

# **CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY (AUTHORITY)**

## **Distressed Hospital Loan Program**

### **Resolution No. 2023-01**

**May 25, 2023**

#### **PURPOSE OF THE REQUEST:**

Staff seeks Authority approval of Resolution No. 2023-01 to delegate authority to the Executive Director and the Deputy Executive Director, in the Executive Director's absence, to assist the Department of Health Care Access and Information (the "Department") with the implementation of the Distressed Hospital Loan Program ("Program") pursuant to an interagency agreement and to issue loans at the direction of the Department.

#### **BACKGROUND:**

California's not-for-profit and public hospitals provide significant levels of care to the State's uninsured population and Medi-Cal and Medicare recipients. In recent years, these hospitals have experienced and continue to experience substantial financial distress, adversely impacting ongoing operations. The negative operating margins in recent years may be attributed to a variety of factors, including, but not limited to responding to the COVID-19 pandemic, surging labor costs, increasing medical supply expenses, and inflation. The substantial increase in expenses over these past few years have far outpaced the rates of reimbursement paid by Medi-Cal and Medicare. As such, several hospitals have declared bankruptcy and ceased operations, with numerous other not-for-profit and public hospitals heading towards insolvency. Absent a capital infusion, additional not-for-profit and public hospitals will be at risk of closure, and thus the most vulnerable California populations will lose access to affordable healthcare. A cashflow infusion is needed to sustain day-to-day operations while the hospitals' governing bodies implement strategies to regain financial viability.

#### **SUMMARY:**

On May 15, 2023, the Program was established through urgency legislation with the approval of Chapter 6, Statutes of 2023, Assembly Bill 112, authorizing \$150 million in one-time funding towards not-for-profit and public hospitals in significant financial distress, or to governmental entities representing a closed hospital to either prevent the closure or facilitate the reopening of closed hospitals. The Program offers zero-percent interest, 72-month term loans, with an 18-month payment deferral at the start of the loan, for the purpose of supporting working capital needs that may be forgiven or modified. The application process for loan forgiveness or modification will be developed in the future. The Department may allocate an amount not to exceed five percent of the total Program funds, totaling \$7.5 million over the life of the Program, to administer the Program, including administrative costs to the Authority. The Program will remain in effect until January 1, 2032.

Pursuant to Health and Safety Code Section 129382(b) and 129383(f), the Authority shall enter into an interagency agreement with the Department to implement the Program, and the Department shall, in consultation with the Authority, determine the application process, underwriting review, and methodology for approval and distribution of loans under the Program.

The Department is responsible for developing the methodology to evaluate an at-risk hospital's potential eligibility for the Program in collaboration with Department of Health Care Services, Department of Managed Health Care, and the Department of Public Health, pursuant to Health and Safety Code Section 129383(a).

Additionally, pursuant to Health and Safety Code Section 129383(c)(2), before issuing a loan to eligible hospitals in loan amounts as determined by the Department, the Department shall make a determination that the eligible hospital's plan is viable and there is reasonable likelihood that the eligible hospital will be able regain financial viability and continue to operate as a hospital.

## **PROGRAM OVERVIEW:**

### **Eligibility**

- An applicant shall be eligible to apply for a Program loan if:
  - 1) The applicant is a not-for-profit hospital or a public hospital; and
  - 2) The applicant is in significant financial distress.

OR

  - 1) The applicant is a governmental entity representing a closed hospital; and
  - 2) The applicant is preventing the closure of or is facilitating the reopening of a closed hospital.

- Not-for-profit hospitals and public hospitals belonging to integrated health care systems with more than two separately licensed hospital facilities are **ineligible** for loans under this Program.

### **Use of Loan Proceeds**

- Loan proceeds may be used for working capital purposes to assist with cashflow.

### **Loan Terms**

- 0% interest rate.
- Monthly payments begin 18 months after the loan's date of origination (deferment period).
- Loans must be fully repaid within 72 months.
- Loans will be secured by the borrower's Medi-Cal reimbursements (if the loan defaults, 20% of the borrower's Medi-Cal checkwrite payments will be intercepted until the Program loan amount has been satisfied).
- No penalty for early repayment of a Program loan.
- Loan may be eligible to be forgiven or modified. Details to be determined in the future.

## **Methodology**

- Shall consider factors, including but not limited to:
  - Hospital is in financial distress, as solely determined by the Department;
  - Whether hospital is small, rural, a critical access hospital, a trauma center, an urban hospital providing access for an underserved area;
  - Hospital that serves a disproportionate share of Medicaid patients or serving a rural catchment area;
  - Whether closure of the hospital would significantly impact access to services in the region;
  - Whether hospital is publicly owned;
  - Hospital's prior and projected performance on financial metrics: cash on hand, or projections to experience negative operating margins.
- Shall also be used for identification and monitoring of hospitals at risk of financial distress.

