

**TITLE 7           HEALTH**  
**CHAPTER 20    MENTAL HEALTH**  
**PART 4           BEHAVIORAL HEALTH CAPITAL FUND PROGRAM**

**7.20.4.1           ISSUING AGENCY:** New Mexico Department of Health - Behavioral Health Services Division.  
[7.20.4.1 NMAC - N, 05-31-07]

**7.20.4.2           SCOPE:** The behavioral health capital fund program rule shall apply to the use of funds by eligible entities available pursuant to the Behavioral Health Capital Funding Act, Sections 6-26-1., et seq., NMSA 1978.  
[7.20.4.2 NMAC - N, 05-31-07]

**7.20.4.3           STATUTORY AUTHORITY:** This rule is promulgated pursuant to: 1) the Department of Health Act, Section 9-7-6.E., NMSA 1978; 2) the Behavioral Health Capital Funding Act, Sections 6-26-1., et seq., NMSA 1978.  
[7.20.4.3 NMAC - N, 05-31-07]

**7.20.4.4           DURATION:** Permanent.  
[7.20.4.4 NMAC - N, 05-31-07]

**7.20.4.5           EFFECTIVE DATE:** 05-31-07, unless a later date is cited at the end of a section.  
[7.20.4.5 NMAC - N, 05-31-07]

**7.20.4.6           OBJECTIVE:** The objective is to establish standards and procedures for regulating programs under the Behavioral Health Capital Funding Act. Section 6-26-5 NMSA 1978 of the Behavioral Health Capital Funding Act directs the department of health and the New Mexico finance authority jointly to develop and administer a loan program established pursuant to the provisions of the act.  
[7.20.4.6 NMAC - N, 05-31-07]

**7.20.4.7           DEFINITIONS:**

**A.           "Act"** means the Behavioral Health Capital Funding Act (Sections 6-26-1 to 6-26-8 NMSA 1978).

**B.           "Agreement"** means the document or documents signed by the board and the eligible entity receiving a loan that specifies the terms and conditions of obtaining the loan under the program.

**C.           "Applicant"** means an eligible entity that has filed a request for a loan with the department and the authority.

**D.           "Application"** means a written document filed with the department and the authority by an applicant for the purpose of obtaining a loan. An application may include a form prescribed by the department and the authority, written responses to requests for information by the department and the authority, or other format as determined by the department and the authority.

**E.           "Application committee"** means a six-member body, three members appointed by the chief executive officer of the authority from the authority staff and three members appointed by the department from the department staff.

**F.           "Authority"** means the New Mexico finance authority.

**G.           "Authorized representative"** means one or more individuals authorized by the governing body of an eligible entity to act on behalf of the eligible entity in connection with its application. An authorized representative may act on behalf of the eligible entity to the extent provided by law.

**H.           "Behavioral health care"** means a comprehensive array of professional and ancillary services for the treatment of mental illnesses, substance abuse disorders and/or trauma spectrum disorders.

**I.           "Behavioral health service provider"** means an individual or an agency licensed or certified by or receiving funds under contract with the New Mexico department of health for the provision of behavioral health services.

**J.           "Behavioral health care facility"** means a facility operated by a behavioral health service provider.

**K.           "Board"** means the New Mexico finance authority board, as created by and set forth in the bylaws of the authority.

- L.** "Department" means the New Mexico department of health.
- M.** "Eligible entity" means a provider that meets the statutory definition of "eligible entity" provided for in the act.
- N.** "Loan" means a loan made by the authority to an applicant under the program for the funding of a project.
- O.** "Fund" means the behavioral health capital fund.
- P.** "Program" means the behavioral health capital fund program authorized by the act.
- Q.** "Project" means repair, renovation or construction of a behavioral health care facility, purchase of land, or the acquisition of capital equipment of a long-term nature. The following items shall be eligible or ineligible for purposes of funding through a loan:
  - (1) eligible for funding:
    - (a) building, construction, renovation;
    - (b) land;
    - (c) project planning and design;
    - (d) purchase of capital equipment;
  - (2) ineligible for funding:
    - (a) purchase of office supplies;
    - (b) general operating expenses.
- R.** "Sick and medically indigent" means both those individuals below the federal poverty level not covered by private third party health care insurance and those individuals between 100% and 200% of federal poverty levels who are not covered by any private third party health insurance. Medically indigent individuals are usually expected to pay for some portion of the cost of their health care based upon the level of their income. [7.20.4.7 NMAC - N, 05-31-07]

