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LEGISLATIVE HISTORY ON THE PASSAGE OF THE HOSPITAL SURVEY AND CONSTRUCTION ACT, PUBLIC LAW 725, 79TH CONGRESS

JULY 1948

FEDERAL SECURITY AGENCY
Public Health Service
Division of Hospital Facilities

C O N T E N T S

Bibliography

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Letter from President Truman to the Chairman of the House Committee on Interstate and Foreign Commerce, January 31, 1946.

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House Report No. 2519 on S. 191, July 13, 1946.

Conference Report No. 2697 on S. 191, July 29, 1946.

Subcommittee Report No. 6, Final Report from the Chairman of the Subcommittee on Health and Education to the Committee on Education and Labor, U. S. Senate, 79th Congress, 2nd Session, July 31, 1946.

INTRODUCTION

The President and various members of Congress had previously given some thought to the establishment of a Federal hospital construction program and thinking in the Public Health Service was well crystallized in the Fall of 1943. The Division of Hospital Facilities (then the Hospital Facilities Section of the States Relations Division) initiated and carried forward the work of establishing the policies and procedures upon which the proposed program would be operated, and of integrating these principles into a coordinated statement showing how the program could be administered at both State and Federal levels.

In April 1944, the Public Health Service submitted to the Postwar Planning Committee of the American Hospital Association a brief statement setting forth the major characteristics of the proposed hospital survey and construction program. In May 1944, a similar submission was made to the Subcommittee on Medical Care of the Committee on Administrative Practice of the American Public Health Association.

The Surgeon General in July 1944, testified before a subcommittee of the Senate's Committee on Education and Labor. He outlined a Federal program of grants-in-aid to assist the States in making surveys to determine hospital and health facility needs, in developing State-wide construction programs, and in building the facilities found necessary and in conformity with those State-wide program. 1/ During the hearings that continued before that subcommittee from July through September, 1944, a number of national organizations, including the American Hospital Association, the American Medical Association, as well as farm, labor, and other groups, endorsed the urgent need for hospital and health center facilities and the need for Federal assistance to supply those facilities. The subcommittee in its interim report 2/ recommended that Federal grants-in-aid to States be authorized to assist in postwar construction of hospitals, medical centers and health centers in accordance with integrated State Plans approved by the Public Health Service.

On January 10, 1945, Senators Hill of Alabama and Burton of Ohio jointly introduced a bill embodying the principles developed by the Public Health Service and endorsed by the national hospital organizations. Designated as S. 191, it was referred to the Senate Committee on Education and Labor. Public hearings on S. 191 were held before the full committee on Education and Labor in the Senate in February and March 1945. 3/

1/ Hearings before a Subcommittee of the Committee on Education and Labor, U.S. Senate, 78th Congress, 1st Session (1944) pursuant to S. Res. 74 (pt. 5), p. 1774 et. seq. Extracts are reprinted in Report to the Committee on Education and Labor, 79th Congress, 2nd Session (1946) Senate Committee Print No. 3, at page 151 et seq. (Referred to herein as S. Comm. Print #3).

2/ Interim Report from the Subcommittee on Wartime Health and Education to the Committee on Education and Labor, U. S. Senate, Subcommittee Report No. 3, 78th Congress, 2nd Session (1945).

3/ Hearings before the Committee on Education and Labor, U. S. Senate, 79th Congress, 1st Session (1945) (Referred to herein as S. Hearings).

In May a new version of the Wagner-Murray-Dingell bill was introduced, which for the first time embodied provisions for the construction of hospital and health center facilities. In view of the publication between the Hill-Burton bill and the facilities section of the Wagner-Murray-Dingell bill, there was some question as to whether the Education and Labor Committee would report S. 191 favorably. On September 14, 1945, a subcommittee was appointed to study S. 191 in the light of suggestions which had been made during the public hearings. Working with technical experts from the Public Health Service, the American Hospital Association, and the Social Security Board, this subcommittee rewrote the bill so as to clarify several provisions in the bill and to clarify the division of responsibility between the Surgeon General and the Federal Hospital Council, on the one hand, and on the other, between the Federal Government and the States.

On October 30, 1945, the Senate Education and Labor Committee reported S. 191 favorably. 4/ This report included a minority report by the Committee Chairman, Senator Murray who had agreed, with reservations, to reporting the bill favorably. Senator Murray objected to three features of the bill: (1) The assignment of administrative powers to a part-time Federal Hospital Council; (2) failure to assure Federal aid to neediest communities through the lack of assistance for the maintenance and operation of hospital facilities, and (3) the lack of Federal standards for operation of facilities.

On November 19, 1945, President Truman sent a message to Congress requesting legislation for the adoption of a national health program. 5/ The President in recommending that Congress adopt a comprehensive and modern health program urged Congress to "provide financial and other assistance for the construction of needed hospitals, health centers, and other medical, health and rehabilitation facilities."

A new Wagner-Murray-Dingell bill was now introduced, which omitted the hospital and health facilities provisions. On December 10th and 11th the Senate debated the bill and amendments offered by Senators Murray and Wagner. On December 11, 1945, the Senate passed S. 191 unanimously. The bill as passed by the Senate was the same as reported by the Senate Committee, with the exception of one amendment suggested by Senator Murray permitting a higher ceiling for public health centers in sparsely settled States.

