

CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY (the “Authority”)

Resolution Approving the Adoption of Amendments to the Regulations for Proposition 61  
Children’s Hospital Program of 2004 and Authorizing Rulemaking Proceedings

Staff Report  
Resolution No. 2014-02  
January 30, 2014

Staff seeks approval of the attached proposed amendments to the Proposition 61 Children’s Hospital Program of 2004 (Program) regulations and authorization to pursue rulemaking proceedings.

**Background**

On November 2, 2004, California voters passed Proposition 61 enabling the State of California to issue \$750 million in General Obligation bonds for the Program. Under California Health and Safety Code, Sections 1179.10-1179.43, the purpose of the Program is to improve the health and welfare of California’s critically ill children, by providing a stable and ready source of funds for capital improvement projects for children’s hospitals. The Authority is responsible for administering the Program. Thirteen children’s hospitals are eligible for grants through the Program, including eight nonprofit children’s hospitals and five University of California medical centers.

The statute states that if for any reason all of the funds are not awarded by June 30, 2014, funds remaining may be made available for any of the Program’s children’s hospitals, with limitations<sup>1</sup>. The Program’s regulations define the first ten years as the First Funding Round and state that if there are any remaining funds, the Authority may, in its sole discretion, award the remaining funds in the Second Funding Round consistent with the original purpose and requirements of the Program. Processes for a Second Funding Round must be adopted by June 1, 2014.

Twelve of the thirteen hospitals have been awarded the maximum grants for which each is eligible (\$74 million for nonprofit hospitals and \$30 million for UC hospitals). Staff does not anticipate the remaining grant funds, approximately \$68 million, will be awarded by June 30, 2014. For those grant funds to be awarded after June 30, 2014, the Authority must amend the regulations.

Staff proposes a Second Funding Round defined as starting July 1, 2014 and expiring prior to July 1, 2018 which will mirror, with minor changes, the framework of the Program established for the First Funding Round. The purpose of the Second Funding Round is to ensure all thirteen of the children’s hospitals receive their respective maximum grant award amounts. If after that time there are still unawarded funds, earned interest, and or unused administrative funds, staff proposes a Third Funding Round. The regulatory specifics for the Third Funding Round will be established through another round of regulations to be presented to the Authority for consideration prior to June 1, 2018.

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<sup>1</sup> Any grant funds remaining from amounts allocated for nonprofit hospitals cannot be made available to UC hospitals and vice versa.

Upon approval by the Authority, the proposed amendments to the regulations for the Second Funding Round will be posted on the Authority's website and staff will file the proposed amendments to the regulations with the Office of Administrative Law for review and approval.

Staff consulted with the California Children's Hospital Association (CCHA) about the proposed amendments. CCHA provided feedback after consultation with its members, and the feedback has been incorporated into the proposed amendments to the existing regulations.

**Recommendation**

Staff recommends the Authority approve the proposed amendments to the Program's regulations and authorize rulemaking proceedings.

Attachments:

A – Summary of Amendments to Regulations for Proposition 61

B – Text of Regulations for Proposition 61 with proposed 2014 revisions

CHILDREN'S HOSPITAL PROGRAM OF 2004

**Section 7030. Definitions**

The following words and phrases, as used in this chapter are defined as follows:

(a) – (v) No Change

(w) “Maximum Grant for the Combined First Funding Round and Second Funding Round” means:

(1) No Change

(2) No Change

(x) – (aa) No Change

(bb) “Pediatric Services” means services provided for children from birth to age 18. Exceptions to the age limit are allowed up to age 21 for children receiving treatment for a California Children’s Services eligible condition as described in Sections 41811 through 41876, Title 22, of the California Code of Regulations.

(cc) – (ff) No Change

(gg) “Second Funding Round” means the period of time after June 30, 2014 and before July 1, 2018, when Grants may be awarded from unexhausted funds made available pursuant to the Program.

(hh) – (ll) No Change

(mm) “Third Funding Round” means the period of time after June 30, 2018 when additional Grants may be awarded from unused administrative and Grant funds pursuant to the Children’s Hospital Program of 2004.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code.  
Reference: Sections 1179.10, 1179.11, 1179.21, 1179.22, 1179.23, and 1179.24, 1179.30, 1179.38, and 1179.39 of the Health and Safety Code.

**Section 7032. Maximum Grant, First Funding Round and Second Funding Round**

No Grant or combination of Grants to any Children’s Hospital may exceed the Maximum Grant for the Combined First Funding Round and Second Funding Round.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code.  
Reference: Sections 1179.22, 1179.23, 1179.24 of the Health and Safety Code.

### **Section 7033. Maximum Grant, ~~Second~~ Third Funding Round**

If funds are available pursuant to Section 7042, the process for determining Maximum Grants for the ~~Second~~ Third Funding Round shall be adopted no later than June 1, ~~2018~~ 2014

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code.  
Reference: Sections 1179.22, 1179.23, and 1179.24 of the Health and Safety Code.

### **Section 7034. Application Form**

A blank Application Form shall be available from the Authority and the Authority's website and may be referred to as the Children's Hospital Program of 2004 Grant Application Form #CHFFA 5, Rev. 01-2009-61, which is hereby incorporated by reference. For the First Funding Round and Second Funding Round, ~~the~~ Applicant shall submit a completed Application Form in the manner set forth in Sections 7035 and 7036. The Children's Hospital Program of 2004 Overview and Instructions for Grant Application, Form #CHFFA 5A, Rev. 01-2009-61 is hereby incorporated by reference.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code.  
Reference: Sections 1179.22, 1179.24, and 1179.25 of the Health and Safety Code.

### **Section 7035. Application Form Submission**

(a) \_\_\_ Application Forms shall be submitted in duplicate to the Authority. The Authority shall accept Application Forms for the First Funding Round and Second Funding Round on an on-going basis ~~until the funding for the Children's Hospital Program of 2004 is exhausted.~~

(b) \_\_\_ Each Applicant may apply for more than one Grant for different Projects until its Maximum Grant for the Combined First Funding Round and Second Funding is reached.

