

Title 15 Mississippi State Department of Health

Part 3: Bureau of Acute Care Systems

Subpart 5: Mississippi Hospital Sustainability Program

Chapter 1 Mississippi Hospital Sustainability Grant Program Regulations

Subchapter 1 General

Legal Authority: In Section 1 of Senate Bill 2372, 2023 Regular Legislative Session (the “Mississippi Hospital Sustainability Grant Program”), the Mississippi Legislature designated the Mississippi State Department of Health (“MSDH”) to administer the Program for the purpose of strengthening, improving, and preserving access to hospital care services for all Mississippians and in recognition of the challenges incurred by hospitals as a result of the COVID-19 pandemic. Section 1 (4) of Senate Bill 2372, 2023 Regular Legislative Session, authorizes MSDH to adopt such reasonable rules as necessary for the administration of the program that allow for the management of this Program in compliance with applicable State and federal laws. This Program is being funded with a portion of the State of Mississippi’s American Rescue Plan Act’s (ARPA) State and Local Fiscal Recovery Fund (SLFRF) allocation. Accordingly, all programmatic rules and regulations must comply with U.S. Treasury’s regulations and guidelines regarding ARPA’s SLFRF.

Source: Senate Bill 2372, 2023 Regular Legislative Session

Rule 1.1.1 Definitions

1. “BACS” means the Bureau of Acute Care Systems, Mississippi State Department of Health.
2. “Beneficiary Agreement” means the instruments sent by the Department to Eligible Beneficiaries for certification of program requirements and binds the Eligible Beneficiary to all terms and conditions of the Program prior to release of funds.
3. “Coronavirus or COVID-19” means the Coronavirus Disease 2019.
4. “Critical Access Hospital” means a rural hospital designated by the Centers for Medicare and Medicaid Services (CMS) as a Critical Care Hospital and licensed as a Critical Care Hospital by HFLC.
5. “Department, the Department, or MSDH” means the Mississippi State Department of Health, as established by Miss. Code Ann. §43-3-1, *et seq.* (Rev. 2006).

6. “Eligible Beneficiary” means an entity defined in Section 1(iii) (a-f) of SB 2372 that has applied for funding by submitting a formal application through this Program and has demonstrated that it is in fact eligible to receive funds under SB 2372 based on the facts and data submitted with its application for funding. Entities eligible to apply include licensed hospitals in the State of Mississippi, including specialty hospitals recognized and licensed as such by HFLC. Hospitals owned and operated by the Department of Veterans Affairs and the State Department of Mental Health are NOT eligible to apply. No other entities except as expressly defined herein and in compliance with SB 2372 will be eligible to apply for funding under this Program.
7. “Emergency Department” means an organized hospital-based facility for the provision of unscheduled episodic services to patients who present for immediate medical attention that is available 24 hours per day seven days per week and approved by HFLC for such purpose.
8. “Frequently Asked Questions” means a listing of questions and answers related to the Program and potentially eligible expenses that can be found at <https://msdh.ms.gov/sustainabilitygrant>.
9. “HFLC” means the Bureau of Health Facilities Licensure and Certification, Mississippi State Department of Health.
10. “Licensed Bed” means the number of beds listed on the current hospital license issued by HFLC.
11. “Mississippi Hospital Sustainability Grant Program” means Senate Bill 2372, 2023 Regular Legislative Session.
12. “Operating Expenses” means an expense that a business incurs through its normal business operations.
13. “Program” means the “Mississippi Hospital Sustainability Grant Program” provided in Senate Bill 2372, 2023 Regular Legislative Session.
14. “Rural Hospital” means a licensed hospital in a Rural County Designation as determined by data from the U.S. Health Resources and Services Administration (HRSA) or a Metropolitan County Designation as listed under an exception for outlying counties that do not have any urbanized area population by HRSA and approved as such by HFLC.

15. “Specialty Services’ as used in these regulations refers to services provided at specialty licensed hospitals such as women’s health services, long-term acute care, rehabilitation or psychiatric services.

