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HEALTH AND SAFETY CODE - HSC

DIVISION 107. HEALTH CARE ACCESS AND INFORMATION [127000 - 130079] (*Heading of Division 107 amended by Stats. 2021, Ch. 143, Sec. 28.)*

PART 6. FACILITIES LOAN INSURANCE AND FINANCING [129000 - 129387] (*Part 6 added by Stats. 1995, Ch. 415, Sec. 9.)*

CHAPTER 1. Health Facility Construction Loan Insurance [129000 - 129355] (*Chapter 1 added by Stats. 1995, Ch. 415, Sec. 9.)*

ARTICLE 2. Insurable Loans and Applications Therefor [129050 - 129110] (*Article 2 added by Stats. 1995, Ch. 415, Sec. 9.)*

129050. A loan shall be eligible for insurance under this chapter if all of the following conditions are met:

(a) The loan shall be secured by a first mortgage, first deed of trust, or other first priority lien on a fee interest of the borrower or by a leasehold interest of the borrower having a term of at least 20 years, including options to renew for that duration, longer than the term of the insured loan. The security for the loan shall be subject only to those conditions, covenants and restrictions, easements, taxes, and assessments of record approved by the office, and other liens securing debt insured under this chapter. The department may require additional agreements in security of the loan.

(b) The borrower obtains an American Land Title Association title insurance policy with the department designated as beneficiary, with liability equal to the amount of the loan insured under this chapter, and with additional endorsements that the department may reasonably require.

(c) The proceeds of the loan shall be used exclusively for the construction, improvement, or expansion of the health facility, as approved by the department under Section 129020. However, loans insured pursuant to this chapter may include loans to refinance another prior loan, whether or not state insured and without regard to the date of the prior loan, if the department determines that the amount refinanced does not exceed 90 percent of the original total construction costs and is otherwise eligible for insurance under this chapter. The department may not insure a loan for a health facility that the office determines is not needed pursuant to subdivision (k).

(d) The loan shall have a maturity date not exceeding 30 years from the date of the beginning of amortization of the loan, except as authorized by subdivision (e), or 75 percent of the department's estimate of the economic life of the health facility, whichever is the lesser.

(e) The loan shall contain complete amortization provisions requiring periodic payments by the borrower not in excess of its reasonable ability to pay as determined by the department. The department shall permit a reasonable period of time during which the first payment to amortization may be waived on agreement by the lender and borrower. The department may, however, waive the amortization requirements of this subdivision and of subdivision (g) of this section when a term loan would be in the borrower's best interest.

(f) The loan shall bear interest on the amount of the principal obligation outstanding at any time at a rate, as negotiated by the borrower and lender, as the department finds necessary to meet the loan money market. As used in this chapter, "interest" does not include premium charges for insurance and service charges if any. Where a loan is evidenced by a bond issue of a political subdivision, the interest thereon may be at any rate the bonds may legally bear.

(g) The loan shall provide for the application of the borrower's periodic payments to amortization of the principal of the loan.

(h) The loan shall contain those terms and provisions with respect to insurance, repairs, alterations, payment of taxes and assessments, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters the department may in its discretion prescribe.

(i) The loan shall have a principal obligation not in excess of an amount equal to 90 percent of the total construction cost.

(j) The borrower shall offer reasonable assurance that the services of the health facility will be made available to all persons residing or employed in the area served by the facility.

(k) The department has determined that the facility is needed by the community to provide the specified services. In making this determination, the department shall do all of the following:

- (1) Require the applicant to describe the community needs the facility will meet and provide data and information to substantiate the stated needs.
- (2) Require the applicant, if appropriate, to demonstrate participation in the community needs assessment required by Section 127350.
- (3) Survey appropriate local officials and organizations to measure perceived needs and verify the applicant's needs assessment.
- (4) Use any additional available data relating to existing facilities in the community and their capacity.
- (5) Contact other state and federal departments that provide funding for the programs proposed by the applicant to obtain those departments' perspectives regarding the need for the facility. Additionally, the department shall evaluate the potential effect of proposed health care reimbursement changes on the facility's financial feasibility.
- (6) Consider the facility's consistency with the Cal-Mortgage state plan.

(l) In the case of acquisitions, a project loan shall be guaranteed only for transactions not in excess of the fair market value of the acquisition.

