

John D. Rockefeller IV  
Governor



L. Clark Hansbarger, M.D.  
Director

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 7/1/82  
Administrative Law Division

# State of West Virginia

DEPARTMENT OF HEALTH  
CHARLESTON 25305

June 7, 1982

RECEIVED

JUN - 7 1982

Secretary of State A. James Manchin  
State Capitol  
Charleston, West Virginia 25305

Legislative Services

Dear Secretary Manchin:

Subject: Filing of emergency rules for the Certificate of  
Need Program

Enclosed are copies of Certificate of Need regulations to be filed as emergency legislative rules pursuant to West Virginia Code §29A-3-15.

These regulations were developed in accordance with the rule making article of the Administrative Procedure Act (W.Va. Code §29A-3-1 et seq.) as it existed prior to the May 11, 1982 effective date of House Bill 1432: a Notice of Public Hearing was filed with your office on December 2, 1981, and notice was provided in accordance with W.Va. Code §16-2D-8; a public hearing was held on January 8, 1982; the State Board of Health approved the regulations on February 19, 1982; the regulations were then filed with the Legislative Rule-Making Review Committee which has taken no action to date on the regulations.

The emergency that gives rise to the filing is the necessity to comply with a time limitation established by federal requirements. If the federal requirements are not complied with, substantial harm to the public interest will result in the form of the federal withholding of several million dollars that are currently received by a variety of health care facilities within the State. Although we can not accurately give the level of federal funding that would be withheld next year if we do not have a Certificate of Need Program in conformance with federal requirements, the level of federal funds provided in fiscal year 1980 was approximately \$12 million. The details of the necessity to comply with federal requirements are described in the attached Program Policy Notice dated May 3, 1982 from the federal Bureau of Health Planning. Note in the next to last sentence of the next to last paragraph of that Notice that in order to document our compliance with Federal Certificate

OFFICE OF THE DIRECTOR

1800 WASHINGTON STREET, EAST

CHARLESTON, WEST VIRGINIA 25305

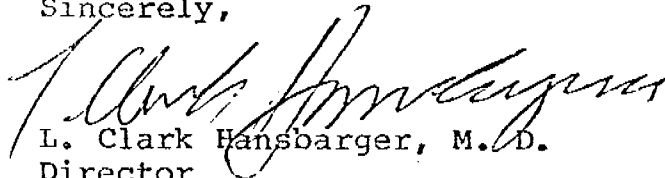
TELEPHONE (304) 348-2971

Secretary of State A. James Manchin  
June 4, 1982  
Page 2

of Need requirements, "The documentation or certificate must be submitted to the Bureau by May 24, 1982."

In order to comply with the May 24, 1982 deadline, we submitted as part of our documentation a statement that the Certificate of Need regulations would be filed under the emergency filing provisions of the Administrative Procedure Act, with an effective date of July 1, 1982.

Sincerely,



L. Clark Hansbarger, M.D.  
Director  
State Health Department

lp

Enclosures

cc: John Homberg, Counsel, Legislative  
Rule-Making Review Committee

Bureau of Health Planning  
Program  
Policy  
Notice

*Long  
Need to  
discuss*  
82-11

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES • Public Health Service • Health Resources Administration

May 3, 1982

**TO:** State Health Planning and Development Agencies  
Statewide Health Coordinating Councils  
Health Systems Agencies  
Centers for Health Planning

**SUBJECT:** Designation of State Health Planning and Development Agencies  
in FY 82

This notice is to clarify the requirements for full designation of State health planning and development agencies (SHPDAs) for the next funding cycle, July 1, 1982 to June 30, 1983. This information is based solely on the existing provisions of Title XV of the Public Health Service Act, as amended. Based on current law, the following requirements apply.

In order to be fully designated, a SHPDA must meet all requirements for full designation, including that of having a certificate of need (CON) program which meets all Federal requirements. To have a complying CON program, a State's CON program must meet the requirements of either (1) the October 21, 1980, CON regulations or (2) the October 21, 1980, regulations as they would be revised to incorporate the statutory amendments made by P.L. 96-538, or P.L. 97-35, or both.

If a SHPDA is not eligible for full designation by a certain date, the Department must invoke the statutory penalty of reducing most Public Health Service grants and contracts to any entity in the State by 25 percent the first year and 50 percent, 75 percent and 100 percent over the next three years. The latest amendments to Title XV, contained in P.L. 97-35, the Omnibus Budget Reconciliation Act of 1981, extended the date by which a State must have a fully designated SHPDA to avoid the imposition of the penalty (the "Penalty date"). Public Law 97-35 also amended Section 1521(b)(2)(B) by specifying that a conditional designation agreement could not extend beyond a State's penalty date. For most States, the penalty date


for not having a fully designated SHPDA is January 1983. (Attached is a list which shows the penalty date for each State.)

As we review SHPDA applications for designation for the grant year beginning July 1, we will be able to award full designation agreements only to SHPDAs in States which have CON programs which comply with the Federal requirements indicated earlier and which meet all other requirements for full designation. Fully designated SHPDAs which do not have complying CON programs but continue to meet other requirements will be returned to conditional designation. Conditionally designated SHPDAs without complying CON programs but which continue to meet all other requirements will retain their conditional designation status.

