

**HEAL NY HIT  
RGA QUESTIONS AND ANSWERS – SET 2  
Dated 11/8/05**

**ELIGIBILITY:**

- Q1) Can you please advise whether the grant would be available to a for profit IPA or whether the grantee would need to be not for profit.
- A1) *An IPA that is primarily owned by a group of physicians is an eligible applicant under RGA Section 3.2(5) and may be for profit or not for profit. The eligible applicant must affirm that their activity as an eligible applicant does not conflict with their Certificate of Authority as prescribed in 10 NYCRR 98-1.5.*
- Q2) Can you please advise whether a for-profit IPA can apply for this grant? If not, can a not for profit IPA apply?
- A2) *See above.*

• **APPLICANTS:**

- Q3) a) Can you clarify the terms of an “umbrella” applicant organization? b) Specifically, can individual projects under the umbrella organization receive funding if all of the projects under the umbrella do not qualify for funding? c) Are individual projects under the umbrella evaluated on the merits of the individual project?
- A3) *a) There is no defined term for “umbrella” applicant organization.  
b) The application will be accepted or rejected as a whole  
c) Projects that are stand-alone should be submitted as separate Applications.*
- Q4) In addition to the 501c(3) medical society (ies) that are being considered as Eligible Applicants per conference questions, would a 501c(3) Rural Health Network be eligible to act as lead agency? Our Network Board is comprised of CEO of the local hospital, local health department director, Article 28 D&T, and a pediatrician who would be also be a principle stakeholder in the proposed project.
- A4) *Rural Health Networks may be eligible applicants pursuant to RGA Section 3.2 (7). A Medical Society is not an eligible applicant under RGA Section 3.2.*

Would the following entities qualify as an Eligible Applicant? (Q5 & Q6)

- Q5) A not-for-profit, tax-exempt members corporation organized under NY State Law Section 216 of the Education Laws, Section 404 of the NFP Laws, and Section 501c(6) of the IRS code, as a trade association. The corporation provides administrative and technical assistance to its member health care professionals.
- A5) *NO.*
- Q6) An IPA Corporation, a NYS regular business corporation organized under Section 402 and wholly owned by a management services organization.

A6) *See A1 & A2.*

Q7) Can a management services organization, which is a limited liability company organized under NYS Corporation laws section 402, be an eligible applicant?

A7) *NO.*

Q8) “X” is an LLC whose members include “Y”, three health systems, a public benefit corporation, and an insurance company. These are the four major Hospitals in Western New York and three major commercial payers all with independent corporate structures. We have been in business providing an all payer web portal for administrative healthcare information including member eligibility, claims status and referral/authorizations to the providers of the eight counties of western New York. Based upon our understanding of your grant applicant requirements, we believe “X” is a qualified applicant for the NYS HEAL Grant.

A8) *To the extent that what is described appears to be a Clinical Information Data Exchange it meets the eligibility requirements of the RGA Section 3.2 (9). Pursuant to RGA Section 3.4 an independent stakeholder is not required.*

Q9) Can an association representing health care providers, i.e. skilled nursing facilities, be an eligible applicant for a group of its members, writing one grant application that would be for the funding of 10-20 individually owned and operated facilities’ projects?

A9) *NO.*

Q10) Can a partnership which is a joint venture among several hospitals to share clinical information be an Eligible Applicant? Currently, the clinical information is shared only among the hospitals that formed the partnership. Under the proposed application, stakeholders other than hospitals would also be involved.

A10) *YES, to the extent that what is described is a Clinical Information Data Exchange.*

Q11) Does the Eligible Applicant need to be a not-for-profit organization, or can it be set up as a for profit?

A11) *The applicant can be either not for profit or for profit.*

Q12) Can a for-profit clinical laboratory which is owned by not-for profit hospitals be the Eligible Applicant?

A12) *A clinical laboratory can be a stakeholder per the RGA Amendment 1 dated November 8, 2005, but not an eligible applicant.*

- **STAKEHOLDERS:**

Q13) Does the creation of an electronic medical record require a stakeholder from a different category?

A13) *YES, stakeholders are always required.*

Q14) How should stakeholders indicate their support for the grant application?