Fair market value shall be determined, for purposes of this subdivision, pursuant to the following procedure, that shall be utilized during the department's review of a loan guarantee application:

- (1) Completion of a property appraisal by an appraisal firm qualified to make appraisals, as determined by the department, before closing a loan on the project.
- (2) Evaluation of the appraisal in conjunction with the book value of the acquisition by the department. When acquisitions involve additional construction, the department shall evaluate the proposed construction to determine that the costs are reasonable for the type of construction proposed. In those cases where this procedure reveals that the cost of acquisition exceeds the current value of a facility, including improvements, then the acquisition cost shall be deemed in excess of fair market value.

(m) Notwithstanding subdivision (i), any loan in the amount of ten million dollars (\$10,000,000) or less may be insured up to 95 percent of the total construction cost.

In determining financial feasibility of projects of counties pursuant to this section, the department shall take into consideration any assistance for the project to be provided under Section 14085.5 of the Welfare and Institutions Code or from other sources. It is the intent of the Legislature that the department endeavor to assist counties in whatever ways are possible to arrange loans that will meet the requirements for insurance prescribed by this section.

(n) The project's level of financial risk meets the criteria in Section 129051.

(Amended by Stats. 2021, Ch. 143, Sec. 233. (AB 133) Effective July 27, 2021.)

129051. (a) The department shall develop and implement a system for assessing the relative financial risk of the applicant. The system shall include, but is not limited to, an assessment of the applicant's financial strength, credit history, security for the loan, cash-flow, and ability to repay the debt.

(b) The department shall establish a maximum acceptable level of financial risk for the projects it insures. The department may only approve a project if its risk level is below the established maximum, except as provided in subdivision (c).

(c) The department may approve a project with a level of insurance risk that exceeds the established maximum if the department determines that the project meets a significant community need or will be a sole community provider.

(Amended by Stats. 2021, Ch. 143, Sec. 234. (AB 133) Effective July 27, 2021.)

129052. A pledge by or to the department of, or the grant to the department of a security interest in, revenues, moneys, accounts, accounts receivable, contract rights, general intangibles, documents, instruments, chattel paper, and other rights to payment of whatever kind made by or to the department pursuant to the authority granted in this chapter shall be valid and binding from the time the pledge is made for the benefit of pledgees and successors thereto. The revenues, moneys, accounts, accounts receivable, contract rights, general intangibles, documents, instruments, chattel paper, and other rights to payment of whatever kind pledged by or to the department or its assignees shall immediately be subject to the lien of the pledge without physical delivery or further act. The lien of such pledge shall be valid and binding against all parties, irrespective of whether the parties have notice of the lien. The indenture, trust agreement, resolution, or another instrument by which such pledge is created need not be recorded or the security interest otherwise perfected.

(Amended by Stats. 2021, Ch. 143, Sec. 235. (AB 133) Effective July 27, 2021.)

129055. In order to comply with subdivision (j) of Section 129050, any borrower that is certified for reimbursement for cost of care under Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code shall demonstrate that its facility is used by persons for whom the cost of care is reimbursed under that chapter, in a proportion that is reasonable based upon the proportion of Medi-Cal patients in the community served by the borrower and by persons for whom the costs of care is reimbursed under Title XVIII of the federal Social Security Act in a proportion that is reasonable based upon the proportion of Medicare patients in the community served by the borrower.

For the purposes of this chapter, the community means the service areas or patient populations for which the health facility provides health care services, unless the department determines that, or the borrower demonstrates to the satisfaction of the office that, a different definition is more appropriate for the borrower's facility.

(Amended by Stats. 2021, Ch. 143, Sec. 236. (AB 133) Effective July 27, 2021.)

129060. Subdivisions (b) and (c) of Section 129355 shall apply to any residential or nonresidential alcoholism or drug abuse recovery or treatment program or facility, as certified under Section 11831.5, or licensed under former Section 11834.19; and any facility that provides an organized program of therapeutic, social, and health activities and services to persons with functional impairments, as licensed under Section 1576.

(Added by Stats. 1995, Ch. 415, Sec. 9. Effective January 1, 1996.)

129065. As part of its assurance under subdivision (j) of Section 129050, any borrower that is a general acute care hospital or acute psychiatric hospital shall agree to the following actions:

(a) To advise each person seeking services at the borrower's facility as to the person's potential eligibility for Medi-Cal and Medicare benefits or benefits from other governmental third party payers.

