

**Subpart D. HEALTH PLANNING**

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**Source**

The provisions of this Chapter 301 adopted October 26, 1979, effective October 27, 1979, 9 Pa.B. 3563; amended through April 25, 1980, effective April 26, 1980, 10 Pa.B. 1664, unless otherwise noted.

**Cross References**

This chapter cited in 55 Pa. Code § 1151.52 (relating to payment for capital costs not included in the base year); 55 Pa. Code § 1163.452 (relating to payment methods and rates); 55 Pa. Code § 1163.453 (relating to allowable and nonallowable costs); 55 Pa. Code § 1181.65 (relating to cost-finding); 55 Pa. Code § 1181.259 (relating to depreciation allowance); 55 Pa. Code § 1181.260 (relating to interest allowance); 55 Pa. Code § 1181.412 (relating to depreciation allowance); and 55 Pa. Code § 1187.113 (relating to capital component payment limitation).

**§ 301.1. Applicability.**

This chapter is applicable to reviews of proposed capital expenditures by covered health care facilities conducted by the Department of Health under an agreement with the United States Department of Health and Human Services and implementing Federal regulations, 42 CFR 100.101—100.109 (relating to cost containment and quality control). The agreement is authorized by section 1122 of the Social Security Act (42 U.S.C.A. § 1320a-1); section 2102(a) and (g) of The Administrative Code of 1929 (71 P. S. § 532(a) and (g)) and Act 56-A of 1978 as it relates to the Health Department. The purpose of the program is to assure that Federal and State funds appropriated under Titles V, XVIII and XIX of the

act (42 U.S.C.A. §§ 701—709, 1395—1395zz and 1396—1396ff) and sections 441.1—472 of the Public Welfare Code (62 P. S. §§ 441.1—472) are not used to support unnecessary capital expenditures made by or on behalf of health care facilities or health maintenance organizations which are reimbursed under any of those provisions.

### § 301.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Social Security Act, 42 U.S.C.A. §§ 201—7706.

*Applicant*—A person proposing a capital expenditure.

*Designated planning agency or DPA or Department*—The Department of Health.

*HHS*—The United States Department of Health and Human Services.

*Health care facility*—The term includes hospitals, psychiatric hospitals, tuberculosis hospitals, skilled nursing facilities, kidney disease treatment centers, including freestanding hemodialysis units, intermediate care facilities and ambulatory surgical facilities, but does not include Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts. For purposes of this definition:

(i) *Hospital*. An institution which is primarily engaged in providing to inpatients, by or under supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons, or rehabilitation services for the rehabilitation of injured, disabled or sick persons. The term does not include psychiatric and tuberculosis hospitals.

(ii) *Psychiatric hospital*. An institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician psychiatric services for the diagnosis and treatment of mentally ill persons.

(iii) *Tuberculosis hospital*. An institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis.

(iv) *Skilled nursing facility*. An institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(v) *Intermediate care facility*. An institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require health-related care and services (above the level of room and board).

(vi) *Ambulatory surgical facility.* A facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization. The term does not include the offices of private physicians or dentists, whether for individual or group practice.

*Health maintenance organization*—A public or private organization, organized under the laws of a state, which:

(i) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, X-ray, emergency and preventive services and out-of-area coverage.

(ii) Is compensated, except for co-payments, for the provision of the basic health care services listed in subparagraph (i) of this definition to enrolled participants on a predetermined periodic rate basis.

(iii) Provides physicians' services primarily directly through physicians who are either employes or partners of the organization or through contracts or other arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

*Health systems agency or HSA*—An entity performing regional health planning and regulatory functions and duly designated by the Secretary of HHS under provisions of the Public Health Service Act (42 U.S.C.A. §§ 201—300cc-15).

*Person*—An individual, a trust or estate, partnership, a corporation, including associations, joint-stock companies and insurance companies, the Commonwealth, or a political subdivision or instrumentality, including a municipal corporation, of the Commonwealth.

#### Source

The provisions of this § 301.2 amended through October 26, 1979, effective October 27, 1979, 9 Pa.B. 4164.

