

WEST VIRGINIA
SECRETARY OF STATE
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ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #7

Effective Date

Sept. 4, 1992

NOTICE OF AN EMERGENCY RULE

AGENCY: Division of Health TITLE NUMBER: 64

CITE AUTHORITY: W. Va. Code §§16-2H-2(c) and 16-2H-2(e)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 70

TITLE OF RULE BEING FILED AS AN EMERGENCY: Primary Care Center

Uncompensated Care Grants

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

W. Va. Code §16-2H-2(c), passed by the 1992 Legislature in S.B. 332, requires the Primary Care Support Program of the Division of Health to create and administer a Primary Care Uncompensated Care Fund, and states that: "All revenues contained in the fund are to be distributed to primary care centers in the form of grants designed to offset the primary care centers' costs of providing uncompensated health care services." W. Va. Code §16-2H-2(e), also
(Continued)

Use Additional Sheets If Necessary.

W. Donald Weston
W. Donald Weston, M.D., Acting Secretary

4.60

CONTINUATION SHEET

FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY RELATING TO THE FILING OF 64 CSR 70, PRIMARY CARE CENTER UNCOMPENSATED CARE GRANTS

passed in S.B. 332, requires the Division of Health to promulgate rules to implement the provisions of said Article 2H. Additionally, the 1992 legislature appropriated three million dollars in S.B. 20 for distribution to primary care centers in fiscal year 1993.

W. Va. Code §29A-3-15(g) states that: "For the purposes of this section, an emergency exists when the promulgation of a rule is necessary...to comply with a time limitation established by this code...". The Division of Health therefore hereby files the rule titled "Primary Care Center Uncompensated Care Grants" on an emergency basis in order to comply with legislative mandates regarding the distribution of grant funds for fiscal year 1993.

DATE: August 27, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: DIVISION OF HEALTH

EMERGENCY RULE TITLE: PRIMARY CARE CENTER UNCOMPENSATED CARE
GRANTS, 64 CSR 70

1. Date of filing: August 27, 1992

2. Statutory authority for promulgating the emergency rule:

W. Va. Code §§16-2H-2(c) and 16-2H-2(e)

3. Date of filing of proposed legislative rule: August 27, 1992

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

This is a new rule.

5. Has the same or similar emergency rule previously been filed and expired?

No.

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

N/A

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

See filing notice.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

N/A

[EMERGENCY]

TITLE 64

WEST VIRGINIA ADMINISTRATIVE RULES
DIVISION OF HEALTH

PRIMARY CARE CENTER UNCOMPENSATED CARE GRANTS

Series 70

1992

[EMERGENCY]
WEST VIRGINIA ADMINISTRATIVE RULES
DIVISION OF HEALTH
PRIMARY CARE CENTER UNCOMPENSATED CARE GRANTS
64 CSR 70

TABLE OF CONTENTS

\$64-70-1.	General	1
\$64-70-2.	Application and Enforcement	1
\$64-70-3.	Definitions	1
\$64-70-4.	Application Procedures	4
\$64-70-5.	Eligibility	4
\$64-70-6.	Application Reviews and Grant Awards	5
\$64-70-7.	Audits	6
\$64-70-8.	Administrative Due Process	7
\$64-70-9.	Severability	7

[EMERGENCY]
TITLE 64
WEST VIRGINIA ADMINISTRATIVE RULES
DIVISION OF HEALTH

SERIES 70
PRIMARY CARE CENTER UNCOMPENSATED CARE GRANTS

§64-70-1. General.

1.1. Scope - This rule establishes procedures and standards for the distribution of funds to primary care centers in the form of grants to offset the cost of the provision of uncompensated health care services. The funds to be distributed are from the primary care uncompensated care fund appropriated for this purpose by the State legislature.

1.2. Authority - W. Va. Code §§16-2H-2(c) and 16-2H-2(e).

1.3. Filing - August 27, 1992

1.4. Effective Date -

§64-70-2. Application and Enforcement.

