Assembly Bill No. 1230

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Passed the Assembly September 12, 1997

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Chief Clerk of the Assembly

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Passed the Senate September 5, 1997

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Secretary of the Senate

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This bill was received by the Governor this ___ day

of _____, 1997, at ___ o'clock __M.

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Private Secretary of the Governor

CHAPTER ____

An act to amend Sections 14001, 14030, 14037, 14059, 14070, and 14076 of the Corporations Code, relating to health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1230, R. Wright. Health: health care provider loans: Medi-Cal managed care.

Existing law establishes the Small Business Development Corporation Law which, among other things, authorizes loans to be made to small businesses.

This would require that consideration in the making of loans be given to applications from traditional and safety-net providers of Medi-Cal services that promote access to medical care for individuals enrolled in managed health care networks contracting with or owned or operated by counties. The bill would state related findings and declarations of the Legislature.

Existing law creates in the State Treasury the California Small Business Expansion Fund and the California Office of Small Business Development which may pay out moneys with the approval of the Department of Finance to lending institutions or financial companies to be used to pay for defaulted loan guarantees issued, as specified, and for administrative costs of corporations. Existing law also provides that the amount of loan guarantees outstanding at any one time shall not exceed 4 times the amount of funds on deposit, be secured by a reserve of at least 25% to be determined by the Executive Director of the California Office of Small Business, and that corporations secure loans with a minimum loan loss reserve of 25%.

Existing law also authorizes the Office of Small Business to reallocate funds held within a corporation's small business development loan guarantee fund if certain conditions are met and also requires that reallocation not

occur more frequently than annually commencing January 1, 1997.

This bill would permit the office to authorize a higher leverage ratio, as described, for an individual corporation and would also provide that the reallocation shall occur no more frequently than once per fiscal year. Since the expansion fund is continuously appropriated, this would result in an appropriation.

This bill would declare that it shall take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) As the Medi-Cal program transitions to managed care, it is the intent of the Legislature and the Medi-Cal managed care local initiatives to preserve access to traditional and safety net providers who have historically provided Medi-Cal services in underserved communities.

(b) Maintaining experienced traditional and safety net providers who are geographically accessible to Medi-Cal patients will ensure access to care in underserved communities, avoid unnecessary disruption in existing provider-patient relationships and on-going treatment and assist in a smooth transition to managed care.

(c) Many traditional and safety net providers do not meet the administrative or physical facility standards required of providers contracting with health plans under the state Knox-Keene Act because the Medi-Cal system historically operated on a fee-for-service basis and compliance with managed care standards was never required.

(d) Many traditional and safety net providers do not have reasonable access to conventional sources of financing to update their administrative capacity or physical facility to meet the Knox-Keene standards.

(e) It is in the public interest to provide Medi-Cal traditional and safety net providers with reasonable access to financing through existing public loan programs in order to make the changes necessary to contract with Medi-Cal managed care local initiatives.

(f) It is the intent of the Legislature that Medi-Cal managed care local initiatives inform and encourage nonprofit traditional and safety net providers to apply for loans to the California Health Facility Financing Authority HELP-II program which currently administers a loan program for nonprofit health centers.

(g) It is further the intent of the Legislature that the California Small Business Development Corporation Loan Guarantee Fund, which administers a loan guarantee program through eight nonprofit regional development corporations, give serious consideration to applications from for-profit traditional providers primarily serving Medi-Cal patients.

SEC. 2. Section 14001 of the Corporations Code is amended to read:

14001. The Legislature finds that:

(a) Unemployment in California is a matter of statewide concern requiring concerted public and private action to develop employment opportunities for the disadvantaged, youth, and unemployed persons.

(b) It is necessary to direct additional capital, general management assistance, business education, and other resources to encourage the development of small business opportunities, particularly for minority, women, and disabled persons, to alleviate unemployment.

