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AN ACT

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

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

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

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

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

B. "capital project" means acquisition, repair, renovation or construction of a behavioral health facility; purchase of land; or acquisition of capital equipment;

C. "department" means the human services department;

D. "eligible entity" means:

(1) a nonprofit behavioral health facility that is a 501(c)(3) nonprofit corporation for federal income

1 tax purposes and serves primarily sick and indigent patients;  
2 or

3 (2) a behavioral health care clinic that  
4 operates in a rural or other health care underserved area of  
5 the state, that is owned by a county or municipality and that  
6 meets department requirements for eligibility;

7 E. "fund" means the behavioral health capital  
8 fund;

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

12 G. "project" means a capital project or operating  
13 capital needed to support the increase of behavioral health  
14 services to sick and medically indigent persons."

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

17 "6-26-4. BEHAVIORAL HEALTH CAPITAL FUND.--

18 A. The "behavioral health capital fund" is created  
19 as a revolving fund in the authority. The fund shall consist  
20 of appropriations, loan repayments, gifts, grants, donations  
21 and interest earned on investment of the fund. Money in the  
22 fund shall not revert at the end of a fiscal year.

23 B. Money in the fund is appropriated to the  
24 authority for the purpose of making loans to eligible  
25 entities for projects pursuant to the Behavioral Health

1 Capital Funding Act.

2 C. The fund shall be administered by the  
3 authority. The authority may recover from the fund the  
4 actual costs of administering the fund and originating  
5 loans."

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

8 "6-26-5. AUTHORITY--RULES.--The authority, in  
9 conjunction with the department, shall adopt rules to  
10 administer and implement the provisions of the Behavioral  
11 Health Capital Funding Act, including provisions:

12 A. establishing procedures and forms for applying  
13 for loans;

14 B. specifying the documentation required to be  
15 provided by the applicant to justify the need for the  
16 project;

17 C. specifying the documentation required to be  
18 provided by the applicant to demonstrate that the applicant  
19 is an eligible entity;

20 D. establishing procedures for review, evaluation  
21 and approval of loans, including the programmatic,  
22 organizational and financial information necessary to review,  
23 evaluate and approve an application;

24 E. for evaluating the ability and competence of an  
25 applicant to provide efficiently and adequately for the

1 completion of a proposed project;

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

5 G. that ensure fair geographic distribution of  
6 loans;

7 H. establishing requirements for repayment of  
8 loans, including payment schedules, interest rates, loan  
9 terms and other requirements;

10 I. for ensuring the authority's interest in any  
11 project by the filing of a lien equal to the total of the  
12 authority's financial participation in the project; and

13 J. for such other requirements deemed necessary by  
14 the department and the authority to ensure that the state  
15 receives the behavioral health services for which the  
16 legislature appropriates money and that the investment in a  
17 project is protected."

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

20 "6-26-6. DEPARTMENT--AUTHORITY--POWERS AND DUTIES.--

21 A. The department and the authority shall  
22 administer the loan programs established pursuant to the  
23 provisions of the Behavioral Health Capital Funding Act. The  
24 department and the authority shall:

25 (1) enter into joint powers agreements with

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  
4 or local governmental agency or private organization for  
5 grants and gifts to carry out the provisions of that act.

6 B. The department and the authority may:

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

13 (2) make and enter into contracts and  
14 agreements necessary to carry out their powers and duties  
15 pursuant to the provisions of the Behavioral Health Capital  
16 Funding Act; and

17 (3) do all things necessary or appropriate  
18 to carry out the provisions of the Behavioral Health Capital  
19 Funding Act.

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

22 (1) administering the fund;

23 (2) accounting for all money received,  
24 controlled or disbursed for capital projects in accordance  
25 with the provisions of the Behavioral Health Capital Funding

1 Act;

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

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

8 (5) determining interest rates and other  
9 financial aspects of a loan and relevant terms of a contract  
10 for services; and

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

15 D. The department is responsible for the following  
16 duties:

17 (1) defining sick and medically indigent  
18 persons for purposes of the Behavioral Health Capital Funding  
19 Act;

20 (2) establishing priorities for loans;

21 (3) determining the appropriateness of a  
22 project;

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

25 (5) selecting recipients of loans and

1 persons with whom to contract for services; and

2 (6) determining that projects comply with  
3 all state and federal licensing requirements.