### § 301.3. Expenditures covered.

(a) A capital expenditure proposed by or on behalf of a health care facility or health maintenance organization, the obligation for which is incurred by or on behalf of a health care facility or health maintenance organization after March 31, 1973, shall be subject to this chapter; provided, that in the case of a health care facility providing health care services as of December 18, 1970, which on such date was committed to a formal plan of expansion or replacement, this chapter does not apply with respect to such expenditures as may be made or such obligations as may be incurred for capital items included in such plan where preliminary expenditures toward the plan of expansion or replacement including payments for studies, surveys, designs, plans, working drawings, specifications, and site acquisition essential to the acquisition, improvement, expansion or replace-

ment of the health care facility or equipment concerned, of \$100,000 or more, had been made during the 3-year period ended December 17, 1970.

(b) For purposes of this chapter, a “capital expenditure” is an expenditure, including a force account expenditure, that is, an expenditure for a construction project undertaken by the facility as its own contractor which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance and which exceeds \$100,000, changes the bed capacity of the facility with respect to which such expenditure is made, or substantially changes the services of the facility with respect to which such expenditure is made.

(c) For purposes of subsection (b), the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition, improvement, expansion or replacement of the plant and equipment with respect to which the expenditure is made shall be included in determining whether such expenditure exceeds \$100,000.

(d) For purposes of subsection (b), where the estimated cost of a proposed project, including cost escalation factors appropriate to the area in which the project is located, is, within 60 days of the date on which the obligation for the expenditure is incurred, certified by a licensed architect or engineer to be \$100,000 or less, the expenditure may be deemed not to exceed \$100,000 regardless of the actual cost of such project; provided, that in a case where the actual cost of the project exceeds \$100,000, the health care facility or health maintenance organization on whose behalf the expenditure is made shall provide written notification of the cost to the designated planning agency not more than 30 days after the date on which the expenditure is incurred. The notification shall include a copy of the certified estimate.

(e) For purposes of subsection (b), a capital expenditure which changes the bed capacity of a facility means a capital expenditure which results in any increase or decrease in licensed capacity.

(f) For purposes of subsection (b), a capital expenditure which substantially changes the services of a facility means a capital expenditure which results in the addition of a clinically related, that is, diagnostic, curative, or rehabilitative service not previously provided in the facility or in the termination of such a service which had previously been provided in the facility.

(g) A change in a proposed capital expenditure which itself meets the criteria set forth in subsection (b) shall, for purposes of this chapter, be deemed a capital expenditure; provided, that an increase or decrease in the cost of a proposed capital expenditure which increase or decrease is not related to a change in bed capacity or a substantial change in services and does not increase the cost of the project more than 20%, may, at the option of the designated planning agency, be exempt from review under this chapter.

(h) When a person obtains, under lease or comparable arrangement or through donation a facility or part thereof or equipment for a facility the expen-

diture for which would have been considered a capital expenditure and subject to exclusion from reimbursement under this chapter if the person had acquired it by purchase, the acquisition shall be deemed a capital expenditure by or on behalf of the facility and the designated planning agency shall recommend that the Secretary of HHS:

(1) In the case of a lease or comparable arrangement, in computing the person's rental expense, in determining the Federal payments to be made under Titles V, XVIII and XIX of the act (42 U.S.C.A. §§ 701—709, 1395—1395zz and 1396—1396ff) with respect to services furnished in the facility, deduct the amount which in his judgment is a reasonable equivalent of the amount that would have been excluded if the person had acquired the facility or equipment by purchase.

(2) In the case of a lease or comparable arrangement, in computing the person's return on equity capital, deduct an amount deposited under the terms of the lease or comparable arrangement.

(3) In the case of a donation which is carried by the person as a capital asset, exclude from reimbursement for services provided under Titles V, XVIII and XIX of the act (42 U.S.C.A. §§ 701—709, 1395—1395zz and 1396—1396ff) an amount claimed for depreciation on the facility or equipment, and other costs related to its acquisition.

(i) An obligation for a capital expenditure shall be deemed to have been incurred by or on behalf of a health care facility or health maintenance organization:

(1) When an enforceable contract is entered into by the facility or organization or by a person proposing the capital expenditure on behalf of the facility or organization for the construction, acquisition, lease or financing, of a capital asset; to be enforceable a construction contract shall obligate a party to cause the capital asset to be constructed, require the commencement of construction by a date specified in the contract but no later than 6 months after the close of the period for incurring an obligation, and provide for appropriate liquidated damages in the event of default by the facility or organization.

