

1 SENATE BILL 423

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Nancy Rodriguez

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10 AN ACT

11 RELATING TO FINANCE; AMENDING THE BEHAVIORAL HEALTH CAPITAL
12 FUNDING ACT, THE PRIMARY CARE CAPITAL FUNDING ACT AND THE CHILD
13 CARE FACILITY LOAN ACT; MOVING THE PRIMARY CARE CAPITAL FUND TO
14 THE NEW MEXICO FINANCE AUTHORITY; ALLOWING FOR THE PROVISION OF
15 OPERATING CAPITAL; ALLOWING THE NEW MEXICO FINANCE AUTHORITY TO
16 CONTRACT FOR SERVICES; PROVIDING DUTIES; DIRECTING RULEMAKING;
17 ALLOWING THE NEW MEXICO FINANCE AUTHORITY TO PROVIDE REMEDIES.

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. Section 6-26-3 NMSA 1978 (being Laws 2004,
21 Chapter 71, Section 3, as amended) is amended to read:

22 "6-26-3. DEFINITIONS.--As used in the Behavioral Health
23 Capital Funding Act:

24 A. "authority" means the New Mexico finance
25 authority;

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1 B. "capital project" means acquisition, repair,
2 renovation or construction of a behavioral health facility;
3 purchase of land; or acquisition of capital equipment [~~of a~~
4 ~~long-term nature~~];

5 C. "department" means the human services department
6 [~~of health~~];

7 D. "eligible entity" means:

8 (1) a nonprofit behavioral health facility
9 that is a 501(c)(3) nonprofit corporation for federal income
10 tax purposes and serves primarily sick and indigent patients;
11 or

12 (2) a behavioral health care clinic that
13 operates in a rural or other health care underserved area of
14 the state, that is owned by a county or municipality and that
15 meets department requirements for eligibility; [~~and~~]

16 E. "fund" means the behavioral health capital fund;

17 F. "operating capital" means funds needed to meet
18 short-term obligations, such as accounts payable, wages, debt
19 servicing, lease and income tax payments; and

20 G. "project" means a capital project or operating
21 capital needed to support the increase of behavioral health
22 services to sick and medically indigent persons."

23 SECTION 2. Section 6-26-4 NMSA 1978 (being Laws 2004,
24 Chapter 71, Section 4, as amended) is amended to read:

25 "6-26-4. BEHAVIORAL HEALTH CAPITAL FUND.--

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1 A. The "behavioral health capital fund" is created
2 as a revolving fund in the authority. The fund shall consist
3 of appropriations, loan repayments, gifts, grants, donations
4 and interest earned on investment of the fund. Money in the
5 fund shall not revert at the end of a fiscal year.

6 B. Money in the fund is appropriated to the
7 authority for the purpose of making loans to eligible entities
8 for ~~[capital]~~ projects pursuant to the Behavioral Health
9 Capital Funding Act.

10 C. The fund shall be administered by the authority.
11 The authority may recover from the fund the actual costs of
12 administering the fund and originating loans ~~[up to an amount
13 equal to ten percent of original loan amounts]."~~

14 SECTION 3. Section 6-26-5 NMSA 1978 (being Laws 2004,
15 Chapter 71, Section 5) is amended to read:

16 "6-26-5. [DEPARTMENT] AUTHORITY--RULES.--The ~~[department]~~
17 authority, in conjunction with the ~~[authority]~~ department,
18 shall adopt rules to administer and implement the provisions of
19 the Behavioral Health Capital Funding Act, including
20 provisions:

21 A. establishing procedures and forms for applying
22 for loans ~~[for capital projects];~~

23 B. specifying the documentation required to be
24 provided by the applicant to justify the need for the ~~[capital]~~
25 project;

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1 C. specifying the documentation required to be
2 provided by the applicant to demonstrate that the applicant is
3 an eligible entity;

4 D. establishing procedures for review, evaluation
5 and approval of loans, including the programmatic,
6 organizational and financial information necessary to review,
7 evaluate and approve an application;

8 E. for evaluating the ability and competence of an
9 applicant to provide efficiently and adequately for the
10 completion of a proposed [~~capital~~] project;

11 F. for the approval of loan applications, including
12 provisions that accord priority attention to areas with the
13 greatest need for behavioral health services;

14 G. that ensure fair geographic distribution of
15 loans;

16 H. establishing requirements for repayment of
17 loans, including payment schedules, interest rates, loan terms
18 and other requirements;

19 I. for ensuring the [~~state's~~] authority's interest
20 in any [~~capital~~] project by the filing of a lien equal to the
21 total of the [~~state's~~] authority's financial participation in
22 the project; and

23 J. for such other requirements deemed necessary by
24 the department and the authority to ensure that the state
25 receives the behavioral health services for which the

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1 legislature appropriates money and that the [~~state's interest~~]
2 investment in a [~~capital~~] project is protected."