2.1. Application - This rule applies to applicants for and recipients of grants to offset primary care centers' costs of providing uncompensated health care services.

2.2. Enforcement - This rule is enforced by the director of the division of health of the West Virginia department of health and human resources.

§64-70-3. Definitions.

3.1. Director - The director of the division of health of the department of health and human resources or his or her lawful designee.

3.2. Community-Based Board of Directors - A board of directors composed of members who reside within the service area of the primary care center under consideration.

3.3. Family Members - Brothers and sisters, whether by the whole or half blood, spouses, ancestors and lineal descendants.

3.4. Federally Qualified Health Center (FQHC) - An entity that has entered into an agreement with the United States Health Care Financing Administration to meet Medicare program requirements under 42 CFR §405.2434, and:

1) Is receiving a grant under Sections 329, 330, or 340 of the United States Public Health Service Act, or is receiving funding from such a grant and meets the requirements to receive a grant under Sections 329, 330 or 340 of the United States Public

Health Service Act; or

2) Based on the recommendation of the United States Public Health Service, is determined by the Secretary of the United States Department of Health and Human Services to meet the requirements for receiving such a grant; or

3) Was treated by the Secretary of the United States Department of Health and Human Services, for purposes of Medicare Part B, as a comprehensive federally funded health center (FFHC) as of January 1, 1990.

3.5. Free Clinic - A primary care center which provides at least ninety percent (90%) of all services free of charge.

3.6. Freestanding - As applied to a primary care center, a center controlled by a board of directors who are not subject to the control or appointment of another organizational entity.

3.7. Medicare Part B - Supplementary medical insurance program authorized under Part B of Title XVIII of the United States Social Security Act.

3.8. Nonprofit - Registered with the secretary of state as a nonprofit organization and recognized as such for tax purposes, or having filed an application for such designation.

3.9. Primary Care Center - An organization which has as its purpose the delivery of primary care services.

3.10. Primary Care Service - A health, including medical, care service which emphasizes first contact patient care and assumes overall and ongoing responsibility for the patient in both health maintenance and treatment of illness. Primary care involves a unique interaction between the patient and primary care physician or a multi-disciplinary team under the supervision of a physician or both. The appropriate use of referrals and community resources is an important part of effective primary care. Such care is generally provided by a physician, but may be provided by other multi-disciplinary personnel such as nurse practitioners, physician assistants and nurse-midwives. The purpose of this interaction is to achieve comprehensive coordination of health care including educational, behavioral, biological, and social aspects of care. It is a patient care-oriented approach which emphasizes the continuity of care over the full spectrum of health services. It begins with patient assessment, wellness, and prevention through medical management, lifestyle modification, and health education. The primary care provider is the patient's advocate through the complex system of health care delivery.

3.11. Related Organization - Any organization, whether publicly owned, nonprofit tax-exempt, or for profit, related to a primary care center through common membership, governing bodies,

trustees, officers, stock ownership, family members, partners or limited partners, or a subsidiary, foundation, related corporation, joint venture or other similar organization, if such similar organization controls or is controlled by the primary care center through contracts or other legal documents which allow the organization the authority to direct any of the center's activities, management, or policies.

A subsidiary, foundation, related corporation, joint venture or other similar organization shall also be considered a "related organization" in the following situations:

3.11.1. The subsidiary, foundation, related corporation, joint venture or other similar organization has solicited funds in the name of the primary care center with the express or implied approval of the center, and any portion of the funds were intended by the contributor, or otherwise required to be used, for the benefit of the center; or

3.11.2. The center has transferred or may transfer resources to the subsidiary, foundation, related corporation, joint venture or other similar organization; or

3.11.3. The subsidiary, foundation, related corporation, joint venture or other similar organization has transferred or may transfer resources to the primary care center, or any of the center's resources are held for the benefit of the subsidiary, foundation, related corporation, joint venture or other similar organization; or

3.11.4. The primary care center has assigned certain of its functions to the subsidiary, foundation, related corporation, joint venture or other similar organization, which is operating primarily for the benefit of the center; or

3.11.5. The subsidiary, foundation, related corporation, joint venture or other similar organization is wholly-owned or was created by the primary care center, and the center receives any of the profits of the subsidiary, foundation, related corporation, joint venture or other similar organization; or

3.11.6. The primary care center is wholly-owned or was created by the foundation, related corporation, joint venture or other similar organization, and the foundation, related corporation, joint venture or other similar organization receives any of the revenues of the center.