(2) Upon the formal internal commitment of funds by a facility or organization for a force account expenditure which constitutes a capital expenditure.

(3) In the case of donated property, as described in subsection (h) of this section the date on which the gift is completed in accordance with Commonwealth law.

(4) In any event, if construction when applicable has not commenced within 2 years from the date on which the applicant received a recommended approval from the Department, an obligation incurred under this subsection shall expire and shall result in a termination of the obligation and of the recommended Commonwealth approval.

(j) A determination by the designated planning agency that a proposed expenditure is not a capital expenditure within the meaning of section 1122 of the

act (42 U.S.C.A. § 1320a-1) and this chapter or that it falls within the exemption described in this section or that it is otherwise not subject to review under section 1122 of the act (42 U.S.C.A. § 1320a-1) shall be binding upon the Secretary of HHS. A determination by the designated planning agency that a proposed expenditure is a capital expenditure subject to review under section 1122 of the act and this chapter may be appealed, by the applicant, to the Secretary of HHS. The appeal may be made at any time, in such form and manner as the Secretary of HHS may prescribe.

(k) During the pendency of the appeal, the running of all time periods specified in § 301.6 (relating to procedures for agency review) shall be suspended, except that nothing in this subsection shall affect the requirement that written notice of the intention to make a capital expenditure subject to this chapter shall be received by the designated planning agency not less than 60 days prior to the date on which the expenditure is incurred.

#### **§ 301.4. Designation; review of proposed capital expenditures.**

The Commonwealth has signed an agreement with the Secretary of HHS to designate the Department of Health as the designated planning agency which will submit to the Secretary of HHS, together with the supporting materials as the Secretary of HHS may require, the following information:

(1) With respect to each capital expenditure proposed by or on behalf of a health care facility or health maintenance organization in the Commonwealth, the findings of the designated planning agency as to whether the following has occurred:

(i) The designated planning agency had been given notice of the proposed capital expenditure at least 60 days prior to obligation for the expenditure.

(ii) The expenditure is or is not consistent with the standards, criteria or plans developed under the Public Health Service Act (42 U.C.S.A. §§ 201—300cc-15) or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, Pub. L. No. 88-64, 77 Stat. 282, to meet the need for adequate health care facilities in the area covered by the plans so developed.

(iii) In reaching the findings, the designated planning agency shall consult with and take into consideration the findings and recommendations of the appropriate health systems agency.

(iv) When the designated planning agency finds that the expenditure is not consistent with the standards, criteria or plans, it shall submit to the Secretary of HHS the findings and recommendations of all other agencies with which it has consulted.

(2) With respect to each proposed capital expenditure which is found by the designated planning agency to be not consistent with the standards, criteria

or plans described in paragraph (1), its recommendation as to whether the Secretary of HHS should either:

(i) Exclude, in determining the Federal payments to be made under Titles V, XVIII and XIX of the act (42 U.S.C.A. §§ 701—709, 1395—1395zz and 1396—1396ff) with respect to services furnished in the health care facility or health maintenance organization for which the capital expenditure is made, expenses related to the capital expenditure, in accordance with section 1122(d)(1) of the act (42 U.S.C.A. § 1320a-1).

(ii) Not exclude expenses, on the ground that the facility or organization has demonstrated proof of capability to provide comprehensive health care services efficiently, effectively and economically, and that an exclusion would discourage the operation or expansion of the facility or organization, or of any facility of the organization.

(3) With respect to each proposed capital expenditure which is found by an agency described in paragraph (1)(ii) to be not consistent with the standards, criteria or plans described in paragraph (1) within the field of responsibilities of the other agency, the findings and recommendations of the other agency.

(4) With respect to each proposed capital expenditure as to which the designated planning agency reaches a finding contrary to that reached by the health systems agency a statement of the reasons for a contrary finding.

#### Cross References

This section cited in 28 Pa. Code § 301.7 (relating to fair hearing); 28 Pa. Code § 301.8 (relating to criteria for agency review); 28 Pa. Code § 301.9 (relating to determination by the Secretary of HHS); and 28 Pa. Code § 301.10 (relating to continuing effect of determinations).