(c) \_\_\_ If necessary, blank application forms for the ~~Second~~ Third Funding Round shall be available no later than June 1, ~~2018~~ 2014.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code.  
Reference: Sections 1179.22 and 1179.24 of the Health and Safety Code

### **Section 7036. Content of Application Form**

For the First Funding Round and Second Funding Round, ~~the~~ following items shall accompany the Application Form:

(a) through (d)(7)      No Change

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code.  
Reference: Sections 1179.22, 1179.24 1179.25, and 1179.32 of the Health and Safety Code.

### **Section 7037. Application Form Evaluation**

- (a) No Change
- (b) First Funding Round and Second Funding Round Applications are due the first business day of each month, with the following exceptions:
  - (1) No Change
  - (2) No Change
- (c) No Change

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code.  
References: Sections 1179.22, and 1179.24 of the Health and Safety Code.

### **Section 7040. Appeals**

- (a) Availability. An Applicant may file an appeal of any Initial Allocation. The grounds for any such appeal shall be limited to Applicant eligibility pursuant to Section 7031 and Section 7037 and whether the proposed expense is for a Project as defined in (ee) of Section 7030 for the First Funding Round and Second Funding Round. No Applicant may appeal the Authority staff evaluation of or Initial Allocation to, another Applicant.
- (b) No Change
- (c) No Change

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. Reference: Sections 1179.22 and 1179.24 of the Health and Safety Code.

### **Section 7042. Any Remaining Funds**

If there are any remaining funds after the First Funding Round and Second Funding Round, the Authority may, in its sole discretion, award Grants of those remaining funds to Applicants in ~~the Second~~ a Third Funding Round in a manner that is consistent with the purpose and requirements of the Children's Hospital Program of 2004.

NOTE: Authority Cited: Sections 1179.22, 1179.24 and 1179.32 of the Health and Safety Code. Reference: Sections 1179.22, 1179.24 and 1179.25 of the Health and Safety Code.

**The Children's Hospital Program of 2004**  
**CALIFORNIA CODE OF REGULATIONS Title 4 Division 10, Chapter 2**

**TEXT OF REGULATIONS**

With proposed 2014 revisions:

Strikethrough indicates proposed deletions and underline indicates proposed additions

**Section 7030. Definitions**

The following words and phrases, as used in this chapter are defined as follows:

- (a) "Act" means the Children's Hospital Bond Act of 2004 (Part 6 (commencing with Section 1179.10), Division 1, Health and Safety Code), approved by voters on November 2, 2004.
- (b) "Administrative Costs" means actual costs incurred by the Authority and other state agencies as permitted by law for administering the Children's Hospital Program of 2004.
- (c) "Applicant" means any Children's Hospital applying for program funding from the Children's Hospital Program of 2004.
- (d) "Application Form" means the written request by an Applicant to the Authority for a Grant under the Children's Hospital Program of 2004 which includes pages 1-9, Attachments A-B and all materials submitted with Form #CHFFA 5, Rev. 01-2009-61.
- (e) "Audited Financial Statements" means an examination and report of the financial activities of the Children's Hospital or the California nonprofit corporation of which the Children's Hospital is an operating entity, for its fiscal year, performed by an independent accounting firm under generally accepted accounting principles.

In the case of the University of California Children's Hospitals, "Audited Financial Statements" means an examination and report of the financial activities of each individual University of California medical center that includes a University of California Children's Hospital, for its fiscal year, performed by an independent accounting firm under generally accepted accounting principles.

- (f) "Authority" means the California Health Facilities Financing Authority.
- (g) "Children's Hospital" means either:
  - (1) A University of California general acute care hospital described as any one of the following:
    - (A) University of California, Davis Children's Hospital.

- (B) Mattel Children’s Hospital at University of California, Los Angeles.
- (C) University Children’s Hospital at University of California, Irvine.
- (D) University of California, San Francisco Children’s Hospital.
- (E) University of California, San Diego Children’s Hospital.

(2) A general acute care hospital that is, or is an operating entity of, a California nonprofit corporation incorporated prior to January 1, 2003, whose mission of clinical care, teaching, research, and advocacy focuses on children, and that provides comprehensive Pediatric Services to a high volume of children eligible for Government Health Insurance Programs and to children with special health care needs eligible for the California Children’s Services program and:

(A) Provided at least 160 licensed beds in the categories of pediatric acute, pediatric intensive care and neonatal intensive care in the fiscal year ending between June 30, 2001, and June 29, 2002, as reported to the Office of Statewide Health Planning and Development (OSHPD) on or before July 1, 2003.

(B) Provided over 30,000 total pediatric patient (census) days, excluding nursery acute days, in the fiscal year ending between June 30, 2001, and June 29, 2002, as reported to OSHPD on or before July 1, 2003.

(C) Provided medical education of at least eight (rounded to the nearest integer) full-time equivalent pediatric or pediatric subspecialty residents in the fiscal year ending between June 30, 2001, and June 29, 2002, as reported to OSHPD on or before July 1, 2003.

(h) “Children’s Hospital Program of 2004” means the program resulting from the Act.

(i) “Costs of Issuance” mean the expenses incurred in connection with the sale and issuance of bonds, other short-term debt instruments, or loans approved by the Pooled Money Investment Board that are used to finance or refinance Grants, and accrued interest on any short-term debt instruments or loans which are not paid from another source.

(j) “Executive Director” means the Executive Director of the Authority.

(k) “Expansion of Health Care Access” means providing same services to additional patients or net additional or new Pediatric Services to existing or new patients.

(l) “Final Allocation” means a Grant allocation approved by the Authority.

(m) “First Funding Round” means the period of time prior to June 30, 2014.

(n) “Going Concern Qualification” means a finding by an independent accounting firm that the carrying value of an entity’s assets will be realized and its liabilities will be liquidated in the ordinary course of continuing business activity.

