

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
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FORM #7

Effective Date

Oct. 7, 1992

NOTICE OF AN EMERGENCY RULE

AGENCY: Division of Health TITLE NUMBER: 64

CITE AUTHORITY: W. Va. Code §§16-2H-2(d) 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: 71

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


Seed Money 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(d), passed by the 1992 Legislature in S.B. 332, requires the Primary Care Support Program of the Division of Health to "provide seed money grants and technical assistance to help nonprofit, community-based organizations create new primary care services for people in their community." W. Va. Code §16-2H-2(e), also passed in S.B. 332, requires the Division of Health to promulgate rules to implement the provisions of said Article 2H.

(Continued)


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

Use Additional Sheets If Necessary.

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CONTINUATION SHEET

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SECRETARY OF HEALTH

FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY RELATING TO THE FILING OF 64 CSR 71, PRIMARY CARE CENTER SEED MONEY GRANTS.

Additionally, the 1992 legislature appropriated one million dollars in S.B. 20, \$900,000 of which is to be distributed in the form of seed money grants 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 Seed Money Grants" on an emergency basis in order to comply with legislative mandates regarding the distribution of grant funds for fiscal year 1993.

DATE: SEPTEMBER 9, 1992
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: DIVISION OF HEALTH
EMERGENCY RULE TITLE: PRIMARY CARE CENTER SEED MONEY GRANTS,
64 CSR 71

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OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

1. Date of filing: September 9, 1992
2. Statutory authority for promulgating the emergency rule:
W. Va. Code §§16-2H-2(d) and 16-2H-2(e)
3. Date of filing of proposed legislative rule: 9-9-92
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
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

PRIMARY CARE SEED MONEY GRANTS

Series 71

1992

[EMERGENCY]
WEST VIRGINIA ADMINISTRATIVE RULES
DIVISION OF HEALTH
PRIMARY CARE SEED MONEY GRANTS
64 CSR 71

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[EMERGENCY]
TITLE 64
WEST VIRGINIA ADMINISTRATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 71
PRIMARY CARE SEED MONEY GRANTS

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§64-71-1. General.

1.1. Scope - This rule establishes standards and procedures for the awarding of seed money grants and technical assistance to help nonprofit, community-based organizations create new primary care services, including preventive services and health education, for people in their community. Seed money grants and technical assistance are provided from funds appropriated for this purpose by the State legislature.

1.2. Authority - W. Va. Code §16-2H-2(d) and 16-2H-3.

1.3. Filing - September 9, 1992.

1.4. Effective Date -

§64-71-2. Application and Enforcement.

2.1. Application - This rule applies to applicants for and recipients of seed money grants and technical assistance to help nonprofit, community-based organizations create new primary care services, including preventive services and health education, for people in their community.

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

§64-71-3. Definitions.

3.1. Community Involvement - Active participation from organizations including health care organizations and other community individuals or groups.

3.2. Community-Based - Located within the community or a surrounding contiguous area immediately adjacent to the community and having community members as a governing body.

3.3. Consortium - An association of two (2) or more entities, functioning under a set of written rules to which each entity (member) agrees to abide, for purposes of conducting joint actions to benefit each member.

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

3.4. Eligible Applicant - Nonprofit community based organi-

zation.

3.5. **Health Education** - A health promotion process which includes activities designed to increase the abilities of people to make informed decisions affecting their personal, family, and community well-being. Health education is designed to facilitate learning and behavioral change in both health personnel and consumers, including children and youth.

3.6. **Lead Agency** - The organization which is responsible for the primary care seed money grant application and the allocation of funds to consortium members in accordance with the conditions of the grant award.

3.7. **New Primary Care Service** - Primary care service which is not currently provided or is under-provided in a community.

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. **Preventive Services** - Services which are comprised of activities or events which are performed by health professionals to effect change in or for patients either clinically, educationally, or personally in order to thwart the onset of a health crisis, disease, or risk-enhancing lifestyle.

3.10. **Primary Care Service** - A health care, including medical, 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 and/or multi-disciplinary team under the supervision of a physician. 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. For purposes of this rule the term "primary care service" shall be interpreted to include preventive services and health education.

3.11. **Service Area** - The geographical area served by the applicant.

3.13. Technical Assistance - A program utilizing various clinical, administrative and educational expertise to assist applicants in the administration of their projects.

3.14. Unmet Need - A primary care service which is not being provided or which is under-provided in a given community, and for which there is a demonstrable demand.

§64-71-4. Applications.

4.1. An application may be submitted by eligible applicants for the creation of new primary care services.

4.2. Applications shall be submitted by May 15 each year to the division on forms approved by the director.

4.3. Incomplete applications shall not be considered for grant awards. In the event of an incomplete application, the director may return the application with a request for additional information.

