

TITLE 2 PUBLIC FINANCE
CHAPTER 110 LOCAL GOVERNMENT GRANTS
PART 4 LOCAL DWI GRANT AND DISTRIBUTION OF CERTAIN DWI GRANT PROGRAM FUNDS

2.110.4.1 ISSUING AGENCY: Department of Finance and Administration, Local Government Division.
[2.110.4.1 NMAC - Rp, 2 NMAC.110.4.1, 1/17/2017]

2.110.4.2 SCOPE: All county and municipal governments.
[2.110.4.2 NMAC - Rp, 2 NMAC.110.4.2, 1/17/2017]

2.110.4.3 STATUTORY AUTHORITY:

A. The Local DWI Grant Program Act, being Sections 11-6A-1 through 11-6A-6 NMSA 1978, as amended, provides for the local DWI grant program to be established by the local government division of the department of finance and administration to award grants to municipalities and counties for:

(1) new, existing innovative or model programs, services and activities to prevent or reduce the incidence of DWI, alcoholism, alcohol abuse; and

(2) programs, services and activities to prevent or reduce the incidence of domestic abuse related to DWI, alcoholism, alcohol abuse. The DWI grant council is created to receive applications, consider grant requests and award DWI grants pursuant to the act.

B. Pursuant to Section 11-6A-5 NMSA 1978, as amended, the division, with advice and approval of the council, shall adopt regulations necessary for operation of the local DWI grant program and the county DWI program distribution, including:

(1) forms and procedures for the application process for the local DWI grant program and the county DWI program distribution;

(2) documentation to be provided by the applicant to assure compliance with the grant and the county DWI program distribution guidelines and other provisions of the act;

(3) procedures and guidelines for review, evaluation and approval of grant awards and for review and approval of programs to be funded by the county DWI program distribution;

(4) procedures and guidelines for oversight, evaluation and audit of DWI grantees to assure that grants are being administered in the manner and for the purposes that the grants were awarded; and

(5) design of an evaluation mechanism for DWI grant programs, distributions and services and submission by each DWI grantee of an annual report or other data on each local DWI grant program, distribution or service and its effectiveness and outcomes.

[2.110.4.3 NMAC - Rp, 2 NMAC.110.4.3, 1/17/2017]

2.110.4.4 DURATION: Permanent.
[2.110.4.4 NMAC - Rp, 2 NMAC.110.4.4, 1/17/2017]

2.110.4.5 EFFECTIVE DATE: January 17, 2017 unless a later date is cited at the end of a section.
[2.110.4.5 NMAC - Rp, 2 NMAC.110.4.5, 1/17/2017]

2.110.4.6 OBJECTIVE: To establish procedures for the local DWI grant program applications and the distribution of certain local DWI grant program funds.
[2.110.4.6 NMAC - Rp, 2 NMAC.110.4.6, 1/17/2017]

2.110.4.7 DEFINITIONS:

A. “Act” means the Local DWI Grant Program Act, being Sections 11-6A-1 through 11-6A-6 NMSA 1978, as amended.

B. “Administrative Guidelines” means guidelines that establish the requirements for eligible counties and their municipalities to apply for funding and to administer the fund and that are consistent with both the applicable regulations and statute.

C. “Alternative sentencing program” means a program that provides -state courts with a sentencing alternative to traditional incarceration for a DWI offender while providing access to intervention services in an environment that is consistent with the “least restrictive” means possible, e.g., incarceration/treatment, non-residential treatment, compliance monitoring/tracking.