### § 301.5. Advisory body.

The Statewide Health Coordinating Council, constituted under section 1524 the act (42 U.S.C.A. § 300m-3), shall serve as the advisory body to the designated planning agency.

### § 301.6. Procedures for agency review.

(a) Procedures for notification and review of proposed capital expenditures shall include the following:

(1) A health care facility or health maintenance organization proposing to make a capital expenditure subject to this chapter shall provide written notice of its intent to make such capital expenditure to the designated planning agency not less than 60 days prior to the date on which the obligation is expected to be incurred. The designated planning agency shall forward the letter of intent to the appropriate health systems agency.

(2) The notice shall be submitted on an application form provided by the designated planning agency and shall contain the information as may be required by the application and the health systems agency to meet the needs of

all the agencies whose respective fields of responsibility cover the proposed expenditure. The designated planning agency shall promptly publicize its receipt of the notice through local newspapers and public information channels.

(3) If the application under this subsection is found by the health systems agency to be incomplete, the agency shall notify the person proposing the capital expenditure within 15 days of its receipt of the incomplete application, advising the person of the additional information required. Where the timely notification of incompleteness is provided, the period within which the designated planning agency is required to notify the person proposing the expenditure that the expenditure is not approved, shall run from the date of receipt by the health systems agency of an application containing the additional information.

(4) The health systems agency shall complete its review of an application for a capital expenditure and send its findings and recommendation to the designated planning agency no later than 70 days after receipt of a complete application.

(5) When an applicant makes a substantial change in its project during review by the designated planning agency, the applicant shall withdraw the application and resubmit it for a full review under paragraph (1). When a substantial change is made by the applicant during review by the health systems agency, the same procedure shall apply unless waived by the health systems agency. A "substantial change," for purposes of this paragraph, shall mean any alteration to a project which changes the site; changes the project cost in excess of 20% or a limit established by the health systems agency, whichever is smaller; changes the number of beds by 5% or five beds, whichever is smaller; or substantially changes the services provided by the health care facility.

(6) The designated planning agency shall within 90 days after the receipt of a complete application unless the applicant agrees to a longer period, provide written notification to the applicant of its decision to recommend approval or disapproval of a project to the Secretary of HHS or of its decision not to review a project.

(7) A health systems agency may, with the approval of the designated planning agency, give a nonsubstantive review, that is, less than a full review, to a proposed capital expenditure. Factors which will be considered in determining when to permit a nonsubstantive review include a project cost of less than \$100,000; replacement of plant or equipment as a result of a natural disaster, fire, equipment failure or similar occurrence requiring immediate replacement in order to maintain continuity of operation; or alteration strictly for remedying Life Safety Code deficiencies, supported by an inspection report from the appropriate agency, when the need is apparent.

(8) The failure of the designated planning agency to provide notification within the time limitations set forth in this section shall have the effect of a recommendation of approval to the Secretary of HHS.



(9) When the designated planning agency notifies an applicant of its intention to recommend disapproval of the proposed expenditure to the Secretary of HHS, it shall include the reasons therefor and a summary of the findings and recommendations of the other agencies with which such agency has consulted and shall provide an opportunity for a fair hearing with respect to the findings and recommendations of the designated planning agency at the request of the applicant.

(10) Copies of the findings and recommendations of the designated planning agency shall also be sent to the other agencies consulted, and shall be publicized through local newspapers and public information channels.

(b) A person proposing a capital expenditure may withdraw his previously filed application without prejudice by filing simultaneous written notification of the withdrawal with the health systems agency and the designated planning agency at any time prior to his receipt of notice from the designated planning agency of its intention to make a recommendation to the Secretary of HHS.

#### Cross References

This section cited in 28 Pa. Code § 301.3 (relating to expenditures covered); 28 Pa. Code § 301.9 (relating to determination by the Secretary of HHS); 28 Pa. Code § 301.10 (relating to continuing effect of determinations); and 28 Pa. Code § 301.11 (relating to phase-out of health facilities review program).