3.12. Rural Health Clinic (RHC) - A facility that:

3.12.1. Has been determined by the Secretary of the United States Department of Health and Human Services to meet the requirements of section 1861(aa)(2) of the United States Social Security Act and for certification for participation in Medicare;

and

3.12.2. Has filed an agreement with the Secretary of the United States Department of Health and Human Services in order to provide rural health clinic services under Medicare. (See 42 CFR Part 405, Subpart X and 42 CFR Part 491 for additional information.)

3.13. Service Area - The geographical area served by a primary care center.

3.14. Sliding Fee Scale - A set of varying amounts (percentages of a maximum fee) to be charged for services to individuals receiving varying levels of income.

3.15. Uncompensated Primary Care Services - A primary care center financial deficit created when the center's revenues do not offset expenses incurred in rendering primary care services.

§64-70-4. Application Procedures.

4.1. Applications for grants to offset the cost of providing uncompensated primary care services shall be submitted by May 1 of each year unless another date is announced by the director, on forms approved by the director. The director may request appropriate documentation or clarification of the application from the applicant.

4.2. Incomplete applications will not be considered for grant awards.

§64-70-5. Eligibility.

5.1. In order for a primary care center to be eligible to be considered for an uncompensated care grant, it shall:

5.1.1. Be freestanding;

5.1.2. Have been in existence for a period of at least two (2) years as of the effective date of this rule or have requested certificate of need review at least two (2) years prior to the date of the application;

5.1.3. Be incorporated under the laws of West Virginia as a private nonprofit corporation;

5.1.4. Have a community-based board of directors;

5.1.5. If it derives revenues, derive eighty per cent (80%) of the revenues, excluding those funds from charitable foundations and state and federal grants, from the provision of primary care services;

5.1.6. Provide in the application or as requested by the director full disclosure regarding all related organizations and their financial relationship to the center;

5.1.7. Provide primary care services to all patients regardless of the patient's ability to pay;

5.1.8. Use generally accepted accounting principles.

5.1.9. Present evidence:

5.1.9.1. Of designation as a federally qualified health center or rural health clinic; or

5.1.9.2. Of having initiated a process, with evidence of reasonable progress towards completion, to become a federally qualified health center or rural health clinic; or

5.1.9.3. Why status as a federally qualified health center or rural health clinic would not result in improved revenues to the center.

5.2. Primary care centers which do not meet federal requirements for qualification as a federally qualified health center (FQHC) or as a rural health clinic (RHC) due to geographical location, limited primary care services provided, or free clinic status may be considered for funding. Exemption from FQHC or RHC requirements may be requested in writing to the director.

\$64-70-6. Application Reviews and Grant Awards.

6.1. Review of grant applications shall consist of the analysis and evaluation of the following information:

6.1.1. The organization's most recent audit as described in Section 7 of this rule;

6.1.2. A twelve (12) month period summary of revenues and expenses;

6.1.3. Projected grant year revenues and expenses;

6.1.4. Number of actual and projected patients and patient encounters;

6.1.5. Actual and projected collections;

6.1.6. Services provided;

6.1.7. Indebtedness;

6.1.8. Notice of Federal grant awards;

6.1.9. Verification of quality assurance; and

6.1.10. Any other information judged necessary by the director to evaluate the organization's need for state funding.

6.2. Awards of grant funds shall be based on the grant application review and the availability of funds.

6.3. Grant funds shall be used by the grantee only to support the delivery of uncompensated health care services.

6.4. Grant funds shall not be diverted to any related or other organization.

6.5. The director may deny or revoke a grant, or take other available actions, if an applicant, a grantee, or an officer or principal owner thereof, has been determined by an appropriate administrative agency or court to be in violation of any applicable federal, state, or local law, rule or ordinance related to the provision of primary care services by the center.