- D.** "Board" means the board of county commissioners of a county.
- E.** "Compliance monitoring/tracking" means any program or activity that enhances tracking, follow-up or otherwise works with DWI and other alcohol-related misdemeanor offenders to assist state courts in the monitoring of offenders for compliance with court-ordered sanctions.
- F.** "Council" means the New Mexico DWI grant council created pursuant to the act. Membership of the council consists of the president of the New Mexico municipal league or designee, the president of the New Mexico association of counties or designee, the secretary of health or the secretary's designee, the secretary of finance and administration or the secretary's designee, the chief of the traffic safety bureau of the state highway and transportation department, and two representatives of local governing bodies who shall be appointed by the governor so as to provide geographic diversity.
- G.** "County DWI Plan" means the local DWI grant application developed with the advice of the council and approved by the human services department.
- H.** "County DWI planning council" means a county planning council that is representative of a broad spectrum of interests and cultural perspectives such as, emergency medical services, community substance abuse treatment, public health, community traffic safety, law enforcement, courts/judicial, prosecutor/legal, and schools. A county DWI planning council is organized to assist in the development, implementation and evaluation of a county DWI program.
- I.** "DFA" means the department of finance and administration.
- J.** "Division" means the local government division of the department of finance and administration.
- K.** "Distribution program" means the distribution of certain local DWI grant funds on a quarterly basis by the division from the fund to eligible counties for council-approved DWI programs, services or activities in an amount in accordance with the formula in Subsection B of Section 11-6A-6 NMSA 1978 as amended.
- L.** "DWI" means driving while intoxicated.
- M.** "Fund" means the local DWI grant fund created pursuant to the act, which receives a portion of liquor excise tax revenue and is administered by the division.
- N.** "Grant program" means the local DWI grant program established by the division to make grants to municipalities or counties for new, existing innovative or model programs, services or activities to prevent or reduce the incidence of DWI, alcoholism and alcohol abuse. Grants shall be awarded by the council pursuant to the advice and recommendations of the division and the requirements of Subsection C of Section 11-6A-3 NMSA 1978, as amended.
- O.** "Enforcement program" means any program or activity improving law enforcement approaches to prevent or deter DWI behavior, such as DWI checkpoints, saturation patrols, warrant roundups and underage drinking prevention activities. Local DWI grants may be used for law enforcement overtime only in support of these types of activities. On a case by case basis local DWI grants may be used for a full-time DWI law enforcement officer if sufficient justification is provided.
- P.** "Local DWI grant application" means the forms required by the division to request funding through the fund.
- Q.** "Offender program" means any program or activity with the purpose of reducing the recidivism of DWI offenders.
- R.** "Prevention program" means any program or activity that has as its objective the fostering or creation of an environment that helps individuals make healthy and safe choices to prevent or reduce the incidence of DWI, alcoholism or alcohol abuse. Prevention programs should be designed to increase the ability of an individual to change behavior related to the misuse or abuse of alcohol, to resist pressures or influences to misuse or abuse alcohol, and to prevent or reduce the incidence of DWI, alcoholism, or alcohol abuse.
- S.** "Public information and education program" means any program or activity aimed at informing communities, families, and individuals about ways to improve efforts toward zero-tolerance of DWI and to support social action for change, such as holiday "survival" campaigns for safety, media conferences, speaker bureaus, resource libraries, emergency medical service professionals providing school presentations, bill boards, and community fairs.
- T.** "Screening program" means the use of empirically-based procedures, such as standardized tests, self-reporting techniques and interviews to identify, at the judicial stage, those DWI offenders who have alcohol or drug-related problems/consequences, who are at risk for such difficulties, or who are at high risk of DWI recidivism. Screening measures are not designed to explain the nature and extent of such problems, or to substitute for assessments to aid in the treatment planning process.
- U.** "Supplantation" means the replacement or substitution of existing funding with local DWI grant funding.

V. **"Teen court program"** means an alternative sentencing program for juveniles accused of minor offenses, which program is sanctioned by a state court or by the juvenile justice division of the children, youth and families department's juvenile probation and parole offices. Teen court program includes juvenile defendants, paid or volunteer staff, teen court judges, community liaison, bailiffs, court clerks and teens serving as jurors, attorneys, or performing other duties.

W. **"Treatment program"** means an array of individual, family, group or social programs or activity alternatives directed to intervene and address DWI, alcohol problems and alcohol dependence, or alcoholism or alcohol abuse. Treatment seeks to reduce the consumption of alcohol, to support abstinence and recovery from drinking alcohol, and to improve physical health, family and social relationships, emotional health, well-being, and general life functioning.

[2.110.4.7 NMAC - Rp, 2 NMAC.110.4.7, 1/17/2017]

2.110.4.8 ELIGIBLE APPLICANTS:

A. Eligible applicants include all counties and all incorporated municipalities that join with the county in which they are located to participate in the proposed application, or any combination of two or more counties and the incorporated municipalities within the boundaries of the counties.

B. The council shall make grants only to counties or municipalities in counties that have established a local DWI planning council and adopted a county DWI plan or are parties to a multi-county DWI plan that has been approved by each applicable board and county DWI planning council pursuant to Section 43-3-15 NMSA 1978, as amended.