(b) To make available to the department and to any interested person a list of physicians with staff privileges at the borrower's facility, that includes:

- (1) Name.
- (2) Speciality.
- (3) Language spoken.
- (4) Whether takes Medi-Cal and Medicare patients.
- (5) Business address and phone number.

(c) To inform in writing on a periodic basis all practitioners of the healing arts having staff privileges in the borrower's facility as to the existence of the facility's community service obligation. The required notice to practitioners shall contain a statement, as follows:

"This hospital has agreed to provide a community service and to accept Medi-Cal and Medicare patients. The administration and enforcement of this agreement is the responsibility of the Department of Health Care Access and Information and this facility."

(d) To post notices in the following form, that shall be multilingual where the borrower serves a multilingual community, in appropriate areas within the facility, including but not limited to, admissions offices, emergency rooms, and business offices:

NOTICE OF COMMUNITY SERVICE OBLIGATION

"This facility has agreed to make its services available to all persons residing or employed in this area. This facility is prohibited by law from discriminating against Medi-Cal and Medicare patients. Should you believe you may be eligible for Medi-Cal or Medicare, you should contact our business office (or designated person or office) for assistance in applying. You should also contact our business office (or designated person or office) if you are in need of a physician to provide you with services at this facility. If you believe that you have been refused services at this facility in violation of the community service obligation you should inform (designated person or office) and the Department of Health Care Access and Information."

The borrower shall provide copies of this notice for posting to all welfare offices in the county where the borrower's facility is located.

(Amended by Stats. 2021, Ch. 143, Sec. 237. (AB 133) Effective July 27, 2021.)

129070. In the event the borrower cannot demonstrate that it meets the requirement of Section 129055, it may nonetheless be eligible for a loan under this chapter if it presents a plan that is satisfactory to the department that details the reasonable steps and

timetables that the borrower agrees to take to bring the facility into compliance with Section 129055.

(Amended by Stats. 2021, Ch. 143, Sec. 238. (AB 133) Effective July 27, 2021.)

129075. (a) Each borrower shall provide any reports as may be required of it by Part 5 (commencing with Section 128675), from which the department shall determine the borrower's compliance with subdivision (j) of Section 129050.

(b) If a report indicates noncompliance with subdivision (j) of Section 129050, Section 129055, or Section 129065, the department shall require the borrower to submit a plan detailing the steps and timetables the borrower will take to bring the facility into compliance.

(c) The department shall annually report to the Legislature the extent of the borrowers' compliance with their community service obligations pursuant to subdivision (j) of Section 129050, Section 129055, and Section 129065.

(Amended by Stats. 2021, Ch. 143, Sec. 239. (AB 133) Effective July 27, 2021.)

129080. The department may impose additional appropriate remedies and sanctions against a borrower when any of the following occurs:

(a) The department determines that the annual compliance report required in Section 129075 indicates that the borrower is out of compliance with subdivision (j) of Section 129050.

(b) A facility fails to carry out the actions agreed to in a plan approved by the department pursuant to Section 129070.

(c) The facility fails to submit compliance reports as required by Section 129075. The additional remedies include referring the violation to the office of Attorney General of California for legal action authorized under existing law or other remedy at law or equity. However, the remedies obtainable by legal action shall not include withdrawal or cancellation of the loan insurance provided under this chapter.

(Amended by Stats. 2021, Ch. 143, Sec. 240. (AB 133) Effective July 27, 2021.)

129085. (a) If a borrower is unable to comply with subdivision (j) of Section 129050 due to selective provider contracting under the Medi-Cal program, and the department has determined the borrower has negotiated in good faith but was not awarded a contract, the borrower may be eligible for insurance under this chapter as provided in subdivision (b).

(b) The department may determine that a noncontracting borrower shall be considered as meeting the requirements of subdivision (j) of Section 129050 if the borrower otherwise provides a community service in accordance with regulations adopted by the department. The regulations shall describe alternative methods of meeting the obligation, that may include, but not be limited to, providing free care, charity care, trauma care, community education, or primary care outreach and care to the elderly, in amounts greater than the community average. The regulations shall include a requirement that a general acute care hospital, that is not a small and rural hospital as defined in Section 124840, shall have, and continue to maintain, a 24-hour basic emergency medical service with a physician on duty, if it provided this service on January 1, 1990. The department shall have the authority to waive this requirement upon a determination by the director that this requirement would create a hardship for the hospital, be inconsistent with regionalization of emergency medical services, or not be in the best interest of the population served by the hospital.