3 SECTION 4. Section 6-26-6 NMSA 1978 (being Laws 2004,
4 Chapter 71, Section 6) is amended to read:

5 "6-26-6. DEPARTMENT--AUTHORITY--POWERS AND DUTIES.--

6 A. The department and the authority shall
7 administer the loan programs established pursuant to the
8 provisions of the Behavioral Health Capital Funding Act. The
9 department and the authority shall:

10 (1) enter into joint powers agreements with
11 each other or other appropriate public agencies to carry out
12 the provisions of that act; and

13 (2) apply to any appropriate federal, state or
14 local governmental agency or private organization for grants
15 and gifts to carry out the provisions of that act.

16 B. The department and the authority may:

17 (1) instead of a loan, contract for services
18 with an eligible entity to provide free or reduced-fee primary
19 care services for sick and medically indigent persons as
20 reasonably adequate legal consideration for money from the fund
21 to the eligible entity so it may acquire or construct a capital
22 project to provide the services;

23 [~~(1)~~] (2) make and enter into contracts and
24 agreements necessary to carry out their powers and duties
25 pursuant to the provisions of the Behavioral Health Capital

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1 Funding Act; and

2 [~~(2)~~] (3) do all things necessary or
3 appropriate to carry out the provisions of the Behavioral
4 Health Capital Funding Act.

5 C. The authority is responsible for all financial
6 duties of the programs, including:

7 (1) administering the fund;

8 (2) accounting for all money received,
9 controlled or disbursed for capital projects in accordance with
10 the provisions of the Behavioral Health Capital Funding Act;

11 (3) evaluating and approving loans, including
12 determining the financial capacity of an eligible entity;

13 (4) enforcing contract provisions of loans,
14 including the ability to sue to recover money or property owed
15 the state;

16 (5) determining interest rates and other
17 financial aspects of a loan and relevant terms of a contract
18 for services; and

19 (6) performing other duties in accordance with
20 the provisions of the Behavioral Health Capital Funding Act,
21 rules promulgated pursuant to that act or joint powers
22 agreements entered into with the department.

23 D. The department is responsible for the following
24 duties:

25 (1) defining sick and medically indigent

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1 persons for purposes of the Behavioral Health Capital Funding
2 Act;

3 (2) establishing priorities for loans;

4 (3) determining the appropriateness of a
5 [~~capital~~] project;

6 (4) evaluating the capability of an applicant
7 to provide and maintain behavioral health services;

8 (5) selecting recipients of loans and persons
9 with whom to contract for services; and

10 (6) determining that [~~capital~~] projects comply
11 with all state and federal licensing [~~and procurement~~]
12 requirements.

13 E. The authority may make a loan to an eligible
14 entity to acquire, construct, renovate or otherwise improve a
15 capital project, provided there is a finding:

16 (1) by the department that the project will
17 provide behavioral health services to sick and indigent persons
18 as [~~defined~~] determined by the department; and

19 (2) by the authority that there is adequate
20 protection, including loan guarantees, real property liens,
21 title insurance, security interests in or pledges of accounts
22 and other assets, loan covenants and warranties or restrictions
23 or other encumbrances and pledges for the state funds extended
24 for the loan."

25 SECTION 5. Section 6-26-7 NMSA 1978 (being Laws 2004,

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1 Chapter 71, Section 7) is amended to read:

2 "6-26-7. ELIGIBLE ENTITY--CHANGE IN STATUS.--If an
3 eligible entity that has received a loan or contract for
4 services for a [~~capital~~] project ceases to maintain its
5 nonprofit status or ceases to deliver behavioral health
6 services at the site of the [~~capital~~] project for twelve
7 consecutive months, the [~~state~~] authority may pursue the
8 remedies provided in the loan agreement or contract for
9 services or as provided by law."