C. Pueblo and tribal governments and non-profit organizations are not eligible to apply directly under the grant and distribution programs. These entities are encouraged to participate in the county DWI planning council process.

D. Municipalities may apply for funding if they are officially designated as fiscal agent for their county by resolution of the applicable county board.

E. For multi-county applicants within reasonable geographic proximity to one another, a lead county or municipality must be identified to administer the project.

F. County DWI planning councils must have provided each municipality and tribal government within the county the opportunity to participate in the development of the application. Documentation of the applicant's efforts to acquire municipal or tribal government participation and endorsement must be presented with the application.

[2.110.4.8 NMAC - Rp, 2 NMAC.110.4.9, 1/17/2017]

2.110.4.9 ELIGIBLE PROGRAMS, SERVICES OR ACTIVITIES: These include the following:

A. New, existing innovative or model programs, services, or activities of any kind designed to prevent or reduce the incidence of DWI, alcoholism or alcohol abuse. As provided in the definitions set forth in these regulations, areas suggested for programs and activities are prevention, enforcement, education, screening, treatment, compliance monitoring/tracking, alcohol related domestic violence, or alternative sentencing including programs that combine incarceration, treatment and aftercare, to prevent or reduce the incidence of DWI, alcoholism, alcohol abuse or domestic abuse related to DWI, alcoholism or alcohol abuse.

B. Existing community-based programs, services, or facilities for prevention, screening, and treatment of alcoholism and alcohol abuse, which demonstrate effective model approaches to prevent or reduce the incidence of DWI, alcoholism, alcohol abuse or domestic abuse related to DWI, alcoholism or alcohol abuse.

[2.110.4.9 NMAC - Rp, 2 NMAC.110.4.10, 1/17/2017]

2.110.4.10 APPLICATION LIMITATIONS:

A. Distribution programs shall be limited to the county's projected year's distribution amount determined by the distribution formula as contained in Section 11-6A-6 NMSA 1978, as amended.

B. Grant programs shall be limited to programs, services or activities that meet the requirements of Subsection C of Section 11-6A-3 NMSA 1978, as amended.

C. Applicants are required to limit the time period of the application as follows:

(1) distribution programs and yearly grant programs are limited to the 12 month fiscal year;
and

(2) multi-year grant programs are limited to no more than 36 months; all multi-year requests must be for projects, activities, or services that support or complement existing DWI efforts and are reasonably anticipated to extend beyond one year.

D. For grant and distribution program applications, a minimum of 10 percent of the proposed operating budget must be from county or municipal matching funds. Cash valued in-kind resources may be applied to the required matching funds; applications proposing to use in-kind resources as required matching funds must demonstrate the value of the in-kind resources to be provided.

E. All approvals will be limited by availability of funds. The division and the council will review requests for funding to ensure all proposed expenditures are justified, meaningful, and feasible within the project period. Justification of need and applicant's past performance will be considered.

F. Multi-county applications will be given preference.
[2.110.4.10 NMAC - Rp, 2 NMAC.110.4.11, 1/17/2017]

2.110.4.11 NUMBER OF APPLICATIONS: To ensure the most efficient and effective use of grant program and distribution program funds, applications are limited as follows:

A. Number of applications - One application per county per grant and distribution program. A county may apply for the funding of a distribution program and a grant program to be implemented in the same fiscal year.

B. Multi-county applications - Two or more counties, within reasonable geographic proximity to each other, may submit a joint application. Parties to a joint application are limited to participation in one distribution program and one grant program.

[2.110.4.11 NMAC - Rp, 2 NMAC.110.4.12, 1/17/2017]

2.110.4.12 INELIGIBLE ACTIVITIES:

A. Capital outlay expenditures are limited to 10 percent of the total grant or distribution amount.

B. Land or building/facility acquisition with DWI grant or distribution funds is not allowed, except that programs eligible for alcohol detoxification grants pursuant to Subsection D of Section 11-6A-3 NMSA 1978 may request approval for land or building/facility acquisition.

C. Use of grant or distribution funds to pay for indirect administrative costs for DWI programs is not allowed in the grant or distribution programs, except that indirect administrative costs may be counted towards in-kind resources match. Administrative costs in direct support of programs may be budgeted in the direct program portion of the budget.

