

TITLE 7 HEALTH
CHAPTER 29 PRIMARY AND RURAL HEALTH CARE SERVICES
PART 4 PRIMARY CARE CAPITAL FUND PROGRAM

7.29.4.1 ISSUING AGENCY: New Mexico Department of Health - Public Health Division
[7.29.4.1 NMAC – Rp 7 NMAC 29.4.1, 12/28/01]

7.29.4.2 SCOPE: The Primary Care Capital Fund Program Regulations shall apply to the use of funds by eligible entities available pursuant to the Primary Care Capital Funding Act, Sections 24-1C-6., et seq., NMSA 1978.
[7.29.4.2 NMAC – Rp 7 NMAC 29.4.2, 12/28/01]

7.29.4.3 STATUTORY AUTHORITY: These regulations are promulgated pursuant to: 1) the Department of Health Act, Section 9-7-6.E., NMSA 1978; 2) the Primary Care Capital Funding Act, Sections 24-1C-1., et seq., NMSA 1978.
[7.29.4.3 NMAC – Rp 7 NMAC 29.4.3, 12/28/01]

7.29.4.4 DURATION: Permanent
[7.29.4.4 NMAC – Rp 7 NMAC 29.4.4, 12/28/01]

7.29.4.5 EFFECTIVE DATE: December 15, 2001, unless a later date is cited in a section.
[7.29.4.5 NMAC – Rp 7 NMAC 29.4.5, 12/28/01]

7.29.4.6 OBJECTIVE: The objective is to establish standards and procedures for regulating Programs under the Primary Care Capital Funding Act. Section 24-1C-6. NMSA 1978 of the Primary Care Capital Funding Act directs the Department of Health and the New Mexico Finance Authority to jointly develop and administer loan and Contract for Services Programs established pursuant to the provisions of the Act.
[7.29.4.6 NMAC – Rp 7 NMAC 29.4.6, 12/28/01]

7.29.4.7 DEFINITIONS:

- A. "Act"** means the Primary Care Capital Funding Act (Sections 24-1C-1 to 24-1C-10 NMSA 1978).
- B. "Agreement"** means the document or documents signed by the Board and the Eligible Entity which specify the terms and conditions of obtaining Financial Assistance under the Program;
- C. "Applicant"** means an Eligible Entity which has filed a request for Financial Assistance 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 Financial Assistance; 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. "Authority"** means the New Mexico Finance Authority;
- F. "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;
- G. "Board"** means the New Mexico Finance Authority Board;
- H. "Capital Project"** means repair, renovation or construction of a facility, purchase of land, or purchase of capital equipment;
- I. "Contract for Services"** means an agreement with an Eligible Entity to provide free or reduced fee Primary Care services for Sick and Medically Indigent persons as reasonably adequate legal consideration for money from the Fund to the Eligible Entity so it may acquire or construct a Capital Project to provide the services;
- J. "Department"** means the New Mexico Department of Health;
- K. "Eligible Entity"** means a community-based nonprofit Primary Care clinic or Hospice that operates in a rural or other Health Care Underserved Area of the State and that has assets totaling less than ten million dollars (\$10,000,000.00) and is a 501 (c)(3) nonprofit corporation for federal income tax purposes;
- L. "Finance Committee"** means a six-member body, three members appointed by the chairman of the Board from the members of the Board and/or the Authority staff and three members appointed by the Department;

M. "Financial Assistance" means loans, contracts for services, and any other type of assistance authorized by the Act, or a combination thereof, provided by the Authority to an Eligible Entity under the Program for the funding of a Capital Project;

N. "Fund" means the Primary Care Capital Fund;

O. "Health Care Underserved Area" (HCUA) means geographic areas, special populations or institutions designated by the Department as having identifiable need for health services. These designations may recognize need for either general or special health care services. State HCUA designations may give consideration to federally designated Health Professional Shortage Areas (HPSA) and Medically Underserved Areas (MUA).

P. "Hospice" means an organization, company, or any other entity which provides a Program of palliative and supportive services which provides physical, psychological, social and spiritual care for terminally ill patients and their family members in a Licensed Facility equipped and staffed to provide services on a twenty-four (24) hour basis.

Q. "Licensing Authority" means the Department.

R. "Licensed Facility" means facility licensed by the Department and complies with all applicable state and federal licensing requirements.

S. "Mid-level Provider" means licensed or certified non-physician Primary Care provider including physician assistant, nurse practitioner or nurse midwife.