(o) “Government Health Insurance Programs” mean governmental assistance programs that include, but are not limited to, Medicaid (Medi-Cal), State Children’s Health Insurance Program (Healthy Families), California Children’s Services (CCS), Child Health and Disability Prevention Program (CHDP) and county indigent programs.

(p) “Grant” means the distribution of money in the Children’s Hospital Fund, as defined in Section 1179.20 of the Health and Safety Code, by the Authority to a Children’s Hospital for a Project pursuant to the Children’s Hospital Program of 2004.

(q) “Grant Agreement” means a written agreement for a Grant entered into between a Grantee and the Authority.

(r) “Grantee” means an Applicant that has received Grant approval by the Authority.

(s) “Improvement of Child Health Care” means an improvement in the timeliness, effectiveness, or quality of care provided to the pediatric population.

(t) “Improvement of Health Care Access” means an increase in the quantity and scope of Pediatric Services provided.

(u) “Improvement of Pediatric Patient Outcomes” means an improvement in the overall health of the pediatric patients receiving treatment or care.

(v) “Initial Allocation” means an Authority staff-level decision granting an allocation.

(w) “Maximum Grant for the Combined First Funding Round and Second Funding Round” means:

(1) A limit of \$30 million less Costs of Issuance and Administrative Costs on the total amount of Grants that may be made to any one Children’s Hospital that is described in paragraph (1) of subdivision (g).

(2) A limit of \$74 million less Costs of Issuance on the total amount of Grants that may be made to any one Children’s Hospital that is described in paragraph (2) of subdivision (g).

(x) “Most Recent Audited Financial Statements” means the Audited Financial Statements for the most recent fiscal year for which such financial statements are available.

(y) “Non University of California Children’s Hospital” means a Children’s Hospital described in paragraph (2) of subdivision (g).

- (z) “Pediatric Research Programs” means scientific research focused on the pediatric population to improve and/or better understand this population’s health.
- (aa) “OSHPD” means the Office of Statewide Health Planning and Development.
- (bb) “Pediatric Services” means services provided for children from birth to age 18. Exceptions to the age limit are allowed up to age 21 for children receiving treatment for a California Children’s Services eligible condition as described in Sections 41811 through 41876, Title 22, of the California Code of Regulations.
- (cc) “Pediatric Teaching Program” means a program that annually provides medical education for at least eight (rounded to the nearest integer) full-time equivalent pediatric or pediatric subspecialty residents.
- (dd) “Pooled Money Investment Board” means the Board established pursuant to Section 16480.1 of the Government Code.
- (ee) “Project” means constructing, expanding, remodeling, renovating, furnishing, equipping, financing, or refinancing capital assets, as defined in Section 16727(a) of the Government Code, of a Children’s Hospital. Pursuant to the Act, this may include reimbursement for the costs of constructing, expanding, remodeling, renovating, furnishing, equipping, financing or refinancing where these costs are incurred after January 31, 2003. “Project” does not include Costs of Issuance for any financing or refinancing of a Project.
- (ff) “Project Period” means a defined beginning and end date approved by the Authority for implementation of the Project.
- (gg) “Second Funding Round” means the period of time after June 30, 2014 and before July 1, 2018, when Grants may be awarded from unexhausted funds made available pursuant to the Program.
- (hh) “Total Grant Funds” means \$750 million less Administrative Costs and Costs of Issuance.
- (ii) “Uncompensated Indigent Care” means care provided without a patient-specific source funding available to pay for the Pediatric Services rendered.
- (jj) “Undercompensated Care” means care provided where a financial shortfall exists between gross expenses and the revenues (or payment) in treating a pediatric patient.
- (kk) “University of California Children’s Hospital” means a Children’s Hospital described in paragraph (1) of subdivision (g).

(ll) “Vulnerable Pediatric Populations” means pediatric patients served by Government Health Insurance Programs and pediatric patients with special health care needs irrespective of insurance status.

(mm) “Third Funding Round” means the period of time after June 30, 2018 when additional Grants may be awarded from unused administrative and Grant funds pursuant to the Children’s Hospital Program of 2004.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. Reference: Sections 1179.10, 1179.11, 1179.21, 1179.22, 1179.23, and 1179.24, 1179.30, 1179.38, and 1179.39 of the Health and Safety Code.

**Section 7031. Eligible Children’s Hospital**

(a) Any Children’s Hospital shall be eligible to apply for one or more Grants if the following conditions are met:

(1) The Children’s Hospital or the California nonprofit corporation of which the Children’s Hospital is an operating entity has a current, valid general acute care hospital license from the Department of Health Services.

(2) The most Recent Audited Financial Statements of the Children’s Hospital or the California nonprofit corporation of which the Children’s Hospital is an operating entity do not contain any Going Concern Qualifications.

(3) The Children’s Hospital has submitted to the Authority a completed Application Form.

(4) The Authority, at its discretion, confirms with OSHPD that the non-University of California Children’s Hospital or the California nonprofit corporation of which the Children’s Hospital is an operating entity has submitted to OSHPD its Annual Disclosure Report for the fiscal year ending between June 30, 2001 and June 29, 2002, on or before July 1, 2003.

(5) If the Children’s Hospital proposes to use Grant funds for a Project other than equipment acquisition on certain property, the Children’s Hospital shall provide evidence that either:

(A) The Children’s Hospital or the California nonprofit corporation of which the Children’s Hospital is an operating entity owns the property.

(B) The Children’s Hospital or the California nonprofit corporation of which the Children’s Hospital is an operating entity is a lessee under a lease agreement that satisfies Section 7047.

(6) If the Children's Hospital proposes to use Grant funds for a Project that includes architect, design, and/or engineering fees, the Children's Hospital shall provide the Authority with reasonable assurance, at the Authority's discretion, that any of these fees are components of a larger Project that will ultimately benefit the health and welfare of California's sick and/or injured children. The Authority shall rely on timelines associated with the entire Project to assess whether or not the Project will benefit pediatric patients.