D. Supplantation - Grant or distribution program funds shall not be used to supplant other existing funds, but can be used for new, expanded, supplemental or complementary DWI activities.

E. Cash accumulations - Distribution program funding shall be obligated or encumbered in binding third-party obligations for council-approved programs, activities or services delivered in the fiscal year of the distribution. No distribution program funds may be accumulated beyond the fiscal year.

F. Cash transfers - Grant or distribution program funds will not be transferred by the county or the municipality designated by the county as fiscal agent to other funds in the fiscal agents' budget from the fiscal agent's established, separate local DWI grant and distribution fund.

[2.110.4.12 NMAC - Rp, 2 NMAC.110.4.13, 1/17/2017]

2.110.4.13 APPLICATION PROCEDURES, FORM AND CONTENT:

A. Applications for grant and distribution program funds shall conform to application instructions determined by the division, including an original signed cover sheet.

B. In the event that an application is incomplete or requires modification, the applicant will be promptly notified by the division. The applicant must then immediately submit the information or modification requested. Applicants that do not respond in writing in the timeframe established by the division may be disqualified.

C. The applicant's governing body must authorize the county or municipality designated as fiscal agent for the county to submit the application by resolution.

D. The form and content of applications will be determined by the division.

[2.110.4.13 NMAC - Rp, 2 NMAC.110.4.14, 1/17/2017]

2.110.4.14 APPLICATION REVIEW, RATING AND SELECTION:

A. The following review, rating and selection process will be used by the division for presentation to the council:

(1) Upon receipt of grant and distribution program applications, division staff shall review for eligibility, completeness and compliance. Additional information may be required and requested. The division

may, in its discretion, consult appropriate experts for information and advice concerning technical aspects of any application.

(2) Division staff shall make recommendations to the council on the eligibility of distribution program applications considering compliance with these regulations and the act.

(3) Division staff shall rate grant program applications and present recommendations to the council based on the extent to which applicants meet program rating criteria.

B. Applications will be rated on the following criteria:

(1) quality of statistical analysis of local data identifying gaps and needs;

(2) quality of discussion around the focus of the project, reason for selection of components and brief descriptions of each component;

(3) demonstrated reasonableness and justified costs appropriate to the proposed activities of component budgets (quantifies costs with a best estimate of units, activities, clients, etc.);

(4) measures of past performance;

(5) community participation, collaboration and planning - extent to which the local DWI planning council, solicited participation from municipal, tribal and pueblo representatives, extent of involvement by such parties in developing the application, and how the applicant provides continuing opportunities for public participation in the planned implementation and evaluation of the program's efforts;

(6) extent to which there is proposed leveraging of in-kind match, cash match, self-sufficiency or other funding sources; and

(7) extent to which the proposal is for new, innovative or model programs, services or activities.

C. The council will review division staff ratings and recommendations, and will make grant program funding decisions and distribution program approvals in an open public meeting held in accordance with the Open Meetings Act. The council may, in its sole discretion, approve all, part or none of an application, and may adjust the scope and dollar amounts of grant program applications. The council will make its grant program funding and distribution program approval determinations by a majority vote of the full council.

[2.110.4.14 NMAC - Rp, 2 NMAC.110.4.15, 1/17/2017]

2.110.4.15 REVERSIONS, SUPPLEMENTAL FUNDING AND UNDERRUNS:

A. Reversions/supplemental funding - When funds are reverted from a previously-approved grant program project or distribution program award, or additional funds are made available for council award for any other reason, the council may:

(1) set aside the funds in a contingency fund; or

(2) take other action as deemed appropriate.

B. Underruns - If, at the end of the fiscal year, a balance of funds remains after all expenditures have been reimbursed, the balance of funds for a grant or distribution program project shall revert to the fund. This underrun rule applies to multi-year grant programs in the last fiscal year of the council-approved program.

C. Special applications - Should additional funds become or be determined to be available in the fund, the council may call for and act on special applications from eligible applicants. The purpose and rating criteria of the special applications will be outlined in the call for applications.

[2.110.4.15 NMAC - Rp, 2 NMAC.110.4.16, 1/17/2017]

2.110.4.16 ADMINISTRATIVE PROCEDURES:

A. All successful grant and distribution program applicants must adhere to state procurement laws, regulations and other procedures as established by the division, to ensure that all grant and distribution program funds are expended in accordance with state law.