§64-70-7. Audits.

7.1. A primary care center which has received a grant under this rule shall arrange to have an audit of its total entity for its annual fiscal period in accordance with the United States Office of Management and Budget (OMB) Circular A-128, "Audits of State and Local Governments", or OMB Circular A-133, "Audits of Institutions or Higher Education and Other Nonprofit Institutions", whichever is applicable. These circulars are hereby incorporated by reference. The center shall furnish the director with two (2) copies of the audit report within one hundred and twenty (120) days of the end of the center's annual fiscal (audit) period. All questioned or disallowed costs identified in the audit that cannot be resolved to the director's, and if applicable, the appropriate federal granting agency's satisfaction shall be returned to the director no later than one hundred and eighty (180) days following the audit period. Audit work papers shall be retained for a minimum of three (3) years from the date of the audit report and shall be made available upon request to the director as well as the appropriate federal granting agency.

7.2. In carrying out the requirements of Section 7.1 of this rule the center shall not use the firm that prepares the organization's financial statements to conduct the annual independent audit. Free clinics may be exempted from the requirement by providing a written request for exemption to the director.

7.3. If the center's receipts from federal funds, State-match funds and all other sources are less than twenty-five thousand dollars (\$25,000) annually, the center may request an exemption from the audit requirement from the director. The request shall be written and shall include justification. The director may, at his

or her discretion, grant the exemption. Free clinics may be exempted from the twenty five thousand dollars (\$25,000) upper limit by providing a written request for exemption to the director.

§64-70-8. Administrative Due Process - Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

§64-70-9. Severability - The provisions of this rule are severable. If any portion of this rule is held invalid, the remaining provisions remain in effect.

OFFICE OF MANAGEMENT AND BUDGET

Issuance of Circular A-128 "Audits of State and Local Governments"

AGENCY: Office of Management and Budget.

ACTION: Final Issuance of OMB Circular A-128, "Audits of State and Local Governments."

SUMMARY: This OMB Circular provides policy guidance to Federal agencies in the implementation of the Single Audit Act of 1984 (Pub. L. 98-502). It establishes uniform requirements for audits of Federal financial assistance provided to State and local governments and promotes the efficient and effective use of audit services.

EFFECTIVE DATE: This Circular was effective April 12, 1985, and shall apply to fiscal years of State and local governments that began after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A-102 shall continue to be observed.

FOR FURTHER INFORMATION CONTACT: Palmer A. Marcantonio, Financial Management Division, Office of Management and Budget, Washington, D.C. 20503, (202) 395-3993.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

CIRCULAR NO. A-128

April 12, 1985

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98-502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, "Audit Requirements," of Circular A-102, "Uniform requirements for grants to State and local governments."

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive \$100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of

Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive \$100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between \$25,000 and \$100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than \$25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A-102, "Uniform requirements for grants to State or local governments."

5. *Definitions.* For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions*, developed by the Comptroller General, dated February 27, 1981.

f. "Independent auditor" means:

(1) a State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or
 (2) a public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) resource use is consistent with laws, regulations, and policies;
 (2) resources are safeguarded against waste, loss, and misuse; and
 (3) reliable data are obtained, maintained, and fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98-502, is described in the Attachment to this Circular.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or

by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A-110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit:

c. ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their

subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizant responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular, so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters

as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; and the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance*. Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

- A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;
- Negative assurance on those items not tested;
- A summary of all instances of noncompliance; and
- An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective

Attachment—Circular A-128

Definition of Major Program as
 Provided in Pub. L. 98-502

"Major Federal Assistance Program,"
 for State and local governments having
 Federal assistance expenditures
 between \$100,000 and \$100,000,000,
 means any program for which Federal
 expenditures during the applicable year
 exceed the larger of \$300,000, or 3
 percent of such total expenditures.