## **Application Review and Loan Amount Determination**

- The Authority will receive applications.
- The Authority will share the applications with the Department, who will determine whether the applications are complete and if an applicant is eligible.
- the Department will evaluate and determine Program loan amounts and share a determination with Authority staff to issue the loans.

## **Required Documentation**

- Borrower's Resolution, delegating authority from Borrower's Board of Directors to an authorized officer to apply to the Program and to execute and deliver Program loan documents.
- Loan and Security Agreement (including a Medi-Cal Intercept Agreement) and Promissory Note.

## **STAFF RECOMMENDATION:**

Staff recommends the approval of Resolution No. 2023-01 to delegate authority to the Executive Director and the Deputy Executive Director, in the Executive Director's absence, to assist the Department with the implementation of the Program pursuant to an interagency agreement and to issue loans at the direction of the Department.

## **ATTACHMENT:**

Exhibit A - Statutory Language (AB 112, 2023)

## Exhibit A: Statutory Language (AB 112, 2023)

### CHAPTER 4. Distressed Hospital Loan Program

**129380.** (a) This program shall be known, and may be cited, as the Distressed Hospital Loan Program.

(b) The purpose of this program is to provide interest-free cashflow loans to not-for-profit hospitals and public hospitals in significant financial distress or to governmental entities representing a closed hospital, except as otherwise provided, to prevent the closure of, or facilitate the reopening of, those hospitals.

**129381.** For the purposes of this chapter, the following definitions apply:

(a) “Authority” means the California Health Facilities Financing Authority.

(b) “Closed hospital” means a hospital that closed after January 1, 2022.

(c) “Department” means the Department of Health Care Access and Information.

(d) “Not-for-profit hospital” means the same as a general acute care hospital described in paragraph (1) of subdivision (d) of Section 15432 of the Government Code that is organized as a not-for-profit entity.

(e) “Program” means the Distressed Hospital Loan Program.

(f) “Public hospital” means a hospital that is licensed to a county, a city, a city and county, the University of California, a local health care district, a local health authority, or a municipal hospital established pursuant to Article 7 (commencing with Section 37600) of Chapter 5 of Part 2 of Division 3 of Title 4 of the Government Code.

**129382.** (a) The department shall administer the program, subject to subdivision (d) of Section 129385, for purposes of this chapter.

(b) The department shall enter into an interagency agreement with the authority to implement this chapter.

**129383.** (a) In collaboration with the State Department of Health Care Services, the Department of Managed Health Care, and the State Department of Public Health, the department shall develop a methodology to evaluate an at-risk hospital’s potential eligibility for state assistance from the program.

(1) (A) The methodology shall consider factors, including, but not limited to, whether the hospital is in financial distress, as solely determined by the department, whether the hospital is small, rural, a critical access hospital, a trauma center, an urban hospital providing access for an underserved area, a hospital that serves a disproportionate share of Medicaid patients, or serving a rural catchment area, whether closure of the hospital would significantly impact access to services in the region, and whether the hospital is publicly owned.

(B) The methodology for determining financial distress may consider such factors as the hospital's prior and projected performance on financial metrics, including the amount of cash on hand, and whether the hospital has, or is projected to experience, negative operating margins.

(2) The methodology shall also be used for identification and monitoring of hospitals at risk of financial distress.

(b) A hospital or a closed hospital applying for aid under this program shall provide the authority and the department with financial information, in a format determined by the authority and the department, demonstrating the hospital's need for financial assistance due to financial hardship.

(c) (1) Before receiving state assistance under this program, an eligible hospital shall submit a plan to the authority, which it shall share with the department, with projections detailing the uses of the proposed loan and strategies proposed by the hospital's governing body to regain financial viability and continue to operate.

(2) Before issuing a loan under this chapter, the department shall review the plan submitted by an eligible hospital and make a determination that the plan is viable and there is a reasonable likelihood that the hospital will be able to regain financial viability and continue to operate as a hospital. The department shall not issue a loan award if the department is unable to make this determination.

(d) The department shall issue the loan award to a qualifying hospital as soon as reasonably practicable following its eligibility determination.

(e) Not-for-profit hospitals and public hospitals that belong to integrated health care systems with more than two separately licensed hospital facilities shall be ineligible for state assistance under the program.

(f) The department shall, in consultation with the authority, determine the application process, underwriting review, and methodology for approval and distribution of the loans under the program.

(g) The department shall have the authority to determine service provision requirements in approving, and for the duration of, loans to eligible hospitals. In making its determination, the department shall consider the impact of any changes to the hospital's service delivery on access to necessary medical care, particularly for beneficiaries of the Medi-Cal program.

