HEAL NY Phase II -- Capital Restructuring Initiatives

Questions and Answers

July 21, 2006

1. Based on the need to meet regulatory requirements and the expected GDA date of on or about October 1, what does that mean in terms of the CON process? Do our projects already have to be moving along through the CON process, or does it mean that once we receive a notice of award, we can submit a CON application?

   Applicants need not submit CON applications in advance of notices of HEAL NY awards. To allow completion of projects within the two-year HEAL NY timeframe, successful applicants should submit CON applications as soon as possible after notification of a HEAL NY Award. The Department will make every effort to expedite the approval of HEAL NY-related CON applications once they are received.

2. If two providers in different regions want to collaborate, for example one in Yonkers and one in the Bronx, what is the best approach? Should the application be submitted as a single project in one of the two regions, or should there be applications from two different counties, put forth on a collaborative basis?

   The applicant should determine the regional designation based on which community is to be served most by the project.

3. In regard to the timing o the HEAL NY bond issue, will this be a pooled issue, or will it be done with facility-specific names associated with it?

   In this first instance of large-scale HEAL NY funding, grant proceeds will be available from State dollars. The bond issue will reimburse the State for its expense, and therefore will not be done on a facility-specific basis. The timing of the bonding will be determined on when the Division of the Budget determines the State needs to be reimbursed and will not affect availability of funds for grantees.

4. If the costs associated with the bond issue come off the top, so to speak, is it then correct that the applicant, the recipient will not have to bear a cost of issuance?

   That is correct. Bonding costs will not be attributed to grantees.

5. If one of the purposes of HEAL NY is to encourage innovations in the organization and delivery of health care, will it be possible to grant relief of certain regulations that may hamper new approaches?

   The HEAL NY legislation provides no specific waiver authority, and applicants should assume that all current codes and regulations will remain applicable to their projects, in the interest of protecting patient safety and promoting quality of care. As with any CON application involving construction, the Department may be able to waive certain parts of the medical facilities construction code, provided there is no compromise to life safety. These requests will be evaluated on a case-by-case basis.

6. Can the applicant apply for a particular pool of the two pools of money—the State appropriation pool and the bond pool? Could an applicant ask simply for the State appropriate money, even for a pure capital piece, so as to avoid certain restrictions?

   Applicants may not apply for a particular funding source for a grant. Using the criteria set forth in the RGA, applicants should allocate their proposed costs into those that they believe are able to be capitalized (and therefore potentially funded from bond proceeds) and those that are not (and so limited to funding from the DoH capital appropriation), and those not reimbursable (and so limited to matching funds). Applicants should also bear in mind that even though the State appropriation funds in HEAL NY are more flexible than the bond funds, they still represent a capital appropriation and will be used accordingly. Funding allocated to specific grants will be made by DoH and DASNY based on the specific expense to be reimbursed.

7. The RGA states that planning costs which are not capitalizable may not be supported by HEAL NY funds. However, planning costs are generally part of project costs and are capitalizable. What is the distinction that applies here?

   The planning costs that the Department refers to as not allowable are the initial concept planning costs. Costs for actual designs or architectural-type planning are capital expenditures and would be allowable. However, all such costs, like other project costs, must be incurred during the two-year term of the GDA. So costs incurred before the applicant's GDA start date would not be allowed.

8. If an applicant applies for HEAL NY funds in an amount that would cover less than the 50 percent allowable, would such an application be viewed more favorably?

   Yes, but this would not, on its own, cause the project to be funded prior to higher-ranking projects.

9. The Web site version of the HEAL NY application is a PDF version. Is there a downloadable application that can be filled out on a computer?

   Yes, a downloadable version has been posted on the DOH Web site.

10. Can land that is owned by a wholly owned subsidiary of a hospital be used as matching for HEAL NY projects?

    Depending on how the application is structured, the land may qualify as a match. For example, if the wholly owned subsidiary and the Hospital are participants in an application and the application meets the eligibility criteria defined in Section 1.4 of the RGA, the land may qualify as a match.

11. Would the transfer of such an asset to the Article 28 applicant have to occur before the application was submitted, or before October 1?

    Not before the application is submitted, but at the time the grant disbursement agreement is signed. The transfer needs to take place before reimbursement of any land related costs.