Where total expenditures of Federal
 assistance exceed \$100,000,000, the
 following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
\$100 million	\$1 billion	\$3 million.
\$1 billion	\$2 billion	\$4 million.
\$2 billion	\$3 billion	\$7 million.
\$3 billion	\$4 billion	\$10 million.
\$4 billion	\$5 billion	\$13 million.
\$5 billion	\$6 billion	\$16 million.
\$6 billion	\$7 billion	\$19 million.
Over \$7 billion	\$20 million.

[FR Doc. 85-10877 Filed 5-3-85; 8:45 am]

BILLING CODE 3110-01-M

OMB CIRCULAR NO. A-133

TO THE HEADS OF EXECUTIVE
DEPARTMENTS AND
ESTABLISHMENTSSUBJECT: Audits of Institutions of
Higher Education and Other Non-Profit
Institutions

1. *Purpose.* Circular A-133 establishes audit requirements and defines federal responsibilities for implementing and monitoring such requirements for institutions of higher education and other non-profit institutions receiving federal awards.

2. *Authority.* Circular A-133 is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541.

3. *Supersession.* Circular A-133 supersedes Attachment F, subparagraph 2h, of Circular A-110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations."

4. *Applicability.* The provisions of Circular A-133 apply to:

a. Federal departments and agencies responsible for administering programs that involve grants, cost-type contracts and other agreements with institutions of higher education and other non-profit recipients.

b. Non-profit institutions, whether they are recipients, receiving awards directly from federal agencies, or are subrecipients, receiving awards indirectly through other recipients.

These principles, to the extent permitted by law, constitute guidance to be applied by agencies consistent with and within the discretion, conferred by the statutes governing agency action.

5. *Requirements and Responsibilities.*

The specific requirements and responsibilities of federal departments and agencies and institutions of higher education and other non-profit institutions are set forth in the attachment.

6. *Effective Date.* The provisions of Circular A-133 are effective upon publication and shall apply to audits of non-profit institutions for fiscal years that begin on or after Jan. 1, 1990. Earlier implementation is encouraged. However, until this circular is implemented, the audit provisions of Attachment F to Circular A-110 shall continue to be observed.

7. *Policy Review (Sunset) Date.* Circular A-133 will have a policy review three years from the date of issuance.

8. *Inquiries.* Further information

concerning Circular A-133 may be obtained by contacting the Financial Management Division, Office of Management and Budget, Washington, D.C. 20503, telephone (202) 395-3993.

Richard G. Darman
Director

- non-guarantees,
- property,
- interest subsidies,
- insurance;
- direct appropriations;
- other non-cash assistance.

(2) Such assistance does not include direct federal cash assistance to individuals.

(3) Such assistance includes awards received directly from federal agencies, or indirectly when subrecipients receive funds identified as federal funds by recipients.

(4) The granting agency is responsible for identifying the source of funds awarded to recipients; the recipient is responsible for identifying the source of funds awarded to subrecipients.

f. "Generally accepted accounting principles" has the meaning specified in the *Government Auditing Standards*.

g. "Independent auditor" means:

(1) A federal, state or local government auditor who meets the standards specified in the *Government Auditing Standards*; or

(2) A public accountant who meets such standards.

h. "Internal control structure" means the policies and procedures established to provide reasonable assurance that:

(1) Resource use is consistent with laws, regulations and award terms;

(2) Resources are safeguarded against waste, loss and misuse; and

(3) Reliable data are obtained, maintained and fairly disclosed in reports.

i. "Major program" means an individual award or a number of awards in a category of federal assistance or support for which total expenditures are the larger of three percent of total federal funds expended or \$100,000, on which the auditor will be required to express an opinion as to whether the major program is being administered in compliance with laws and regulations.

