RULES

GOVERNING THE

PRIMARY CARE CAPITAL FUND

AS ADOPTED ON

DECEMBER 12, 2024

BY THE BOARD OF DIRECTORS OF THE

NEW MEXICO FINANCE AUTHORITY

SECTION 1. AUTHORITY AND PURPOSE

The Primary Care Capital Fund (the "Fund") was created pursuant to Section 24-1C-4, NMSA 1978, as amended (the "Act"). Pursuant to the Act, the New Mexico Finance Authority ("NMFA") is required to establish rules necessary to administer the Fund. The purpose of these Rules, which may be supplemented by NMFA Board policies as provided herein, is to establish procedures governing the administration of the Fund in accordance with the Act.

SECTION 2. DEFINITIONS

A. "**Act**" means the Primary Care Capital Funding Act (Sections 24-1C-1 to 24-1C-10 NMSA 1978), as may be amended from time to time;

B. "**Agreement**" means the document or documents signed by the NMFA and the Eligible Entity that specify the terms and conditions of Financial Assistance from the Fund;

C. "**Applicant**" means an Eligible Entity which has filed a prescribed written form requesting Financial Assistance from the Fund with NMFA;

D. "**Application**" means a written form prescribed by NMFA and filed with NMFA for the purpose of obtaining Financial Assistance from the Fund. An Application includes all written supplemental information provided in response to requests from NMFA for additional information;

E. "**Authorized Representative**" means one or more individuals authorized by the governing body of an Eligible Entity to act on behalf of the Eligible Entity to the extent provided by law;

F. "**Board**" means the NMFA Board of Directors;

G. "**Capital Project**" means acquisition, repair, renovation or construction of a facility, purchase of land, acquisition of capital equipment of a long-term capital nature, or acquisition of capital equipment to be used in the delivery of primary care, telehealth or hospice services;

H. "**Contract for Services**" means an agreement with an Eligible Entity to provide free or reduced fee primary care services for Sick and Medically Indigent patients as reasonably adequate as reasonably adequate legal consideration from the Fund;

I. "**Credit Committee**" means a committee of NMFA staff appointed by the Chief Executive Officer;

J. "**Department**" means the New Mexico Department of Health;

K. "**Economic Development Committee**" means a committee appointed by the Board Chair consisting of members of the Board;

L. “**Eligible Entity**” means:

(1) a community-based nonprofit primary care clinic that operates in a rural or other Health Care Underserved Area of the state that is a 501(c)(3) nonprofit corporation for federal income tax purposes and that meets Department requirements for eligibility;

(2) a hospice that operates in a rural or other Health Care Underserved Area of the State that is a 501(c)(3) nonprofit corporation for federal income tax purposes and that meets Department requirements for eligibility;

(3) a school-based health center that operates in a public school district and that meets Department requirements or that is funded by the federal department of health and human services;

(4) a primary care clinic that operates in a rural or other Health Care Underserved Area of the state, that is owned by a county or municipality and that meets Department requirements for eligibility; or

(5) a telehealth site that is operated by an entity described above and that meets Department requirements for eligibility;

M. “**Financial Assistance**” means loans, contracts for services, and any other type of assistance authorized by the Act, or a combination thereof, provided by the NMFA to an Eligible Entity;

N. “**Fund**” means the Primary Care Capital Fund;

O. “**Health Care Underserved Area (HCUA)**” means geographic areas where it has been determined by the Department, through the use of indices and other standards set by the Department, that sufficient primary health care is not being provided to the citizens of that area. These designations may recognize need for either general or special health care services. HCUA designations may give consideration to federally designated health professional shortage areas (HPSA) and medically underserved areas (MUA);

P. “**NMFA**” means the New Mexico Finance Authority;

Q. “**Operating Capital**” means funds needed to meet short-term debt obligations, such as accounts payable, wages, debt servicing, lease and income tax payments;

R. “**Primary Care**” means the first level of basic or general health care for an individual’s health needs, including diagnostic and treatment services and including services delivered at a primary care clinic, a telehealth site or a school-based health center; “Primary Care” includes the provision of mental health services if those services are integrated into the Eligibility Entity’s service array;