(7) If the Children's Hospital proposes to use Grant funds for the acquisition of real property, the Children's Hospital shall provide a valid, current, enforceable contingent purchase and sale agreement or option agreement between the Children's Hospital or the California nonprofit corporation of which the Children's Hospital is an operating entity and the owner of the subject property, including evidence that all extensions necessary to keep the agreement current through the Final Allocation have been executed, if applicable. In addition, the Children's Hospital shall provide the Authority with reasonable assurance that the acquisition is a component of a larger Project that will ultimately benefit the health and welfare of California's sick and/or injured children, such as the construction of a new facility to benefit pediatric patients.

(b) If an Applicant does not meet the conditions described in (a), the Applicant shall be deemed ineligible, but may reapply at a time when the Applicant is able to meet the conditions.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. Reference: Sections 1179.11, 1179.22, and 1179.24 of the Health and Safety Code

### **Section 7032. Maximum Grant, First Funding Round and Second Funding Round**

No Grant or combination of Grants to any Children's Hospital may exceed the Maximum Grant for the Combined First Funding Round and Second Funding Round.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. Reference: Sections 1179.22, 1179.23, 1179.24 of the Health and Safety Code.

### **Section 7033. Maximum Grant, ~~Second~~ Third Funding Round**

If funds are available pursuant to Section 7042, the process for determining Maximum Grants for the ~~Second~~ Third Funding Round shall be adopted no later than June 1, 2018.~~2014~~.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. Reference: Sections 1179.22, 1179.23, and 1179.24 of the Health and Safety Code.

### **Section 7034. Application Form**

A blank Application Form shall be available from the Authority and the Authority's website and may be referred to as the Children's Hospital Program of 2004 Grant Application Form #CHFFA 5, Rev. 01-2009-61, which is hereby incorporated by reference. For the First

Funding Round and Second Funding Round, tThe Applicant shall submit a completed Application Form in the manner set forth in Sections 7035 and 7036. The Children's Hospital Program of 2004 Overview and Instructions for Grant Application, Form #CHFFA 5A, Rev. 01-2009-61 is hereby incorporated by reference.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. Reference: Sections 1179.22, 1179.24, and 1179.25 of the Health and Safety Code.

### **Section 7035. Application Form Submission**

(a) \_\_\_ Application Forms shall be submitted in duplicate to the Authority. The Authority shall accept Application Forms for the First Funding Round and Second Funding Round on an on-going basis, ~~until the funding for the Children's Hospital Program of 2004 is exhausted.~~

(b) \_\_\_ Each Applicant may apply for more than one Grant for different Projects until its Maximum Grant for the Combined First Funding Round and Second Funding Round is reached.

(c) \_\_\_ If necessary, blank application forms for the ~~Second~~ Third Funding Round shall be available no later than June 1, 2018.2014

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. Reference: Sections 1179.22 and 1179.24 of the Health and Safety Code

### **Section 7036. Content of Application Form**

For the First Funding Round and Second Funding Round, ~~T~~the following items shall accompany the Application Form:

(a) Financial Information. The Children's Hospital or the California nonprofit corporation of which the Children's Hospital is an operating entity shall submit its Most Recent Audited Financial Statements.

(b) Organization Information.

(1) If the Applicant is a non-University of California Children's Hospital, the Applicant shall submit both of the following:

(A) A copy of the Applicant's 501(c)(3) determination letter from the Internal Revenue Service and a copy of either the tax-exemption letter or Letter of Good Standing from the Franchise Tax Board. For Children's Hospitals that are operating entities of a California nonprofit corporation, the Internal Revenue Service and Franchise Tax Board Letters are required for the parent corporation.

(B) A copy of the Applicant's Articles of Incorporation and Bylaws. For Children's Hospitals that are operating entities of a California nonprofit corporation, the Articles of Incorporation and Bylaws are required for the parent corporation.

(2) For all Applicants, a copy of its current general acute care hospital license from the Department of Health Services or a copy of the general acute care hospital license of the California nonprofit corporation of which the Children's Hospital is an operating entity.

(c) Legal Information. Applicant shall complete a legal status questionnaire.

(d) Agreement and Certification. Within the Application Form and as memorialized in a separate Grant Agreement, the Chief Executive Officer, Chief Financial Officer or other authorized officer of the Applicant, on behalf of the Applicant, shall agree and certify to the following terms and conditions as a requirement of receiving any Grant:

(1) The information contained in the Application Form and attachments is true and correct to the best of its knowledge and belief and understands that any misrepresentation may result in the cancellation of a Grant and other actions permitted by law and the Grant Agreement.

(2) Applicant may be required to return all or a portion of the Grant including any unused investment earnings if the Applicant fails to complete the Project as approved. In cases where the Grant will fund architect, design, or engineering fees or land acquisition costs as part of an approved Project, the Applicant may be required to return all Grant funds and any unused investment earnings if the Authority cannot determine that the associated larger Project has been completed, based on timelines provided within the Application Form.

(3) Grant funds will only be used for the Project described in the Application Form unless a change in the Project is approved in writing by the Authority pursuant to Section 7043.

(4) The Project and financial records of the Applicant's Project are subject to audit and inspection by the Authority and the Bureau of State Audits.

(5) Applicant has disclosed all information requested by the legal status questionnaire.

(6) Applicant will notify the Authority in writing at the time of Project completion with evidence of completion included.

(7) Applicant will provide all documents and information required by law and meet all necessary requirements prior to the release of the Grant.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. Reference: Sections 1179.22, 1179.24 1179.25, and 1179.32 of the Health and Safety Code.

### **Section 7037. Application Form Evaluation**

- (a) Application Forms shall be reviewed and evaluated within 60 days from receipt by Authority staff according to the evaluation criteria described in Section 7038.
- (b) First Funding Round and Second Funding Round Applications are due the first business day of each month, with the following exceptions:
  - (1) For October, applications are due on October 7.
  - (2) Applications are not accepted in November.
- (c) A positive response or combination of positive responses to the legal status questionnaire may result in the applicant becoming ineligible for a Grant.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code.  
References: Sections 1179.22, and 1179.24 of the Health and Safety Code.

