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B-74254, Sep. 3, 1969

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MISCELLANEOUS - GRANTS-IN-AID DECISION TO THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE CONCLUDING THAT NATIONAL INSTITUTES OF HEALTH HAVE AUTHORITY UNDER SECTION 202 (A) OF THE COMMUNITY MENTAL HEALTH CENTERS ACT TO AMEND GRANTS TO SUBSTITUTE NEW CONSTRUCTION PROJECTS FOR ACQUISITION AND REMODELING OF EXISTING FACILITIES WHERE BOTH PROJECTS WOULD FULLY COMPLY WITH STATUTORY AND PROGRAM REQUIREMENTS.

TO MR. SECRETARY:

REFERENCE IS MADE TO LETTER OF AUGUST 15, 1969, FROM THE ASSISTANT SECRETARY, COMPTROLLER, IN WHICH HE PRESENTS FOR CONSIDERATION CERTAIN SITUATIONS WHICH HAVE ARISEN IN THE ADMINISTRATION OF THE COMMUNITY MENTAL HEALTH CENTERS ACT, PUB. L. 88-164, AS AMENDED, 42 U.S.C. 2681 ET SEQ.

THE COMMUNITY MENTAL HEALTH CENTERS ACT (ACT) AUTHORIZES ALLOTMENTS TO THE STATES FROM WHICH GRANTS MAY BE MADE TO PUBLIC AND NONPROFIT PRIVATE AGENCIES AND ORGANIZATIONS TO ASSIST IN THE ACQUISITION OF COMPREHENSIVE LOCAL MENTAL HEALTH CENTERS. SECTION 202 (A) OF THE ACT, 42 U.S.C. 268 (A) PROVIDES IN PART THAT --

"* * * SUMS SO ALLOTTED TO A STATE FOR A FISCAL YEAR AND REMAINING UNOBLIGATED AT THE END OF SUCH YEAR SHALL REMAIN AVAILABLE TO SUCH STATE FOR SUCH PURPOSE FOR THE NEXT FISCAL YEAR (AND FOR SUCH YEAR ONLY), IN ADDITION TO THE SUMS ALLOTTED FOR SUCH STATE FOR SUCH NEXT FISCAL YEAR.'

DURING SUCH TWO-YEAR PERIOD GRANTS MAY BE MADE FOR EITHER THE CONSTRUCTION OF NEW FACILITIES, OR THE ACQUISITION, EXPANSION, REMODELING AND ALTERATION OF EXISTING BUILDINGS AT THE OPTION OF THE APPLICANT.

IT IS STATED THAT THE NATIONAL INSTITUTE OF MENTAL HEALTH (NIMH), WHICH ADMINISTERS THIS PROGRAM, HAS RAISED THE QUESTION WHETHER IT HAS THE AUTHORITY TO APPROVE -- SUBSEQUENT TO THE END OF THE TWO YEARS OF AVAILABILITY OF AN ALLOTMENT -- A REQUEST THAT FUNDS GRANTED FOR THE CONSTRUCTION OF NEW FACILITIES NOW BE USED INSTEAD TO ACQUIRE AND REMODEL EXISTING BUILDINGS -- OR VICE VERSA -- WHERE THE RESULTS IN TERMS OF MEETING PROGRAM OBJECTIVES WILL BE SUBSTANTIALLY THE SAME OR BETTER.

THE THREE SITUATIONS REFERRED TO BY NIMH ARE DESCRIBED AS FOLLOWS: "* * * IN THE FIRST, AN APPLICANT WHICH HAS HAD A GRANT APPROVED FOR CONSTRUCTION OF A NEW MENTAL HEALTH CENTER TO PROVIDE SERVICES FOR A HIGH PRIORITY CATCHMENT AREA IN THE ROCKY MOUNTAIN STATES, FINDS THAT IT MAY ACQUIRE AND RENOVATE AN EXISTING