#### **7.20.4.8 LOAN APPLICATION PROCEDURES:**

- A.** Contingent upon a sufficient balance in the fund, the department and the authority may accept applications at any point during the state fiscal year.
- B.** The department and the authority will provide forms and/or guidelines for a loan application and applications must be submitted on that form. The application shall be signed by the authorized representative and submitted to the department. Only applications that are complete will be considered for a loan. The application shall include the following.
  - (1) The amount of the loan requested and an itemization of the proposed use or uses of the loan.
  - (2) A detailed description of the circumstances that demonstrate the need for the project, including:
    - (a) the eligibility of the applicant;
    - (b) the programmatic appropriateness;
    - (c) the facility's need;
    - (d) the needs of community.
  - (3) A detailed description of the project, including:
    - (a) a description of the scope of work of the project;
    - (b) the estimated cost of the project;
    - (c) the target date for the initiation of the project and the estimated time to completion;
    - (d) the estimated useful life of the project and selected components (furnishings, equipment, etc.), as detailed on the application form;
    - (e) proof of applicable licenses and certifications; and
    - (f) other data as requested by the department or the authority.
  - (4) A copy of the applicant's articles of incorporation and by-laws and a certificate of good standing from the New Mexico public regulation commission.
  - (5) A copy of the applicant's internal revenue service tax exempt determination letter.
  - (6) A letter certifying that the project was duly authorized and approved by the applicant's governing body.
  - (7) The identification of the source of funds for repayment of the loan and the source of funds to operate and maintain the project over its useful life.
  - (8) The applicant's audited financial reports for the most recent five years, or term of existence, along with its projected cash flows for five years.
  - (9) The requested loan payback period.

- (10) Any existing title insurance policies, title abstracts or searches of the real property owned by the applicant.
  - (11) Information on the current and proposed services of the applicant to the sick and medically indigent.
  - (12) Additional information as requested by the department or the authority that is requested at any point in the application process.
- [7.20.4.8 NMAC - N, 05-31-07]

**7.20.4.9 EVALUATION OF APPLICANT AND PROJECT BY DEPARTMENT AND THE APPLICATION COMMITTEE:**

**A.** The department will determine whether an application is complete. Once the application is complete, the department will evaluate the application for eligibility and will determine the programmatic priority of the project.

**B.** To be eligible for a loan, an eligible entity must:

- (1) be a provider or facility that meets the statutory definition of “eligible entity” provided for in the act;
- (2) have policies and procedures that assure that no person will be denied services because of inability to pay; these policies and procedures must address the medically indigent persons below poverty not covered by third party payors and those between 100% and 200% of poverty without third party coverage; the eligible entity must be able to demonstrate either the successful impact of these policies and procedures, or have a practical plan for their implementation;
- (3) have billing policies and procedures that maximize patient collections except where federal rules or contractual obligations prohibit the use of such measures; the eligible entity must be able to demonstrate either the successful impact of these policies and procedures, or have a practical plan for their implementation;
- (4) provide evidence satisfactory to the authority that it has proper title, easements, leases, and right of ways to the property upon which any facility proposed for funding is constructed or improved;
- (5) comply with all applicable federal, state, and local laws and rules;
- (6) meet other requirements as determined by the department.

**C.** The department shall determine the priority for loans from the fund. Priority shall be based on:

- (1) community need and support, including but not limited to the identification of other financing;
  - (2) facility or equipment need;
  - (3) the appropriateness of the project;
  - (4) the ability of an applicant to maintain behavioral health care services;
  - (5) whether making the loan would help achieve the goal of a fair geographic distribution of loans;
- and,
- (6) other factors, as determined by the department.