Source: Senate Bill 2372, 2023 Regular Legislative Session

Rule 1.1.2 Funding Formula for Eligible Beneficiaries

1. Eligible Beneficiaries may be eligible for funds up to a certain amount under this Program, following submission and evaluation of a formal application for funding, based upon the following initial funding criteria
 - A. Each licensed hospital that has fewer than one hundred (100) licensed beds and that is not classified as a critical access hospital that operates an emergency department is eligible to receive up to Six Hundred Twenty-five Thousand Dollars (\$625,000) to defray the costs of providing emergency department services, if such hospital submits an application for funding with proof of negative economic impact as required by the Program Rules and Regulations. A hospital is not eligible to receive funding unless it has submitted a formal application with all required information and supporting documentation, and that application has been reviewed and deemed eligible under Program guidelines.
 - B. Each rural hospital that has fewer than one hundred (100) licensed beds and that is classified as a critical access hospital that operates an emergency department is eligible to receive up to Five Hundred Thousand Dollars (\$500,000) to defray the costs of providing emergency department services, if such hospital submits an application for funding with proof of negative economic impact as required by the Program Rules and Regulations. A hospital is not eligible to receive funding unless it has submitted a formal application with all required information and supporting documentation, and that application has been reviewed and deemed eligible under Program guidelines.
 - C. Each hospital that operates an emergency department and that has more than one hundred (100) licensed beds is eligible to receive up to One Million Dollars (\$1,000,000), if such hospital submits an application for funding with proof of negative economic impact as required by the Program Rules and Regulations. A hospital is not eligible to receive funding unless it has submitted a formal application with all required information and supporting documentation, and that application has been reviewed and deemed eligible under Program guidelines.

- D. Each hospital with fewer than two hundred (200) licensed beds with the majority of such beds being dedicated to providing specialty services such as women’s health services, long-term acute care, rehabilitation, or psychiatric services is eligible to receive up to Five Hundred Thousand Dollars (\$500,000), if such hospital submits an application for funding with proof of negative economic impact as required by the Program Rules and Regulations. A hospital is not eligible to receive funding unless it has submitted a formal application with all required information and supporting documentation, and that application has been reviewed and deemed eligible under Program guidelines.

 - E. Each rural hospital with fewer than one hundred (100) licensed beds with no emergency department is eligible to receive up to Three Hundred Thousand Dollars (\$300,000) to defray the costs of providing access to hospital care in rural communities, if such hospital submits an application for funding with proof of negative economic impact as required by the Program Rules and Regulations. A hospital is not eligible to receive funding unless it has submitted a formal application with all required information and supporting documentation, and that application has been reviewed and deemed eligible under Program guidelines.
- 2. In addition to the funds listed above, each small rural hospital with fifty (50) beds or less which operated an emergency department is eligible to receive up to Two Hundred Fifty Thousand Dollars (\$250,000) to defray the costs of providing access to hospital care in rural communities, if such hospital submits an application for funding with proof of negative economic impact as required by the Program Rules and Regulations.
 - 3. A hospital is not eligible to receive funding unless it has submitted a formal application with all required information and supporting documentation, and that application has been reviewed and deemed eligible under Program guidelines.
 - 4. In the event funds remain available after the close of the Program’s initial application period, and funding of all Eligible Beneficiaries, MSDH will work directly with the Mississippi Legislature to develop a plan for allocating any remaining program funds in compliance with federal regulations.

Source: Senate Bill 2372, 2023 Regular Legislative Session

Rule 1.1.3 Eligible Beneficiaries

Eligible Beneficiaries are those specifically outlined in SB 2372, Section 1 (iii) (a-f) as eligible to apply for funding under this program for an amount UP TO the amount outlined in the applicable portion of SB 2372, Section 1 (iii) (a-f).

In order to be considered for funding under this Program, an entity must (1) be defined as eligible to apply in SB 2372, Section 1 (iii) (a-f); (2) submit an application for funding with all required information and documentation within the initial application window; and (3) demonstrate through its application and supporting documentation that it experienced a financial harm as a result of the COVID-19 pandemic.

The Program will maintain Frequently Asked Questions on the Department website <https://msdh.ms.gov/sustainabilitygrant>.