B. All counties and municipalities designated by a county as a fiscal agent must set up a separate local DWI grant and distribution program fund in the county or municipality's budget. This fund must be included in the entity's budget process and financial reports.

[2.110.4.16 NMAC - Rp, 2 NMAC.110.4.17, 1/17/2017]

2.110.4.17 SANCTIONS:

A. Grantee sanctions may include any administrative action authorized by the division director taken against a grant or distribution program for improper or inadequate performance or non-compliance with one or more condition(s) of the grant agreement, based on state program requirements, or failure to follow through on the approved DWI application, including the signed statement of assurances or the local DWI planning council

approved plan. In each instance, to the extent possible under the circumstances, the sanctions imposed by the director will be intended first, to correct the deficiency; second, to mitigate any adverse effects or consequences of the deficiency; and third, to prevent recurrence of the same or similar deficiencies.

B. Examples of deficiencies include but are not limited to the following:

- (1) failure to correct monitoring or audit findings;
- (2) failure to document and report to the division in a timely manner all DWI expenditures of the grant or distribution programs;
- (3) failure to implement the project in a timely fashion;
- (4) lack of continuing capacity to administer the program;
- (5) failure to execute planned activities in accordance with the grant agreement or the approved DWI application for distribution programs;
- (6) failure to comply with the local DWI planning council approved plan; and
- (7) implementation of a project change without prior division approval.

C. Types of sanctions:

(1) The division director may withhold grant program reimbursement payments, or disallow further distribution draw-downs when there are specific irregularities in payment requests or contractual obligations.

(2) The division director may withhold distributions to distribution programs if the DWI program is not implementing the council-approved DWI programs, services or activities as set forth in the application.

(3) The division director may suspend authority to proceed with any grant or distribution program's programs, services or activities when monitoring of the programs, services or activities warrants such action. Cause for suspension may include local management or project administration irregularities or nonperformance in matters of program compliance, failure to comply with the state procurement code, failure to implement council-approved DWI programs, services or activities as set forth in the application, including the signed statement of assurances, failure to implement the local DWI planning council approved plan, or any other failures or unsatisfactory performance for which the grant or distribution program has been cited by written correspondence or instructions. Any suspension will be in effect until the grant or distribution program cures all causes for suspension, or until termination. The division director shall provide the grant or distribution program with an opportunity to appeal the suspension within 15 calendar days after receipt of written notice of the suspension to demonstrate why the grant or distribution should not be suspended. The director will review any appeal of the suspension and may, in the director's sole discretion, proceed with the suspension, impose another sanction, or resume normal processing of the grant or distribution program.

(4) Termination:

(a) The division director may terminate a grant or distribution program's receipt of further funds after receiving council approval to do so.

(b) Grounds for termination:

(i) the grantee or distribution program is noncompliant with state program statutory requirements, or these regulations;

(ii) the grantee or distribution program lacks the continuing capacity to administer the project;

(iii) the grantee or distribution program has not implemented the project in a timely manner; or

(iv) the grantee or distribution program has not implemented the DWI programs, services or activities approved by the council in the county program application.

[2.110.4.17 NMAC - Rp, 2 NMAC.110.4.18, 1/17/2017]

2.110.4.18 COUNCIL AUTHORITY: The council may at any time waive or adjust any requirement imposed in these regulations so long as the council finds that the waiver or adjustment is in the best interest of the state and that the waiver or adjustment does not unduly penalize or favor any applicant or violate any state law or other regulation.

[2.110.4.18 NMAC - Rp, 2 NMAC.110.4.19, 1/17/2017]

HISTORY OF 2.110.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

DFA-LGD Rule No. 93-2, Local Driving While Intoxicated/Impaired (DWI) Grant Program Regulations Governing Program Application and Operations, 5/20/1994.

DFA-LGD Rule No. 94-1, Local Driving While Intoxicated/Impaired (DWI) Grant Program Regulations Governing Program Application and Operations, 10/18/1994.

DFA-LGD Rule No. 95-3, Local Driving While Intoxicated/Impaired (DWI) Grant Program Regulations Governing Program Application and Operations, 11/17/1995.

History of Repealed Material: 2 NMAC 110.4, Local DWI Grant and Distribution of Certain DWI Grant Program Funds, filed 10/1/2001, repealed effective 1/17/2017.