4.4. Applications shall be limited to:

4.4.1. One (1) per applicant; and

4.4.2. No more than one project per application, which may include more than one (1) related component.

4.5. Applications shall include the following:

4.5.1. The legal name, street address and mailing address of the organization or lead agency making the application;

4.5.2. The legal name, street address and mailing addresses of any other organization, entity or consortium member with which the applying organization contracts or is legally affiliated;

4.5.4. Information that demonstrates that the applicant is community-based;

4.5.5. Documentation of the organization's nonprofit tax status;

4.5.6. Documentation of the particular unmet need for primary care services that will be addressed in the community by the project;

4.5.7. Projection of the number of users to be served, and the costs attributable to such users during the grant period;

4.5.8. Documentation of the need for physical facility development or improvement and any equipment that is addressed in the application;

4.5.9. Identification of the projects consistency with goals and objectives of the division of health;

4.5.10. A detailed account, including a budget, of how the applicant's project will use financial and technical assistance from the primary care support program of the division of health and other sources to develop the primary, preventive or health education services within one (1) year that will be available to the public regardless of ability to pay; how the services provided under the project will continue to be funded once established and whether and how potential federal and charitable funds will be maximized;

4.5.11. Identification of projected revenue generated by the project, if applicable;

4.5.12. Identification of any in-kind support for the project;

4.5.13. A description of community involvement and support through linkages and cooperative efforts with other appropriate community resources or consortium members;

4.5.14. A statement of goals and measurable objectives for the project;

4.5.15. A description of the methods which will be used to evaluate the progress and outcome of the project; and

4.5.16. A description of how the project will be coordinated with local activities of the division of health, regional health advisory councils, the health care planning commission, medical schools, local health departments, primary care clinics and other public health agencies.

4.6. The director shall have the right to request additional information pertinent to the evaluation of an application.

4.7. Technical assistance will be provided to awarded projects by the division of health when available and only upon request.

§64-71-5. Award Process

5.1. Grants shall be awarded for a period of one (1) year and may be renewed two (2) subsequent years for a period of one (1) year each. The division of health shall be under no obligation to fund any project for a period of more than one (1) year. Under no circumstances is a specific project entitled to receive grants for more than three (3) years.

5.2. Ten percent (10%) of the grants awarded are required to be used to support the development of community-based preven-

tive services and health education services which are not required to be self-supporting at the conclusion of the grant period.

5.3. The division of health shall have the right to limit the amount of the grant awarded to any applicant based on the availability of funds.

5.4. Preference shall be given to applications for projects which:

5.4.1. Satisfy unmet needs of the service area;

5.4.2. Involve the formation of a consortium with other community-based organizations when applying for grants. Such arrangements may not exceed five (5) organizations and must be within the applicant's service area. Organizations may involve like entities (horizontal), or different entities (vertical), and may be formed for such purposes as shared staffing or systems, joint purchasing of supplies or products, access to capital financing, and the proposal of new services;

5.4.3. Are consistent with goals and objectives of the division of health;

5.4.4. Do not duplicate services provided in the service area. The expansion of an under-provided service shall not be considered to be a duplication of services;

5.4.5. Are designed to become self-supporting within one (1) year.

5.4.6. Maximize funding from potential federal and charitable sources;

5.4.7. Demonstrate community involvement and support for the project;

5.4.8. Meet the most severe needs or serve the most people, compared to other applications under consideration; and

5.4.9. Have objectives which are measurable and relevant to the goals of the project.

§64-71-6. Reporting - Recipients of grant awards shall provide reports on the grant project as requested by the director.

§64-71-7. 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.

§64-71-8. Severability - The provisions of this rule are severable. If any portion of this rule is held invalid, the remaining provisions remain in effect.



KEN HECHLER
Secretary of State

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help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE
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Charleston, WV 25305-0770

October 7, 1992

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

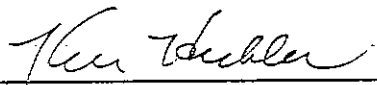
AGENCY: Division of Health

RULE: New Rule, Series 71, Primary Care Center Seed Money Grants

DATE FILED AS AN EMERGENCY RULE: September 9, 1992

DECISION NO. 26-92

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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SECURITY OF STATE
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DECISION

EMERGENCY RULE DECISION (ERD 26-92)

AGENCY: Division of Health
RULE: New Rule, Series 71, Primary Care Center Seed Money Grants
FILED AS AN EMERGENCY RULE: September 9, 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 September 9, 1992 and with the LRMRC September 9, 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 reads in part:

The primary care support program shall provide seed money grants and technical assistance to help nonprofit, community-based organizations create new primary care services for people in their community. Under no circumstances will a specific project be entitled to receive the grants for more than three years. In order to qualify for the grants, applicants must provide the following:

(1) A description of an unmet need for certain primary care services in their community;

(2) A detailed account, including a budget, of how the applicant's project will use technical and financial assistance from the program and other sources to develop the primary care services within one year that will be available to the public regardless of ability to pay;

(3) A detailed account, including a budget, showing how the services will continue to be funded once established and showing how potential federal and charitable funds will be maximized;

(4) An account of the extent of community involvement and support for the project;

(5) A description of how the project will be coordinated with local activities of the division of health, regional health advisory councils, the health care planning commission, medical schools, local health departments, primary care clinics or other public health agencies.

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

par. 10 (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. 11. 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. 12. The facts and circumstances as presented by the Division are as follows:

West Virginia Code §16-2H-2(d), passed by the 1992 Legislature in SB 332, requires the Primary Care support Program of the Division of Health to "provide seed money grants and technical assistance to help nonprofit, community-based organizations create new primary care services for people in their community. West Virginia 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 one million dollars in SB 20, \$900,000 of which is to be distributed in the form of seed money grants in fiscal year 1993.

West Virginia 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 thereby files the rule titled "Primary Care Center Seed Money Grants" on an emergency basis in order to comply with legislative mandates regarding the distribution of grant funds for fiscal year 1993.

par. 13. 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. 14 This decision shall be cited as Emergency Rule Decision 26-92 or ERD 26-92 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

KEN HECHLER
Secretary of State

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