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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

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**NATIONAL HEALTH
SERVICE CORPS**

**Critical Health Manpower
Shortage Areas**

**DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE**

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[42 CFR Part 23]

NATIONAL HEALTH SERVICE CORPS

Critical Manpower Shortage Areas

Notice is hereby given that the Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposes to delete Part 23 of Title 42, Code of Federal Regulations and to substitute in lieu thereof a new Part 23. The primary purpose of the new proposed Part 23 is to implement section 2 of the Emergency Health Personnel Act Amendments of 1972 (Pub. L. 92-585), which amended section 329 of the Public Health Act, authorizing the establishment of the National Health Service Corps.

The major changes made by this proposed regulation are as follows: (1) the Secretary, without regard to an application for assignment of NHSC personnel, will designate those areas which have a critical health manpower shortage and publish periodically in the FEDERAL REGISTER a list of such designated areas, and the criteria utilized in making such designation; (2) provision is made for 90 days written notice published in the FEDERAL REGISTER, before the Secretary may withdraw his designation of an area as one having a critical health manpower shortage; (3) three options are set forth for the reimbursement of the National Health Service Corps by applicants whereby the Corps can recover its reasonable costs of providing services; (4) the charge to any person for services from assigned personnel shall be in accordance with a schedule of charges determined in consultation with the local medical, or dental, or other appropriate health society; and (5) the Secretary may approve an application without the certification of need by the State and district medical, dental or other appropriate health societies when he finds that such certification has been arbitrarily and capriciously withheld.

Written comments concerning the proposed regulations are invited from interested persons. Inquiries may be addressed, and data, views and arguments relating to this notice may be presented in writing, in triplicate, to the Director, Bureau of Community Health Services, Health Services Administration, Room 7-05 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852.

All comments received in response to this notice will be available for public inspection and copying at the above referred to address weekdays (Federal holidays excepted) during regular business hours. All relevant material received on or before February 5, 1975 will be considered.

It is therefore proposed to delete Part 23 and substitute in lieu thereof a new Part 23 as follows:

Dated: October 29, 1974.

THEODORE COOPER,
Acting Assistant Secretary for Health.

Approved: December 23, 1974.

CASPAR W. WEINBERGER,
Secretary.

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AUTHORITY: Sec. 215, 58 Stat. 690, as amended (42 U.S.C. 216); sec. 329, 84 Stat. 1868 as amended (42 U.S.C. 254b).

§ 23.1 Applicability.

The regulations in this subpart are applicable to the assignment of personnel of the National Health Service Corps to areas with critical health manpower shortages, as provided by section 329 of the Public Health Service Act (42 U.S.C. 254b).

§ 23.2 Definitions.

As used in this part:

(a) "Act" means the Public Health Service Act.

(b) "State" means any of the several states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(c) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of that Department to whom the authority involved has been delegated.

(d) "Assigned personnel" means health or health related personnel of the Regular and Reserve Corps of the Service and such civil service personnel as the Secretary designates, including, but not limited to, physicians, dentists, psychologists, nurses, paramedical personnel, medical services administrators or planners, and medical and psychiatric technicians, who are assigned, in accordance with section 329 of the Act and the regulations in this part, to an area to provide needed health care or services.

(e) "Nonprofit" private health entity means a private health entity no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(f) "Population" means the population based on the latest figures available from the U.S. Census Bureau or such other source that the Secretary finds acceptable, applicable to the area to be served.

(g) "Arca" means a defined geographical or service region acceptable to the Secretary from which persons are provided services under this part, irrespective of political or geographic boundaries.

§ 23.3 Eligibility.

Application for assignment of Corps personnel to an area designated by the Secretary under § 23.4 may be made by the health agency or any other public or nonprofit private health entity in such area.

§ 23.4 Designation.

(a) In accordance with section 329(b)(1)(A) of the Act, the Secretary shall designate those areas which he determines have critical health manpower shortages. In making such determination the Secretary shall take into consideration, among other pertinent factors:

(1) The latest reliable health resources statistics available to him, such as numbers of primary care physicians, dentists, and other health manpower personnel; the range of primary care and other health services available; and the types of health facilities in the area.