(c) Many traditional and safety net health care providers of Medi-Cal services are in need of financial assistance to ensure their continued participation in Medi-Cal managed care networks and to preserve geographic access to quality care for individuals in underserved communities.

SEC. 3. Section 14030 of the Corporations Code is amended to read:

14030. There is hereby created in the State Treasury the Small Business Expansion Fund. All or a portion of the

funds in the expansion fund may be paid out, with the approval of the Department of Finance, to lending institutions or financial companies. This fund shall be used to pay for defaulted loan guarantees issued pursuant to Section 14045, administrative costs of corporations, and those costs necessary to protect a real property interest in a defaulted loan or guarantee. The amount of guarantee liability outstanding at any one time shall not exceed four times the amount of funds on deposit in the expansion fund, including each of the loan accounts and corporate funds within the expansion fund, unless the office has permitted a higher leverage ratio for an individual corporation pursuant to subdivision (c) of Section 14037.

SEC. 4. Section 14037 of the Corporations Code is amended to read:

14037. (a) All money deposited in the loan account is hereby appropriated, without regard to fiscal years for the purposes of this chapter. The state shall not be liable or obligated in any way beyond the state money which is allocated and deposited in the loan account from state money which is appropriated for these purposes.

(b) On and after January 1, 1997, accounts within the expansion fund for loan guarantees and surety bond guarantees, including loan loss reserves established for the purpose of paying loan defaults, shall be transferred to the small business development loan guarantee fund in the corporate fund of those corporations previously using those funds in the expansion fund to guarantee loans and surety bonds.

(c) The office may reallocate funds held within a corporation's small business development loan guarantee fund.

(1) The office shall reallocate funds based on which corporation is most effectively using its guarantee funds. If funds are withdrawn from a less effective corporation as part of a reallocation, the office shall make that withdrawal only after giving consideration to that corporation's fiscal solvency, its ability to honor loan guarantee defaults, and its ability to maintain a viable presence within the region it serves. Reallocation of funds

shall occur no more frequently than once per fiscal year. Any decision made by the office pursuant to this subdivision may be appealed to the board. The board has authority to repeal or modify any decision to reallocate funds.

(2) The office may authorize a corporation to exceed the leverage ratio specified in Section 14030, subdivision (b) of Section 14070, and subdivision (a) of Section 14076 pending the annual reallocation of funds pursuant to this section.

SEC. 5. Section 14059 of the Corporations Code is amended to read:

14059. Unless delegated to its loan committee, the corporation's board of directors, upon a recommendation from its loan committee:

(a) Shall emphasize consideration to applications that will increase employment of disadvantaged, disabled, or unemployed persons, or increase employment of youth residing in areas of high youth unemployment and high youth delinquency.

(b) Shall give consideration to applications from traditional and safety-net providers of Medi-Cal services that will promote access to quality medical care for individuals enrolled in Medi-Cal managed health care networks that are contracting with or owned or operated by a county board of supervisors, a county health commission or a county health authority organized pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38 or 14087.9605 of the Welfare and Institutions Code.

(c) Shall not grant a loan or guarantee unless it determines that the conditions of Section 14071 are satisfied.

SEC. 6. Section 14070 of the Corporations Code is amended to read:

14070. (a) The corporate guarantee shall be backed by funds on deposit in the corporation's corporate fund.

(b) Loan guarantees shall be secured by a reserve of at least 25 percent to be determined by the director, unless the office authorizes a higher leverage ratio for an

individual corporation pursuant to subdivision (c) of Section 14037.

(c) The expansion fund and corporate accounts shall be used exclusively to guarantee obligations and pay the administrative costs of the corporations. A corporation located in a rural area may utilize the funds for direct lending to farmers as long as at least 90 percent of the corporate fund farm loans, calculated by dollar amount, and all expansion fund farm loans are guaranteed by the United States Farmers Home Administration. The amount of funds available for direct farm lending shall be determined by the executive director. In its capacity as a direct lender, the corporation may sell in the secondary market the guaranteed portion of each loan so as to raise additional funds for direct lending. The agency shall issue regulations governing these direct loans, including the maximum amount of these loans.