(Amended by Stats. 2021, Ch. 143, Sec. 241. (AB 133) Effective July 27, 2021.)

129087. The department shall develop and maintain a formal system of monitoring borrowers, in order to assist the department in detecting at the earliest possible date those borrowers who are experiencing financial difficulties. This system shall include, but shall not be limited to, all of the following:

(a) A method of tracking the receipt of information that borrowers are required by law and regulatory agreement to submit to the department.

(b) A process for thoroughly reviewing borrowers' financial statements, budgets, auditor's management letters, and health facility utilization trends.

(c) Timely and structured site visits to insured facilities.

(Amended by Stats. 2021, Ch. 143, Sec. 242. (AB 133) Effective July 27, 2021.)

129090. Pursuant to this chapter, political subdivisions and nonprofit corporations may apply for state insurance of needed construction, improvement, or expansion loans for construction, remodeling, or acquisition of health facilities to be or already owned, established, and operated by them as provided in this chapter. Applications shall be submitted to the department by the nonprofit corporation or political subdivision authorized to construct and operate a health facility. Each application shall conform to the requirements of the department, shall be submitted in the manner and form prescribed by the department, and shall be accompanied by an application fee of one-half of 1 percent of the amount of the loan applied for, but in no case shall the application fee exceed

five hundred dollars (\$500). The fees shall be deposited by the department in the fund and used to defray the office's expenditures in the administration of this chapter.

(Amended by Stats. 2021, Ch. 143, Sec. 243. (AB 133) Effective July 27, 2021.)

129092. Notwithstanding any other provision of law, upon the application of a borrower for insurance, the department shall perform a feasibility study relating to the proposed project, the cost of which shall be paid by the applicant. The department may retain independent consultants and require a deposit from the applicant for such services, upon submission of the application. This section shall take effect on January 1, 2001.

(Amended by Stats. 2021, Ch. 143, Sec. 244. (AB 133) Effective July 27, 2021.)

129095. (a) The department shall not regulate, impose requirements on, or require approval by the department of a professional, or a fee charged by a professional, used by applicants for the initial application for loan insurance. The choice of any professional and the funding source used shall be left entirely to the participants.

(b) For purposes of this section, "professional" includes, but is not limited to, an underwriter, bond counsel, or consultant.

(c) Nothing in this section shall prohibit the department, in the event of defaults, from taking any action authorized under this chapter to protect the financial interest of the state.

(Amended by Stats. 2021, Ch. 143, Sec. 245. (AB 133) Effective July 27, 2021.)

129100. Every applicant for insurance shall be afforded an opportunity for a fair hearing before the committee upon 10 days' written notice to the applicant. If the department, after affording reasonable opportunity for development and presentation of the application and after receiving the advice of the committee, finds that an application complies with the requirements of this article and of Section 129020 and is otherwise in conformity with the state plan, it may approve the application for insurance. The department shall consider and approve applications in the order of relative need set forth in the state plan in accordance with Section 129020. Judicial review of a final decision made under this section may be had by filing a petition for writ of mandate. Any petition shall be filed within 30 days after the date of the final decision of the department.

(Amended by Stats. 2021, Ch. 143, Sec. 246. (AB 133) Effective July 27, 2021.)

129105. The department may upon application of the borrower insure any loan that is eligible for insurance under this chapter, and upon the terms prescribed by the department, may make commitments for the insuring of the loans prior to their date of execution or disbursement thereon. The decision to grant loan insurance upon an application of the borrower is within the discretion of the director of the department. Showing need for the project or meeting the eligibility requirements for loan insurance and establishing financial feasibility of the project or recommendation for approval from the committee does not create any entitlement to loan insurance.

(Amended by Stats. 2021, Ch. 143, Sec. 247. (AB 133) Effective July 27, 2021.)

129110. Any contract of insurance executed by the department under this chapter shall be conclusive evidence of the eligibility of the loan for insurance and the validity of any contract of insurance so executed shall be incontestable from the date of the execution of the contract, except in case of fraud or misrepresentation on the part of the lender.

(Amended by Stats. 2021, Ch. 143, Sec. 248. (AB 133) Effective July 27, 2021.)