(2) Health status indicators, such as infant and maternal mortality rates, accident rates, morbidity rates, disability rates, life expectancy rates, and others.

(3) Inaccessibility of health care services in the community, and the ability to obtain services when required on a timely and effective basis, taking into account transportation difficulty, travel times, utilization rates, ability of health resources to meet increased demands, and other socio-economic, demographic, and environmental factors of community life which significantly impair access. The Secretary shall publish periodically in the FEDERAL REGISTER a list of such designated areas together with the specific criteria used in determining such areas.

(b) Any State health agency or local public health agency or other public or nonprofit private health entity in an area which has not been designated by the Secretary pursuant to paragraph

(a) of this section may request such designation. If upon review of the application and all other relevant facts it is determined that the area meets the criteria utilized under paragraph (a) of this section, the Secretary shall add the area to the list of areas designated.

(c) Upon determining that there has been a substantial change in circumstances upon which a designation was based, the Secretary may, 90 days after publication of a notice in the FEDERAL REGISTER, withdraw his designation of an area as one having a critical health manpower shortage.

§ 23.5 Information and Assistance.

The Secretary shall conduct information programs in the areas designated to inform public and nonprofit private health entities serving the designated areas of the technical and consultative services available from the Corps and to assist people in those areas who are seeking assignment of Corps personnel to their areas.

§ 23.6 Application for Assignment.

(a) An application for the assignment of Corps personnel under section 329 of the Act may be submitted to the Secre-

tary by an eligible applicant in such form and manner and at such time as the Secretary may require.

(b) The application shall include, among other things, the certification to the Secretary of

(1) the local government of such area, and

(2) the State and district medical, dental or other appropriate health societies (as the case may be) that such assignment is needed for the area, *provided, however*, That where such certification has been withheld, a full explanation of the absence of such certification shall be submitted.

(c) The application shall also include, unless established to the satisfaction of the Secretary that such recommendations were not reasonably obtainable, the recommendations of (1) the appropriate State health planning agency established pursuant to section 314(a) of the Act; (2) the appropriate Regional Medical Program established pursuant to Title IX of the Act; (3) where there has been such an agency established, the appropriate areawide health planning agency established pursuant to section 314(b) of the Act; (4) the State medical, dental, and other health associations and (5) from other medical personnel of the area to be served.

(d) The application shall also include evidence satisfactory to the Secretary that the general public has been informed, through the published news media or other means of communication appropriate to local circumstances, of the actions of all certifying and recommending agencies, and has been afforded adequate opportunity to comment on such application. All such comments received shall be appended to the application.

(e) Such applications shall be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant any obligations imposed by law, the statute, these regulations, or any additional conditions of assignment imposed pursuant thereto.

§ 23.7 Assignment of Personnel.

The Secretary may upon proper application, assign Corps personnel to such designated areas where he finds such assignment will best serve the purposes of section 329 of the Act and the regulations of this part, taking into account:

(a) The need of the area for the health services to be provided without regard to the area's ability to pay;

(b) The willingness of the area and the appropriate governmental agencies therein to assist and cooperate with the Public Health Service in providing effective health services to residents of the area;

(c) The recommendations of any agency or organization which may be responsible for the development, under section 314(a) or (b), of the Act, of a

comprehensive plan covering all or any part of the area involved;

(d) Recommendations from the State medical, dental, and other health associations and from other medical personnel of the area considered for assistance. *Provided*, That with respect to any proposed assignment, where the Secretary has from all the facts available to him, found that certification required by section 329(b)(2)(A)(ii) of the Act was clearly arbitrarily and capriciously withheld by the State or district medical, dental or other appropriate health society, the Secretary may, after consultation with such society or societies, assign Corps personnel to the designated area. A certification may be considered to be arbitrarily and capriciously withheld when a State or district society:

(1) fails to acknowledge a request for certification within 30 days, or make a decision regarding certification within 90 days; or

(2) provides either no justification for its refusal to certify need or the data submitted in support of its justification clearly is not adequate in light of the factors considered by the Secretary in designating areas.

§ 23.8 Costs and charges of services.