- A14) *The application should discuss the responsibilities of all parties – eligible applicant as well as stakeholders, and describe how they will document those relationships and responsibilities in either a letter agreement or Memorandum of Understanding.*
- Q15) Can stakeholders express interest in health information exchange projects in more than one grant application?
- A15) *YES. See answer to Question 2 under Stakeholders in the Q&As posted on the DOH website on 10/24/05.*
- Q16) a) If a physician employed at a medical corporation receives a fee for teaching at the eligible applicant's institution (hospital), can that corporation still be considered a stakeholder? b) In addition, if the head physician at a nursing home operated by the eligible applicant is part of a consortium of community physicians, can that consortium be a participating stakeholder in the project?
- A16) a) *YES. Such an individual employment relationship would not constitute common ownership or control between an eligible applicant and a stakeholder within the meaning of Section 3.1 and 3.4 in the RGA.*  
b) *YES. See answer to (a) above.*
- Q17) Can vendors be considered stakeholders if they provide a service critical to project implementation?
- A17) *NO. See definition of stakeholders in the RGA Section 3.3.*
- Q18) We would be applying as a comprehensive cancer center. a) Could the Department of Biochemistry in a Medical School be a stakeholder? b) Also, could community based organizations that provide health and human service programs be stakeholders?
- A18) a) *NO.*  
b) *NO – unless the community based organization provides medical services (See answer 4 under Stakeholders in the Q&As posted on the DOH website on 10/24.*
- Q19) For purposes of the HEAL NY Phase 1 grant, would Hospital “X” be considered a stakeholder for Medical Center Y? They have a separate operating certificate and their own board.
- A19) *NO. Even though they have their own board, if there is a common parent Hospital X does not qualify as an independent stakeholder. Furthermore, both entities are hospitals and not different entity categories as required by RGA Section 3.1.*
- Q20) Are independent physicians, those not involved in a group practice, eligible to participate as stakeholders? Many physicians in rural areas operate on their own and, if not allowed to be stakeholders because they do not have a group practice, will severely impact providers in rural areas.
- A20) *YES. Independent physicians are eligible as stakeholders per the RGA Amendment 1 dated November 8, 2005.*
- Q21) The dental school is an Article 28 D & T Center and should qualify to be an applicant. The vision would include interoperability and data sharing with medical, dental & others.

Is it sufficient for the Nov 30th application to document Oral Health collaboration or must we have a medical stakeholder.

A21) *D&Ts are eligible, however at least one stakeholder must be in a different category which is described in RGA Section 3.*

Q22) Section 3 of the RGA, page 12, states that “at least one of the entities that have entered into an agreement with an Eligible Applicant must not be under common control or have the authority to appoint board members of the other entity.” Would a collaboration between a hospital, acting as the applicant, and a separately incorporated physicians’ group that is a captive professional corporation of the hospital, acting as a stakeholder, satisfy the requirement for a multi-stakeholder partnership?

A22) *NO, unless there is another independent stakeholder.*

Q23) We have an existing project in which the independent physician practices in our area are utilizing the Physician Hospital Organization (PHO) to share costs and create a "community" EMR project. The PHO has its own bylaws and can enter into contracts. The hospital has the ability to appoint board members to the PHO. Can the hospital be the applicant and the PHO be considered a separate stakeholder?

A23) *NO - The hospital has the ability to appoint board members to the PHO, and therefore is not independent.*

Q24) Can an IPA's members (owners) which are regional hospitals be stakeholders, if the IPA is the Eligible Applicant?

A24) *NO – unless there is another independent stakeholder.*

Q25) Are certified laboratories eligible stakeholders for this project?

A25) *YES – see RGA Amendment 1, dated November 8, 2005.*

### **CAPITAL COST:**

Q26) Can you clarify what types of budget expenses are eligible for funding? Does capital include software, hardware and services to install the systems? Where can one go to find the type of HIT expenses that are eligible to receive funding under this grant?

A26) *See RGA Attachment 5.*

Q27) Can fees associated with the grant management be reimbursed as part of the grant itself?

A27) *Generally, this type of cost would be considered an indirect cost and therefore would not be reimbursable.*

### **MATCHING FUNDS:**

Q28) Our EMR project is being implemented in multiple phases. Phase 1 is the purchase and installation of an Emergency Room EMR system. The agreement for the payment of the software spans the February 1, 2005 date such that 50% of the purchase price was paid before February 1, 2005, and 50% of the purchase price was paid after February 1, 2005.

Can the 50% of the software cost that took place after February 1, 2005 be counted as matching funds toward the larger EMR initiative? All training cost (fees paid to the vendor) took place after February 1, 2005. Can that capitalized cost also be considered matching cost?