SHPDAs which receive conditional designation will receive a 12-month conditional designation agreement. However, P.L. 97-35 prohibits the conditional designation of any SHPDA from extending beyond its penalty date. Any SHPDA which is conditionally designated on its penalty date must be terminated. Therefore, we will send a termination notice to any conditionally designated SHPDA 90 days prior to its penalty date if it still has not demonstrated that it has a complying CON program. All conditional designation agreements will stipulate that, if the SHPDA does not achieve full designation by its penalty date, the SHPDA's designation agreement will be terminated. Conditionally designated SHPDA's in States which achieve compliance with all Federal CON requirements before reaching the penalty date will be fully designated through the end of June 30, 1983, if they meet all other requirements for full designation.

SHPDAs that believe they meet the current CON requirements for full designation may: (1) submit copies for Bureau review of the State's CON legislation, regulations, and policies along with any other evidence they wish to submit, which document compliance with Federal CON requirements; or (2) submit a written certification from the State Attorney General that the State's legislation, regulations, and policies constitute a State CON program which fully complies with the Federal requirements described in the second paragraph of this Notice. The documentation or certification must be submitted to the Bureau by May 24, 1982. Attachment 2 is a form which the State Attorney General may use for certification.

If you have any questions concerning these requirements, please contact Mr. Jon Cold, Acting Director, Division of Regulatory Activities, (301) 436-6134.

  
William R. Berry  
Acting Director

Attachments

Names of States	SERRA Designation Status As of 6/31	Penalty Date	1122	DATE
			Agree- ment As of 1/82	1122 Terminates
Alabama	Full	02-05-83		
Alaska	Full	01-19-83		
Arizona	Conditional	01-12-83		
Arkansas	Full	01-12-83	Yes	06/30/82
California	Conditional	12-17-82		
Colorado	Full	01-7-83		
Connecticut	Full	01-07-83		
Delaware	Full	01-13-83	Yes	06/30/82
District of Columbia	Full	12-17-82		
Florida	Full	04-01-83		
Georgia	Conditional	01-12-83	Yes	06/30/82
Hawaii	Full	01-21-83		
Idaho	Conditional	01-12-83		
Illinois	Full	01-14-83		
Indiana	Conditional	01-05-83	Yes	01/01/83
Iowa	Full	01-12-83	Yes	06/30/82
Kansas	Full	01-12-83		
Kentucky	Full	01-05-84	Yes	06/30/82
Louisiana	Conditional	04-20-83	Yes	06/30/82
Maine	Full	01-08-84	Yes	06/30/82
Maryland	Full	01-14-83		
Massachusetts	Full	01-07-83		
Michigan	Full	01-14-83	Yes	01/01/83
Minnesota	Full	01-05-83	Yes	01/01/83
Mississippi	Initial Full	01-06-83		
Missouri	Conditional	01-07-83		
Montana	Full	01-05-83		
Nebraska	Full	01-07-83	Yes	06/30/82
Nevada	Full	01-19-83		
New Hampshire	Full	01-07-83		
New Jersey	Full	01-13-83	Yes	06/30/82
New Mexico	Full	01-20-83	Yes	06/30/82
New York	Full	01-07-83		
North Carolina	Full	01-05-83		
North Dakota	Full	01-03-83		
Ohio	Conditional	01-05-83		
Oklahoma	Full	01-06-83	Yes	06/30/82
Oregon	Conditional	01-12-83		
Pennsylvania	Conditional	01-01-83		
Rhode Island	Full	01-06-83		
South Carolina	Full	01-08-83		
South Dakota	Full	01-20-83		
Tennessee	Full	02-06-83		
Texas	Full	01-13-83		
Utah	Full	01-12-83		
Vermont	Full	01-07-83		
Virginia	Full	01-14-83		
Washington	Full	01-12-83		
West Virginia	Conditional	02-11-83	Yes	06/30/82
Wisconsin	Full	01-03-83		
Wyoming	Full	01-13-83		
American Samoa	Full	01-12-83		
Cuba	Full	01-12-83		
Puerto Rico	Initial Full	01-12-83		
Trust Territory	Full	01-12-83		
Virgin Islands	Conditional	01-12-83	Yes	06/30/82
Northern Marianas	Conditional	01-11-84		

S A M P L E

I certify on \_\_\_\_\_ that \_\_\_\_\_ 's  
(date) (State)  
certificate of need program (composed of State statute, regulations, and  
policies) fully complies with the requirements of either (1) the October 21,  
1980 Federal Certificate of Need regulations or (2) the October 21, 1980 Federal  
Certificate of Need regulations as they would be revised to incorporate the  
statutory amendments made by P.L. 96-538 or P.L. 97-35 or (3) both (1) and (2)  
above.

John D. Rockefeller IV  
Governor



L. Clark Hansbarger, M.D.  
Director

# State of West Virginia

DEPARTMENT OF HEALTH

CHARLESTON 25305

## NOTICE OF EXTENSION

Pursuant to Chapter 29A, Article 3, Section 15 of the Code of West Virginia, 1931, as amended the state board of health extends the effective period of emergency legislative rules Chapter 16-2D, Series I (1982) Certificate of Need for an additional 180 day period.

L. Clark Hansbarger, M.D.  
Secretary, Board of Health

Dec. 15, 1982

FILED IN THE OFFICE OF  
JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 12-15-82  
Administrative Law Division