S. “**Project**” means a Capital Project or Operating Capital needed to support the increase of Primary Care services to Sick and Medically Indigent persons; and

T. “**Sick and Medically Indigent**” means individuals who are unable to afford all medical care that they require. This includes both those individuals below the federal poverty level not covered by Medicaid, Medicare or other third-party health care insurance and those individuals between 100% and 200% of federal poverty levels who are not covered by any third-party health insurance. Sick and Medically Indigent individuals are usually expected to pay for some portion of the cost of their health care based upon the level of their income.

SECTION 3. APPLICATION REQUIREMENTS

A. Subject to sufficient balance in the Fund, the NMFA will make Application forms publicly available and may accept Applications at any point during the fiscal year.

B. The NMFA will provide forms and guidelines for Applicants seeking to apply for Financial Assistance from the Fund. Applications shall be signed by an Authorized Representative and submitted to the NMFA. Only Applications that are complete will be considered. Complete Applications shall include the following:

(1) the amount and type of Financial Assistance requested and an itemization of the proposed uses of Financial Assistance;

(2) a detailed description of the Applicant, including:

a. type of entity;
b. types of Primary Care services offered;
c. current and proposed services provided to populations in rural HCUAs and to Sick and Medically Indigent persons;
d. organizational chart and description of Applicant’s management team and staffing, including number and types of licensed and certified Primary Care professionals;

(3) a detailed description of the Project, including:

a. project location and Primary Care needs of local community addressed by the Project, including additional services the Project may provide that are not currently available in the community;
b. a description of the scope of work of the Project;
c. a description of staffing or consulting capacity dedicated to project management and oversight;
d. the estimated cost of the Project and schedule of sources and uses;
e. the target dates for Project initiation and completion;
f. the estimated useful life of the Project and selected components (furnishings, equipment, etc.); and
g. planning documentation if available;

(4) copies of the Applicant's articles of incorporation and by-laws, and a certificate of good standing from the New Mexico Secretary of State, if applicable;

(5) copies of the Applicant's licenses and recent reports from all relevant regulatory bodies, if applicable;

(6) a copy of the Applicant's internal revenue service tax exempt determination letter;

(7) composition and biographies of all governing board members;

(8) billing policies and procedures;

(9) identification of the source of funds for repayment of the loan and the source of funds to operate and maintain the Project over its useful life;

(10) Applicant's audited financial reports for the most recent three (3) years, or term of existence, and projected cash flows for at least three (3) years;

(11) any existing title insurance policies, title abstracts or searches of the real property owned by the Applicant;

(12) written assurance acceptable to NMFA that the Applicant has proper title, easements, leases, and right of ways to the property upon which any facility proposed for funding is constructed or improved;

(13) any additional information as requested by the Department or the NMFA.

SECTION 4. EVALUATION AND APPROVAL PROCEDURES

A. The Department shall conduct a review of complete Applications for eligibility.

a. In order to qualify for Financial Assistance an Eligible Entity must:

i. Meet the definition of Eligible Entity above.

ii. Have a governing board whose membership is generally representative of the HCUA served. An eligible organization which is multipurpose or provides services in more than one HCUA must have a local or regional advisory board whose membership is generally representative of the HCUA being served;

iii. If a Primary Care clinic, must sustain or provide a minimum level of primary health care services through the services of a physician, physician assistant and/or advanced practice nurse (including nurse practitioners and midwives). Services may additionally include, but not be limited to, medical support, diagnostic and treatment services, pharmacy, laboratory, radiology, preventive health services, emergency medical services, mental health, patient follow-up, and/or dental and dental support services. Any dental and/or behavioral health services shall be provided in coordination with primary medical care services;

iv. If a Hospice, proof of compliance with all New Mexico Requirements for In-home and Inpatient Hospice Care as specified in 7 NMAC 12.2 or such other regulations as may be adopted by the New Mexico Health Care Authority;