A28) *This determination is dependent upon the standard basis of accounting used by the organization incurring the cost. If the organization generally uses an accrual basis of accounting, the software purchase would not be eligible since the expense would have been recorded prior to February 1, 2005. See RGA attachment 5 and Matching Costs Question and Answers published 10/24/05.*

Q29) Please clarify how a skilled nursing facility (SNF) that is applying for a HEAL NY Phase I grant can expect to proceed in this example. The SNF plans to purchase a \$100,000 capital item; \$50,000 is eligible for reimbursement under HEAL NY and the remaining \$50,000 is to be funded with matching funds. Under the Medicaid program, would the SNF be eligible for depreciation costs related to the full \$100,000 purchase or to the \$50,000 portion of this purchase that was directly paid for by the SNF via its matching funds?

A29) *The full value of the capital cost, as determined in accordance with RGA Attachment 5, should be capitalized. The Medicaid program will include the amortization of the full cost capitalized in the Facilities capital reimbursement, since the Medicaid program considers amortization or depreciation of an asset to be paid for replacement of that asset.*

Q30) As an institution of SUNY all patient care revenue whether Article 28 reimbursement or payments directly from the patients are deposited in an Income Fund Reimbursable Account (IFRA) and become a form of State funds. Can these funds be used for the 50% match on Project costs?

A30) *YES. Since revenue to the IFRA (does not come from) a state grant, expenses paid from this fund may be used for matching purposes.*

Q31) Can direct labor costs of programmers assigned to the Project who are on SUNY payroll be used for the 50% match on Project costs?

A31) *YES, as long as funds are not grants to SUNY by the State.*

Q32) Can the fair market value of space donated by the University be used for the 50% match on Project costs?

A32) *These costs can be included as matching costs only if they would be treated as direct (vs indirect) costs by the University.*

Q33) Section 4.10, page 16, requires that the applicant describe a methodology for measuring project benefits over the three years following the funding of the grant. Can costs associated with evaluation be counted toward the match if they are incurred subsequent to the term of the grant award?

A33) *NO.*

Q34) Does each stakeholder need to contribute toward the matching funds?

A34) *NO.*

Q35) If (as a contribution to the project, or in any circumstance) a hardware or software vendor gives us a discount off of list price, or a consulting firm gives us a discount off of standard rates, can the discount count toward the match?

A35) *NO.*

**OTHER FINANCIAL:**

Q36) With regard to Section 4.11.4, pg. 17 of the HEAL proposal, Eligible Applicant and Stakeholder Financial Stability: Is an applicant eligible if currently in Chapter 11, though anticipating moving out in the near future?

A36) *YES.*

Q37) In the Applicant conference held today in Albany, there were questions regarding the need for financial statements from the various stakeholders involved in an eligible project. If a potential project currently includes four unrelated hospitals, several payors, pharmacies and national laboratories, an independent practice association (“IPA”), and hundreds of individual physicians who are participating with the IPA will it be necessary to obtain the financial statements of each of the medical groups involved in the project? Needless to say this will be an extreme hardship and possibly a strong deterrent for these currently participating physicians who have not been required previously to provide their individual practice financial statements. We would suggest that the financial statement of the IPA should be sufficient to cover the physician stakeholder component of the project.

A37) *We expect the projects to be financially viable as a whole. If projects can show that quality without the financials of some stakeholders, the absence of those financial statements could be acceptable. In addition, any stakeholder receiving less than \$100,000 will not be required to submit financial statements.*

Q38) “X” is preparing a proposal for the HEAL NY RGA and the following issue arose concerning the stakeholders. In our proposal the stakeholders are physicians in private practice. To show their financial viability we are asking them to submit copies of their corporate tax returns. We need to be able to assure them that these records will remain confidential and will not become part of the public record once they are submitted with the proposal.

A38) *We cannot provide that assurance, as applications will be subject to the Freedom of Information Laws. Applicants may provide alternative documents to show financial viability and stability, however, DOH reserves the right to request further information. Also see the response to Question 37 above.*

Q39) Can the stakeholders’ financials be submitted directly by the stakeholder without being compiled by the Eligible Applicant? This would allow each MD group direct and confidential reporting to the state without sharing it with (X).

A39) *YES, but also see the answer to Question 37 & 38 above.*

Q40) Does each stakeholder need to be financially at risk in the project proposed?

A40) *Not specifically, but we expect all stakeholders to be directly involved in and contributing to the success of the project.*

Q41) Would it be acceptable to the State if confidential financial information about a stakeholder was submitted in a sealed envelope inside the Applicant's proposal package?

A41) *YES. See answer to Questions 37 & 38.*

**STARK:**

Q42) a) Will the grant be exempt from Stark and safe harbor regulations that might prohibit a hospital from developing and supporting I.T. services in an affiliated but non-employed physician's office? b) How will HHS's pending rule changes affect hospital promotion of the EHR to physician practices?

