

(2) Prior to the submission of the funding request, the Consortium Leader must secure authorization, the necessary certifications, and any supporting documentation from each consortium member to permit the Consortium Leader to submit the funding request and manage invoicing and payments on behalf of the member.

(b) *Optional two-step process.* The Consortium Leader may secure both required authorizations from each consortium member in either a single LOA or in two separate LOAs.

(c) *Required Information in LOA.* (1) An LOA must include, at a minimum, the name of the entity filing the application (*i.e.*, lead applicant or Consortium Leader); name of the entity authorizing the filing of the application (*i.e.*, the participating health care provider/consortium member); the physical location of the health care provider/consortium member site(s); the relationship of each site seeking support to the lead entity filing the application; the specific timeframe the LOA covers; the signature, title and contact information (including phone number, mailing address, and email address) of an official who is authorized to act on behalf of the health care provider/consortium member; signature date; and the type of services covered by the LOA.

(2) For HCPs located on Tribal lands, if the health care facility is a contract facility that is run solely by the tribe, the appropriate tribal leader, such as the tribal chairperson, president, or governor, shall also sign the LOA, unless the health care responsibilities have been duly delegated to another tribal government representative.

[78 FR 13985, Mar. 1, 2013]

**§ 54.633 Health care provider contribution.**

(a) *Health care provider contribution.* All health care providers receiving support under the Healthcare Connect Fund shall receive a 65 percent discount on the cost of eligible expenses and shall be required to contribute 35 percent of the total cost of all eligible expenses.

(b) *Limits on eligible sources of health care provider contribution.* Only funds from eligible sources may be applied

toward the health care provider's required contribution.

(1) Eligible sources include the applicant or eligible health care provider participants; state grants, funding, or appropriations; federal funding, grants, loans, or appropriations except for other federal universal service funding; Tribal government funding; and other grant funding, including private grants.

(2) Ineligible sources include (but are not limited to) in-kind or implied contributions from health care providers; direct payments from vendors or other service providers, including contractors and consultants to such entities; and for-profit entities.

(c) *Disclosure of health care provider contribution source.* Prior to receiving support, applicants are required to identify with specificity their sources of funding for their contribution of eligible expenses.

(d) *Future revenues from excess capacity as source of health care provider contribution.* A consortium applicant that receives support for participant-owned network facilities under § 54.636 may use future revenues from excess capacity as a source for the required health care provider contribution, subject to the following limitations.

(1) The consortium's selection criteria and evaluation for "cost-effectiveness" pursuant to § 54.642 cannot provide a preference to bidders that offer to construct excess capacity.

(2) The applicant must pay the full amount of the additional costs for excess capacity facilities that will not be part of the supported health care network.

(3) The additional cost of constructing excess capacity facilities may not count toward a health care provider's required contribution.

(4) The inclusion of excess capacity facilities cannot increase the funded cost of the dedicated health care network in any way.

(5) An eligible health care provider (typically the consortium, although it may be an individual health care provider participating in the consortium) must retain ownership of the excess capacity facilities. It may make the facilities available to third parties only under an infeasible right of use (IRU)

or lease arrangement. The lease or IRU between the participant and the third party must be an arm's length transaction. To ensure that this is an arm's length transaction, neither the vendor that installs the excess capacity facilities nor its affiliate is eligible to enter into an IRU or lease with the participant.

(6) Any amount prepaid for use of the excess capacity facilities (IRU or lease) must be placed in an escrow account. The participant can then use the escrow account as an eligible source of funds for the participant's 35 percent contribution to the project.

(7) All revenues from use of the excess capacity facilities by the third party must be used for the health care provider contribution or for sustainability of the health care network supported by the Healthcare Connect Fund. Network costs that may be funded with any additional revenues that remain include administration, equipment, software, legal fees, or other costs not covered by the Healthcare Connect Fund, as long as they are relevant to sustaining the network.

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#### § 54.634 Eligible services.

(a) *Eligible services.* Subject to the provisions of §§ 54.600 through 54.602 and §§ 54.630 through 54.680, eligible health care providers may request support from the Healthcare Connect Fund for any advanced telecommunications or information service that enables health care providers to post their own data, interact with stored data, generate new data, or communicate, by providing connectivity over private dedicated networks or the public Internet for the provision of health information technology.

(b) *Eligibility of dark fiber.* A consortium of eligible health care providers may receive support for "dark" fiber where the customer, not the vendor, provides the modulating electronics, subject to the following limitations:

(1) Support for recurring charges associated with dark fiber is only available once the dark fiber is "lit" and actually being used by the health care provider. Support for non-recurring charges for dark fiber is only available for fiber lit within the same funding

year, but applicants may receive up to a one-year extension to light fiber if they provide documentation to the Administrator that construction was unavoidably delayed due to weather or other reasons.

(2) Requests for proposals (RFPs) that solicit dark fiber solutions must also solicit proposals to provide the needed services over lit fiber over a time period comparable to the duration of the dark fiber lease or indefeasible right of use.

(3) If an applicant intends to request support for equipment and maintenance costs associated with lighting and operating dark fiber, it must include such elements in the same RFP as the dark fiber so that the Administrator can review all costs associated with the fiber when determining whether the applicant chose the most cost-effective bid.

(c) *Dark and lit fiber maintenance costs.* (1) Both individual and consortium applicants may receive support for recurring maintenance costs associated with leases of dark or lit fiber.

(2) Consortium applicants may receive support for upfront payments for maintenance costs associated with leases of dark or lit fiber, subject to the limitations in § 54.638.

(d) *Reasonable and customary installation charges.* Eligible health care providers may obtain support for reasonable and customary installation charges for eligible services, up to an undiscounted cost of \$5,000 per eligible site.

(e) *Upfront charges for vendor deployment of new or upgraded facilities.* (1) Participants may obtain support for upfront charges for vendor deployment of new or upgraded facilities to serve eligible sites.

(2) Support is available to extend vendor deployment of facilities up to the "demarcation point," which is the boundary between facilities owned or controlled by the vendor, and facilities owned or controlled by the customer.

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#### § 54.635 Eligible equipment.

(a) Both individual and consortium applicants may receive support for network equipment necessary to make functional an eligible service that is