BUILDING AND PROVIDE ESSENTIALLY THE SAME SERVICES TO THE AREA (1) SOONER, (2) AT LESS COST, (3) AT A MORE CONVENIENT LOCATION, (4) WITH AN ADDED POTENTIAL FOR FUTURE SERVICES EXPANSION, AND (5) STILL FULFILLING ALL CONSTRUCTION AND FIRE SAFETY REQUIREMENTS APPLICABLE TO SUCH RENOVATED BUILDING.'IN THE SECOND SITUATION, AN APPLICANT IN NEW ENGLAND IS IN THE PROCESS OF DEVELOPING A LARGE HOSPITAL MEDICAL CENTER COMPLEX WHICH WILL INCLUDE A NEW FREESTANDING MENTAL HEALTH OUTPATIENT FACILITY FOR WHICH A NEW CONSTRUCTION GRANT HAS BEEN APPROVED. BECAUSE OF AN INCREASE IN AVAILABLE MENTAL HEALTH STAFF AND THE GROWTH OF THE AREA'S MENTAL HEALTH SERVICES PROGRAM SINCE THE GRANT WAS APPROVED, THE NEED HAS BECOME PRESSING TO HAVE A FACILITY AVAILABLE FOR OUTPATIENT ACTIVITIES AS QUICKLY AS POSSIBLE. WHILE ENDEAVORING TO MAKE TEMPORARY ARRANGEMENTS, THE APPLICANT FOUND A DOWNTOWN BUILDING WHICH, PRIMARILY DUE TO ITS ACCESSIBILITY TO THE POPULATION IN NEED OF MENTAL HEALTH SERVICES, IS WELL SUITED TO THE DAY CARE AND CERTAIN OTHER OUTPATIENT PROGRAMS. THE APPLICANT NOW WISHES TO UTILIZE A PORTION OF FUNDS, APPROVED FOR THE CONSTRUCTION OF THE NEW OUTPATIENT BUILDING AT THE HOSPITAL COMPLEX SITE, FOR THE ACQUISITION AND RENOVATION OF THE DOWNTOWN BUILDING, ENABLING IT TO PROVIDE DAY CARE AND OTHER APPROPRIATE SERVICES, AGAIN, MORE QUICKLY, AT A MORE ACCESSIBLE LOCATION, IN AN ECONOMIC MANNER, AND WITH THE RESULTANT FACILITY BEING SUBSTANTIALLY COMPARABLE TO THAT ORIGINALLY PROPOSED IN TERMS OF FUNCTION AND PROGRAM. IT SHOULD ALSO BE NOTED THAT THE FACILITY SO ACQUIRED AND RENOVATED WILL BE A PERMANENT STRUCTURE WHICH WILL CONTINUE TO OPERATE IN THE DOWNTOWN LOCATION SUBSEQUENT TO COMPLETION OF THE HOSPITAL COMPLEX.'THE THIRD SITUATION REPRESENTS THE CONVERSE OF THE ABOVE TWO. AN APPLICANT ON THE EASTERN SEABOARD HAS BEEN AWARDED A GRANT FOR THE ACQUISITION AND RENOVATION OF AN EXISTING BUILDING AS PART OF A MENTAL HEALTH CENTER. SUBSEQUENTLY, IN THE COURSE OF FURTHER DEVELOPING AND FINALIZING ITS OVERALL PLANS, IT FINDS IT WOULD BE PREFERABLE AND, IN THE LONG-RUN, A MORE ECONOMIC UTILIZATION OF AVAILABLE FUNDS TO CONSTRUCT A NEW FACILITY AT A SOMEWHAT DIFFERENT LOCATION IN THE CENTER AREA (ONE WHICH PERMITS AN IMPROVED SERVICE FLOW PATTERN). SINCE THE NEW FACILITY WOULD CLEARLY QUALIFY FOR GRANT FUNDS ON THE BASIS OF A NEW APPLICATION, THE QUESTION PRESENTED IS WHETHER FUNDS PREVIOUSLY AWARDED FOR SUBSTANTIALLY THE SAME PROGRAM PURPOSES MAY BE USED TO CONSTRUCT A FACILITY AT ANOTHER SITE.'

AS POINTED OUT BY THE ASSISTANT SECRETARY BOTH THE ALLOTMENTS AND GRANTS UNDER THE ACT ARE OF A ,MANDATORY" NATURE IN THAT A STATE IS ENTITLED TO ITS ALLOTMENT ONCE CONGRESS HAS APPROPRIATED FUNDS FOR COMMUNITY HEALTH CENTER PURPOSES FOR A GIVEN YEAR, AND AN APPLICANT IS ENTITLED TO A GRANT FROM THE ALLOTMENT IF ITS APPLICATION MEETS THE REQUIREMENTS OF THE ACT. IN OTHER WORDS WHILE APPROVAL OF A QUALIFIED APPLICATION IS REQUIRED BY LAW, THE CONGRESS HAS LEFT IT TO THE APPLICANT-COMMUNITY TO DETERMINE WHICH OF THE AUTHORIZED TYPES OF ACTIVITY MEETING THE STATUTORY PROVISIONS -- I.E., NEW CONSTRUCTION, RENOVATION, OR ACQUISITION -- WOULD IN ITS JUDGMENT AND UNDER THE CIRCUMSTANCES BEST SERVE THE NEEDS OF THE COMMUNITY. AND, AS ALSO POINTED OUT BY THE ASSISTANT SECRETARY, THERE IS NO INDICATION IN THE LEGISLATIVE HISTORY OF THE ACT THAT CONGRESS INTENDED THAT THIS FLEXIBILITY ACCORDED TO AN APPLICANT IN CHOOSING BETWEEN NEW CONSTRUCTION AND ACQUISITION COULD NOT AS A MATTER OF LAW SURVIVE THE GRANT AWARD.