A42) *a) NO, grantees are not exempt from any applicable laws that might prohibit self-referrals, such as Public Health Law §§ 238 to 238-e (the State's "Stark" law). Nor are grantees given any specific safe harbor under the explicit text of laws that prohibit kickbacks, such as Education Law § 6530(18), Social Services Law § 366-d and Public Health Law § 587.*

*b) See Stark Law and Safe Harbor questions from the Questions and Answers dated 10/24/2005 on the DOH website.*

**PUBLIC HEALTH INFORMATION:**

Q43) The questions and answers provided spoke at length about the 'Bidirectional flow of Critical Public Health information'. Can you say specifically that use of the health provider network <https://commerce.health.state.ny.us/hpn> for such things as bed availability and infection data qualifies as 'to the department' and the alert network qualifies as 'to the clinical/health care community'? In other words, when addressing 4.8 Technology in the grant application, will we have to 'demonstrate support for automated, bi-directional standards based on reporting of critical public health information to State Public Health' for the project being submitted or is this a case where 'such information is already being provided by Project participants' and we only need to 'describe the current information and process'.

A43) *Yes, if such information is already being supplied by the participants, you may simply say that and very briefly state how.*

**GENERAL:**

Q44) Is there a maximum or minimum written length for the grant application?

A44) *NO, but be concise.*

Q45) Will NYS DOH recommend a 'best practice' to authenticate physicians not credentialed by an organization for purposes of exchanging health information subsequent the patient's consent to release of medical records?

A45) *NO.*

Q46) Would the grant support software purchase and development for making patient results review available via the web to a physician not employed by our hospital?

A46) *Yes, if the eligibility and stakeholder criteria are met.*

Q47) Would funding for a clinical data repository that would enable longitudinal access to health information exchange be within the scope of the grant?

A47) *Yes, if the eligibility and stakeholder criteria are met.*

Q48) Will the State DOH provide a boilerplate memorandum of understanding (MOU) to stakeholders for information exchange or should grant applicants include the cost to develop that legal document in their application?

A48) *NO. However, the costs to develop the legal documents may be included as part of the match.*

Q49) Can the grant support network upgrades?

A49) *YES, if the upgrades are necessary to support the project.*

Q50) Are bids required for the purchase and installation of hardware and software?

A50) *NO.*

Q51) The grant award can range from \$50,000 to \$5 million. What amount would be allowable for an HIE project between a hospital system, affiliated health care organizations, and private physicians?

A51) *Grant awards can range from \$50,000 to \$10 million. Decisions on specific grant amounts will be made on a case by case basis.*

Q52) On pg. 9 of the HEAL proposal, it says that consideration will be given to projects involving one or more regions. On pg. 11, it says that preference will be given to eligible applicants with multiple stakeholders in the community. Please clarify if community involvement takes precedence over cross-regional projects, or if cross-regional projects are preferable to those with more community involvement.

A52) *Both will be considered.*

Q53) Regarding the Project Monitoring and Evaluation component of the proposal, pg. 16: is an outside evaluator required for the project?

A53) *NO.*

Q54) At the Conference it was stated that the list of attendees would be published on the RGA site. When is this information expected to be available?

A54) *A list of attendees and their affiliation will be posted on the DOH website by 11/10/2005 at <http://www.health.state.ny.us/funding/rfa/0508190240/index.htm>.*

Q55) Is a contract with a vendor necessary for purposes of the grant application?

A55) *NO.*

Q56) Does each stakeholder need to receive some funds under the grant?

A56) *See question 40.*

Q57) If a hospital, as an approved grantee, relies on an IT partner's commitment to meet the requirements referenced in Section 2.1.2, #4 but the IT partners fails in that commitment, will DOH hold the hospital liable and require any/all of the funds to be returned?

A57) *YES. The eligible applicant is responsible for the commitments made in the GDA.*

Q58) When will the bidders' conference attendees be posted? What will the link be?

A58) *A list of attendees and their affiliation will be posted on the DOH website by 11/10/2005 at <http://www.health.state.ny.us/funding/rfa/0508190240/index.htm>.*

Q59) Can submission of a proposal in Phase 1 in any way impact the potential to participate in Phase 2?

A59) *NO.*

Q60) If an eligible applicant, i.e. a non-profit taxable IPA, has a related 501(c)(3) tax exempt educational fund, can the IPA be the applicant and the grant funds flow through the 501(c)(3) educational fund in order to maximize potential future non-state grants and tax deductible contributions?

A60) *NO. Grant funds will only be disbursed to eligible applicants.*