Each of the following categories of federal awards shall constitute a major program where total expenditures are the larger of three percent of total federal funds expended or \$100,000:

— Research and Development.

— Student Financial Aid.

— Individual awards not in the student aid or research and development category.

j. "Management decision" means the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary.

k. "Non-profit institution" means any

OMB CIRCULAR A-133

AUDITS OF INSTITUTIONS OF HIGHER
EDUCATION AND OTHER NON-PROFIT
INSTITUTIONS

ATTACHMENT

1. *Definitions.* For the purposes of this circular, the following definitions apply:

a. "Award" means financial assistance, and federal cost-type contracts used to buy services or goods for the use of the federal government. It includes awards received directly from the federal agencies or indirectly through recipients. It does not include procurement contracts to vendors under grants or contracts, used to buy goods or services. Audits of such vendors shall be covered by the terms and conditions of the contract.

b. "Cognizant agency" means the federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 3 of this attachment.

c. "Coordinated audit approach" means an audit wherein the independent auditor, and other federal and non-federal auditors consider each other's work, in determining the nature, timing and extent of his or her own auditing procedures. A coordinated audit must be conducted in accordance with *Government Auditing Standards* and meet the objectives and reporting requirements set forth in paragraph 12(b) and 15, respectively, of this attachment. The objective of the coordinated audit approach is to minimize duplication of audit effort, but not to limit the scope of the audit work so as to preclude the independent auditor from meeting the objectives set forth in paragraph 12(b) or issuing the reports required in paragraph 15 in a timely manner.

d. "Federal agency" has the same meaning as the term "agency" in Section 551(1) of Title 5, United States Code.

e. "Federal Financial Assistance."

(1) "Federal financial assistance" means assistance provided by a federal agency to a recipient or subrecipient to carry out a program. Such assistance may be in the form of:

- grants;
- contracts;
- cooperative agreements;
- loans;

5. *Recipient Responsibilities.* A recipient that receives a federal award and provides \$25,000 or more of it during its fiscal year to a subrecipient shall:

a. Ensure that the non-profit institution subrecipients that receive \$25,000 or more have met the audit requirements of this circular, and that subrecipients subject to OMB Circular A-128 have met the audit requirements of that circular;

b. Ensure that appropriate corrective action is taken within six months after receipt of the subrecipient audit report in instances of non-compliance with federal laws and regulations;

c. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

d. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary for the recipient to comply with this circular.

6. *Relation to Other Audit Requirements.*

a. An audit made in accordance with this circular shall be in lieu of any financial audit required under individual federal awards. To the extent that an audit made in accordance with this circular provides federal agencies with the information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a federal agency shall make any additional audits or reviews necessary to carry out responsibilities under federal law and regulation. Any additional federal audits or reviews shall be planned and carried out in such a way as to build upon work performed by the independent auditor.

b. Audit planning by federal audit agencies should consider the extent to which reliance can be placed upon work performed by other auditors. Such auditors include state, local, federal and other independent auditors, and a recipient's internal auditors. Reliance placed upon the work of other auditors should be documented and in accordance with *Government Auditing Standards*.

c. The provisions of this circular do not limit the authority of federal agencies to make or contract for audits and evaluations of federal awards, nor do they limit the authority of any federal agency inspector general or other federal official.

d. The provisions of this circular do not authorize any institution or subrecipient thereof to constrain federal agencies, in any manner, from carrying out additional audits, evaluations or reviews.

e. A federal agency that makes or contracts for audits, in addition to the audits made by recipients pursuant to

this circular, shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits or reviews include financial, performance audits and program evaluations.

7. *Frequency of Audit.* Audits shall usually be performed annually but not less frequently than every two years.

8. *Sanctions.* No audit costs may be charged to federal awards when audits required by this circular have not been made or have been made but not in accordance with this circular. In cases of continued inability or unwillingness to have a proper audit in accordance with the circular, federal agencies must consider appropriate sanctions including: — withholding a percentage of awards until the audit is completed satisfactorily;

— withholding or disallowing overhead costs; or

— suspending federal awards until the audit is made.