12. If you're an Article 28 hospital and you want to establish an Article 28 diagnostic and treatment center and/or reconfigure an existing one or relocate an existing one, is that acceptable as part of the project scope?

    Yes, that would be acceptable so long as the project is consistent with the objectives of the RGA as stated in Section 1.2.

13. If you have a D & T center already, and you want to reconfigure and/or relocate it, is that also an acceptable project?

    Such a project is certainly not prohibited, but it must meet the objectives of the RGA as stated in Section 1.2.

14. A little earlier, staff talked about how the application will need to make every effort to ensure that the project is consistent with the goals of what we call the Berger Commission (the Commission on Health Care Facilities in the Twenty-First Century). Does that mean that a project, an application that in fact does do that will get extra credit?

    The goals of HEAL NY and the goals of the Commission are virtually congruent. So any application that addresses the goals of HEAL NY—reduced capacity,

rightsizing, efficiency, quality stability, meeting community needs will be addressing the goals of the Commission.

15. Assuming a HEAL award is granted to an applicant and then they are successful in a C.O.N. total project cost, would that total project cost be reimbursed through depreciation for the long-term care facility? In other words it's --say it's five million dollars, HEAL'S is two and a half million, will the depreciation be of that five million dollars and the Medicaid rate?

    Assuming the entire $5 million meets the Medicaid requirements for reimbursement as depreciation, the reimbursement would be based on the $5 million total project cost.

16. Then with regard to the three years of budgets, should the applicant propose that in 2006 dollars that remain constant with no inflation?

    Yes, that would be acceptable.

17. During the review process for HEAL NY applications, will there be any questions or other inquiries similar to a CON review, where there are thirty-day letters sent out by reviewers; or will it be pretty much that the application is sent in complete and that's the way it comes out?

    The latter. There will be no 30-day letters or other follow-up inquiries once an application is submitted.

18. Can a HEAL NY application propose to convert medical/surgical beds to Article 28 psychiatric beds?

    There would be no prohibition against that, but the application would have to be evaluated within the overall context of HEAL NY's goals and objectives as stated in Section 1.2 of the RGA. The application would also have to document community need for such beds.

19. The criteria that you're going to review on included, very prominently, cost savings and in addition, need. Is there going to be a weight between those two factors wherein if there's a very high public need, but not necessarily savings that can be demonstrated within the project itself, on perhaps long-term in the community, will that be acceptable? Or will we be downgraded because of the lack of demonstrable within-project cost savings?

There is no expressed weight between cost savings and need. A strong application will demonstrate both that community need is met and cost savings are achieved.

20. Suppose an applicant submits a construction project that goes three years, ten million, ten million, ten million. Since HEAL NY funding can only go for two years, the application would have to ask for $20 million HEAL grant, of which fifty percent would be matching or seventy percent. Is that the way you're looking at this?

    Yes. The third year would be solely up to the applicant to fund. The application would have to demonstrate that the third year of the project would be fundable from other sources and the maximum HEAL NY grant would be one-half of the first two years' $20 million cost. Also, the first two years of the project must meet the goal and objectives of the HEAL NY program on their own, without the third year of the program needing to be included.

21. If an applicant is part of a network that has excess beds at one hospital and a need for beds at another hospital and that involves a capital project to do that, by shifting or converting beds from one facility to another,-- is that the type of project you'd be looking for, even though it doesn't necessarily bring beds out of the whole health system, but it's a more efficient use of those beds?

    Yes, such a project would be eligible for HEAL NY funding, provided that it met the objectives of the RGA as stated in Section 1.2. Proposals should seek to eliminate or transform excess capacity into something that is needed and affordable.

22. Is HEAL NY primarily about elimination of beds, or could we put our efforts into ambulatory care so that we could restructure ambulatory care in some way to better meet community need?

    It would depend on the context and the project would need to be consistent with the objectives of the RGA as stated in Section 1.2. In and of itself, an ambulatory care project would not be justifiable under HEAL NY. There would have to be some sort of a corresponding adjustment or reduction in the costs of the health care delivery system, to show the results of that primary-care investment.

