S T A T E O F N E W Y O R K

5784

2013-2014 Regular Sessions

I N S E N A T E

June 14, 2013

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the public authorities law, in relation to credit enhancement for health reform projects

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The public health law is amended by adding a new section 2807-zz to read as follows:

S 2807-ZZ. CREDIT ENHANCEMENT PROGRAM FOR HEALTH REFORM PROJECTS. 1. THE COMMISSIONER IS AUTHORIZED TO ESTABLISH A PROGRAM TO ASSIST IN RESTRUCTURING HEALTH CARE DELIVERY SYSTEMS BY PROVIDING CREDIT ENHANCEMENT SOLELY TO HOSPITALS THAT LACK THE CREDIT RESOURCES NECESSARY TO FINANCE HEALTH REFORM PROJECTS FROM CONVENTIONAL LENDERS. THE PROGRAM SHALL APPLY TO REGIONS (INCLUDING PORTIONS OF A SINGLE COUNTY) DESIGNATED BY THE COMMISSIONER AS MEDICALLY UNDERSERVED, INCLUDING RURAL REGIONS. A HOSPITAL SUBJECT TO ACTIVE PARENT CONTROL (AS DEFINED IN REGULATIONS UNDER THIS ARTICLE) SHALL QUALIFY UNDER THIS SECTION EVEN IF OTHER HOSPITALS IN THAT SAME HOLDING COMPANY STRUCTURE DO NOT QUALIFY UNDER THIS SECTION. THE PROGRAM SHALL APPLY TO HOSPITALS OPERATING PURSUANT TO THIS ARTICLE, BUT THE FINANCING MAY ALSO INCLUDE PROJECTS UNDERTAKEN BY NON-HOSPITAL AFFILIATES OF THE APPLICANT HOSPITAL. PROJECTS ELIGIBLE FOR CREDIT ENHANCEMENT INCLUDE RENOVATIONS AND REPURPOSING OF FACILITIES, MEDICAL HIGH TECHNOLOGY EQUIPMENT AND HEALTH INFORMATION TECHNOLOGY, WORKING CAPITAL, CARE MANAGEMENT INFRASTRUCTURE, AND "SOFT" COSTS NOT TYPICALLY ELIGIBLE FOR LOANS FROM COMMERCIAL LENDERS. ALL PROJECTS UNDER THIS SECTION MUST MEET DEFINED REGIONAL NEEDS TO ADVANCE THE STATE'S HEALTH REFORM AGENDA OF BETTER CARE, BETTER HEALTH FOR POPULATIONS, LOWER COSTS, AND SYSTEM RIGHT-SIZING. PREFERENCE WILL BE GIVEN TO APPLICANTS THAT INCLUDE COLLABORATIONS WITH OTHER HEALTH CARE PROVIDERS IN THE REGION. AN APPLICANT HOSPITAL SHALL BE AFFILIATED, THE EXTENT OF THE AFFILIATION TO BE DETERMINED BY THE COMMISSIONER, WITH

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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AT LEAST ONE ACADEMIC MEDICAL INSTITUTION APPROVED BY THE COMMISSIONER, PROVIDED THAT THE COMMISSIONER MAY WAIVE THAT REQUIREMENT IN RURAL REGIONS.

2. APPLICANTS MUST COMMIT THAT THE USES OF THE CREDIT-ENHANCED LOANS UNDER THIS SECTION WILL PROMOTE AGREED UPON REGIONAL HEALTH REFORM OBJECTIVES. APPLICANTS MUST SUBMIT A COMPREHENSIVE PROGRAM AND BUSINESS PLAN AND SUCH PLAN MUST PROMOTE AGREED UPON REGIONAL HEALTH REFORM OBJECTIVES. APPLICATION DOCUMENTS SHALL CONTAIN HEALTH REFORM COVENANTS AND MILESTONE DATES AND STATISTICAL TARGETS TO BE ATTAINED BY THE BORROWER. SUCH APPLICATION COVENANTS MAY INCLUDE, BUT ARE NOT LIMITED TO, ACUTE CARE RIGHT-SIZING, EXPANSION OF PRIMARY CARE, EXPANSION AND INTEGRATION OF MENTAL HEALTH OR OTHER SERVICE CAPACITY REQUIRED IN THE REGION, AND IMPLEMENTATION OF CARE DELIVERY AND CARE COORDINATION MODELS CONSISTENT WITH HEALTH REFORM GOALS. THE APPLICATION MUST ADDRESS HOW THE APPLICANT WILL UNDERTAKE THE IMPROVEMENTS IN FORMAL OR INFORMAL COOPERATION WITH OTHER HEALTH CARE PROVIDERS IN THE REGION. STEPS TO AVOID DUPLICATION OF SERVICES AND HIGH COST MEDICAL RESOURCES IN THE REGION SHALL BE A CONDITION OF APPROVAL. TO THE EXTENT REQUIRED TO PROVIDE LEGAL PROTECTION FOR SUCH COOPERATIVE ENDEAVORS, THE COMMISSIONER SHALL EXERCISE ALL NECESSARY POWERS PURSUANT TO ARTICLE TWENTY-NINE-F OF THIS CHAPTER AND ANY FEES ASSOCIATED WITH SUCH OVERSIGHT MAY BE INCLUDED IN THE PROJECT FINANCING COSTS. HEALTH REFORM COVENANTS CONTAINED IN THE APPLICATION SHALL BE MONITORED AND ENFORCED BY THE COMMISSIONER, IN A MANNER DETERMINED BY THE COMMISSIONER, AND SHALL NOT CONSTITUTE LOAN COVENANTS BETWEEN THE BORROWER AND THE LENDER.