### **Section 7038. Evaluation Criteria**

Authority staff shall evaluate each Application Form based on the following criteria.

- (a) How well the Project contributes to both of the following:
  - (1) Expansion or Improvement of Health Care Access by children eligible for Governmental Health Insurance Programs and indigent, underserved, and uninsured children.
  - (2) Improvement of Child Health Care or Improvement of Pediatric Patient Outcomes.
- (b) How well the Applicant does any or all of the following:
  - (1) Provides Uncompensated Indigent Care or Undercompensated Care to eligible pediatric patients.
  - (2) Provides services to Vulnerable Pediatric Populations.
  - (3) Promotes Pediatric Teaching Programs or Pediatric Research Programs.
- (c) How well the Applicant demonstrates Project readiness and feasibility based upon the following:
  - (1) A project timeline that includes the following:
    - (A) An expected start date (e.g. construction start date(s) and/ or equipment purchase date(s)).

(B) An expected completion date (e.g. construction completion date(s), acquisition completion dates, and/or equipment installation date(s)).

(C) Problems anticipated in implementing the Project and how problems will be managed to ensure timely completion.

(2) Whether the Project is feasible after a review of all of the following:

(A) For all Projects with the exception of equipment acquisition projects, the Applicant shall submit estimates of Project costs and evidence of property ownership or, if the property is leased to a Children's Hospital or the California nonprofit corporation of which the Children's Hospital is an operating entity, a copy of a lease agreement that satisfies the requirements of Section 7047. The Applicant shall also provide building permits and/or executed construction, architect, design and engineering contracts, if available. An Applicant with a Project that does not yet have an executed contract or building permit but is actively in the process of obtaining one shall provide a detailed statement that explains the status of obtaining the document.

(B) For Projects that include the acquisition of real property, the Applicant shall submit a copy of an executed purchase and sale agreement or status of obtaining one or other evidence of site control to the satisfaction of the Authority. In addition, if the Grant will be used to pay for real property acquisition costs as part of a larger Project, the Applicant shall provide a timeline that specifies when the entire Project will be complete.

(C) For equipment acquisition projects, the Applicant shall submit a specific list of items and cost estimates of equipment or copies of invoices, and if applicable, cost estimates of installation of such equipment.

(D) If funding sources other than the Grant are required to complete the Project, the Applicant shall provide proof of the funding source, including but not limited to, commitment letters, board approved capital campaign plans, or any other documentation acceptable to the Authority. Such documentation shall be in accordance with the Project timeline and budget.

(3) Whether implementation of the Project is feasible:

(A) The Applicant shall submit a third-party prepared feasibility study, funding letters or other documentation to demonstrate that the Project will generate sufficient revenues to provide on-going support for new or expanded services and/or research programs. If revenues generated by the Project will be insufficient, the Applicant's revenues shall be sufficient, as determined by Authority staff, to provide on-going support.

(B) When applicable, the Applicant shall submit evidence that it is in compliance with the California Environmental Quality Act and all other applicable laws.

(d) The sources and uses of funds:

(1) The Applicant shall detail all sources of funds required to complete the proposed Project. Sources may include, but are not limited to, the total Grant request, borrowed funds, internal assets, and other sources. If the Project, or a portion of the Project, has been or will be submitted to other lenders or grantors for funding, the Applicant shall list them and the status of their consideration.

(2) The Applicant shall detail the uses of all funds required to complete the proposed Project. The total uses shall not exceed the total of all available fund sources. In some instances, funds from sources other than the Grant may be used for portions of a proposed Project that would otherwise be ineligible for this Grant. In those instances, the Applicant shall describe specifically how the Grant funds, as well as other grants, loans, or internal funds, will be used to ensure Grant funds will not subsidize Project elements not eligible for such funds. Where a Project includes elements required to serve non-pediatric populations, the Grant funds shall be limited only to the proportionate cost of providing care to the pediatric population. The Authority shall determine the appropriate manner in which the proportionate share use will be evaluated.

If a proposed Project will benefit both pediatric and non-pediatric patients, the total Grant for that Project cannot exceed the proportionate share use of the pediatric population. For such Projects, the Authority staff shall determine the amount of Grant funds to be awarded based on proportionate use and any other factors related to improvement of pediatric population care.

(e) The financial capacity of the Applicant based upon a review of the Most Recent Audited Financial Statements supplied pursuant to paragraph (2) of subdivision (a) of Section 7031.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. References: Sections 1179.22, 1179.24 and 1179.25 of the Health and Safety Code.

### **Section 7039. Notification and Initial Allocation**

The Authority shall notify each Applicant in writing, stating the amount of each Initial Allocation.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. Reference: Sections 1179.22, 1179.23, 1179.24 of the Health and Safety Code.

### **Section 7040. Appeals**

(a) Availability. An Applicant may file an appeal of any Initial Allocation. The grounds for any such appeal shall be limited to Applicant eligibility pursuant to Section 7031 and Section 7037 and whether the proposed expense is for a Project as defined in (ee) of Section 7030 for the First Funding Round and Second Funding Round. No Applicant may appeal the Authority staff evaluation of, or Initial Allocation to, another Applicant.

(b) Timing. The appeal shall be submitted in writing and shall be received by the Authority not later than ten (10) calendar days following the transmittal date of the notification of Initial Allocation.

(c) Review. The Authority staff shall review the written appeal based upon the existing documentation submitted by the Applicant when the Application Form was filed and any other information the Authority staff requests of the Applicant. The Authority staff shall make a finding as to the merit of the appeal and shall notify the Applicant as to the decision no later than ten (10) calendar days after the receipt of an appeal. In the event that the Authority staff does not approve an appeal, the Applicant may further appeal to the Authority. The Applicant shall notify the Executive Director in writing no later than ten (10) calendar days prior to the next regularly scheduled Authority meeting that the Applicant intends to further appeal to the Authority. Any such appeal shall be presented by the Applicant, in person, at the next regularly scheduled Authority meeting.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. Reference: Sections 1179.22 and 1179.24 of the Health and Safety Code.