(h) The department shall make the methodology publicly accessible on its internet website.

**129384.** (a) Notwithstanding Sections 15432 and 15451.5 of the Government Code, unless subdivision (c) applies, a hospital shall be required to begin making monthly repayments of the loan after the first 18 months and shall discharge the loan within 72 months of the date of the loan.

(b) Notwithstanding any other law and to the extent permissible under federal rules, security for the cashflow loans in this chapter shall be Medi-Cal reimbursements due to the hospital from the State Department of Health Care Services. The department's or authority's recoupment of these cashflow loans shall not exceed 20 percent of the hospital's respective Medi-Cal checkwrite payments until the loan amount has been satisfied. In the event that a 20-percent withhold will not result in full repayment of the loan within a 72-month period, the department may extend the repayment term of the loan.

(c) (1) The department, in consultation with the authority, and upon approval of the Department of Finance, shall develop an application and approval process for loan forgiveness or modification of the terms of the loan, including a delay of the beginning of the loan repayment period or an extension of the 72-month loan repayment term, or both. The process shall include, but is not limited to, eligibility criteria for an applicant for loan forgiveness or modification, including which portion of a loan may be forgiven or modified.

(2) The department shall provide loan forgiveness or modification of loan terms to an applicant based upon criteria determined by the department and subject to the approval of the department and the authority. The Department of Finance shall be authorized to approve any loan forgiveness and any modification of loan terms that would result in the extension of the payback period by more than one year.

(3) The department shall also establish the terms and conditions associated with accepting loan forgiveness or modification of loan terms, subject to approval of the Department of Finance.

(4) Before any action on a request for forgiveness or modification of any loan that would result in the extension of the payback period by more than one year, and again not later than 60 days after final approval or denial of the forgiveness or modification, the department shall submit to the Joint Legislative Budget Committee and relevant policy and fiscal committees of the Legislature notice of the request and the subsequent action, including a summary of the request and reason for the denial, approval, or modification.

**129385.** (a) The Distressed Hospital Loan Program Fund is hereby established in the State Treasury. The fund shall be administered by the department consistent with this chapter.

(b) Notwithstanding Section 13340 of the Government Code, all moneys in the fund are continuously appropriated, without regard to fiscal years, for the department and the authority to implement this chapter.

(c) The authority shall make secured loans from the Distressed Hospital Loan Program Fund to a hospital or to a governmental entity representing a closed hospital, for purposes of preventing the closure, or facilitating the reopening, of the hospital.

(d) The department may allocate an amount not to exceed 5 percent of total program funds to administer the program, including, but not limited to, administrative costs to the authority. Any funds transferred shall be available for encumbrance or expenditure until June 30, 2026.

(e) The Department of Finance may transfer up to \$150,000,000 from the General Fund to the Distressed Hospital Loan Program Fund between state fiscal years 2022–23 and 2023–24 to implement this chapter.

(f) All moneys accruing to the authority and the department under this chapter from any source shall be deposited into the fund.

(g) The Treasurer may invest moneys in the fund that are not required for its current needs in eligible securities specified in Section 16430 of the Government Code and may transfer moneys in the fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(h) Notwithstanding Section 16305.7 of the Government Code, all interest or other increment resulting from the investment or deposit of moneys from the fund shall be deposited in the fund.

(i) Moneys in the fund shall not be subject to transfer to any other funds pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code, except to the Surplus Money Investment Fund.

(j) Effective December 31, 2031, the Distressed Hospital Loan Program Fund in the State Treasury, created pursuant to this chapter, is hereby abolished. Any remaining balance, assets, liabilities, and encumbrances of the Distressed Hospital Loan Program Fund shall revert to the General Fund. The department shall deposit all subsequent loan repayments or Medi-Cal reimbursements withheld for due cause pursuant to subdivision (b) of Section 129384 to the Treasurer, to the credit of the General Fund.

(k) The department and the authority may require any hospital receiving a loan under this chapter to provide the department and the authority with an independent financial audit of the hospital's operations for any fiscal year in which a loan is outstanding.

**129386.** (a) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the authority and the department may implement, interpret, or make specific this chapter, in whole or in part, by means of information notices or other similar instructions, without taking any further regulatory action.

(b) For purposes of implementing this chapter, the authority and the department may enter into exclusive or nonexclusive contracts, or amend existing contracts, on a bid or negotiated basis. Contracts entered into or amended pursuant to this subdivision shall be exempt from Chapter 6 (commencing with Section 14825) of Part 5.5 of Division 3 of Title 2 of the Government Code, Section 19130 of the Government Code, Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, and the State Administrative Manual, and shall be exempt from the review or approval of any division of the Department of General Services.