23. In regard to demonstrable cost savings to be achieved through HEAL NY projects, is there a distinction between savings that redound to the State, for example by reduced Medicaid or HCRA spending, versus those that result in reduced spending overall, whether to commercial payers or Medicare? Would the latter have the same weight?

There is no distinction in where savings are achieved. HEAL NY seeks global savings for the health care system, so demonstrable cost savings for any payer segment would be viewed favorably.

24. The RGA states that funds from the non-bonded capital appropriation component of HEAL NY would be available for closures and downsizings in particular geographic regions. Does this mean that funds will be awarded in a manner that would direct some of the softer closure costs to particular regions of the State?

    No. Applicants from all regions are equally eligible for support of closing-related costs, and applications within each region will be reviewed on their merits.

25. What type of costs related to the management of long-term and short-term debt could be supported by HEAL NY?

    Reconfiguration and rightsizing may necessarily deal with issues of debt management. Grant funds are available to do that with some distinction between the sources of the grant funds. HEAL NY bond proceeds will only be available to be used for debt management to the degree that an entity is acquiring a piece of property such as a hospital. Debt service on assets to be downsized or closed will be funded from the State capital appropriation. There are fewer dollars available for that, as there is $195 million of bonding authority and $74 million of capital appropriations authorized to fund the Phase II HEAL NY Capital Restructuring Program.

26. If an applicant is looking to decertify beds, say ten percent of their beds, can they apply for funding to improve their H-VAC, to pay down some of their debt, to improve their information-technology systems, all of which would improve the overall effectiveness of the facility?

    Such a project is certainly something that could be applied for; however, it might not be very highly ranked. Projects need to meet the objectives of the RGA as stated in Section 1.2 It would be better to take a broader look at the community's health care needs and not limit the project to reinvestment, so to speak, in the mechanical systems of the hospital.

27. In regard to the evaluation and scoring criteria for HEAL NY applications, will they all be equally weighted?

    No, not every variable will be weighted the same. The Technical component of the applications will be worth a total of 65 points and the Financial component of the applications will be worth a total of 35 points. This was published with the July 14th Q&A set, as a change to the scoring ratios outlined in Section 3.4 of the RGA. The

RGA provides sufficient guidance as to the type of activities that would best serve the intended goals and objectives of the HEAL NY program. A minimum scoring requirement is anticipated for certain components of the application as a condition to receipt of an award.

28. Based on the types of projects described in the RGA, Section 1.3, could an entity have a project that encompasses more than one of those types?

    Yes. Applications are not restricted to a single type or category, so long as they meet the requirements of the RGA including the Objectives (Section 1.2), Eligibility (Section 1.4) and Allowable Costs (Section 1.8)

29. Could an applicant's project be in its own environment, but in different environments, for instance, ambulatory and inpatient and something else?

    Yes.

30. Financially distressed institutions may not be investing as much in either I. T. or infrastructure as they need to. But if the facility is in fact a needed facility, those would be justifiable investments, since they are necessary for the financial health and survival of the institution. Would such a project have to be coupled to specific programs or services to be supportable under HEAL NY?

    Yes. Every funded HEAL NY application, in addition to demonstrating efficiency and cost savings, will have to have a patient care or program element to it that addresses the health care needs of the community.

31. Please explain the 50 percent match. Is it based on the total project cost made up of HEAL NY funds and the applicant's matching share, or is it calculated as 50 percent of what the applicant offers to contribute?

    The 50 percent will be calculated on total project costs. Therefore, the maximum HEAL NY share of a $1 million project would be $500,000. For a $75 million project, the maximum HEAL NY share would be $37.5 million. (For financially distressed institutions, the maximum HEAL NY share can be up to 70 percent of total project costs.)

32. Can the executive summary be the same for the financial and technical portions of the application?

    Yes.

33. Would it be acceptable for a project to convert or trade acute care beds in order to do something in the long-term care realm, such as assisted living, adult day health care, or other activities?

    Yes, such cross-sector projects are acceptable so long as they meet the objectives of the RGA as stated in Section 1.2, in particular demonstrating meeting or improving community need.

34. As a corollary question, if closed beds are at one location, can the new community-based long-term care service be in the same service area but at a different location, or must it stay within that hospital campus.

    The new service need not remain in the same location and could be located anywhere appropriate to community need.