3. THE CREDIT ENHANCEMENT PROGRAM SHALL BE ADMINISTERED BY THE DORMITORY AUTHORITY. THE COMMISSIONER SHALL CHAIR THE CREDIT ENHANCEMENT APPLICATION AND APPROVAL COMMITTEE. THE COMMISSIONER SHALL DESIGNATE THREE OR MORE MEMBERS OF THE CREDIT ENHANCEMENT APPLICATION AND APPROVAL COMMITTEE. THE CHIEF EXECUTIVE OFFICER OF THE DORMITORY AUTHORITY SHALL ALSO SERVE AS A MEMBER OF THE COMMITTEE, AND SHALL DETERMINE ALL RULES FOR REVIEWING AND APPROVING APPLICATIONS, AND ADMINISTERING APPROVED CREDIT ENHANCEMENTS. NOTWITHSTANDING ANY OTHER LAW, NO PERSON SERVING AS A MEMBER OF THE CREDIT ENHANCEMENT APPLICATION AND APPROVAL COMMITTEE SHALL HAVE ANY PERSONAL LIABILITY, OR INCUR LIABILITY FOR HIS OR HER EMPLOYER, BY VIRTUE OF THE PERSON'S REASONABLE AND GOOD FAITH ROLE OR VOTE IN THE CREDIT ENHANCEMENT APPLICATION AND APPROVAL PROCESS.

4. THE PURPOSE OF THE CREDIT ENHANCEMENT PROGRAM SHALL BE TO PROVIDE ADDITIONAL RESOURCES TO BORROWERS SUFFICIENT TO ATTRACT CONVENTIONAL LENDERS TO INVEST IN HEALTH REFORM PROJECTS PURSUANT TO LOANS TO QUALIFYING HOSPITAL BORROWERS. THE CREDIT ENHANCEMENT MAY CONSIST OF THE COMMISSIONER EXPENDING FUNDS, WITH THE APPROVAL OF THE DIRECTOR OF THE BUDGET, THROUGH THE USE OF ONE OR MORE MEASURES INCLUDING, BUT NOT LIMITED TO, MORTGAGE INSURANCE, LETTERS OF CREDIT, BOND INSURANCE, POSTING COLLATERAL OR OTHER FINANCIAL COMMITMENTS OF APPROPRIATED FUNDS. A DEBT SERVICE RESERVE FUND MAY BE CREATED TO FACILITATE THE CREDIT ENHANCEMENT.

5. (A) IN THE EVENT OF A DEFAULT BY A BORROWER TO A LENDER, THE AMOUNT OF THE DEFAULTED PAYMENT SHALL BE PAID BY THE COMMISSIONER TO THE LENDER. TO FINANCE THE COMMISSIONER'S REMITTANCE OF THOSE DEFAULTED PAYMENTS, THE COMMISSIONER SHALL DRAW UPON FUNDS ALLOCATED FOR SUCH POTENTIAL DEFAULTS, INCLUDING BUT NOT LIMITED TO FUNDS MADE AVAILABLE FOR THAT PURPOSE PURSUANT TO THE STATE'S AUGUST SIXTH, TWO THOUSAND TWELVE SECTION ELEVEN HUNDRED FIFTEEN PARTNERSHIP PLAN WAIVER APPLICATION, ADDITIONAL FEDERAL FUNDS MADE AVAILABLE THROUGH IMPLEMENTATION OF THE FEDERAL AFFORDABLE CARE ACT (HEALTH REFORM), OR OTHER SOURCES. THE

COMMISSIONER SHALL INFORM POTENTIAL LENDERS OF THE SUM TOTAL AMOUNTS APPROPRIATED SO THAT LENDERS CAN DETERMINE THE RATIO OF LOANS TO BE MADE IN RELATION TO DEFAULT RESOURCES APPROPRIATED. THE COMMISSIONER AND THE DIRECTOR OF THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK SHALL ENTER INTO AN AGREEMENT, SUBJECT TO THE APPROVAL OF THE DIRECTOR OF THE BUDGET, FOR THE PURPOSE OF ADMINISTERING THE CREDIT ENHANCEMENT FUNDS.

(B) ALL PAYMENT OF DEFAULTED AMOUNTS SHALL BE MADE SOLELY FROM THE APPROPRIATED FUNDS PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION. NEITHER THE STATE OF NEW YORK, THE COMMISSIONER, THE DEPARTMENT, THE DORMITORY AUTHORITY, NOR ANY OTHER INSTRUMENTALITY OF THE STATE OF NEW YORK, SHALL BE LEGALLY RESPONSIBLE FOR PAYMENT OF THE DEFAULTED AMOUNTS, OTHER THAN PURSUANT TO THE PROCESS AND FINANCIAL RESOURCES APPROPRIATED AS DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION. NO ASSETS OR RESOURCES OF THE STATE SHALL BE PLEDGED, OR CONSIDERED TO BE PLEDGED OR OBLIGATED IN ANY FORM, TO PAYMENT OF THE DEFAULTS, OTHER THAN PURSUANT TO THE PROCESS AND FINANCIAL RESOURCES DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION.

S 2. Subdivision 1 of section 1680 of the public authorities law is amended by adding a new undesignated paragraph to read as follows:

SUCH HOSPITALS AND AFFILIATES AS ARE APPROVED FOR CREDIT ENHANCEMENT UNDER SECTION TWENTY-EIGHT HUNDRED SEVEN-ZZ OF THE PUBLIC HEALTH LAW.

S 3. This act shall take effect immediately.