(d) In furtherance of the purposes of this part, up to one-half of the corporate funds may be used to guarantee loans utilized to establish a Business and Industrial Development Corporation (BIDCO) under Division 15 (commencing with Section 33000) of the Financial Code.

(e) To execute the direct loan programs established in this chapter, the office may loan trust funds to a corporation located in a rural area for the express purpose of lending those funds to an identified borrower. The loan by the office to the corporation shall be on terms similar to the loan between the corporation and the borrower. The amount of the loan may be in excess of the amount of a loan to any individual farm borrower, but actual disbursements pursuant to the office loan agreement shall be required to be supported by a loan agreement between the farm borrower and the corporation in an amount at least equal to the requested disbursement. The loan between the office and the corporation shall be evidenced by a credit agreement. In the event that any loan between the corporation and borrower is not guaranteed by a governmental agency, the portion of the credit agreement attributable to that loan shall be secured by assignment of any note, executed in favor of

the corporation by the borrower to the office. The terms and conditions of the credit agreement shall be similar to the loan agreement between the corporation and the borrower, which shall be collateralized by the note between the corporation and the borrower. In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the office is limited to the repayment received by the corporation from the borrower except in a case where the Farmers Home Administration requires exposure by the corporation in rule or regulation. The corporation may use trust funds for loan repayment to the office if the corporation has exhausted a loan loss reserve created for this purpose. Interest and principal received by the office from the corporation shall be deposited into the same account from which the funds were originally borrowed.

(f) Upon the approval of the director, a corporation shall be authorized to borrow trust funds from the office for the purpose of relending those funds to small businesses. A corporation shall demonstrate to the director that it has the capacity to administer a direct loan program, and has procedures in place to limit the default rate for loans to startup businesses. Not more than 25 percent of any trust fund shall be used for the direct lending established pursuant to this subdivision. A loan to a corporation shall not exceed the amount of funds likely to be lent to small businesses within three months following the loan to the corporation. The maximum loan amount to a small business is fifty thousand dollars ($50,000). In the absence of fraud on the part of the corporation, the repayment obligation pursuant to the loan to the corporation shall be limited to the amount of funds received by the corporation for the loan to the small business and any other funds received from the office that are not disbursed. The corporation shall be authorized to charge a fee to the small business borrower, in an amount determined by the office pursuant to regulation. The program provided for in this subdivision shall be available in all geographic areas of the state.

SEC. 7. Section 14076 of the Corporations Code is amended to read:

14076. (a) It is the intent of the Legislature that the corporations make maximal use of their statutory authority to guarantee loans and surety bonds, including the authority to secure loans with a minimum loan loss reserve of only 25 percent, unless the office authorizes a higher leverage ratio for an individual corporation pursuant to subdivision (c) of Section 14037, so that the financing needs of small business may be met as fully as possible within the limits of corporations' loan loss reserves. The agency shall report annually to the Legislature on the financial status of the corporations and their portfolio of loans and surety bonds guaranteed.

(b) Any corporation that serves an area declared by the Governor or the President to be a disaster area on or after January 1, 1992, or the area affected by the state of emergency declared in Los Angeles on April 29, 1992, shall increase the portfolio of loan guarantees where the dollar amount of the loan is less than one hundred thousand dollars ($100,000), so that at least 15 percent of the dollar value of loans guaranteed by the corporation is for those loans. The corporation shall comply with this requirement within one year of the date the disaster is declared, or January 1, 1995, whichever is later. Upon application of a corporation, the director may waive or modify the rule for the corporation if the corporation demonstrates that it made a good faith effort to comply and failed to locate lending institutions in the region that the corporation serves that are willing to make guaranteed loans in that amount.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to preserve access to traditional and safety net providers of health care services in underserved communities, it is necessary that this bill take effect immediately.

Approved _____, 1997

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Governor