### § 301.7. Fair hearing.

The designated planning agency will grant to an applicant an opportunity for a fair hearing with respect to the findings and recommendations of the designated planning agency. The procedures for a fair hearing shall be as follows:

(1) *Request for hearing.* Requests for hearing shall conform with the following:

(i) Requests for hearing shall be made in writing to the designated planning agency within 30 days after the applicant receives notice of the designated planning agency's findings and recommendations. The request for hearing shall be in the form of a pleading. It shall indicate which of the issues specified in this subsection the applicant wishes to raise and shall set forth the facts and the law upon which the applicant relies. A mere general assertion that the capital expenditure is consistent with standards, criteria or plans or that the designated planning agency committed prejudicial error, or the like, will not be considered as complying with this subsection. The Hearing Officer may strike a portion of a request for hearing which does not comply with this subsection, or, in the alternative, may permit the applicant to make its request more specific. In the latter event, the hearing shall be commenced within 30 days of the filing of the amended request for hearing.

(ii) Subparagraph (i) supplements 1 Pa. Code § 35.17 (relating to petitions generally).

(2) *Commencement and procedure.* Commencement and procedure shall conform with the following:

(i) The hearing shall be commenced within 30 days after receipt of the request described in subsection (c)(1) (or later, at the option of the person requesting the hearing), and shall be conducted in accordance with the regulations contained in this subsection and 1 Pa. Code Part II (relating to general rules of administrative practice and procedure); provided that, whenever the general rules of administrative practice and procedure are inconsistent with this subsection, the latter shall control.

(ii) The following provisions of the general rules of administrative practice and procedure are inapplicable to hearings held under this subsection: 1 Pa. Code §§ 35.190, 35.201—35.203, 35.211—35.214, 35.221, 35.225, 35.226, 35.231—35.233, 35.241 and 35.251 (relating to appeals to agency head from rulings of presiding officers; certification of record without proposed report; proceedings in which proposed reports are prepared; unavailability of presiding officer; exception to proposed reports; briefs and argument in absence of proposed report; decisions; reopening of record; application for rehearing or reconsideration; and reports of compliance).

(3) *Hearing officer.* Hearing officers shall conform with the following:

(i) Hearings shall be conducted by an agency or person, other than the designated planning agency, as the Governor designates for that purpose; provided, that no agency which or person who has taken part in a prior consideration of or action upon the proposed capital expenditure may conduct the hearing.

(ii) Subparagraph (i) supersedes 1 Pa. Code § 35.123 (relating to conduct of hearings).

(4) *Open to the public.* The hearing shall be open to the public and shall be publicized through local newspapers and public information channels.

(5) *Testimony from the public.* Testimony from the public shall conform with the following:

(i) The person proposing the capital expenditure, the other agency described § 301.4(i)(iii) (relating to designation; review of proposed capital expenditures) and other interested parties, including members of the public and representatives of consumers of health services, shall be permitted to give testimony and present arguments at the hearing without formally intervening. Reference should be made to 1 Pa. Code §§ 35.27—35.32 (relating to intervention). The testimony and arguments shall be presented after the testimony of the designated planning agency, the applicant, and any intervening parties has been heard but may be presented, at the discretion of the Hearing Officer, at any other convenient time. When the testimony is presented, parties may cross-examine the witness.

(ii) Subparagraph (i) supplements 1 Pa. Code §§ 35.27—35.32 and 35.125(b) (relating to order of procedure).

(6) *Scope of the fair hearing.* The scope of the fair hearing shall be as follows:

(i) Hearings shall be limited to the following issues the applicant raises:

(A) Whether the findings and recommendations of the designated planning agency are supported by substantial evidence.

(B) Whether there was a violation of the constitutional or statutory rights of the applicant or a prejudicial procedural error in the review of the proposed capital expenditure.

(ii) The following issues may not be considered at a hearing:

(A) The correctness, adequacy or appropriateness of the standards, criteria or plans against which the proposed expenditure was measured.

(B) Whether the proposed expenditure is subject to review by the designated planning agency.

(ii) Subparagraphs (i) and (ii) supplements 1 Pa. Code § 35.162 (relating to reception and ruling on evidence).

(7) *Burden of going forward; burden of proof.* Procedures shall be as follows:

(i) Unless the Hearing Officer, for good cause, orders otherwise, the designated planning agency will proceed first with its case, followed by the applicant's case; nevertheless, the burden of proof shall be on the applicant, and the findings and recommendations of the designated planning agency shall be sustained unless unsupported by substantial evidence or unless the applicant establishes that it was the victim of a violation of law or a prejudicial procedural error.