T. "Primary Care" means the first level of basic or general health care for an individual's health needs, including diagnostic and treatment services; "Primary Care" includes the provision of mental health services if those services are integrated into the Eligible Entity's service array;

U. "Program" means the Primary Care Capital Project Finance Program authorized by the Act;

V. "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.

[7.29.4.7 NMAC – Rp 7 NMAC 29.4.7, 12/28/01]

7.29.4.8 APPLICATION PROCEDURES FOR FINANCIAL ASSISTANCE

A. Contingent upon a sufficient balance in the Fund, the Department and the Authority may establish one or more application cycles in any state fiscal year. At the beginning of any application cycle, the Department and the Authority will notify eligible entities that applications are being accepted for financing of Capital Projects.

B. The Department and the Authority will provide forms and/or guidelines for application to apply for Program funds. The application shall be signed by the Authorized Representative and submitted to the Department. The application shall include the following:

(1) type of Financial Assistance being sought and itemization of the proposed use or uses of the Financial Assistance;

(2) detailed description of the circumstances which justify the need for the Capital Project, including:

- (a) eligibility of application entity
- (b) programmatic appropriateness
- (c) facility need as covered in Section 9.2.a.
- (d) needs of community as covered in Section 9.2 b.

(3) detailed description of the Capital Project to be financed. Information on each Capital Project must include:

- (a) description of the scope of work of the Capital Project;
- (b) the estimated cost of the Capital Project;
- (c) the target date for the initiation of the Capital Project and the estimated time to

completion;

(d) the estimated useful life of the Capital 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;

(5) a copy of the Applicant's Internal Revenue Service tax exempt determination letter;

- (6) a letter certifying that the Capital Project was duly authorized and approved by the Applicant's governing body;
- (7) identification of the source of funds for repayment of the Financial Assistance and the source of funds to operate and maintain the Capital Project over its useful life;
- (8) the Applicant's audited financial reports for the most recent three 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, Board or Finance Committee.

C. The Department shall conduct a review of the application for eligibility, completeness and programmatic priority.

D. The Department will refer the applications to the Finance Committee. The Finance Committee will consider the Capital Project and may confer with outside parties as necessary to obtain more information on the financial feasibility, Capital Project feasibility, and readiness to proceed. The Finance Committee will make a written recommendation to the Board. Such recommendation will include approval or disapproval of specific Capital Projects and the estimated costs thereof. The Finance Committee may also, at its discretion, recommend interest rates, loan periods, loan amounts and amounts of contracts for services.

E. Once a recommendation has been made on the application by the Finance Committee, the Board will act on the application no later than the next regular Board meeting at which such item may be properly considered, or 45 days after Finance Committee action, whichever comes first. The Board may approve all or part of the application as recommended by the Finance Committee. Board approval may specify, at the Board's discretion, terms and conditions of the Financial Assistance as necessary to ensure repayment, including but not limited to, maximum loan term and maximum annual payments.

F. The Board 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. Written notification of the approval will be accompanied by an Agreement to be signed by an Authorized Representative of the Applicant and returned to the Board by certified mail.

G. All communications regarding an Eligible Entity's original application shall be directed to the Department.

[7.29.4.8 NMAC – Rp 7 NMAC 29.4.8, 12/28/01]

7.29.4.9 EVALUATION OF APPLICANT AND CAPITAL PROJECT

The Department and Authority will complete an evaluation of the Applicant and proposed Capital Project. Such evaluation will include, to the extent applicable, an evaluation of Capital Project feasibility, administrative capacity, and financial position.

A. An Eligible Entity:

(1) Must be a community-based nonprofit Primary Care clinic or Hospice that operates in a rural or other Health Care Underserved Area of the State and that has assets totaling less than ten million dollars (\$10,000,000.00) and is a 501 (c)(3) nonprofit corporation for federal income tax purposes.

(2) Have a governing board whose membership is generally representative of the health care underserved area served. An eligible organization which is multipurpose or provides services in more than one Health Care Underserved Area must have a local or regional Primary Care or Hospice advisory board whose membership is generally representative of the Health Care Underserved Area being served.

(3) If a Primary Care clinic, must sustain or provide a minimum level of primary health care services through the services of a physician or midlevel provider. Services may additionally include, but not be limited to, medical support, diagnostic and treatment services, pharmacy, laboratory, radiology, preventive health services, emergency medical services, mental health, patient follow-up, and/or dental and dental support services. Such services shall be provided in coordination with primary medical care services.