35. If a project would involve a long-term lease for the service site, could HEAL monies be used for leasehold improvements and equipment?

    Only if the applicant would have control of the site for a long period. It would also depend on the term of the useful life of whatever the applicant was seeking to finance.

36. Can this be hand delivered to the thirteenth floor of the Tower Building?

    Yes, we will alert security that applications are being delivered that day.

37. Regarding the issue that no financial information be in the technical part of the application. Do you mean really the budgetary information? I assume that you do expect, in order to derive benefits and display benefits, cost savings, transfer of cost in a societal or governmental basis, would be part of the program application content?

    Yes. It is expected that in general terms your application would discuss quality and efficiency, particularly efficiency, which is one of the goals of the technical part as well. Applications will be scored on a financial basis (principally the budgeted cost) and a technical basis, and the cost of the project needs to be totally separated in order to do that evaluation.

38. Regarding the format of the application, it looks like we have basically a narrative format. There's not really a format that you're dictating unless I'm overlooking something?

    Yes. This is largely narrative, but certainly when you're looking at any data you want to submit, census data, morbidity, mortality, SPARCS, certainly those would be in tables. Also for your timeline, you may use a critical path or a Gantt chart or whatever you choose.

39. In the example where a system has several Article 28 facilities, if one facility were to decertify beds with no capital investment, just decertify beds at a particular facility, can they use that as their right-sizing portion of the grant, but then say, build a new primary-care center at another Article 28 facility, if it met community need?

    Yes. You are reducing bed capacity in favor of primary-care capacity, that you demonstrated is needed in the community. In the case of an established Article 28 network there would be one applicant. We would look at that as one endeavor, one applicant who is reconfiguring services, reducing beds in favor of some other needed service.

40. Regarding the demonstrated savings of healthcare expenses and reducing excess capacity, and then looking at the long-term impact on the healthcare spending , it's hard to document some of the initiatives that might be more demonstration-type projects that might take three or four years to really show a reduction in overall hospitalization, for example, of a certain service area. How much documentation and how much projection are you looking at on the healthcare overall spending aspect of the application?

    Some of your project results may not be quantifiable for several years, especially if you are putting an emphasis on prevention. However, if you have statistics or data that demonstrates that this type of approach results in savings it would be reasonable to infer that the project will produce these similar outcomes. (i.e., poor birth outcomes are reduced with more prenatal care). Applicants choosing to downsize acute-care capacity should be able to demonstrate savings to the system, both in terms of capital and operating expense.

41. If an applicant applies for funding to retire existing debt on a facility that is to be closed, does the actual physical closure of that facility have to occur by October of 2008 or is the retirement of the debt that occurs by that date?

    Both need to occur within the one-year period of the GDA.

42. On the vendor list that you're looking for, could you please clarify what exactly

you need there? Is it vendors associated with this project, is it vendors in general, how many you're looking for?

We requested information on vendors who will provide significant goods or services for the project.

43. Is there a page limitation to the application? It didn't seem that way.

There are no page limitations.

44. If applying for two applications, say a small project and then one in a regional category, can you be the lead agency in both applications, or do you recommend being the lead agency in only one of the applications, or does it not matter?

You can be a lead agency in either one or both, but you need separate applications to seek funding from the separate categories for rural and small projects.

45. If you don't have a certified network, but you have a system and you want to add services that are needed in the community on the long-term-care side, non-institutional based services; and, on the acute side you have the availability to downsize, but you don't have that ability on the long-term-care side because your occupancy is very high, are you able to do that through the application?

Yes.

46. Can State capital appropriations be used to pay off a mortgage in the process of closing beds and restructuring?

Yes.

47. You mentioned program income can be used as matching funds. Can that be general operating income?

Program income is income derived from the project itself. It is not day-to-day operating income. General operating income can, of course, be the source of cash used as matching funds.

48. Do we need to submit a contingency plan if a nearby hospital happens to close in the time when we submit an application and when the grant is funded, not related to our application?

It would be better if you incorporated that whole concept into the application.

49. It has not been raised, but in previous grant applications letters of community support, are they necessary in the HEAL grant?

    They are helpful, but not necessary. Applicants should note that there is a new required Form in the RGA entitled, "Multiple Provider/ Participant Consent Form", for all applications with multiple participants in a project. The Form requires the signatures of the lead applicant and the participants certifying that they agree to participate in the project. This was posted to the DoH Web page on July 19, 2006.