IN CONCLUSION, IT IS STATED THAT NONE OF THE THREE SITUATIONS PRESENTED FOR CONSIDERATION WOULD INVOLVE AN INCREASE IN THE AWARDS FROM PRIOR YEAR ALLOTMENTS. NONE WOULD SIGNIFICANTLY ALTER THE SCOPE OF THE GRANT AGREEMENTS AS EACH OF THE CHANGED "CONSTRUCTION" ACTIVITIES PROPOSED MEETS THE ELIGIBILITY REQUIREMENTS OF THE STATUTE AND REGULATIONS AND THE PROJECTS TO BE SUPPORTED BY THE GRANT WOULD STILL ACCOMPLISH THE OBJECTIVES FOR WHICH THE MONEY WAS

INITIALLY MADE AVAILABLE.

WHILE THE ABOVE CRITERIA MAY NOT BE NECESSARILY CONTROLLING IN THE MATTER WE NOTE THAT SECTION 205 (B) OF THE ACT, 42 U.S.C. 2685 (B), PROVIDES THAT

"AMENDMENT OF ANY APPROVED APPLICATION SHALL BE SUBJECT TO APPROVAL IN THE SAME MANNER AS AN ORIGINAL APPLICATION.' SUCH PROVISION DOES NOT SPECIFY ANY LIMITATION AS TO THE TIME IN WHICH AN AMENDMENT TO AN APPLICATION CAN BE PROCESSED NOR DOES ANYTHING THEREIN INDICATE THAT AN APPLICATION CANNOT BE AMENDED SUBSEQUENT TO THE TWO-YEAR PERIOD OF AVAILABILITY OF THE ORIGINAL ALLOTMENT.

IN CONNECTION WITH SUCH AMENDED APPLICATION SECTION 403 (B), 42 U.S.C. 2693 (B) PROVIDES THAT --

"IN CASE AN AMENDMENT TO AN APPROVED APPLICATION IS APPROVED AS PROVIDED IN SECTION 2675 OR 2685 OF THIS TITLE OR THE ESTIMATED COST OF A PROJECT IS REVISED UPWARD, ANY ADDITIONAL PAYMENT WITH RESPECT THERETO MAY BE MADE FROM THE APPLICABLE ALLOTMENT OF THE STATE FOR THE FISCAL YEAR IN WHICH SUCH AMENDMENT OR REVISION IS APPROVED.'

THIS LATTER PROVISION CLEARLY CONTEMPLATES THAT AN AMENDMENT TO AN APPROVED APPLICATION MAY BE MADE SUBSEQUENT TO THE FISCAL YEAR IN WHICH THE ORIGINAL ALLOTMENT WAS MADE AND AGAIN NOTHING THEREIN SUGGESTS THAT SUCH PERIOD IS LIMITED TO THAT OF THE AVAILABILITY OF THE ORIGINAL ALLOTMENT. FURTHER, BY PROVIDING FOR ADDITIONAL FUNDS TO COVER ANY INCREASED COSTS INCURRED BY REASON OF SUCH AMENDMENT, IT IS CLEAR THAT THE ORIGINAL GRANT FUNDS ARE TO REMAIN AVAILABLE FOR CARRYING OUT THE WORK COVERED BY SUCH AMENDED APPLICATION.

CONSEQUENTLY, WE WOULD NOT BE REQUIRED TO OBJECT TO NIMH APPROVING AMENDMENTS TO FUNDED APPLICATIONS WHICH WOULD PERMIT SUBSTITUTION OF ONE TYPE OF "CONSTRUCTION" FOR ANOTHER WHERE BOTH WOULD FULLY COMPLY WITH STATUTORY AND PROGRAM REQUIREMENTS AND SUCH AMENDMENTS ARE APPROVED IN THE SAME MANNER AS ORIGINAL APPLICATIONS.