Source: Senate Bill 2372, 2023 Regular Legislative Session

Rule 1.1.4 Required Application and Eligibility Documentation

1. The initial Program application window will open on June 1, 2023, and close at 11:59 pm CST on June 30, 2023.
2. As per the ARPA Final Rule, the use of ARPA funds must be reasonably proportional to the harm experienced. As such, applicants must submit revenue and operating expense data from the fiscal years 2017, 2018, and 2019 as compared to revenue and operating expenses for fiscal year 2022. Using the data from FYs 2017-2019, a pre-pandemic baseline will be determined. This will be compared to FY 2022 data to calculate the negative impact resulting from or exacerbated by the pandemic. FY 2021 data can be considered but only for periods beyond March 3, 2021 as required by ARPA guidelines. Data considered for FY 2021 must be compared to the same time period from the pre-pandemic fiscal years (e.g. if the non-Federal entity operates on a calendar year basis, they may provide documentation showing data from April thru December 2021, but must show data for April thru December for FYs 2017-2019 in order to perform an accurate comparison). This data must demonstrate a clear negative impact resulting from or exacerbated by the pandemic.
3. Applicants must submit audited financial statements for FYs 2017-2019, 2021 (if applicable), and 2022 to support the revenue and operating expenses used in calculating the award. If audited or reviewed financial statements are not available, internally prepared financials may be provided but there may be additional procedures to be performed to ensure the validity of the data. This will be evaluated on a case-by-case basis.

4. Applicants will not be reimbursed for increased operating expenses that occurred before March 3, 2021.
5. Applicants will not be reimbursed for increased operating expenses previously reimbursed by any other State or Federal funding and will be required to certify that no other funding has been received in relation to the costs covered under this program. If additional funding has been received, it will be factored into the award calculation, as appropriate.
6. None of the funds issued under this program shall be used to pay employee premium payments.

Source: House Bill 271, 2023 Regular Legislative Session

Rule 1.1.5 Beneficiary Agreements

Beneficiary agreements will be sent by the Program to the attention of the Administrator listed for the Eligible Beneficiary hospital utilizing the most current address on file at HFLC for the hospital. (Hospitals should maintain accurate contact information with HFLC)

1. Prior to release of any Program funds all Eligible Beneficiaries will be required to certify, through a Beneficiary Agreement, that it understands and agrees to certain required provisions, including but not limited to, the following statements:
 - a. That the Eligible Beneficiary understands and agrees to follow and comply with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, by the United States Department of the Treasury regarding the use of monies from the American Rescue Plan established by the ARP Act;
 - b. That the Eligible Beneficiary understands and agrees to follow and comply with all provisions of the Program, including but not limited to, the Mississippi Hospital Sustainability Grant in Senate Bill 2372, 2023 Regular Legislative Session, and the Department Mississippi Hospital Sustainability Grant Program Rules and Regulations;
 - c. That, if the Eligible Beneficiary is found to be fully or partially noncompliant with any Program requirements, the Eligible Beneficiary agrees to return all or a portion any monies received from the Program to the Department, and the Eligible Beneficiary understands that it, or its legally responsible officials, may be subject to additional civil and criminal penalties;

- d. That the Eligible Beneficiary certifies and acknowledges that by accepting reimbursement under this Program for negative economic impact as a result of the COVID-19 pandemic, it may be subject to additional monitoring, oversight, and/or auditing by the U.S. Department of Treasury's Office of the Inspector General, the Mississippi Office of the State Auditor, the Mississippi State Department of Health, or such other federal or state agencies with authority to conduct such reviews;
 - e. That the Eligible Beneficiary certifies it has not received and will not receive reimbursement for the expense in question from any other source of funds, including insurance proceeds.
 - f. The Beneficiary Agreement must be signed under penalty of perjury certifying that all responses and statements are true and correct and are not false, fraudulent, or materially misleading.
2. All supporting information requested in the Beneficiary Agreement must be provided. The failure to enter into the Beneficiary Agreement and agree to the required certifications and representations will result in the Eligible Beneficiary being disqualified from the Program.