(ii) Subparagraph (i) supersedes 1 Pa. Code § 35.125(a) (relating to order of procedure).

(8) *Record from below.* Records shall conform with the following:

(i) The Hearing Officer shall admit, if offered, the following documents as constituting the record of the designated planning agency's decision:

(A) The complete application for the proposed capital expenditure.

(B) The standards, criteria or plans against which the proposed expenditure was measured by the designated planning agency and by any agency consulted by the designated planning agency.

(C) The findings and recommendations of the designated planning agency and of any agency consulted by the designated planning agency.

(D) Minutes, transcripts or other records of a public hearing or public meeting held by the designated planning agency or an agency consulted by the designated planning agency at which hearing or meeting the proposed expenditure was considered.

(E) Other documentary evidence considered by the designated planning agency, or an agency consulted by the designated planning agency, in making its findings and recommendations.

(ii) Paragraph (8) shall not be construed so as to deprive a party of the opportunity to offer additional documentary or oral evidence relevant to an issue raised in the hearing.

(iii) Subparagraph (ii) supplements 1 Pa. Code §§ 35.125(d) and 35.162.

(9) *Record of the fair hearing.* A record of the proceedings shall be kept in accordance with the requirements of applicable State law and copies of the record together with copies of documents received in evidence, shall be available to the public for inspection and copying: provided, that a person who requests copies of the material may be required to bear the costs thereof.

(10) *Conclusion of the hearing.* Conclusion of the hearing shall conform with the following:

(i) Hearings shall conclude on the last day fixed by the Hearing Officer for the submission of a brief. The Hearing Officer shall notify all parties, in writing or on the record, of the day on which the hearing will conclude and of any changes thereto.

(ii) Subparagraph (i) supplements 1 Pa. Code § 35.191 (relating to proceedings in which briefs are to be filed).

(11) *Notification of decision.* As soon as practicable, but not more than 45 days after the conclusion of a hearing, the Hearing Officer shall notify the person who requested the hearing, the designated planning agency, the other agencies described in § 301.4(1)(iii) who participated in the hearing, and other interested parties at the discretion of the Hearing Officer of his decision and the reasons therefor. The decision shall be publicized through local newspapers and public information channels. In the event that the Hearing Officer fails to provide notice as required in this section within 45 days after the conclusion of a hearing, the failure to provide notice shall have the effect of a recommendation of approval to the Secretary of HHS.

(12) *Disposition of the record.* Disposition of the record shall conform with the following:

(i) After rendering his decision, the Hearing Officer shall transmit the record of the hearing to the designated planning agency.

(ii) The provisions of subparagraph (i) supplement the provisions of 1 Pa. Code § 35.133 (relating to copies of transcripts).

(13) *Role of the fair hearing decision.* A decision of a Hearing Officer arrived at in accordance with this subsection shall, to the extent that it reverses or revises the findings or recommendations of the designated planning agency, supersede the findings and recommendations of the designated planning agency; provided, that where judicial review of the decision is obtained, the final decision of the reviewing court to the extent that it modifies the findings and recommendation of the designated planning agency, shall to such extent supersede the findings and recommendation of the designated planning agency.

(14) *Further action.* To the extent that any decision of a Hearing Officer under this subsection requires that the designated planning agency take further

action, the action shall be completed by the date the Hearing Officer specifies. Failure by the designated planning agency to complete the action by the date shall have the effect of a recommendation of approval of the proposed capital expenditure.

#### **§ 301.8. Criteria for agency review.**

The criteria under which the designated planning agency and the other agency described in § 301.4(1)(iii) (relating to designation; review of proposed capital expenditures) evaluates proposals for capital expenditures for purposes of this chapter to determine their conformance with the applicable standards, criteria and plans referred to in § 301.4(1)(ii)—(iv) includes the following:

- (1) Whether the proposed project is needed or projected as necessary to meet the needs in the community in terms of health services required; provided, that projects for highly specialized services, such as open-heart surgery, renal transplantation or radiation therapy, which will draw from patient population outside the community in which the project is situated will receive appropriate consideration.
- (2) Whether the proposed project can be adequately staffed and operated when completed.
- (3) Whether the proposed capital expenditure is economically feasible and can be accommodated in the patient charge structure of the health care facility or health maintenance organization without unreasonable increases.
- (4) Whether the project will foster cost containment or improved quality of care through improved efficiency and productivity, including promotion of cost-effective factors such as ambulatory care, preventive health care services, home health care and design and construction economies, or through increased competition between different health services delivery systems.

