site administrative offices,
- (iv) An off-site data center and the public Internet or another network,
- (v) An off-site administrative office and the public Internet or another network, or
- (vi) An off-site administrative office and an off-site data center.

(2) The supported connections and network equipment must be used solely for health care purposes.

(3) The supported connections and network equipment must be purchased by an eligible health care provider or a public or non-profit health care system that owns and operates eligible health care provider sites.

(4) If traffic associated with one or more ineligible health care provider sites is carried by the supported connection and/or network equipment, the ineligible health care provider sites must allocate the cost of that connection and/or equipment between eligible and ineligible sites, consistent with the “fair share” principles set forth in § 54.639(d).

[78 FR 13987, Mar. 1, 2013]

#### § 54.638 Upfront payments.

(a) Upfront payments include all non-recurring costs for services, equipment, or facilities, other than reasonable and customary installation charges of up to \$5,000.

(b) The following limitations apply to all upfront payments:

(1) Upfront payments associated with services providing a bandwidth of less than 1.5 Mbps (symmetrical) are not eligible for support.

(2) Only consortium applicants are eligible for support for upfront payments.

(c) The following limitations apply if a consortium makes a request for support for upfront payments that exceeds, on average, \$50,000 per eligible site in the consortium:

(1) The support for the upfront payments must be prorated over at least three years.

(2) The upfront payments must be part of a multi-year contract.

[78 FR 13987, Mar. 1, 2013]

#### § 54.639 Ineligible expenses.

(a) *Equipment or services not directly associated with eligible services.* Expenses associated with equipment or services that are not necessary to make an eligible service functional, or to manage, control, or maintain an eligible service or a dedicated health care broadband network are ineligible for support.

NOTE TO PARAGRAPH (a): The following are examples of ineligible expenses:

1. Costs associated with general computing, software, applications, and Internet content development are not supported, including the following:

i. Computers, including servers, and related hardware (*e.g.*, printers, scanners, laptops), unless used exclusively for network management, maintenance, or other network operations;

ii. End user wireless devices, such as smartphones and tablets;

iii. Software, unless used for network management, maintenance, or other network operations;

iv. Software development (excluding development of software that supports network management, maintenance, and other network operations);

v. Helpdesk equipment and related software, or services, unless used exclusively in support of eligible services or equipment;

vi. Web server hosting;

vii. Web site portal development;

viii. Video/audio/web conferencing equipment or services; and

ix. Continuous power source.

2. Costs associated with medical equipment (hardware and software), and other general health care provider expenses are not supported, including the following:

i. Clinical or medical equipment;

ii. Telemedicine equipment, applications, and software;

iii. Training for use of telemedicine equipment;

iv. Electronic medical records systems; and

v. Electronic records management and expenses.

(b) *Inside wiring/internal connections.* Expenses associated with inside wiring or internal connections are ineligible for support under the Healthcare Connect Fund.

(c) *Administrative expenses.* Administrative expenses are not eligible for support under the Healthcare Connect Fund.

NOTE TO PARAGRAPH (c): Ineligible administrative expenses include, but not limited to, the following expenses:

1. Personnel costs (including salaries and fringe benefits), except for personnel expenses in a consortium application that directly relate to designing, engineering, installing, constructing, and managing a dedicated broadband network. Ineligible costs of this category include, for example, personnel to perform program management and coordination, program administration, and marketing;

2. Travel costs, except for travel costs that are reasonable and necessary for network design or deployment and that are specifically identified and justified as part of a competitive bid for a construction project;

3. Legal costs;

4. Training, except for basic training or instruction directly related to and required for broadband network installation and associated network operations;

5. Program administration or technical coordination (*e.g.*, preparing application materials, obtaining letters of agency, preparing request for proposals, negotiating with vendors, reviewing bids, and working with the Administrator) that involves anything other than the design, engineering, operations, installation, or construction of the network;

6. Administration and marketing costs (*e.g.*, administrative costs; supplies and materials, except as part of network installation/construction; marketing studies, marketing activities, or outreach to potential network members; evaluation and feedback studies);

7. Billing expenses (*e.g.*, expense that vendors may charge for allocating costs to each health care provider in a network);

8. Helpdesk expenses (*e.g.*, equipment and related software, or services); and

9. Technical support services that provide more than basic maintenance.

(d) *Cost allocation for ineligible sites, services, or equipment*—(1) *Ineligible sites*. Eligible health care provider sites may share expenses with ineligible sites, as long as the ineligible sites pay their fair share of the expenses. An applicant may seek support for only the portion of a shared eligible expense attributable to eligible health care provider sites. To receive support, the applicant must ensure that ineligible sites pay their fair share of the expense. The fair share is determined as follows:

(i) If the vendor charges a separate and independent price for each site, an ineligible site must pay the full undiscounted price.

(ii) If there is no separate and independent price for each site, the applicant must prorate the undiscounted price for the “shared” service, equipment, or facility between eligible and

ineligible sites on a proportional fully-distributed basis. Applicants must make this cost allocation using a method that is based on objective criteria and reasonably reflects the eligible usage of the shared service, equipment, or facility. The applicant bears the burden of demonstrating the reasonableness of the allocation method chosen.

(2) *Ineligible components of a single service or piece of equipment*. Applicants seeking support for a service or piece of equipment that includes an ineligible component must explicitly request in their requests for proposals that vendors include pricing for a comparable service or piece of equipment that is comprised of only eligible components. If the selected provider also submits a price for the eligible component on a stand-alone basis, the support amount is calculated based on the stand-alone price of the eligible component on a stand-alone basis. If the vendor does not offer the eligible component on a stand-alone basis, the full price of the entire service or piece of equipment must be taken into account, without regard to the value of the ineligible components, when determining the most cost-effective bid.

(3) *Written description*. Applicants must submit a written description of their allocation method(s) to the Administrator with their funding requests.

(4) *Written agreement*. If ineligible entities participate in a network, the allocation method must be memorialized in writing, such as a formal agreement among network members, a master services contract, or for smaller consortia, a letter signed and dated by all (or each) ineligible entity and the Consortium Leader.

[78 FR 13987, Mar. 1, 2013]

#### § 54.640 Eligible vendors.

(a) *Eligibility*. For purposes of the Healthcare Connect Fund, eligible vendors shall include any provider of equipment, facilities, or services that are eligible for support under Healthcare Connect Fund.

(b) *Obligation to assist health care providers*. Vendors in the Healthcare Connect Fund must certify, as a condition of receiving support, that they will