#### **Section 7041. Approval of Grant and Notification of Grantee**

When an Initial Allocation for funding has been determined, Authority staff shall recommend to the Authority at its regularly scheduled meeting, that the Initial Allocation for consideration be approved as a Final Allocation. Any Final Allocation approved by the Authority at the same meeting shall be awarded as Grants to Grantees. Grantees shall be notified within five (5) business days of the same meeting in writing of the Grant approval.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. Reference: Sections 1179.22, 1179.24, and 1179.25 of the Health and Safety Code.

#### **Section 7042. Any Remaining Funds**

If there are any remaining funds after the First Funding Round and Second Funding Round, the Authority may, in its sole discretion, award Grants of those remaining funds to Applicants in ~~the Second~~ a Third Funding Round in a manner that is consistent with the purpose and requirements of the Children's Hospital Program of 2004.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. Reference: Sections 1179.22, 1179.24 and 1179.25 of the Health and Safety Code.

### **Section 7043. Approval of Grant Use Change**

The Authority or the Authority staff may, on a case-by-case basis, consider a change in the use of the Grant if the Grantee demonstrates, to the Authority or the Authority staff's satisfaction, that the change is consistent with the Act and this chapter.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. Reference: Sections 1179.22, 1179.24 and 1179.25 of the Health and Safety Code.

### **Section 7044. Grant Agreements**

The terms and conditions of a Grant shall be set forth in a Grant Agreement, which shall include, but not be limited to, all of the following terms and conditions:

- (a) A Grant amount not greater than \$30 million (less Administrative Costs and Costs of Issuance) for University of California Children's Hospitals or \$74 million (less Costs of Issuance) for all Non-University of California Children's Hospitals.
- (b) A Project Period.
- (c) Disbursement procedures pursuant to Section 7045 or Section 7046, as applicable.
- (d) A provision that any unused Grant funds and any unused investment earnings on such Grant funds shall revert to the Authority.
- (e) Agreement to comply with the Children's Hospital Program of 2004 and these regulations.
- (f) Agreement that the Grantee will defend, indemnify and hold harmless the Authority and the state, and all officers, trustees, agents and employees of the same, from and against any and all claims, losses, costs, damages, or liabilities of any kind or nature, whether direct or indirect, arising from or relating to the Grant, the Project or the Act.
- (g) Agreement to comply with state and federal laws outlawing discrimination, including, but not limited to, those prohibiting discrimination because of sex, race, color, ancestry, religion, creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer or genetic characteristics), sexual orientation, political affiliation, position in a labor dispute, age, marital status, and denial of statutorily-required employment-related leave.
- (h) Agreement that continued compliance with Children's Hospital Program of 2004 requirements is the Grantee's responsibility.
- (i) Agreement that the Grant shall only be used for Projects as described in Grantee's Application Form and approved by the Authority.

- (j) Any audit provisions.
- (k) Any provision necessary to ensure that interest on the bonds is tax-exempt.
- (l) Agreement that the Grantee will not dispose of any component of the Project before the end of the useful life of that component of the Project.
- (m) Any provisions relating to lease agreements pursuant to Section 7047.
- (n) Any other provisions required by the Authority.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. References: Sections 1179.22, 1179.24, and 1179.25 of the Health and Safety Code.

**Section 7045. Release of Funds for Non-University of California Children’s Hospitals.**

(a) No Grant shall be released to a Non-University of California Children’s Hospital until the following information has been provided to the satisfaction of Authority staff:

(1) For all Projects with the exception of equipment acquisition or real property acquisition projects, any supporting documentation that was incomplete with the Application Form shall be finalized and submitted along with a copy of the executed construction contract and the building permit.

(2) For Projects that include architect, design and engineering fees to be paid with Grant proceeds, all applicable executed architect, design and engineering contracts.

(3) For real property acquisition Projects, a copy of the executed purchase and sale agreement and a copy of an appraisal, the appraised value of which (when added to the amount of reasonable transaction and closing costs) shall not be less than the sum of the Grant and all other funding sources necessary to acquire the Project. The appraisal shall be no older than six months from the date of the executed purchase and sale agreement and shall be completed by a state certified appraiser.

(4) For equipment acquisition Projects, any supporting documentation that was incomplete when the Application Form was submitted or not provided at that time shall be finalized and submitted along with a list of items to be purchased and all purchase orders.

(5) Evidence that all other funds, if needed, are in place to complete the Project.

(6) Evidence of property ownership for all construction Projects or if the property is leased to a Children’s Hospital or the California nonprofit corporation of which the Children’s Hospital is an operating entity, a copy of a lease agreement that satisfies the requirements of Section 7047.

(7) An executed Grant Agreement.

(8) When applicable, evidence that there are no outstanding issues related to the California Environmental Quality Act and any other applicable law, if this information was not provided with the Application Form.

(b) Documentation provided for the release of Grant funds shall clearly show that the Grant award does not exceed the cost of the Project.

(c) Grant funds shall be released on a periodic basis upon receipt of draw requests.

(d) Credit for investment earnings on any previously released portion of Grant shall be paid to the Authority prior to final release of Grant funds to the Grantee.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code.  
Reference: Sections 1179.11, 1179.22, 1179.24, and 1179.25 of the Health and Safety Code.

**Section 7046. Release of Funds for University of California Children's Hospitals.**

(a) No Grant shall be released to a University of California Children's Hospital until the following has been provided to the satisfaction of Authority staff:

(1) For all Projects (including Projects with architect, design and engineering fees) with the exception of equipment acquisition projects, all Project documentation of expenditures, including copies of cancelled checks that represent payment to contractors. The Grantee shall provide evidence of property ownership for all Projects or if the property is leased to a Children's Hospital or the California nonprofit corporation of which the Children's Hospital is an operating entity, a copy of a lease agreement that satisfies the requirements of Section 7047, if this documentation was not submitted with the Application Form. If the Grantee does not provide copies of cancelled checks, the Grantee shall provide wire transfers, electronic fund transfers or other evidence acceptable to the Authority in lieu of copies of cancelled checks.