**D.** Upon completion of its evaluation of eligibility and its determination of programmatic priority, the department will refer the applications to the application committee. The application committee will evaluate the project. The application committee may confer with outside parties as necessary to obtain more information on the feasibility of the project, the applicant’s administrative capacity, and the applicant’s readiness to proceed. The application committee will make a written recommendation to the authority. The recommendation will include approval or disapproval of specific projects and the estimated costs of the projects. The recommendation may include recommendations for loan covenants needed for programmatic reasons and adjustments to the department’s programmatic prioritization of loans.

**E.** Although the department and the authority will analyze each project to determine whether the project is feasible, a loan by the authority does not constitute a warranty or other guarantee as to the feasibility of the project and the authority shall not have any responsibility or liability with respect to any project.

[7.20.4.9 NMAC - N, 05-31-07]

**7.20.4.10 FINANCING APPROVAL BY THE AUTHORITY:**

**A.** The authority will perform an independent financial analysis of each application. In evaluating an application, the authority will consider.

- (1) The applicant’s demonstration that the excess of public support and revenues over expenses for the most recent fiscal year or the projected amount for the fiscal year after the project’s completion (after adding back annual depreciation and interest) will provide sufficient coverage of the previous year’s annual debt service and sufficient coverage of projected maximum annual debt service after accounting for the loan.

- (2) The ability of the applicant to secure financing from other sources and the costs of the loan.
- (3) The recommendations of the application committee.

**B.** The evaluation must include a finding that the useful life of the project will meet or exceed the final maturity of the loan and must meet standards for reasonable costs set by the board.

**C.** The evaluation must include a finding by the authority that there is adequate protection, including loan guarantees, real property liens, title insurance, security interests in or pledges of accounts and other assets, loan covenants and warranties or restrictions or other encumbrances and pledges for the state funds extended for the loan.

**D.** The applicant must agree, and such agreement may be included in the agreement at the request of the board:

(1) to maintain separate project accounts in accordance with generally accepted accounting principles and to conduct an annual audit of the project's financial records during the term of the loan; and

(2) to satisfy any other requirements as may be determined by the authority.

**E.** Once a recommendation has been made on the application by the authority staff, the board will act on the application and any associated loan documents or agreements no later than the next regular board meeting at which such item may be properly considered. The board may approve all or part of the application as recommended by the authority staff. Board approval may specify, at the board's discretion, terms and conditions of the loan as necessary to ensure repayment, including but not limited to, maximum loan term and maximum annual payments.

**F.** The authority will notify the applicant of the approval or disapproval of its application by telephone and will mail written notification by certified mail within seven working days of board action.

**G.** All communications regarding an eligible entity's original application shall be directed to the department.

[7.20.4.10 NMAC - N, 05-31-07]

#### **7.20.4.11 RECONSIDERATION:**

**A.** Decision by department as to eligibility. An applicant may request reconsideration of a contrary decision by the department as to whether it is an eligible entity as defined by the act and under these rules. Notice must be given to the department in writing within ten (10) working days of receipt of the department's decision as to eligibility. A request for reconsideration not timely or properly made will be barred. The department's secretary will promptly review each timely request for reconsideration. The decision of the department secretary is final. If the decision of the department secretary differs from the decision of the department as to an applicant's eligibility, evaluation of the application shall be resumed by the department based on the decision of the department secretary.

**B.** Decision by board as to funding. An applicant may request reconsideration of a decision by the board denying funding to an eligible entity by notifying the authority in writing within forty-five days of the date on which the authority gives notice of an adverse decision to an applicant. Notice of an adverse decision is deemed to be given on the fifth business day following the date on which written notice of the adverse decision is mailed to the applicant by the authority by certified United States mail. A request for reconsideration is deemed to have been given on the fifth business day following the date on which the request is mailed to the authority. A request for reconsideration not timely or properly made will be barred. The authority's chief executive officer will promptly review each timely request for reconsideration and will recommend, at the next regular meeting of the board, action to be taken by the board. The board will review and take action on the request for reconsideration and will notify the applicant of the board's decision, in writing, within five working days of the board's decision. The decision of the board is final.