9. *Audit Costs.* The cost of audits made in accordance with the provisions of this circular are allowable charges to federal awards. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of Circular A-21, "Cost Principles for Universities" or Circular A-122, "Cost Principles for Non-Profit Organizations," FAR subpart 31, or other applicable cost principles or regulations.

10. *Auditor Selection.* In arranging for audit services institutions shall follow the procurement standards prescribed by Circular A-110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations."

11. *Small and Minority Audit Firms.*

a. Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this circular.

b. Recipients of federal awards shall take the following steps to further this goal:

(1) Ensure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable;

(2) Make information on forthcoming opportunities available and arrange timeframes for the audit to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals;

(3) Consider in the contract process whether firms competing for larger awards intend to subcontract with small

audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

(4) Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs, and in cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities;

(5) Encourage contracting with consortiums of small audit firms as described in section (1), above, when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals; and

(6) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

12. *Scope of Audit and Audit Objectives.*

a. The audit shall be made by an independent auditor in accordance with *Government Auditing Standards* developed by the Comptroller General of the United States covering financial audits. An audit under this circular should be an organization-wide audit of the institution. However, there may be instances where federal auditors are performing audits or are planning to perform audits at non-profit institutions. In these cases, to minimize duplication of audit work, a coordinated audit approach may be agreed upon between the independent auditor, the recipient and the cognizant agency or the oversight agency. Those auditors who assume responsibility for any or all of the reports called for by paragraph 15 should follow guidance set forth in *Government Auditing Standards* in using work performed by others.

b. The auditor shall determine whether:

(1) The financial statements of the institution present fairly its financial position and the results of its operations in accordance with generally accepted accounting principles;

(2) The institution has an internal control structure to provide reasonable assurance that the institution is managing federal awards in compliance with applicable laws and regulations, and controls that ensure compliance with the laws and regulations that could have a material impact on the financial statements; and

(3) The institution has complied with laws and regulations that may have a direct and material effect on its financial statement amounts and on each major federal program.

impact on the financial statements and those that provide reasonable assurance that federal awards are being managed in compliance with applicable laws and regulations; and 3) the reportable conditions, including the identification of material weaknesses, identified as a result of the auditor's work in understanding and assessing the control risk. If the auditor limits his/her consideration of the internal control structure for any reason, the circumstances should be disclosed in the report.

(3) The auditor's report on compliance containing:

— An opinion as to whether each major federal program was being administered in compliance with laws and regulations applicable to the matters described in paragraph 13(c)(3) of this attachment, including compliance with laws and regulations pertaining to financial reports and claims for advances and reimbursements;

— A statement of positive assurance on those items that were tested for compliance and negative assurance on those items not tested;

— Material findings of non-compliance presented in their proper perspective:

- the size of the universe in number of items and dollars,
- the number and dollar amount of transactions tested by the auditors,
- the number and corresponding dollar amount of instances of non-compliance;

— Where findings are specific to a particular federal award, an identification of total amounts questioned, if any, for each federal award, as a result of non-compliance and the auditor's recommendations for necessary corrective action.

c. The three parts of the audit report may be bound into a single document, or presented at the same time as separate documents.

d. Non-material findings need not be disclosed with the compliance report but should be reported in writing to the recipient in a separate communication. The recipient, in turn, should forward the findings to the federal grantor agencies or subgrantor sources.

e. All fraud or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, may be covered in a separate written report submitted in accordance with the *Government Auditing Standards*.

f. The auditor's report should disclose the status of known but uncorrected significant material findings and recommendations from prior audits that affect the current audit objective as specified in the *Government Auditing Standards*.

g. In addition to the audit report, the recipient shall provide a report of its comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

h. Copies of the audit report shall be submitted in accordance with the reporting standards for financial audits contained in the *Government Auditing Standards*. Subrecipient auditors shall submit copies to recipients that provided federal awards. The report shall be due within 30 days after the completion of the audit, but the audit should be completed and the report submitted not

later than 18 months after the end of the recipient's fiscal year unless a longer period is agreed to with the cognizant or oversight agency.

i. Recipients of more than \$100,000 in federal awards shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audit reports on file.

j. Recipients shall keep audit reports, including subrecipient reports, on file for three years from their issuance.