v. Have policies and procedures which assure that no person will be denied services because of inability to pay. These policies and procedures must address Sick and Medically Indigent individuals. The Eligible Entity must be able to demonstrate either the successful impact of these policies and procedures, or have a practical plan for their implementation;

vi. Have billing policies and procedures which maximize patient collections except where Federal regulations or contractual obligations prohibit the use of such measures. The Eligible Entity must be able to demonstrate either the successful impact of these policies and procedures, or have a practical plan for their implementation;

vii. Have viable systems and infrastructure to deliver primary health care services including facility, staff and financial management systems;

viii. Must comply with all applicable federal, state, and local laws and regulations;

ix. Must meet other requirements as determined by the Department.

B. After the Department has established the eligibility of an Application, NMFA will review the Application and assess feasibility according to policies established by the NMFA which including structuring parameters (including interest rates and terms), and credit and monitoring requirements. In evaluating an Application for feasibility, the NMFA will consider:

a. if the Applicant can demonstrate that projected operating revenues over expenses will provide sufficient cash flow coverage to make annual debt service payments;

b. the useful life of the Project will meet or exceed the final maturity of the loan;

c. project costs meet reasonable standards;

d. if there is adequate protection, including loan guarantees, real property liens, title insurance, security interests in or pledges of accounts and other assets, loan covenants and warranties or restrictions or other encumbrances and pledges;

e. the ability of the Applicant to secure financing from other sources;

f. the accounting and financial administrative capacity of the Applicant is adequate;

g. the Applicant maintains financial statements and reporting in accordance with generally accepted accounting principles and agrees to conduct an annual audit of the Project's financial records during the term of the loan;

h. if the project advances fair geographic distribution of Financial Assistance; and

i. any other requirements or conditions as may be determined by the NMFA.

C. NMFA staff will make recommendations regarding Applications requesting Financial Assistance to the Credit Committee. The Credit Committee will consider Applications and may confer with outside parties as necessary to obtain more information on Project feasibility, financial feasibility, readiness to proceed, or other aspects at its discretion.

D. The Credit Committee will make a written recommendation regarding Applications to the Economic Development Committee. Such recommendation will include approval or disapproval of specific Applications and the estimated costs thereof. The Credit Committee may also recommend interest rates, loan periods, loan amounts, amounts of contracts for services, or other terms and conditions of closing at its discretion.

E. Once a recommendation has been made by the Economic Development Committee, the Board will act on an Application no later than the next regular Board meeting at which such item may be properly considered, or forty-five (45) days after Economic Development Committee action, whichever comes first. The Board may approve all or part of the Application as recommended by the Economic Development Committee. Board approval may specify terms and conditions of closing at its discretion.

F. NMFA will notify the Applicant of the approval or disapproval of its Application within seven (7) business days of Board action.

G. All communications regarding an Eligible Entity's original Application shall be directed to the NMFA Chief Executive Officer ("CEO") or the CEO's designee.

SECTION 5. RECONSIDERATION

A. An Applicant may request reconsideration of a denial by the Department as to whether it is an Eligible Entity as defined by the Act and under these rules. Notice must be given to the Department in writing within ten (10) business days of receipt of the Department's decision. A request for reconsideration not timely or properly made will be barred. The Department will promptly review each timely request for reconsideration. The decision of the Department is final.

B. An Applicant may appeal to the NMFA CEO a decision not to recommend an Application for approval by notifying the NMFA CEO in writing within ten (10) business days following the receipt of notice of the decision not to recommend the Application. The notice of appeal shall include any reasons and documentation supporting the position that the Application satisfies the requirements of these rules and the applicable NMFA policies. A request for reconsideration not timely or properly made shall be barred. The NMFA CEO will promptly review each timely request for reconsideration and will recommend, at the next regular meeting of the Board, action to be taken by the Board. The Board will review and take action on the request for reconsideration and will notify the Applicant of its decision, in writing, within five (5) business days. The decision of the Board is final.

SECTION 6. FINANCIAL ASSISTANCE AGREEMENTS

A. The NMFA and the Eligible Entity will enter into an Agreement and any other applicable documentation to establish the terms and conditions of Financial Assistance from the Fund. The Agreement will include the terms of repayment and remedies and sanctions available to the NMFA in the event of a default.

