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## AB-112 Distressed Hospital Loan Program. (2023-2024)

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### Assembly Bill No. 112

#### CHAPTER 6

An act to amend Section 128740 of, and to add and repeal Chapter 4 (commencing with Section 129380) of Part 6 of Division 107 of, the Health and Safety Code, relating to health facilities, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[ Approved by Governor May 15, 2023. Filed with Secretary of State May 15, 2023. ]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 112, Committee on Budget. Distressed Hospital Loan Program.

The California Health Facilities Financing Authority Act authorizes the California Health Facilities Financing Authority to, among other things, make loans from the continuously appropriated California Health Facilities Financing Authority Fund to participating health institutions, as defined, for financing or refinancing the acquisition, construction, or remodeling of health facilities.

This bill would create the Distressed Hospital Loan Program, until January 1, 2032, for the purpose of providing loans to not-for-profit hospitals and public hospitals, as defined, in significant financial distress or to governmental entities representing a closed hospital to prevent the closure or facilitate the reopening of a closed hospital. The bill would require the Department of Health Care Access and Information to administer the program and would require the department to enter into an interagency agreement with the authority to implement the program. The bill would require the department, in collaboration with the State Department of Health Care Services, the Department of Managed Health Care, and the State Department of Public Health, to develop a methodology to evaluate an at-risk hospital's potential eligibility for state assistance from the program, as specified. The bill would require a hospital or a closed hospital to provide the authority and the department with financial information demonstrating the hospital's need for assistance due to financial hardship. The bill would additionally require that the department, in consultation with the authority, develop an application and approval process for loan forgiveness or modification of loan terms, as specified.

This bill would create the Distressed Hospital Loan Program Fund, a continuously appropriated fund, for use by the department and the authority to administer the loan program, as specified. The bill would authorize both the authority and the department to recover administrative costs from the fund. The bill would authorize the Department of Finance to transfer funds from the General Fund to the Distressed Hospital Loan Program Fund between state fiscal years 2022–23 and 2023–24 to implement the bill, as specified. The bill would authorize the department and the authority to require any hospital receiving a loan under the program 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. The bill would abolish the fund on December 31, 2031, and would require any remaining balance, assets, liabilities, and encumbrances of the fund to revert to the General Fund. By creating a continuously appropriated fund, the bill would make an appropriation. The bill would specify that the authority and the department may implement these provisions by information notices or other similar instructions, without taking any further regulatory action.

Existing law generally requires a health care facility to report specified data to the department, including total inpatient and outpatient revenues by payer, including Medicare and Medi-Cal. Existing law requires the department to adopt regulations regarding the identification and reporting of charity care services, and specifies various obligations to provide hard copies of hospital data reports submitted pursuant to these provisions.

This bill would additionally require data for total inpatient and outpatient revenues by payer to include commercial coverage payers. The bill would require a hospital subject to these data reporting requirements to submit a balance sheet detailing the assets, liabilities, and net worth at the end of the quarter as specified by the department. The bill would also remove the provisions regarding regulations related to charity care services and obligations to provide hard copies of hospital data reports.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: no

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** It is the intent of the Legislature to find offsetting statewide General Fund savings to support the costs associated with the requirements of this act.

**SEC. 2.** Section 128740 of the Health and Safety Code is amended to read:

**128740.** (a) The following summary financial and utilization data shall be reported to the department by a hospital within 45 days of the end of a calendar quarter. Adjusted reports reflecting changes as a result of audited financial statements may be filed within four months of the close of the hospital's fiscal or calendar year. The quarterly summary financial and utilization data shall conform to the uniform description of accounts as contained in the Accounting and Reporting Manual for California Hospitals and shall include all of the following:

(1) Number of licensed beds.

(2) Average number of available beds.

(3) Average number of staffed beds.

(4) Number of discharges.

(5) Number of inpatient days.

(6) Number of outpatient visits.

(7) Total operating expenses.

(8) Total inpatient gross revenues by payer, including, but not limited to, Medicare, Medi-Cal, county indigent programs, commercial coverage, other third parties, and other payers.

(9) Total outpatient gross revenues by payer, including, but not limited to, Medicare, Medi-Cal, county indigent programs, commercial coverage, other third parties, and other payers.

(10) Deductions from revenue in total and by component, including the following: Medicare contractual adjustments, Medi-Cal contractual adjustments, and county indigent program contractual adjustments, other contractual adjustments, bad debts, charity care, restricted donations and subsidies for indigents, support for clinical teaching, teaching allowances, and other deductions.

(11) Total capital expenditures.

(12) Total net fixed assets.

(13) Total number of inpatient days, outpatient visits, and discharges by payer, including, but not limited to, Medicare, Medi-Cal, county indigent programs, commercial coverage, other third parties, self-pay, and other payers.

(14) Total net patient revenues by payer, including Medicare, Medi-Cal, county indigent programs, commercial coverage, other third parties, and other payers.

(15) Other operating revenue.

(16) Nonoperating revenue net of nonoperating expenses.

(17) (A) A balance sheet detailing the assets, liabilities, and net worth at the end of the quarter, as specified by the department.

(B) The department shall allow and provide for, in accordance with appropriate regulations, additions, or deletions to the summary financial and utilization data to meet the purposes of this chapter.

(b) The department may adopt regulations, including emergency regulations, necessary to implement this section.

**SEC. 3.** Chapter 4 (commencing with Section 129380) is added to Part 6 of Division 107 of the Health and Safety Code, to read:

#### **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.

**SEC. 4.** This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.