10 SECTION 6. Section 24-1C-3 NMSA 1978 (being Laws 1994,
11 Chapter 62, Section 9, as amended) is amended to read:

12 "24-1C-3. DEFINITIONS.--As used in the Primary Care
13 Capital Funding Act:

14 A. "authority" means the New Mexico finance
15 authority;

16 B. "capital project" means acquisition, repair,
17 renovation or construction of a facility; purchase of land;
18 acquisition of capital equipment of a long-term nature; or
19 acquisition of capital equipment to be used in the delivery of
20 primary care, telehealth or hospice services;

21 C. "department" means the department of health;

22 D. "eligible entity" means:

23 (1) a community-based nonprofit primary care
24 clinic or hospice that operates in a rural or other health care
25 underserved area of the state, that is a 501(c)(3) nonprofit

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1 corporation for federal income tax purposes and that is
2 eligible for funding pursuant to the Rural Primary Health Care
3 Act;

4 (2) a school-based health center that operates
5 in a public school district and that meets department
6 requirements or that is funded by the federal department of
7 health and human services;

8 (3) a primary care clinic that operates in a
9 rural or other health care underserved area of the state, that
10 is owned by a county or municipality and that meets department
11 requirements for eligibility; or

12 (4) a telehealth site that is operated by an
13 entity described in this subsection;

14 E. "fund" means the primary care capital fund;
15 [~~and~~]

16 F. "operating capital" means funds needed to meet
17 short-term obligations, such as accounts payable, wages, debt
18 servicing, lease and income tax payments;

19 [~~F.~~] G. "primary care" means the first level of
20 basic or general health care for an individual's health needs,
21 including diagnostic and treatment services and including
22 services delivered at a primary care clinic, a telehealth site
23 or a school-based health center; "primary care" includes the
24 provision of mental health services if those services are
25 integrated into the eligible entity's service array; and

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1 H. "project" means a capital project or operating
2 capital needed to support the increase of primary care services
3 to sick and medically indigent persons."

4 SECTION 7. Section 24-1C-4 NMSA 1978 (being Laws 1994,
5 Chapter 62, Section 10, as amended) is amended to read:

6 "24-1C-4. PRIMARY CARE CAPITAL FUND--CREATION.--

7 A. The "primary care capital fund" is created as a
8 revolving fund in the [~~state treasury~~] authority. The fund
9 shall consist of appropriations, loan repayments, gifts,
10 grants, donations and interest earned on investment of the
11 fund. A separate account shall be maintained for
12 appropriations, loan repayments, gifts, grants, donations and
13 interest earned on investment of the account for loans to
14 school-based health centers and telehealth sites. Money in the
15 fund shall not revert at the end of a fiscal year.

16 B. The fund shall be administered by the authority.
17 The authority may recover from the fund the actual costs of
18 administering the fund and originating loans [~~up to an amount~~
19 ~~equal to ten percent of original loan amounts. Money in the~~
20 ~~fund shall be expended only on warrants drawn by the secretary~~
21 ~~of finance and administration pursuant to vouchers signed by~~
22 ~~the chief executive officer of the authority or the chief~~
23 ~~executive officer's authorized representative]."~~

24 SECTION 8. Section 24-1C-5 NMSA 1978 (being Laws 1994,
25 Chapter 62, Section 11) is amended to read:

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1 "24-1C-5. [REGULATIONS] RULES.--~~[A. Prior to September~~
2 ~~15, 1994, the department, in conjunction with]~~ The authority
3 shall adopt [~~regulations~~] rules to administer and implement the
4 provisions of the Primary Care Capital Funding Act, including
5 providing for:

6 [~~(1)~~] A. the determination of rural or other health
7 care underserved areas of the state in which eligible entities
8 may receive loans or contracts for services from the fund;

9 [~~(2)~~] B. procedures and forms for applying for
10 loans or contracts for services for [~~capital~~] projects;

11 [~~(3)~~] C. documentation required to be provided by
12 the applicant to justify the need for the [~~capital~~] project;

13 [~~(4)~~] D. documentation required to be provided by
14 the applicant to demonstrate that the applicant is an eligible
15 entity;

16 [~~(5)~~] E. procedures for review, evaluation and
17 approval of loans and contracts for services, including the
18 programmatic, organizational and financial information
19 necessary to review, evaluate and approve an application;

20 [~~(6)~~] F. evaluation of the ability and competence
21 of an applicant to provide efficiently and adequately for the
22 completion of a proposed [~~capital~~] project;

