

CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY (the “Authority”)

Investment in Mental Health Wellness Act of 2013

Resolution No. 2015-02

**REQUEST:**

Staff seeks to amend existing Investment in Mental Health Wellness Act of 2013 (“Act”) grant program regulations through the Authority’s emergency regulatory authority and to pursue emergency rulemaking proceedings with the Office of Administrative Law (“OAL”).

Permanent regulations were approved by OAL for the Investment in Mental Health Wellness Grant Program (“Program”) on October 6, 2014 and since then, the Authority has received inquiries about whether counties may allow their private nonprofit corporate providers (crisis residential and crisis stabilization providers) to hold title to real property acquired with grant funds. According to these inquiring counties, allowing the providers to do so will greatly expedite the local entitlement process and the overall efficiency of project development. Sacramento County serves as an example of the facts that led to the inquiry:

*Sacramento County’s provider found a near perfect site for a new crisis residential program in Sacramento County. The site has been previously licensed, fully fire marshal approved, has a Special Use Permit (which will save 8 – 12 months of contemptuous public debate) and requires minimal remodeling - mostly landscaping. The property is for sale and the owner is already entertaining bids. The owner is willing to entertain bid proposals from the provider. If CHFFA allowed the money to pass through Sacramento County to the provider for purchase and renovation, the provider could bid and renovate and be up and running as early as this summer. Should the provider lose the site, the timeline extends to likely longer than 18 months.*

Staff reviewed the Act and existing regulations and consulted with in-house legal counsel and determined that though program regulations are silent on the issue, the Act may permit nonprofit providers to receive grant funding in lieu of counties directly receiving the funds. The Act, found within Welfare and Institutions Code section 5848.5(d), states in pertinent part:

Funds appropriated by the Legislature to the authority for purposes of this section shall be made available to selected counties, or counties acting jointly. The Authority may, at its discretion, also give consideration to private nonprofit corporations and public agencies in an area or region of the state if a county, or counties acting jointly, affirmatively supports this designation and collaboration in lieu of a county government directly receiving grant funds.

When staff drafted regulations for the Program, staff was aware of the authority conferred by this code section, but elected to vest all responsibility for fund transfers and accountability in the counties to minimize the risk of gifting public funds and to maximize the likelihood funds would be utilized for their intended purpose. Staff was not then aware of the reality that some counties defer to local providers to implement their Programs, nor was staff then aware of the significant and meaningful opportunities for more expeditious implementation of Programs if providers are directly given the resources needed to implement them.

Now that staff is aware of these realities, staff recommends amending the existing regulations (Exhibit A) to reflect the authority given by the Act and to provide further clarity given the regulations are currently silent on this issue. Staff also recommends incorporating the conditions set forth in the attached Exhibit A to help ensure funds are utilized for their intended purposes. No other substantive changes to the Program's existing regulations are proposed at this time.

Staff requests emergency regulatory relief to hasten the adjustments and continue its efforts to disburse grant funds on an expedited basis.

Upon approval by the Authority, staff will file the proposed amendments to the regulations with the OAL for review and approval.

**RECOMMENDATION:**

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

**Attachment:**

Exhibit A - Text of the proposed amendments to the regulations for the Investment in Mental Health Wellness Act of 2013 grant program.

**Amend Section 7125 to read:**

**Section 7125. Release of Grant Funds.**

(a) Grant funds shall not be released until the following requirements have been met:

(1) A Grant Agreement has been executed by the Authority and Grantee.

(2) The Grantee has submitted to the Authority the following documentation, if available. If not available, Grantee has submitted a detailed statement concerning the status of obtaining any or all of this documentation to enable Authority Staff to determine readiness and feasibility.

(A) For construction or renovation.

(i) Detail of building plans, costs, and timelines.

(ii) Executed construction contract.

(iii) Architect, design and engineering contracts, if applicable.

(iv) Building permits and conditional use permits, if applicable.

(v) Evidence of compliance with the California Environmental Quality Act.

(vi) Evidence of compliance with prevailing wage law under Labor Code Section 1720 et. seq.

(vii) Evidence of property ownership, such as a grant deed or lease agreement and title report as required under Section 7126.

(B) For real property acquisitions: ~~An appraisal completed within the previous six months by a state certified appraiser.~~

(i) An appraisal completed within the previous six months by a state certified appraiser.

(ii) In addition to subdivision (a)(2)(B)(i), prior to the release of Grant funds to a private nonprofit corporation or public agency designated by a county or Counties Applying Jointly to acquire real property with Grant funds, the designated private nonprofit corporation or public agency shall execute a Grant Agreement and agree to comply with Section 7125.1. The designated private nonprofit corporation or public agency shall return the Grant funds to the Authority if the designated private nonprofit corporation or public agency fails to comply with Section 7125.1.

(C) For acquisition of supplies, furniture and equipment including vehicles: A list of items to be purchased and a copy of related purchase orders.

- (D) For personnel costs:
  - (i) Staffing plan, including number of full time equivalent staff.
  - (ii) Job description or duty statement for each position, including minimum qualifications and any licensing or certification preferred or required.
  - (iii) Documentation of salary or hourly wage rate, if applicable.
  - (iv) Documentation of employer's contribution of benefits.
  - (v) Documentation that confirms salaries and benefits to be paid are consistent with the Applicant's compensation policies.

(E) For other eligible costs: Contracts and/or purchase orders.

(3) The Authority Staff has determined the Project is ready and feasible.