50. Is there a matching requirement for the financing side as well or just the grant? Is the matching for all HEAL grants? If you just have the financing piece of it, if you are only requesting that, does that require a matching?

    Yes, a match is required if you are seeking assistance in debt retirement. There is a matching requirement regardless of the proposed use of the money.

51. Are these are tax-exempt bonds that are going to be issued? Are proprietary facilities eligible for the end use of the money?

    The bonds to be issued will be state-supported debt, and will not be issued on behalf of a particular hospital or nursing home. When DASNY does its' regular financing, and loan bond proceeds to an institution, there are limitations on what can be done with those proceeds. The limitations are very different when the bond proceeds are to be used for state grants; these can be issued as tax-exempt bonds, which will be used as grants to benefit a for-profit entity.

52. The award letter will go out and an applicant will have ninety days to decide to accept it. Do you envision establishing almost like a wait list?

    Yes

53. Would an applicant know their position on the waiting list?

    No.

54. Do you consider funds received from say a New York City council acceptable? It's government funding, but it is city government.

Yes. The only governmental fund that would be prohibited as matching funds is a State grant.

55. Suppose you have a hospital that has closed in your area within the last year. It wouldn't be a part of your particular grant application, however, your facility is dealing with and restructuring their services to accommodate that closure. Is that an appropriate project?

Yes. However, projects will be evaluated against how well they meet the objectives of the RGA (Section 1.2) and the Selection Factors (Section 3.4).

56. When do you expect to announce the grants?

Sometime during the fall of 2006.

57. The Commission, as I understand it, is expected to make their recommendations in December, and to the extent that the HEAL funds are supposed to be used in concert with what the Commission might be doing, and people may have some expectations about what the Commission might come out with, how does one address that in an application? Is it through things like a couple of different scenarios? I mean what would be the best way to present that kind of information?

It is up to the applicant to be as knowledgeable as possible about the Commission and all of the information and data available on the Commission's Mission, Goals and activities.

58. Would you be consulting with the Commission in making determinations about awards?

No.

59. In Phase 1, there was a certain period where eligible planning costs, even planning costs that were incurred prior to the first day of the grant disbursement agreement would be eligible costs. However, in Phase 2, I heard that eligible costs had to actually be a cost that was as of the first day of the grant disbursement agreement. So, this is different from Phase 1?

Correct. Section 1.5, the last sentence, states that all reimbursable and matching costs must be incurred within the period of the grant disbursement agreement.

60. Page thirty-five -- Provide a list of grants applied for in the last three years and whether the grants were awarded or declined, is that simply state grants or would that be foundational grants as well?

    This requirement is referring to New York State grants.

61. In attempt to right size, if we were to decertify beds and go through a renovation process in a portion of our facility, we would, in that section that is being renovated, do some updates including sprinkling the building, new carpeting, et cetera. Could we also include, as a part of the project, do those things to the existing building that would remain in nursing home beds?

    Yes, those costs could conceivably be included in your application, but the project(s) need to meet the objectives of the RGA as stated in Section 1.2 to score favorably.

62. We could qualify either for rural or regional. It was stated earlier that rural and small projects in each region will be selected first. Does that indicate that we should apply as rural first, or could we apply as rural and regional? The cover page on the technical application states to circle one, obviously, for just one single project.

    You need to choose which category you're going to be competing in, either rural, small project or regional.

63. Regarding awards, if you're awarding the rural projects first, and we were to ask for a million dollars, and you said, "we will give you a half a million out of the rural, but we can give the other half a million out of the regional," do you have that ability?

    No.

64 How do we know which category is the most advantageous; is there any way to determine that at all?

    The applicant would have to assess that. There is a dollar allocation, based on census population, for each region of the state. The funding for projects awarded under the small project and rural project categories will be subtracted from the regional allocations. This will occur before regional projects are funded.

65. We've got two facilities, both of which would be eligible for this. Is it best to put that under one provider application or do I submit them as two separate ones?

    It depends upon the nature of the project, and if there is collaboration between the two. If you qualify to apply as one and there is collaboration, you should apply as one

project. But, if they're stand-alone projects serving different communities and there are different goals and objectives that don't necessarily cross, you're probably better off applying for two projects.