23 [~~(7)~~] G. approval of loan and contract for services
24 applications, including provisions that accord priority
25 attention to areas with the greatest need for primary care

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1 services;

2 [~~(8)~~] H. fair geographic distribution of loans and
3 contracts for services; and

4 [~~(9)~~] ~~requirements for repayment of loans,~~
5 ~~including payment schedules, interest rates, loan terms and~~
6 ~~other requirements;~~

7 [~~(10)~~] ~~ensuring the state's interest in any~~
8 ~~capital project by the filing of a lien equal to the total of~~
9 ~~the state's financial participation in the project; and~~

10 [~~(11)~~] I. such other requirements deemed necessary
11 by the department to ensure that the state receives the primary
12 care services for which the legislature appropriates money and
13 that [~~protects~~] protect the state's interest in a [~~capital~~]
14 project.

15 [~~B. Regulations adopted by the department shall~~
16 ~~become effective when filed in accordance with the provisions~~
17 ~~of the State Rules Act.]"~~

18 SECTION 9. Section 24-1C-6 NMSA 1978 (being Laws 1994,
19 Chapter 62, Section 12, as amended) is amended to read:

20 "24-1C-6. DEPARTMENT--AUTHORITY--POWERS AND DUTIES.--

21 A. The department and the authority shall
22 administer the loan programs and contracts for services
23 established pursuant to the provisions of the Primary Care
24 Capital Funding Act. The department and authority shall:

25 (1) enter into joint powers agreements with

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1 each other or other appropriate public agencies to carry out
2 the provisions of that act; and

3 (2) apply to any appropriate federal, state or
4 local governmental agency or private organization for grants
5 and gifts to carry out the provisions of that act or to fund
6 allied community-based health care programs.

7 B. The department or authority may, instead of a
8 loan, contract for services with an eligible entity to provide
9 free or reduced fee primary care services for sick and
10 medically indigent persons as reasonably adequate legal
11 consideration for money from the fund to the entity so it may
12 acquire or construct a capital project to provide the services.

13 C. The department and authority may:

14 (1) make and enter into contracts and
15 agreements necessary to carry out their powers and duties
16 pursuant to the provisions of the Primary Care Capital Funding
17 Act; and

18 (2) do all things necessary or appropriate to
19 carry out the provisions of the Primary Care Capital Funding
20 Act.

21 D. The authority is responsible for all financial
22 duties of the programs, including:

23 (1) administering the fund;

24 (2) accounting for all money received,
25 controlled or disbursed for capital projects in accordance with

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1 the provisions of the Primary Care Capital Funding Act;

2 (3) evaluating and approving loans and
3 contracts for services, including determining financial
4 capacity of an eligible entity;

5 (4) enforcing contract provisions of loans and
6 contracts for services, including the ability to sue to recover
7 money or property owed the state;

8 (5) determining requirements for repayment of
9 loans, including interest rates, loan terms, payment schedules
10 and other financial aspects of a loan and relevant terms of a
11 contract for services; ~~[and]~~

12 (6) ensuring the authority's interest in any
13 project by the filing of a lien equal to the total of the
14 authority's financial participation in the project; and

15 ~~[(6)]~~ (7) performing other duties in
16 accordance with the provisions of the Primary Care Capital
17 Funding Act, ~~[regulations]~~ rules promulgated pursuant to that
18 act or joint powers agreements entered into with the
19 department.

20 E. The department is responsible for the following
21 duties:

22 (1) defining sick and medically indigent
23 persons for purposes of the Primary Care Capital Funding Act;

24 (2) establishing priorities for loans and
25 contracts for services;

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1 (3) determining the appropriateness of the
2 ~~[capital]~~ project;

3 (4) evaluating the capability of an applicant
4 to provide and maintain primary care or hospice services;

5 (5) selecting recipients of loans and persons
6 with whom to contract for services;

7 (6) determining that capital projects comply
8 with all state and federal licensing ~~[and procurement~~
9 ~~requirements]~~; and

10 (7) contracting with an eligible entity to
11 provide primary care services without charge or at a reduced
12 fee for sick and medically indigent persons as defined by the
13 department.

