

John D. Rockefeller IV
Governor



L. Clark Hansbarger, M.D.
Director

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

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

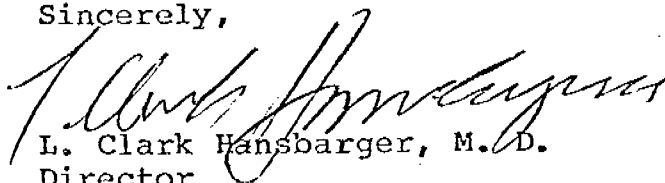
OFFICE OF THE DIRECTOR

Secretary of State A. James Manchin
June 4, 1982
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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

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Enclosures

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

Bureau of Health Planning
Program
Policy
Notice

*Lovry
Need to
discuss*

82-12

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

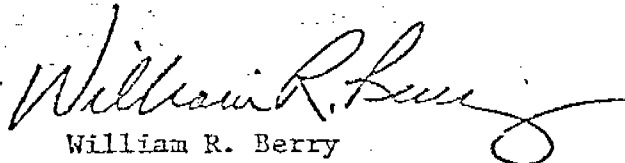
for not having a fully designated SHPDA is January 1983. (Attached is a list which shows the penalty date for each State.)

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 Gold, Acting Director, Division of Regulatory Activities, (301) 436-6134.


William R. Berry
Acting Director

Attachments

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.