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

7 (1) by the department that the project will  
8 provide behavioral health services to sick and indigent  
9 persons as determined by the department; and

10 (2) by the authority that there is adequate  
11 protection, including loan guarantees, real property liens,  
12 title insurance, security interests in or pledges of accounts  
13 and other assets, loan covenants and warranties or  
14 restrictions or other encumbrances and pledges for the state  
15 funds extended for the loan."

16 SECTION 5. Section 6-26-7 NMSA 1978 (being Laws 2004,  
17 Chapter 71, Section 7) is amended to read:

18 "6-26-7. ELIGIBLE ENTITY--CHANGE IN STATUS.--If an  
19 eligible entity that has received a loan or contract for  
20 services for a project ceases to maintain its nonprofit  
21 status or ceases to deliver behavioral health services at the  
22 site of the project for twelve consecutive months, the  
23 authority may pursue the remedies provided in the loan  
24 agreement or contract for services or as provided by law."

25 SECTION 6. Section 24-1C-3 NMSA 1978 (being Laws 1994,

1 Chapter 62, Section 9, as amended) is amended to read:

2 "24-1C-3. DEFINITIONS.--As used in the Primary Care  
3 Capital Funding Act:

4 A. "authority" means the New Mexico finance  
5 authority;

6 B. "capital project" means acquisition, repair,  
7 renovation or construction of a facility; purchase of land;  
8 acquisition of capital equipment of a long-term nature; or  
9 acquisition of capital equipment to be used in the delivery  
10 of primary care, telehealth or hospice services;

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

12 D. "eligible entity" means:

13 (1) a community-based nonprofit primary care  
14 clinic or hospice that operates in a rural or other health  
15 care underserved area of the state, that is a 501(c)(3)  
16 nonprofit corporation for federal income tax purposes and  
17 that is eligible for funding pursuant to the Rural Primary  
18 Health Care Act;

19 (2) a school-based health center that  
20 operates in a public school district and that meets  
21 department requirements or that is funded by the federal  
22 department of health and human services;

23 (3) a primary care clinic that operates in a  
24 rural or other health care underserved area of the state,  
25 that is owned by a county or municipality and that meets

1 department requirements for eligibility; or

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

4 E. "fund" means the primary care capital fund;

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

8 G. "primary care" means the first level of basic  
9 or general health care for an individual's health needs,  
10 including diagnostic and treatment services and including  
11 services delivered at a primary care clinic, a telehealth  
12 site or a school-based health center; "primary care" includes  
13 the provision of mental health services if those services are  
14 integrated into the eligible entity's service array; and

15 H. "project" means a capital project or operating  
16 capital needed to support the increase of primary care  
17 services to sick and medically indigent persons."

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

20 "24-1C-4. PRIMARY CARE CAPITAL FUND--CREATION.--

21 A. The "primary care capital fund" is created as a  
22 revolving fund in the authority. The fund shall consist of  
23 appropriations, loan repayments, gifts, grants, donations and  
24 interest earned on investment of the fund. A separate  
25 account shall be maintained for appropriations, loan

1 repayments, gifts, grants, donations and interest earned on  
2 investment of the account for loans to school-based health  
3 centers and telehealth sites. Money in the fund shall not  
4 revert at the end of a fiscal year.

5 B. The fund shall be administered by the  
6 authority. The authority may recover from the fund the  
7 actual costs of administering the fund and originating  
8 loans."