B. The NMFA will monitor and enforce the terms and conditions of the Agreement, including prompt notice and collection. The NMFA will take actions as necessary to ensure loan repayment and integrity of the Fund.

C. If any repayment of Financial Assistance is more than thirty (30) days past due, or if the Eligible Entity is in default on any other conditions as defined under the Agreement, the NMFA and the Department will report to each other and to the NMFA's CEO as to the borrower's then current status as it relates to the loan, including credentialing or licensure status and any reported or known violations of applicable laws or rules to which the facility is subject and any known change in financial status. The NMFA may develop workout plans for any borrower who ceases to maintain eligibility as defined in NMSA 1978 Section 6-26-3(D) and is more than sixty (60) days past due. Any such workout plan and its implementation is in addition to and not instead of the courses of actions, remedies and sanctions available separately to the NMFA under the Act, these Rules or the agreement or in any other manner available by law.

D. The Department will monitor the performance of an Eligible Entity under any Contract for Services and report to NMFA quarterly on the contractor's efforts to provide free or reduced fee Primary Care services for Sick and Medically Indigent persons. Compliance with performance requirements under a Contracts for Services may result in an abatement of loan repayments, as further detailed in NMFA policy. Agreements shall include a defined cure period if a borrower fails to meet performance requirements under a Contract for Services.

E. The Department will monitor the performance of an Eligible Entity under credentialing and/or licensure requirements and for programmatic requirements and will make the necessary site visits. The NMFA will not monitor the performance of an Eligible Entity under credentialing and/or licensure requirements nor for programmatic requirements.

F. NMFA will not be responsible for any act or omission of the Applicant upon which any claim, by or on behalf of any person, firm, corporation or other legal entity, may be made, arising from the loan or any establishment or modification of the Project or otherwise.

G. Agreements will contain provisions that require:

   i. the Applicant complies with all applicable federal, state and local laws and rules;

   ii. any contract or subcontract executed for the completion of any Project shall contain a provision that there shall be no discrimination against any employee or Applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin; and

H. The NMFA shall secure its interest in any Project by filing a lien equal to the total of the NMFA's financial participation in the Project.

I. If land is to be purchased with Financial Assistance from the Fund, the Applicant shall provide evidence satisfactory to the NMFA that the title is merchantable and free and clear from liens or encumbrances. The NMFA shall also require that a title insurance policy insuring the NMFA's interest as a first lien be obtained as a condition of making the loan. The Eligible Entity shall not encumber the land purchased by granting or creating any additional security interest in the land while any amount of the loan is unpaid. The Eligible Entity shall pay immediately any encumbrance or lien against the land that attaches while any amount of the loan is unpaid.

J. If an Eligible Entity that has received Financial Assistance for a Project ceases to maintain its nonprofit status or ceases to deliver Primary Care services at the site of the Project for twelve (12) consecutive months, the NMFA may pursue the remedies provided in the Agreement or as provided by law.

K. If an Eligible Entity has received Financial Assistance for a Project, in NMFA's discretion the loan may be renegotiated if the Eligible Entity is still eligible but has had a change in financial status.

L. In the event of default by the borrower, the NMFA may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law.

M. The NMFA will take actions as necessary to ensure loan repayment and the integrity of the Fund.

SECTION 7. ADMINISTRATION OF THE PRIMARY CARE CAPITAL FUND

A. The Fund shall be administered by the NMFA as a separate account in the NMFA and may consist of such sub-accounts as the NMFA deems necessary to carry out the purposes of the Act.

B. Money from repayments of loans or payments on securities held by the NMFA for Projects authorized specifically by law shall be deposited in the Fund. The Fund shall also consist of any other money appropriated, distributed or otherwise allocated to the Fund for the purpose of financing Projects authorized specifically by law.

C. The NMFA shall adopt a uniform accounting system for the Fund and related accounts and sub-accounts established by the NMFA, based on generally accepted accounting principles.