(2) For real property acquisition Projects, a copy of the final closing statement with certification by the title company and a copy of an appraisal, the appraised value of which (when added to the amount of reasonable transaction and closing costs) shall not be less than the sum of the Grant and all other funding sources necessary to acquire the Project. The appraisal shall be completed by a state certified appraiser.

(3) For equipment acquisition Projects, all contracts, purchase orders, invoices and copies of cancelled checks shall be submitted. If the Grantee does not provide copies of cancelled checks, the Grantee shall provide wire transfers, electronic fund transfers or other evidence acceptable to the Authority in lieu of copies of cancelled checks.

(4) When applicable, evidence that there are no outstanding issues relating to the California Environmental Quality Act and any other applicable law, if this information was not provided with Application Form.

(5) An executed Grant Agreement.

(b) Documentation provided for the release of Grant funds shall clearly show that the Grant award did not exceed the cost of the Project.

(c) Grant funds shall be released on a periodic basis, upon receipt of draw requests, based on a listing of expenditures made on the Project and not previously reimbursed.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. Reference: Sections 1179.11, 1179.22, 1179.24, and 1179.25 of the Health and Safety Code.

**Section 7047. Requirements for Construction Projects on Leased Property.**

(a) If a Children’s Hospital proposes to use Grant funds for a Project other than equipment acquisition on property where the Children’s Hospital or the California nonprofit corporation of which the Children’s Hospital is an operating entity is a lessee under a lease agreement, the following requirements shall be satisfied prior to any release of Grant funds pursuant to Sections 7045 or 7046:

(1) The lease agreement shall provide the Children’s Hospital or the California nonprofit corporation of which the Children’s Hospital is an operating entity, as lessee, full access to the site to carry on its healthcare purposes.

(2) The term of the lease agreement must meet one of the following:

(A) The term of the lease agreement shall be at least as long as the useful life of the Project under the Grant.

(B) If the landlord under the lease agreement is an Affiliate, the term of the lease agreement must be at least 74% of useful life of the Project under the Grant.

(3) A current title report on the site, brought up to date as of the effective date of the lease agreement shall be provided to the Authority. The title report shall show all of the following:

(A) No delinquent taxes or assessments or, if there are delinquent taxes or assessments, these are being contested in good faith and the Children’s Hospital has set aside on its books adequate reserves to pay these taxes or assessments.

(B) No easements, exceptions or restrictions on the use of the site that will interfere with or impair the operation of the Project.

(C) No superior liens (deeds of trust or other rights) in the property. If there are any superior liens, they shall be subordinated to the lease agreement. The lease agreement shall provide that any subsequent encumbrance on the property (e.g. deed of trust) or sale of the property shall be subject to the lease agreement.

(4) Any one of the following shall be satisfied:

(A) The lease agreement shall provide for a nominal rent (e.g. \$1 per year).

(B) Full rent under the lease agreement shall be paid in a lump sum up front.

(C) The Children's Hospital or the California nonprofit corporation of which the Children's Hospital is an operating entity shall covenant in the Grant Agreement to budget for payment of rent each year.

(5) The lease agreement shall provide that the only remedy for any default, including failure to pay rent, by lessee Children's Hospital or the California nonprofit corporation of which the Children's Hospital is an operating entity is suit for rent or specific performance to remedy any specific breach. The landlord's remedies for any default by lessee Children's Hospital or the California nonprofit corporation of which the Children's Hospital is an operating entity may not include cancellation of lease agreement, retaking of property or eviction of the lessee.

(6) The lease agreement shall provide for either one of the following:

(A) The lessee Children's Hospital or the California nonprofit corporation of which the Children's Hospital is an operating entity is obligated to pay all taxes and assessments on the property.

(B) The landlord will provide the lessee Children's Hospital or the California nonprofit corporation of which the Children's Hospital is an operating entity with notice of any failure to pay taxes or assessments on the property and an opportunity for the lessee Children's Hospital or the California nonprofit corporation of which the Children's Hospital is an operating entity to cure the failure.

(7) The landlord shall demonstrate that the lease agreement is legally authorized and has been properly approved and executed and enforceable against the landlord. The landlord shall provide a legal opinion of qualified counsel to this effect that is acceptable to the Authority.

(8) The lessee Children's Hospital shall demonstrate that the lease agreement is legally authorized and has been properly approved and executed and enforceable against the lessee Children's Hospital or the California nonprofit corporation of which the Children's Hospital is an operating entity. Lessee Children's Hospital shall provide a legal opinion of qualified counsel to this effect that is acceptable to the Authority.

(9) (A) Except as provided in (B), the Children’s Hospital shall provide a legal opinion that either: 1. the landlord is a special purpose entity which cannot enter bankruptcy proceedings under the federal Bankruptcy Code, or 2. the lease agreement will not be an executory contract and cannot be rejected by the landlord in the event of bankruptcy. The legal opinion shall be acceptable to the Authority.

(B) For so long as the landlord is an Affiliate of lessee Children’s Hospital or the California nonprofit corporation of which the Children’s Hospital is an operating entity, the requirements of (A) do not apply.

(10) The Grant Agreement shall provide that if the lease agreement terminates prior to the end of the useful life of the Project under the Grant and the property that was subject to the lease agreement is not simultaneously re-leased under a new lease agreement that complies with the requirements of this Section 7047 or fee title to the property that was subject to the lease agreement is not simultaneously transferred to the Children’s Hospital, the Authority is entitled to recover the Grant funds pursuant to Section 7049.

(11) When a Project on leased property includes improvements to any common areas that are shared with other tenants or areas that are not leased by the lessee Children’s Hospital or the California nonprofit corporation of which the Children’s Hospital is an operating entity under the lease agreement, the Grant funds shall be limited only to the proportionate costs of the Project which exclude the costs related to such areas.