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

11 "24-1C-5. RULES.--The authority shall adopt rules to  
12 administer and implement the provisions of the Primary Care  
13 Capital Funding Act, including providing for:

14 A. the determination of rural or other health care  
15 underserved areas of the state in which eligible entities may  
16 receive loans or contracts for services from the fund;

17 B. procedures and forms for applying for loans or  
18 contracts for services for projects;

19 C. documentation required to be provided by the  
20 applicant to justify the need for the project;

21 D. documentation required to be provided by the  
22 applicant to demonstrate that the applicant is an eligible  
23 entity;

24 E. procedures for review, evaluation and approval  
25 of loans and contracts for services, including the

1 programmatic, organizational and financial information  
2 necessary to review, evaluate and approve an application;

3 F. evaluation of the ability and competence of an  
4 applicant to provide efficiently and adequately for the  
5 completion of a proposed project;

6 G. approval of loan and contract for services  
7 applications, including provisions that accord priority  
8 attention to areas with the greatest need for primary care  
9 services;

10 H. fair geographic distribution of loans and  
11 contracts for services; and

12 I. such other requirements deemed necessary by the  
13 department to ensure that the state receives the primary care  
14 services for which the legislature appropriates money and  
15 that protect the state's interest in a project."

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

18 "24-1C-6. DEPARTMENT--AUTHORITY--POWERS AND DUTIES.--

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

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

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

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

12                   C. The department and authority may:

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

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

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

22                   (1) administering the fund;

23                   (2) accounting for all money received,  
24 controlled or disbursed for capital projects in accordance  
25 with the provisions of the Primary Care Capital Funding Act;

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

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

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

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

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

18 E. The department is responsible for the following  
19 duties:

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

22 (2) establishing priorities for loans and  
23 contracts for services;

24 (3) determining the appropriateness of the  
25 project;

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

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

6 (6) determining that capital projects comply  
7 with all state and federal licensing; and

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

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

16 (1) by the department that the project will  
17 provide primary care services to sick and medically indigent  
18 persons as defined 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  
23 restrictions on other encumbrances and pledges for the state  
24 funds extended for the loan.

25 G. The authority may make a loan to a school-based SB 423  
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1 health center that operates in a school district or to a  
2 telehealth site for a capital project; provided, however, that  
3 the loan shall not exceed the amount in the account reserved  
4 for school-based health center or telehealth site funding."

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

7 "24-1C-9. ELIGIBLE ENTITY--CHANGE IN STATUS.--If an  
8 eligible entity that has received a loan or contract for  
9 services for a capital project ceases to maintain its  
10 nonprofit status or ceases to deliver primary care services at  
11 the site of the capital project for twelve consecutive months,  
12 the authority may pursue the remedies provided in the loan  
13 agreement or contract for services or as provided by law."

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

16 "24-24-3. DEFINITIONS.--As used in the Child Care  
17 Facility Loan Act:

18 A. "department" means the early childhood  
19 education and care department;

20 B. "facility" means a child care facility operated  
21 by a provider, including both family home-based and  
22 center-based programs, licensed by the department to provide  
23 care to infants, toddlers and children;

24 C. "fund" means the child care facility revolving  
25 loan fund;

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

4           E. "provider" means a person licensed by the  
5 department to provide child care to infants, toddlers and  
6 children pursuant to Section 9-2A-8 NMSA 1978."

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

9           "24-24-4. FUND CREATED--ADMINISTRATION.--

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

21           B. Money in the fund shall be used to make loans  
22 to providers that demonstrate the need to make health and  
23 safety improvements, including space expansion, in order to  
24 maintain an adequate and appropriate environment for their  
25 clients. Loans from the fund are to be made at an interest

1 rate greater than zero percent for a term that does not exceed  
2 the useful life of the project being financed.

3 C. No more than twenty percent of the fund may be  
4 loaned for a single provider in a single project. The  
5 department shall give priority for loans to facilities of  
6 providers that serve proportionately high numbers of  
7 state-subsidized clients and low-income families.

8 D. The department, in conjunction with the  
9 New Mexico finance authority, shall adopt rules to administer  
10 and implement the Child Care Facility Loan Act. The rules  
11 shall become effective when filed in accordance with the State  
12 Rules Act."

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