[7.20.4.11 NMAC - N, 05-31-07]

#### **7.20.4.12 LOAN DOCUMENTS AND AGREEMENT:**

**A.** The authority and the eligible entity will enter into an agreement and any other applicable documentation to establish the terms and conditions of the loan. The agreement will include the terms of repayment and remedies and sanctions available to the authority in the event of a default. The authority will monitor and enforce the terms and conditions of the agreement, including prompt notice and collection. In consultation with the department, the authority will take actions as necessary to ensure loan repayment and the integrity of the fund. The authority will not monitor the performance of an eligible entity under department credentialing and/or licensure requirements nor for programmatic requirements and will not make site visits. The department will monitor the performance of an eligible entity under department credentialing and/or licensure requirements and for programmatic requirements and will make the necessary site visits. The authority will not be responsible for any act or omission of the applicant upon which any claim, by or on behalf of any person, firm, corporation or other legal entity, may be made, arising from the loan or any establishment or modification of the project or otherwise.

**B.** The board will establish the interest rate for loans. The board will set the rate at the lowest legally permissible interest rate. The interest rate shall not change during the term of the loan unless refinanced.

**C.** The agreement will contain provisions that require that.

(1) The applicant complies with all applicable federal, state and local laws and rules.

(2) Any contract or subcontract executed for the completion of any project shall contain a provision that there shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin.

(3) The applicant shall require any contractor of a project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978 and its subsequent amendments and successor provisions.

**D.** The authority shall ensure the state's interest in any project by filing a lien equal to the total of the authority's financial participation in the project.

**E.** If land is to be purchased with a loan from the fund, the applicant shall provide evidence satisfactory to the authority that the title is merchantable and free and clear from liens or encumbrances. The authority shall also require that a title insurance policy insuring the authority's interest as a first lien be obtained as a condition of making the loan. The eligible entity shall not encumber the land purchased by granting or creating any additional security interest in the land while any amount of the loan is unpaid. The eligible entity shall pay immediately any encumbrance or lien against the land that attaches while any amount of the loan is unpaid.

**F.** If any repayment of a loan is more than 30 days past due, or if the eligible entity is in default on any other conditions as defined under the loan agreement, the authority and the department will report to each other and to the application committee as to the borrower's then current status as it relates to the loan, including credentialing or licensure status and any reported or known violations of applicable laws or rules to which the facility is subject and any known change in financial status. The department may develop workout plans in conjunction with the application committee for any borrower who maintains eligibility as defined in NMSA 1978 Section 6-26-3 D, but is more than 60 days past due in loan repayment. The authority may develop workout plans in conjunction with the application committee for any borrower who ceases to maintain eligibility as defined in NMSA 1978 Section 6-26-3 D and is more than 60 days past due in loan repayments. Any such workout plan and its implementation is in addition to and not instead of the courses of actions, remedies and sanctions available separately to the department or the authority under the act, these rules or the agreement or in any other manner available by law.

**G.** If an eligible entity that has received a loan for a project ceases to maintain its nonprofit status or ceases to deliver behavioral health services at the site of the project for twelve consecutive months, the authority may pursue the remedies provided in the loan agreement or as provided by law.

**H.** If an eligible entity has received a loan for a project, the loan may be renegotiated if the entity is still eligible but has had a change in financial status.

**I.** In the event of default by the borrower, the authority may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law.  
[7.20.4.12 NMAC - N, 05-31-07]

#### **7.20.4.13 ADMINISTRATION OF THE BEHAVIORAL HEALTH CAPITAL FUND:**

**A.** The fund shall be administered by the authority as a separate account, but may consist of such sub accounts as the authority deems necessary to carry out the purposes of the fund.

**B.** Money from repayments of loans or payments on securities held by the authority for projects authorized specifically by law shall be deposited in the fund. The fund shall also consist of any other money appropriated, distributed or otherwise allocated to the fund for the purpose of financing projects authorized specifically by law.

**C.** The authority shall adopt a uniform accounting system for the fund and related accounts and sub-accounts established by the authority, based on generally accepted accounting principles.  
[7.20.4.13 NMAC - N, 05-31-07]

**History of 7.20.4 NMAC:** [RESERVED]