(4) If a Hospice, comply with all New Mexico Requirements for Inhome and Inpatient Hospice Care as specified in 7 NMAC 12.2 or such other regulations as may be adopted by the Department.

(5) Have policies and procedures which 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.

(6) Have billing policies and procedures which maximize patient collections except where Federal regulations 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.

(7) Provide a written assurance, signed by an attorney, 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.

(8) Comply with all applicable federal, state, and local laws and regulations.

(9) Meet other requirements as determined by the Department.

B. Need. The Department will determine priorities for community need and facility/equipment need.

C. Capital Project Feasibility. The Finance Committee will analyze each Capital Project to determine whether the Capital Project is feasible. Extension of Financial Assistance by the Authority does not constitute a warranty or other guarantee as to the feasibility of the Capital Project.

D. Administrative Capacity. The Finance Committee will evaluate the extent to which the Applicant has sufficient administrative capacity.

E. Financial Position. Financial performance is a key factor in the evaluation of an Applicant.

The Applicant must demonstrate 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 Capital Project's completion (after adding back annual depreciation and interest) provides sufficient coverage of the previous year's annual debt service and sufficient coverage of projected maximum annual debt service after accounting for the Authority's loan.

F. Service Capacity. The Department will establish priorities for Financial Assistance, determine the appropriateness of the Capital Project, evaluate the capability of an Applicant to maintain Primary Care or Hospice services, and determine that Capital Projects comply with all state and federal licensing requirements. The Department will determine, for applications for contracts for service, the adequacy of proposed plans to provide Primary Care services in lieu of loan repayment.

G. Geographic Location. The Department will determine whether there is fair geographic distribution of Financial Assistance.

[7.29.4.9 NMAC – Rp 7 NMAC 29.4.9, 12/28/01]

7.29.4.10 ELIGIBLE PUBLIC CAPITAL PROJECTS AND COSTS: The Authority provides Financial Assistance to eligible entities only for Capital Projects, as defined above. Costs which may be financed under the Program include all or any portion of the cost of eligible Capital Projects. An Applicant which has had Financial Assistance approved by the Board may apply to the Board to redirect the Financial Assistance to modify a Capital Project made necessary by unanticipated events.

[7.29.4.10 NMAC – Rp 7 NMAC 29.4.10, 12/28/01]

7.29.4.11 CAPITAL PROJECT FINANCING

A. The Authority reserves the right to structure Financial Assistance packages that include loans, contracts for services, and any other type of assistance authorized by the Act. The structure, terms and conditions of the Financial Assistance will be determined by Board resolution. Financial Assistance for Capital Projects may be pooled, at the discretion of the Authority.

B. Priority will be given to applications for Capital Projects which show substantial community support, including, but not limited to, the identification of other financing.

C. Eligible Items/Ineligible Items. The following items shall be eligible or ineligible for purposes of funding through a loan or Contract for Services.

(1) Eligible Item/Uses of Funds

- a. Building, construction, renovation
- b. Land (can only be funded by a loan)
- c. Capital Project planning and design
- d. Purchase of capital equipment

(2) Ineligible Item/Uses of Funds

- a. Repair and/or maintenance of necessary medical and dental equipment
- b. Mobile clinics
- c. Purchase of office, medical, and/or dental supplies
- d. General operating expenses.

D. Loans. Capital Projects or Applicants may be eligible for loans made directly from available resources.

E. Contracts for Services. The Authority may enter into a Contract for Services to offset a portion or all of an Applicant's loan repayments. No more than 20% of the Funds awarded in any application cycle shall be made available as contracts for services in that cycle. The amount of any Contract for Services offered as part of any Financial Assistance package will be recommended by the Finance Committee based upon consideration of the need for the Capital Project, the inability of the Applicant to afford debt financing in the near term and the proposed plan to provide services for Sick and Medically Indigent free or at a reduced fee.

[7.29.4.11 NMAC – Rp 7 NMAC 29.4.11, 12/28/01]

7.29.4.12 FINANCING APPROVAL REQUIREMENTS: Based on the evaluation factors set forth in 7.29.4.9, the Board may award Financial Assistance to the Applicant provided the following requirements are satisfied:

A. In determining the qualification for Financial Assistance, the Board may consider the ability of the Eligible Entity to secure financing from other sources and the costs of the Financial Assistance.

B. In approving a Contract for Services, the Board will consider the recommendations of the Finance Committee.

C. In approving a loan application, the Board will review the Applicant's ability to repay the loan extended. The Board will establish a base interest rate for loans. A portion or all of the loan repayment may be offset by a contract for service.