16. Audit Resolution.

a. As provided in paragraph 3, the cognizant agency shall be responsible for ensuring the resolution of audit findings that affect the programs of more than one federal agency. Resolution of findings that relate to the programs of a single federal agency will be the responsibility of the recipient and the agency. Alternate arrangements may be made on case-by-case basis by agreement among the agencies concerned.

b. A management decision shall be made within six months after receipt of the report by the federal agencies responsible for audit resolution. Corrective action should proceed as rapidly as possible.

17. *Audit Workpapers and Reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.



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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

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September 4, 1992

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Health

RULE: New Rule, Series 70, Primary Care Center Uncompensated Grants

DATE FILED AS AN EMERGENCY RULE: August 27, 1992

DECISION NO. 20-92

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Sept. 4, 1992
ADMINISTRATIVE LAW DIVISION



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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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DECISION

EMERGENCY RULE DECISION (ERD 20-92)

AGENCY: Division of Health
RULE: New Rule, Series 70, Primary Care Center Uncompensated Care Grants
FILED AS AN EMERGENCY RULE: August 27, 1992

- par. 1 The Division of Health (Division) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Division filed this emergency rule with supporting documents with the Secretary of State August 27, 1992 and with the LRMRC August 28, 1992.

par. 7 It is the determination of the Secretary of State that the Division has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §16-2H-2(c) reads:

The primary care support program shall create and administer a "primary Care Uncompensated Care Fund". All revenues contained in the fund shall be distributed to primary care centers in the form of grants designed to offset the primary care centers' costs of providing uncompensated health care services. In order to qualify for the grants, a primary care center must be a nonprofit corporation, have a community board, provide services to the public regardless of ability to pay (such as on a sliding fee scale basis) and present proof of designation as a federally qualified health center or rural health center, of steps taken to qualify as a federally qualified health center or rural health center, or of why status as a federally qualified or rural health center would not result in improved revenues to the center.

par. 9 WV Code §16-2H-2(e) further states:

(e) The director of health shall promulgate rules in accordance with §29A-3-1 et seq. of this code to implement the provisions of this article, and shall approve all loans, grants and disbursements of money authorized by this article. (Emphasis added)

par. 10 It is the determination of the Secretary of State that the Division has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 13 The facts and circumstances as presented by the Division are as follows:

WV Code §16-2H-2(c) passed by the 1992 Legislature in SB 332, requires the Primary Care Support of the Division of Health to create and administer a Primary Care Uncompensated Care Fund, and states that: "All revenues contained in the fund are to be distributed to primary care centers in the form of grants designed to offset the primary care centers' costs of providing uncompensated health care services." WV Code §16-2H-2(e), also passed in SB 332, requires the Division of Health to promulgate rules to implement the provisions of said Article 2H. Additionally, the 1992 legislature appropriated three million dollars in SB 20 for distribution to primary care centers in fiscal year 1993.

WV Code §29A-3-15(g) states that: "For the purposes of this section, an emergency exists when the promulgation of a rule is necessary...to comply with a time limitation established by the code...". The division of Health therefore hereby files the rule titled "Primary Care Center Uncompensated Care Grants" on an emergency basis in order to comply with legislative mandates regarding the distribution of grant funds for fiscal year 1993.

par. 14 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "time limitation"

par. 15 This decision shall be cited as Emergency Rule Decision 20-92 or ERD 20-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Health, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

Entered _____ THIS DATE Sept. 4, 1992
ADMINISTRATIVE LAW DIVISION