#### **§ 301.9. Determination by the Secretary of HHS.**

(a) This section issued by the Department of Health imposes no legal obligation on the Secretary of HHS. It restates the Federal regulation found at 42 CFR 100.108 (relating to determination by the Secretary). Reference should be made to the Federal regulation.

(b) Except as provided in subsection (c), if the Secretary of HHS determines that the designated planning agency has not been given timely notice of intention to make a capital expenditure in accordance with § 301.6 (relating to procedures for agency review) or that the designated planning agency has, in accordance with the requirements of section 1122 of the act (42 U.S.C.A. § 1320a-1) and this chapter, submitted to the Secretary of HHS its findings that the expenditure is not consistent with the standards, criteria or plans described in § 301.4(2) (relating

to designation; review of proposed capital expenditures) then for a period the Secretary of HHS deems necessary to effectuate the purpose of section 1122 of the act, the Secretary of HHS will, in determining the Federal payments to be made under Titles V, XVIII and XIX of the act (42 U.S.C.A. §§ 701—709, 1395—1395zz and 1396—1396ff) to the health care facility or health maintenance organization, exclude expenses related to the capital expenditure.

(c) Notwithstanding the provisions of subsection (b), if the Secretary of HHS, after submitting the matters involved to the National Advisory Health Council on Comprehensive Health Planning Programs and after taking into consideration the recommendations of the designated planning agency and the other agency described in § 301.4 (2)(i) with respect to the expenditure, determines that an exclusion of expenses related to a capital expenditure of a health care facility or health maintenance organization would discourage the operation or expansion of the facility or organization or of any facility of the organization which has demonstrated to his satisfaction proof of capability to provide comprehensive health care services efficiently, effectively and economically or would otherwise be inconsistent with the effective organization and delivery of health services or the effective administration of Titles V, XVIII or XIX of the act (42 U.S.C.A. §§ 701—709, 1395—1395zz and 1396—1396ff), the Secretary of HHS will include the expenses in Federal payments under such titles.

(d) Upon making a determination under this section, the Secretary of HHS will promptly notify the person proposing a capital expenditure, the designated planning agency and the other agency described in § 301.4 (2)(i) with which the designated planning agency has consulted of the determination and the basis for the determination.

(e) A person dissatisfied with a determination by the Secretary of HHS under section 1122 of the act or this chapter with respect to a particular capital expenditure may, within 6 months following the date of the determination, request the Secretary of HHS to reconsider the determination.

(1) The request for reconsideration shall be in writing, shall be addressed to the Secretary of HHS or to an officer or employe of HHS to whom the Secretary of HHS has delegated responsibility to receive requests, and shall set forth the grounds based upon the record of the proceedings and issues of law upon which reconsideration is requested.

(2) Reconsideration will be based upon the record of the proceedings, which shall consist of the findings; the recommendation and supporting materials submitted to the Secretary of HHS by the designated planning agency, including the findings and recommendations of other agencies, which relate to the findings and recommendations involved; the record of the hearing provided by the designated planning agency, if any, and of judicial proceedings; the materials submitted in connection with the request; and the comments as the Secretary of HHS may request from the designated planning agency.

(3) Notice of a reconsidered determination under this subsection shall be sent to the designated planning agency and the person requesting such reconsideration.

(f) A determination by the Secretary of HHS is, under section 1122 of the act (42 U.S.C.A. § 1320a-1), not subject to administrative or judicial review.

#### Source

The provisions of this § 301.9 amended through October 26, 1979, effective October 27, 1979, 9 Pa.B. 4164.