Source: Senate Bill 2372, 2023 Regular Legislative Session

Rule 1.1.6 Return of funds

Any funds provided by the Department to a hospital as a beneficiary that are found to be fully or partially noncompliant with the requirements of the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, by the United States Department of the Treasury regarding the use of monies from the American Rescue Plan Act (ARPA) of 2021, Public Laws 117-2, Mississippi Hospital Sustainability Grant Program, or these rules and regulations shall be returned to the state.

Source: Senate Bill 2372, 2023 Regular Legislative Session

Rule 1.1.7 Appeals Process

1. An Eligible Beneficiary may appeal any award or disqualification notice received from the Department by giving written notice within ten (10) calendar days of the date of the notice of award decision. The appeal must be received by the Program at the address below by 5:00 p.m. CST of the 7th day.

2. If an appeal is not made within the ten (10) calendar day timeframe, the Eligible Beneficiary will have waived its right to appeal the decision and the original decision shall be deemed final. Appeals must be written and state with specificity the basis for the Eligible Beneficiary's disagreement with the decision. Appeals are determined solely on the written record. The appeal must attach copies of all documents, records, papers or other information to support the appeal. In addition, all appeals must be dated and contain the Eligible Beneficiary's name and the name of any authorized representative.
3. To be considered, the written appeal must be delivered by one of two methods: By United States Mail to the following address:

Mississippi State Department of Health
Mississippi Hospital Sustainability Grant Program – Appeals
Room O-434
P.O. Box 1700
Jackson, MS 39215-1700

Or by courier mail or hand delivery to the following:
Mississippi State Department of Health
Mississippi Hospital Sustainability Grant Program – Appeals
Room O-434
570 East Woodrow Wilson Avenue
Jackson, MS 39216
4. The Department will review the appeal and all supporting material to determine if the appeal can be resolved based upon the Eligible Beneficiary's submission and Program requirements. If so, a final written determination of the appeal will be issued by the Department.
5. If the appeal cannot be resolved after the initial review, the Department will forward the appeal for review by an Independent Hearing Officer ("IHO"), to be designated by the Attorney General of Mississippi. The Department will provide to the IHO the Eligible Beneficiary's file, the appeal and all supporting material provided by the Eligible Beneficiary on appeal, all program requirements and policies, a Department explanation of the case, and Department's recommendation (if any). The IHO will review all the written materials and issue a written recommendation to the Department. The Department will review and make a final written determination which will be issued by the Department to the Eligible Beneficiary within ten (10) days of the receipt of the IHO's decision.
6. All appeal determinations made by the Department are final with no further administrative review and are not subject to judicial review.

7. An Eligible Beneficiary may withdraw an appeal at any time by providing written notice to the Department. Such written notice must be delivered to the Department at the addresses set forth above.
8. Program requirements established by the Department as dictated by federal and state law may not be waived or abrogated.

Source: Senate Bill 2372, 2023 Regular Legislative Session

Rule 1.1.8 Fraud Referrals

In cases in which fraud is suspected or where false or materially misleading information or documentation has been provided by an Eligible Beneficiary, a written referral will be made to the Mississippi State Auditor's Office, the Office of the United States Attorney, or other appropriate federal or state agencies. The Department will cooperate fully in such investigations and provide all information and documentation which it has received or gathered on the Eligible Beneficiary.

Source: Senate Bill 2372, 2023 Regular Legislative Session

Rule 1.1.9 Waiver

The Mississippi Hospital Sustainability Grant Program Rules and Regulations may be amended by the Department at any time and are further subject to amendment pursuant to any change in the federal law providing for the grant funds and the regulations and guidance implemented related thereto. The Department, in its sole discretion, may temporarily waive any requirement of the Rules to the extent that the result of such waiver promotes the public purpose of the Mississippi Hospital Sustainability Grant Program created through S.B. 2372 of the 2023 Regular Legislative Session and is not prohibited by state or federal law.

Source: Senate Bill 2372, 2023 Regular Legislative Session

Rule 1.1.10 Availability of Funds

This Program is contingent upon the availability of funds as appropriated by the Legislature and provided by the Federal government.

Source: Senate Bill 2372, 2023 Regular Legislative Session