(a) The National Health Service Corps shall be reimbursed, subject to the approval of the Secretary, in accordance with one of the following mechanisms designed to recover the reasonable costs of providing services. Each agreement concluded with an applicant under § 23.10 shall identify the method of reimbursement selected from the following:

(1) The National Health Service Corps will be reimbursed a percentage of the total receipts collected (after certain preferential costs in the agreement concluded under § 23.10 agreed to are paid) which is equal to the percentage of the National Health Service Corps' contribution toward the cost of operation as determined under the agreement concluded with the applicant under § 23.10.

(2) The National Health Service Corps will be reimbursed its actual reasonable cost per annum, a fixed amount regardless of receipts collected; or

(3) The National Health Service Corps will provide the total cost of operation and will collect all receipts.

(b) Except as otherwise provided in paragraph (d) of this section, any person receiving services from assigned personnel shall be charged at a rate designed to recover reasonable costs, to be distributed according to one of the methods of reimbursement specified above. Such charges shall (except as provided in paragraph (c) of this section) be in accordance with a schedule of charges determined in consultation with the local medical, or dental, or other appropriate health society, and specified in the agreement concluded with the applicant under § 23.10; *provided, however*, That where assigned personnel are providing

services within the framework of an established health services delivery system, the charges made shall be consistent with the charges made by such system.

(c) In lieu of being charged on a fee-for-services basis pursuant to paragraph (b) of this section, persons eligible to receive services from assigned personnel may be charged on a prepaid capitation basis or other reimbursement mechanism.

(d) No charge or a reduced charge shall be made for services provided by assigned personnel to any person from a family which has an annual income below the higher of (1) the State figures for the "medically needy" as determined in accordance with the Aid to Families with Dependent Children figures calculated by the Assistance Payments Administration, or (2) the Social Security Administration poverty index as set forth in the latest Social Security Bulletin, Annual Statistical Supplement, *provided, however*, That pursuant to paragraph (e) of this section, charges shall be made for services to such persons to the extent that payment will be made by a third party which is authorized or under legal obligation to pay such charges.

(e) If a Federal agency, an agency of a State or local government, or other third party would be responsible for all or part of the cost of the care or service provided under section 329 of the Act if such care or service had not been provided pursuant to section 329 of the Act, the Secretary shall collect from such agency or third-party the portion of such cost for which it would be so responsible.

(f) Any funds received by the Secretary pursuant to this section shall be deposited in the Treasury as miscellaneous receipts.

§ 23.9 Supervision of assigned personnel and termination of assignment.

Personnel assigned in accordance with the provisions of section 329 of the Act and the regulations in this part shall at all times remain under the direct supervision and control of the Secretary. Observance of institutional rules and regulations by assigned personnel are mere incidents of the performance of their Federal functions and do not alter their direct professional and administrative responsibility to the Secretary. The Secretary may terminate or modify any such assignment if he determines that such assignment is not being performed in accordance with section 329 of the Act, the regulations in this part, or any agreement entered into under § 23.10.

§ 23.10 Agreements with applicants.

The Secretary will, upon determining to assign personnel to an area, and consistent with section 329 of the Act and these regulations, enter into agreements with applicants setting forth such additional terms and conditions as he deems necessary to assure the furtherance of the purposes of section 329 of the Act,

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the regulations in this part, and interests of the public health, or the effective utilization of assigned personnel, including but not limited to

(a) Number and type of personnel assigned;

(b) Duration of assignment;

(c) Fees and methods for charging for services of assigned personnel including the choice of option for reimbursing the Federal Government for its reasonable costs under section 23.8;

(d) Types of facilities or other assistance to be provided by applicant.

§ 23.11 Use of facilities by assigned personnel.

The Secretary, to the extent feasible may make such arrangements as he de-

termines necessary to enable assigned personnel to utilize the health facilities of the area to be served. If there are no health facilities in or serving such area, the Secretary may arrange to have such care and services provided in the nearest health facilities of the Public Health Service or the Secretary may lease or otherwise provide facilities in such area for the provision of care and services. In providing such care and services, the Secretary may (a) make such arrangements as he determines are necessary for the use of equipment and supplies of the Service and for the lease or acquisition of other equipment and supplies and (b) secure the temporary services of nurses and allied health professionals.

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