66. In the guidelines there's not a lot in there about things like tabs and what kind of binding and pagination and those kinds of things, is that best left to us?

    It is helpful if applications are tabbed, since this assists reviewers in their review process. Applications should follow the order provided in the RGA.

67. How much sell do you want in this? I mean I know we've got the basic things, but are you looking for nice pictures and quotes and things like that? Will that be a factor in this or not?

    The more succinct you are, the more you get to the point, and the better your prose is will make the reviewers jobs easier, and it will enable them to weigh your application more fairly.

68. It's not the subject of today's meeting, I know, but the portion of HEAL that is allocable on a sole-source basis to distressed facilities that meet a somewhat different definition. If I'm a distressed facility that meets that definition, and perhaps also meets the definitions of the R.G.A., and there is a portion of my project that fits within the larger R.G.A., but it would be augmented or enhanced by also doing the sole source portion, would you advise trying to do them together, or do you have any guidance in that area?

    The set-aside program that you referred to is a separate track, it's a discretionary allocation to the Department of Health, and it really is handled separately and apart from the R.G.A.

69. Is there likely to be a closer relationship between the amount of money requested and the grant in Phase 2 of HEAL than perhaps we may have seen in Phase 1? These are capital projects that have real costs, and if we're filing a C.O.N. that postulates fifty percent of the HEAL NY Phase 2 money being grant funds it would be a little unfortunate to fall way short of that in terms of that particular source of funds.

    We're sensitive to that issue, however we do reserve the right to award less than what was requested to serve the best interests of the State.

70. Is there a restriction as to how many projects can be funded per entity?

    No.

71. Is it possible for an entity to get funded in more than one category, realistically?

    If an entity submits separate applications for each category, it is possible that an entity could be awarded in more than one category, depending on how each application scores. Each application stands on its' own.

72. If a project fits within multiple categories, and the cap is reached, would the project be moved to another category for consideration?

    No. The applicant must choose the category.

73. If you're already in the process of reconfiguring your healthcare organization, your C.O.N. is approved, you anticipated to start reconfiguration capital, construction acquisition in the fall with a community campaign to assist you in supporting this endeavor would you still be eligible to apply for these funds?

    No. If your C.O.N. has already been approved, its financial feasibility has been approved, so you would be asking HEAL to supplant existing, approved funding sources.

74. Please clarify the statement on page seven, the last paragraph of 1.6. "The proceeds of HEAL bonds however could be used to help finance the acquisition of a capital asset, thereby enabling the transferer of the asset to utilize the sale proceeds for the above non-capital purposes." Could you give an example of this?

    If there is a community where there were two institutions, one institution was going to close, the remaining institution could, in fact, apply for HEAL proceeds to help them acquire that physical asset and reduce the debt with HEAL proceeds. Also, it's not two different entities at that point.

    Regarding the transfer of property, if you wish to include the value of that transfer as part of your match, I don't think you want it to happen until you have your G.D.A. In your application, you need to let us know that there is a commitment to do that, but you have to be sure then, that the transfer falls within the period for which you are eligible to apply for matching funds.

75. If that transfer happens after the G.D.A. is signed, could you still use the value?

    Yes.

76. Are unrelated facilities that work collaboratively on HEAL NY grants given the same protection from state anti-trust laws and regulations as hospitals that follow the procedure outlined in the Voluntary Rightsizing Procedure during both the development of the grant application and the project implementation after the grant is awarded?

It is the Department's position that unrelated facilities may work collaboratively to prepare joint applications for HEAL NY grants or to implement the actions required pursuant to any such grants awarded to them. In our view, such collaboration would be immune from anti-trust liability because the application without implementation, would be a constitutionally-protected petition to government immune under the Noerr-Pennington doctrine, and the implementation of a grant award would be immune under the State Action Immunity doctrine pursuant to the clearly articulated New York State policy of the HEAL NY statute and the active state supervision of the performance of the grant. Nonetheless, the Department and DASNY encourage facilities that are concerned about the antitrust implications of a particular collaboration to consult their counsel, and if appropriate, to avail themselves of the voluntary rightsizing procedure offered by the Commission.