**129387.** This chapter shall remain in effect only until January 1, 2032, and as of that date is repealed.

## RESOLUTION NUMBER 2023-01

### RESOLUTION OF THE CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY AUTHORIZING THE IMPLEMENTATION OF THE DISTRESSED HOSPITAL LOAN PROGRAM AND DELEGATING CERTAIN POWERS TO THE EXECUTIVE DIRECTOR OR DEPUTY EXECUTIVE DIRECTOR

**WHEREAS**, the California Health Facilities Financing Authority (the “Authority”), a public instrumentality of the State of California, is authorized by the provisions of Chapter 6, Statutes of 2023 (Assembly Bill 112) (Health and Safety Code Section 129380, et seq), the Distressed Hospital Loan Program (the “Program”), to issue zero-interest cashflow loans for working capital to eligible not-for-profit and public hospitals in significant financial distress or to governmental entities representing closed hospital to prevent closure or facilitate the reopening of a closed hospital in a total amount of \$150,000,000, less administrative costs at the direction of the Department of Health Care Access and Information (the “Department”); and

**WHEREAS**, the Department may allocate an amount not to exceed five percent of the total Program funds to administer the program, including administrative costs to the Authority, totaling \$7.5 million; and

**WHEREAS**, California’s not-for-profit and public hospitals provide significant levels of care to the State’s uninsured population and Medi-Cal and Medicare recipients. In recent years, these hospitals have experienced and continue to experience substantial financial distress, adversely impacting ongoing operations. The negative operating margins in recent years may be attributed to a variety of factors, including, but not limited to responding to the COVID-19 pandemic, surging labor costs, increasing medical supply expenses, and inflation. The substantial increase in expenses over these past few years have far outpaced the rates of reimbursement paid by Medi-Cal and Medicare. As such, several hospitals have declared bankruptcy and ceased operations, with numerous other not-for-profit and public hospitals heading towards insolvency. Absent a capital infusion, additional not-for-profit and public hospitals will be at risk of closure, and thus the most vulnerable California populations will lose access to affordable healthcare. A cashflow infusion is needed to sustain day-to-day operations while the hospital’s governing bodies implement strategies to regain financial viability; and

**WHEREAS**, it is necessary to delegate certain powers and duties to the Executive Director and Deputy Executive Director, in the Executive Director’s absence, to assist the Department with the implementation of the Program pursuant to an interagency agreement;

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

Section 1. The Authority hereby delegates to the Executive Director and the Deputy Executive Director, in the Executive Director’s absence, the authority to assist the Department with the implementation of the Program pursuant to an interagency agreement.

Section 2. The Authority hereby delegates to the Executive Director and the Deputy Executive Director, in the Executive Director’s absence, the power to issue Program cashflow loans for eligible hospitals in varying amounts as solely determined by the Department, pursuant to Health and Safety Code, Section 129383(c)(2), but solely to the extent there are available proceeds for the Program, as determined pursuant and subject to Section 3 hereof.



Section 3. The Authority hereby delegates to the Executive Director and the Deputy Executive Director, in the Executive Director's absence, the power to draw loan proceeds for the Program from the fund to be established, not to exceed those amounts as determined by the Department. The Authority hereby delegates to the Executive Director and the Deputy Executive Director, in the Executive Director's absence, the power to execute and deliver any and all documents necessary to complete the transfer of loan proceeds.

Section 4. The Authority hereby delegates to the Executive Director and the Deputy Executive Director, in the Executive Director's absence, the power to develop, in consultation with legal counsel, loan and security agreements and promissory notes for loans approved under the Program. The Authority hereby delegates to the Executive Director and the Deputy Executive Director, in the Executive Director's absence, the power to do any and all things necessary to execute and deliver any documents in connection with the issuance, disbursement, and prepayment of loans, including loan and security agreements, disbursement memorandums, loan closing documents, and Medi-Cal intercept agreements as security for the loans. The Authority hereby delegates to the Executive Director and the Deputy Executive Director, in the Executive Director's absence, the power to carry out any ministerial actions.

Section 5. The Authority hereby directs the Executive Director and the Deputy Executive Director, in the Executive Director's absence, to notify borrowers of loan proceeds from the Program that: 1) a borrower may apply to the Authority for loan forgiveness or modification of the terms of the loan, including a delay of the beginning of the loan repayment period or an extension of the 72-month loan repayment term, or both in the future; and 2) the eligibility criteria and determination of loan forgiveness or modification shall be shared by the Authority once it has been established.

Section 6. The Executive Director and the Deputy Executive Director, in the Executive Director's absence, shall report to the Authority at the next scheduled meeting all loans issued pursuant to this resolution.

Section 7. This resolution shall take effect immediately upon its approval and shall be repealed on January 1, 2032.

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