(12) Prior to approval of the Grant by the Authority, the Applicant shall submit the proposed lease agreement for review and demonstrate compliance with all of the above conditions and any other conditions required by the Authority.

(b) For purposes of this section, “Affiliate” means an entity which, directly or indirectly through one or more intermediaries, is controlled by or is under common control with the lessee Children’s Hospital or the California nonprofit corporation of which the Children’s Hospital is an operating entity.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. Reference: Sections 1179.22, 1179.24, and 1179.25 of the Health and Safety Code.

**Section 7048. Completion of Grant Funded Project.**

(a) The Grantee shall certify to the Authority that the Project is complete and, to the extent not already provided to the Authority, provide supporting documentation to the satisfaction of the Authority staff as follows:

(1) Construction projects (including Projects with architect, design and engineering fees) require documentation including, but not limited to, copies of the certificate of occupancy and/or notice of completion. Purchase orders, invoices, and cancelled checks shall be submitted.

If the Grantee does not provide copies of cancelled checks, the Grantee shall provide wire transfers, electronic fund transfers or other evidence acceptable to the Authority in lieu of copies of cancelled checks.

(2) Real property acquisition Projects require a copy of the final closing statement with certification by the title company.

(3) Equipment acquisition projects require service contracts, purchase orders, invoices and copies of cancelled checks to be submitted.

If the Grantee does not provide copies of cancelled checks, the Grantee shall provide wire transfers, electronic fund transfers or other evidence acceptable to the Authority in lieu of copies of cancelled checks.

(b) If the Grantee fails to complete the Project within the Project Period, the Authority may require remedies, including forfeiture and return of the Grant to the Authority.

(c) On a case-by-case basis, the Authority or the Authority staff may extend the Project Period for extraordinary or unavoidable delays where the Grantee can demonstrate that it occurred through no fault of its own.

(d) Documentation provided to establish the completion of a Project shall clearly show that the Grant award did not exceed the cost of the Project.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. Reference: Sections 1179.22, 1179.24, and 1179.25 of the Health and Safety Code.

#### **Section 7049. Recovery of Funds for Non-Performance and Unused Funds.**

(a) If the Authority determines that the use of the Grant funds did not comply with Children's Hospital Program of 2004 requirements and the terms of the Grant Agreement for an approved Project, the Authority may require remedies, including a return of all Grant funds.

In cases where Grant funds paid for a component of a Project that does not specifically benefit pediatric patients, such as architect, design or engineering fees or land acquisition costs, and if the Authority determines that the Grantee did not complete a larger Project as described in the timelines provided with the Application, the Authority may require remedies, including a return of all Grant funds.

If the Project, or any part thereof, funded with Grant funds ceases to be used by the Children's Hospital before the end of the useful life of the Project, the Authority is entitled to recover Grant funds in an amount that bears the same ratio to the value of the Project, or the appropriate part thereof, at the time it ceased to be used by the Children's Hospital as the amount of the Grant bore to the cost of the Project or the appropriate part thereof. For purposes of this paragraph, the value of the Project, or the appropriate part thereof, is determined by mutual agreement of the

Authority and the Grant recipient or through an action brought for that purpose in the superior court.

(b) If any portion of the Grant is forfeited to the Authority, the forfeited funds shall be deemed remaining funds for purposes of Section 7042.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. Reference: Sections 1179.22, 1179.24, and 1179.25 of the Health and Safety Code.

### **Section 7050. Audits**

The Bureau of State Audits and Authority staff may conduct periodic audits to ensure Grantees are using Grants consistent with the Children's Hospital Program of 2004 requirements and the terms of the Grant Agreement for an approved Project. Grantees shall retain all Children's Hospital Program of 2004 documentation and financial data necessary to substantiate the purposes for which the Grant funds were spent for a period of three years after the certification of completion of the Project has been submitted or until June 30, 2017, whichever is later.

NOTE: Authority Cited: Sections 1179.22, 1179.24, and 1179.32 of the Health and Safety Code. Reference: Section 1179.25 of the Health and Safety Code.

**CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY**

**RESOLUTION NO. 2014-02**

**RESOLUTION APPROVING THE ADOPTION OF AMENDMENTS TO THE  
REGULATIONS FOR PROPOSITION 61  
CHILDREN'S HOSPITAL PROGRAM OF 2004  
AND AUTHORIZING RULEMAKING PROCEEDINGS**

WHEREAS, the Children's Hospital Bond Act of 2004, Proposition 61, was approved by the voters on November 2, 2004 to provide for the issuance of general obligation bonds in the amount of \$750 million to award grants to children's hospitals for capital projects and authorizing the California Health Facilities Financing Authority (the "Authority") to administer the grant program; and

WHEREAS, the regulations for the Children's Hospital Program define the First Funding Round as the period prior to June 30, 2014, and state that if any remaining unawarded grant funds are available after the First Funding Round, the Authority may in its sole discretion, award those funds in a manner consistent with the original purpose and requirements of the Children's Hospital Program; and

WHEREAS, amendments to the regulations are required for the Authority to award funds remaining after June 30, 2014;

THEREFORE BE IT RESOLVED, by the California Health Facilities Financing Authority, as follows:

Section 1. The proposed amendments to the regulations for the Children's Hospital Program of 2004 are hereby approved in substantially the form submitted to the Authority by staff. The Chair, any Deputy to the Chair, Executive Director and Deputy Executive Director are each hereby authorized, for and on behalf of the Authority, to submit such amendments with the supporting documentation required by law to the Office of Administrative Law and proceed with the procedures required by the Administrative Procedures Act.

Section 2. The Chair, any Deputy to the Chair, Executive Director and Deputy Executive Director of the Authority are each hereby authorized and directed to take such actions, including making or causing to be made such changes to the regulations as may be required for approval thereof by the Office of Administrative Law, and to execute and deliver any and all documents that the officer or officers may deem necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. This resolution shall take effect immediately upon its approval.

Date Approved: \_\_\_\_\_