### § 301.10. Continuing effect of determinations.

(a) Except in the case of a long-term construction plan of the type described in subsection (b), where the designated planning agency has found that a proposed capital expenditure is in conformity with the standards, criteria and plans described in § 301.4(a)(2) (relating to designation; review of proposed capital expenditures), the obligation for capital expenditure shall be incurred not more than 1 year following the date of the finding; provided, that the designated planning agency may, under a showing of good cause by the person proposing the expenditure, extend the period during which the obligation shall be incurred for up to an additional 6 months from the expiration date of the original approval. The health systems agency shall contact the applicant no later than 10 months after the designated planning agency approval to notify the person of the expiration date and of the procedure for requesting a 6-month extension for good cause. If no obligation is incurred within the period or, if incurred, the facility or organization has not started construction or purchased the equipment for which the approval was granted, within 6 months following the expiration date for incurring an obligation, the approval of the designated planning agency shall, for purposes of this chapter, be deemed to be terminated upon the expiration of the applicable period. When a project approval is terminated for failure to incur an obligation or to start construction or purchase equipment in a timely manner, the designated planning agency will notify the applicant in writing of the termination.

(b) In the case of a plan for capital expenditures proposed by or on behalf of a health care facility or health maintenance organization under which a series of obligations for capital expenditures for discrete components of the plan is to be incurred over a period longer than 1 year, the designated planning agency may review and approve or disapprove, for purposes of this chapter, those of capital expenditures which it estimates will be incurred within 3 years following the date of approval or disapproval.

(c) Problems shall be dealt with as follows:

(1) In any case in which the Secretary of HHS has determined under a finding by the designated planning agency that a proposed capital expenditure is not in conformity with the standards, criteria or plans described in § 301.4(a)(2), that expenses related to the capital expenditure will not be

included in determining Federal payments under Titles V, XVIII and XIX of the act (42 U.S.C.A. §§ 701—709, 1395—1395zz and 1396—1396ff), the health care facility or health maintenance organization to whom the payments are made shall be entitled, upon its request to the designated planning agency in such form and manner and supported by information as the agency may require, to a reconsideration by the designated planning agency of the finding:

(i) Whenever there is a substantial change in existing or proposed health facilities or services of the type proposed in the area served by the facility or organization.

(ii) Upon a substantial change in the need for facilities or services of the type proposed in the area served by the facility or organization as reflected in the standards, criteria or plans referred to in § 301.4(a)(2).

(iii) At any time following the expiration of 3 years from the date of the finding of the designated planning agency or of its last reconsideration of a finding under this subsection, whichever is later.

(2) Reconsideration shall be dealt with as follows:

(i) If, upon reconsideration of its finding under this subsection and after consulting with and taking into consideration the findings and recommendations of the other agency described in § 301.4(a)(2)(i) the designated planning agency finds that the facilities or services provided by the capital expenditure are in conformity with the standards, criteria and plans described in § 301.4(a)(2) it shall promptly so notify the Secretary of HHS and the person submitting the request.

(ii) If the designated planning agency, upon reconsideration, reaffirms its previous finding, the procedure set forth in § 301.6 (relating to procedures for agency review) and fair hearings following an initial determination shall be followed.

(3) Upon notification by a designated planning agency of a revised finding in accordance with paragraph (2), the Secretary of HHS will include (42 U.S.C.A. §§ 701—709, 1395—1395zz and 1396—1396ff), in determining future payments under Titles V, XVIII and XIX of the act, expenses related to the capital expenditure. The expenses will be included for periods following the date of notification only and amounts previously excluded may not be taken into account in determining Federal payments under Titles V, XVIII and XIX of the act.

**§ 301.11. Phase-out of health facilities review program.**

(a) No letter of intent required by § 301.6(a)(1) (relating to procedures for agency review) will be accepted after July 31, 1980.

(b) No “Health Facilities Section 1122 Project Form” required by § 301.6(a)(2) will be accepted after September 30, 1980. No “Health Facilities Section 1122 Project Form” will be accepted unless a letter of intent related to that project has been submitted prior to July 31, 1980.



(c) Forms required to be filed under § 301.6 will be reviewed for completeness in accordance with the procedures established in that section by December 1, 1980. In the event an application is found to be incomplete; required information shall be submitted by December 1, 1980, or the applications will be deemed to be abandoned and no further review will occur. The Department may grant an appropriate extension if unique circumstances require it, but in no event will the extension exceed 3 months.

**Authority**

The provisions of this § 301.11 issued under section 2102(a) and (g) of The Administrative Code of 1929 (71 P. S. § 532(a) and (g)); and section 904 of the Health Care Facilities Act (35 P. S. § 448.904).

**Source**

The provisions of this § 301.11 adopted October 24, 1980, effective October 25, 1980, 10 Pa.B. 4213.

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