D. In approving an application for debt financing, the Board will find that the useful life of the Capital Project will meet or exceed the final maturity of loans made or bonds purchased or issued by the Board and must meet standards for reasonable costs set by the Board.

E. To be eligible for a loan, the Applicant shall agree to properly maintain separate Capital Project accounts in accordance with generally accepted accounting principles and to conduct an annual audit of the Capital Project's financial records during the term of the loan.

F. In order to receive Financial Assistance, the Applicant shall provide a written opinion, signed by an attorney, that the Eligible Entity has or will acquire proper title, easements and rights-of-way to the property upon or through which the Capital Project is to be constructed or extended.

G. Any contract or subcontract executed for the completion of any Capital 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.

H. In order to receive Financial Assistance, the Applicant shall require any contractor of a Capital 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.

I. In addition to the foregoing, the Eligible Entity shall satisfy any other requirements as may be determined by the Authority.

J. Reserved

[7.29.4.12 NMAC – Rp 7 NMAC 29.4.12, 12/28/01]

7.29.4.13 RECONSIDERATION

A. 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. Notice must be given to the Department in writing within ten (10) working days of receipt of the Department's decision as to eligibility.

B. 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 notice of an adverse decision is given by the Authority to an Applicant. Notice is deemed to be given on the fifth business day following the date on which written notice is mailed to the Applicant by the Authority by certified U.S. mail. A request for reconsideration not timely or properly made will be barred. The Authority's Executive Director 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.

[7.29.4.13 NMAC – Rp 7 NMAC 29.4.13, 12/28/01]

7.29.4.14 FINANCIAL ASSISTANCE AGREEMENT

A. The Authority and the Eligible Entity will enter into an Agreement to establish the terms and conditions of Financial Assistance from the Authority including, as appropriate, a Contract for Services. The Agreement will include the terms of repayment and sanctions available to the Authority in the event of a default. The Authority will diligently monitor terms of the Agreement and enforce all terms and conditions thereof, including prompt notice and collection. The Department will monitor the performance of an Eligible Entity under any Contract for Services and report to the Authority quarterly on the contractor's efforts to provide free or reduced fee Primary Care services for Sick and Medically Indigent persons. The Authority will take actions as necessary to ensure loan repayment and the integrity of the Fund.

B. The interest on any Financial Assistance extended shall be determined by the Board based on the cost of funds and ability of the Eligible Entity to pay. The interest rate shall not change during the term of the Financial Assistance unless refinanced.

C. The Agreement will contain provisions which require Financial Assistance recipients to comply with all applicable federal, state and local laws and regulations.

D. In the event of default by the qualified entity, the Authority may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law.

E. If land is to be purchased with a loan from the Fund, the Authority shall ensure that the title is merchantable and free and clear from liens or encumbrances. The state shall also require that a title insurance policy insuring the state'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. No contracts for services shall be made to purchase land.

F. If an Eligible Entity that has received a loan or Contract for Services for a Capital Project ceases to maintain its nonprofit status or ceases to deliver Primary Care services at the site of the Capital Project for twelve consecutive months, the state shall have the following remedies at its option, subject to liens having preference:

(1) order liquidation of the premises and recover any loan balance or amount due on the contract and any interest previously forgiven on the loan, imputed at the prevailing interest rate at the time of the loan; or

(2) foreclose on the property and convert it to state use or transfer title to another Eligible Entity.

G. If an Eligible Entity has received a loan or contract for service for a Capital Project, the loan or contract for service may be renegotiated if the entity is still eligible but has had a change in financial status.

[7.29.4.14 NMAC – Rp 7 NMAC 29.4.14, 12/28/01]

7.29.4.15 ADMINISTRATION OF THE PRIMARY CARE CAPITAL FUND

A. The Fund shall be administered by the Authority as a separate account in the State Treasury, 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 Capital 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 Capital 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.

[7.29.4.15 NMAC – Rp 7 NMAC 29.4.15, 12/28/01]

HISTORY of 7.29.4 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the Commission of Public Records – State Records Center and Archives as: DOH 94-08 [CHSD] Regulations governing the Primary Care Capital Fund Program, filed 9-13-94.

HISTORY of Repealed Material: 7 NMAC 29.4, Primary Care Capital Fund Program, filed 4-14-98.

Other History: 7 NMAC 29.4, Primary Care Capital Fund Program, filed 4-14-98 renumbered, reformatted and replaced by 7.29.4 NMAC, Primary Care Capital Fund Program, effective 12/28/01.