14 F. The authority may make a loan to an eligible
15 entity to acquire, construct, renovate or otherwise improve a
16 capital project or to fund operating capital, provided there is
17 a finding:

18 (1) by the department that the project will
19 provide primary care services to sick and medically indigent
20 persons as defined by the department; and

21 (2) by the authority that there is adequate
22 protection, including loan guarantees, real property liens,
23 title insurance, security interests in or pledges of accounts
24 and other assets, loan covenants and warranties or restrictions
25 on other encumbrances and pledges for the state funds extended

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1 for the loan.

2 G. The authority may make a loan to a school-
3 based health center that operates in a [~~public~~] school
4 district or to a telehealth site for a capital project;
5 provided, however, that the loan shall not exceed the amount
6 in the account reserved for school-based health center or
7 telehealth site funding."

8 SECTION 10. Section 24-1C-9 NMSA 1978 (being Laws 1994,
9 Chapter 62, Section 15, as amended) is amended to read:

10 "24-1C-9. ELIGIBLE ENTITY--CHANGE IN STATUS.--If an
11 eligible entity that has received a loan or contract for
12 services for a capital project ceases to maintain its
13 nonprofit status or ceases to deliver primary care services
14 at the site of the capital project for twelve consecutive
15 months, the [~~state~~] authority may pursue the remedies
16 provided in the loan agreement or contract for services or as
17 provided by law."

18 SECTION 11. Section 24-24-3 NMSA 1978 (being Laws 2003,
19 Chapter 316, Section 3) is amended to read:

20 "24-24-3. DEFINITIONS.--As used in the Child Care
21 Facility Loan Act:

22 A. "department" means the [~~children, youth and~~
23 ~~families~~] early childhood education and care department;

24 B. "facility" means a child care facility
25 operated by a provider, including both family home-based and

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1 center-based programs, licensed by the department to provide
2 care to infants, toddlers and children;

3 C. "fund" means the child care facility revolving
4 loan fund; ~~and~~

5 D. "operating capital" means funds needed to meet
6 short-term obligations, such as accounts payable, wages, debt
7 servicing, lease and income tax payments; and

8 ~~[D.]~~ E. "provider" means a person licensed by the
9 department to provide child care to infants, toddlers and
10 children pursuant to Section 9-2A-8 NMSA 1978."

11 SECTION 12. Section 24-24-4 NMSA 1978 (being Laws 2003,
12 Chapter 316, Section 4) is amended to read:

13 "24-24-4. FUND CREATED--ADMINISTRATION.--

14 A. The "child care facility revolving loan fund"
15 is created in the New Mexico finance authority to provide
16 low-interest, long-term loans to providers to make health and
17 safety improvements in their facilities and for operating
18 capital. The fund shall consist of appropriations, gifts,
19 grants and donations to the fund, which shall be invested as
20 provided in the New Mexico Finance Authority Act. Money in
21 the fund shall not revert and is appropriated to the
22 department, which shall utilize the fund for the purposes of
23 the Child Care Facility Loan Act. Administrative costs of
24 the authority may be paid from the fund. ~~[Expenditures from~~
25 ~~the fund for loans to providers shall be made upon warrants~~

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1 ~~of the secretary of finance and administration pursuant to~~
2 ~~vouchers signed by the secretary of children, youth and~~
3 ~~families or his authorized representative.]~~

4 B. Money in the fund shall be used to make loans
5 to providers that demonstrate the need to make health and
6 safety improvements, including space expansion, in order to
7 maintain an adequate and appropriate environment for their
8 clients. Loans from the fund are to be made at [~~the lowest~~
9 ~~legally permissible~~] an interest [rates] rate greater than
10 zero percent for [~~the longest amount of time in order to~~
11 ~~allow the providers the maximum opportunity to maintain the~~
12 ~~business while repaying the loan~~] a term that does not exceed
13 the useful life of the project being financed.

14 C. No more than twenty percent of the fund may be
15 loaned [~~to~~] for a single provider in a single [~~loan. A~~
16 ~~provider that has received a loan from the fund in the~~
17 ~~immediately preceding five years or that has not completed~~
18 ~~repayment of a previous loan from the fund is ineligible for~~
19 ~~a new loan~~] project. The department shall give priority for
20 loans to facilities of providers that serve proportionately
21 high numbers of state-subsidized clients and low-income
22 families.

23 D. The department, in conjunction with the New
24 Mexico finance authority, shall adopt rules to administer and
25 implement the Child Care Facility Loan Act. The rules shall

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1 become effective when filed in accordance with the State
2 Rules Act."

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