(A) The determination that the Project is ready and feasible may occur at the time of Initial Allocation or within six months following Final Allocation.

(B) If the determination is made after Final Allocation, the determination shall be based on updated information provided to the Authority by Grantee in accordance with Section 7124(a)(14).

(C) Limited extensions beyond six months as set forth in subdivision (3)(A) shall be made on a case-by-case basis at the discretion of the Executive Director for good cause, such as reasonable delays associated with obtaining building and conditional use permits, obtaining California Environmental Quality Act compliance documentation, or identifying a qualified provider.

(D) Failure to demonstrate readiness and feasibility within the timeframes dictated by the Authority shall cancel the Grant and the Grant funds shall be made available to other Applicants.

(4) The Grantee has submitted to the Authority a completed Request for Disbursement Form No. CHFFA 7 MH-02 (Rev.06/2014). Except for the initial submission of the Request for Disbursement Form No. CHFFA 7 MH-02 (Rev.06/2014), a status report and Actual Expenditures Report Form No. CHFFA 7 MH-03, (Rev.06/2014) as required by Section 7128, subdivisions (a)(1) and (a)(2) shall accompany all Requests for Disbursement Form No. CHFFA 7 MH-02 (Rev.06/2014).

Note: Authority cited: Sections 5848.5 and 5848.6, Welfare and Institutions Code. Reference: Section 5848.5, Welfare and Institutions Code.

**Add Section 7125.1 to read:**

**Section 7125.1. Grant Funds to Designated Private Nonprofit Corporation or Public Agency for Real Property Acquisition**

(a) The Authority may, at its discretion, also give consideration to private nonprofit corporations and public agencies in an area or region of the state if a county, or Counties Applying Jointly, affirmatively supports this designation and collaboration in lieu of a county directly receiving Grant funds. The designated private nonprofit corporation or public agency shall comply with the following requirements:

(1) The designated private nonprofit corporation or public agency shall provide the services under the Program(s).

(2) The designated private nonprofit corporation or public agency shall execute a Grant Agreement with the provisions required in Section 7124. The Grant Agreement shall also provide that in the event the designated private nonprofit corporation or public agency ceases to provide Crisis Residential Treatment or Crisis Stabilization services as provided in the Grant Agreement, title to the real property shall be given to the county or Counties Applying Jointly.

(3) The designated private nonprofit corporation shall provide, upon request, Audited Financial Statements and shall retain all Project and financial records necessary to substantiate the purposes for which the Grant funds were spent for a period of three years after the certification of Project completion has been submitted.

(4) The designated private nonprofit corporation or public agency shall provide, upon request, a current title report that shows all of the following:

(i) A title report without easements, exceptions or restrictions on the use of the site that shall interfere with or impair the operation of the Project.

(ii) Fee title subject to the lease agreement described in subdivision (a)(5).

(iii) Deed of trust shall be recorded in the chain of title against the real property and shall contain the lease agreement described in subdivision (a)(5).

(5) The designated private nonprofit corporation or public agency shall enter into a lease agreement with the county or Counties Applying Jointly for use of the real property for Crisis Residential Treatment or Crisis Stabilization for the useful life of the Project, including any renewals. The lease agreement shall provide that in the event the designated private nonprofit corporation or public agency ceases to provide Crisis Residential Treatment or Crisis Stabilization services as provided in the Grant Agreement, title to the real property shall be given to the county or Counties Applying Jointly.

Note: Authority cited: Sections 5848.5 and 5848.6, Welfare and Institutions Code. Reference: Section 5848.5, Welfare and Institutions Code

**RESOLUTION NO. 2015-02**

**RESOLUTION OF THE CALIFORNIA HEALTH FACILITIES FINANCING  
AUTHORITY APPROVING THE ADOPTION OF AMENDMENTS TO THE  
REGULATIONS FOR THE INVESTMENT IN MENTAL HEALTH WELLNESS ACT OF  
2013 AND AUTHORIZE RULEMAKING PROCEEDINGS**

WHEREAS, the Investment in Mental Health Wellness Act of 2013 (the “Act”) established a grant program for mental health crisis services with funding from various sources and authorized the California Health Facilities Financing Authority (the “Authority”) to, among other things, develop specified selection criteria and maximum grant amounts for awarding grants to eligible applicants which are counties, counties acting jointly, or counties with private non-profit corporations or public agencies counties may designate; and

WHEREAS, on October 31, 2013, the Authority authorized the adoption of emergency regulations relating to the grant program and the Office of Administrative Law approved the emergency regulations on November 21, 2013;

WHEREAS, on May 15, 2014, the Office of Administrative Law authorized the re-adoption of these emergency regulations with an effective date through August 14, 2014;

WHEREAS, on October 6, 2014, the permanent regulations were approved by the Office of Administrative Law for the implementation and operation of the mental health wellness grant program;

WHEREAS, since the adoption of the permanent regulations and grant awards for the first and second funding rounds, Authority staff has identified recommended amendments to the permanent regulations for clarity of a specific scenario of uses of grant funds that is silent in the regulations and needs to be addressed to ensure accurate conditions are applied and funds are appropriately used; and

WHEREAS, the Authority must act to amend the permanent regulations for the implementation and operation of the mental health wellness grant program;

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

Section 1. The proposed amendments to the permanent regulations for the grant program are hereby approved in substantially the form submitted to the Authority by Authority 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 he or she 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: \_\_\_\_\_