Several bills, identical with S. 191, had been introduced in the House and referred to the Committee on Interstate and Foreign Commerce. On January 31, 1946, President Truman addressed a letter concerning S. 191 to Congressman Clarence Lea, Chairman of the House Committee on Interstate and Foreign Commerce, to which S. 191 had also been referred. The President objected to two provisions of the bill, namely, the administrative powers of the Federal Hospital Council and court review.

4/ S. Report No. 674, 79th Congress, 1st Session (1945) (Herein referred to as S.R. 674). This report is reprinted in S. Comm. Print #3 pp. 29 et. seq.
5/ S. Comm. Print #3, pp. 1 et seq.

On February 28, 1946, Congressman Priest introduced H. R. 5623, a revised version of S. 191, which incorporated the changes recommended in Senator Murray's minority report and in the President's letter of January 31.

Public hearings were held on S. 191 before the Public Health Subcommittee of the House Committee on Interstate and Foreign Commerce in early March 1946. 6/ On July 13, 1946, the House Committee on Interstate and Foreign Commerce reported S. 191 favorably. 7/ There were several differences between S. 191 as passed by the Senate and as reported by the House Committee. Notably the House Committee substituted for the variable grant for construction a flat grant of 33 1/3 % and changed the professional-consumer representation on the Federal Hospital Council from five-three to four-four.

On July 26, 1946, S. 191 as reported by the House Committee was passed by the House and the Senate requested a conference. On July 29, a conference report was issued 8/ which proposed two changes in the bill as passed by the House, raising the flat grant from 33 1/3% to 40% and changing professional-consumer representation on the Federal Hospital Council from four-four back to five-three.

Congress was preparing to adjourn, a quorum was lacking, and it was impossible to get a unanimous vote in favor of the conference report. The bill was taken back to the Senate, which on August 1 agreed to the amendments as passed by the House.

On August 13, 1946, President Truman signed S. 191, objecting to the two provisions cited in his letter of January 31, namely administrative powers of the Federal Hospital Council and court review. S. 191 became Public Law 725, 79th Congress.

Amendments by the 80th Congress have been noted.

6/ Hearings before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 79th Congress, 2nd Session (1946) (Herein referred to as H. Hearings).

7/ House Report #2519, 79th Congress, 2nd Session (1946) (Herein referred to as H.R. 2519).

8/ Conference Report, House of Representatives Report No. 2697, 79th Congress, 2nd Session, (1946) (Herein referred to as C. R. #2697).

" An Act To amend the Public Health Service Act to authorize grants to the States for surveying their hospitals and public health centers and for planning construction of additional facilities, and to authorize grants to assist in such construction.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Hospital Survey and Construction Act".

Sec. 2. The Public Health Service Act (consisting of titles I to V inclusive, of the Act of July 1, 1944, 58 Stat. 682) is hereby amended by adding at the end thereof the following new title:

"TITLE VI--CONSTRUCTION OF HOSPITALS"

"The bill is not a federal hospital construction bill. The need for a country-wide program of hospital construction has been demonstrated. It remained for the committee to consider and determine the relationship that should exist between the Federal Government and the States in planning and carrying out such a program. The Committee believes that a Federal-aid program of the character set forth in the reported bill, which will supplement State and local funds for planning and carrying out a construction program, but will at the same time encourage the States to assume the responsibility for carrying out the program to the greatest possible extent consistent with a proper check upon expenditure of Federal appropriations, will be most effective in a long-range hospital construction program". S. Report #674, p.7.

"The fact that, without exception, all these witnesses, representing a cross section of America, spoke in favor of the objectives in this bill was in itself extraordinary. Seldom, if ever, have I seen so large a group of witnesses from so widely divergent walks of life so much of one mind on any legislative proposal. While this unanimity of opinion was extraordinary, we do not have to search far to find the reason. We all know that the desirability of a high standard of health is not controversial." Senator Johnston on the floor of the Senate, December 10, 1945, S. Committee Print #3, p. 82.

Statements in support of the bill are contained in numerous places in the hearings, particularly in Senate Hearings pages 101, 119, 125, 138, 165, 166, 197, 201, 227, 228, 256, 267, 290, 318, 356; House Hearings pages 42, 54, 60, 77, 83, 100, 104, 103, 117, 136, 137, 141, 145, 149, 161, 177, 184, 209, 232.

"The American Hospital Association and its members have given much consideration to the need of better distribution of hospital services which are univerally recognized as the finest in the world. We feel that this program for the careful expansion of facilities for rendering that care merits your careful and earnest consideration. As a first step in the improvement of the distribution of hospital and medical care, we urge the prompt and favorable action by this committee on the Hospital Survey and Construction Act as passed by the Senate." House Hearings, page 54.

"The American Medical Association believes that the program provided by S. 191, as passed by the Senate, promises to contribute to improved hospital and medical care in this country, endorses the bill strongly, and offers its every assistance in carrying out the provisions of the measure, should this bill become law." House Hearings, p. 104.

Statements in opposition to the bill may be found in Senate Hearings pages, 266, 313; House Hearings pages 167, 224, 238. The only serious opposition was made by Congressman Cannon, testifying as Chairman of the House Appropriations Committee. The objection raised was that the Federal Government was not in a position to assume additional financial obligations and that the States and local governments could better finance the program. H. Hearings, page 167.

REGULATIONS:

"§ 10.1 Definitions ***

(f) Federal Act. Title VI of the Public Health Service Act, as amended by the Hospital Survey and Construction Act (Public Law 725, 79th Congress, 60 Stat. 1042; 42 U. S. C. Supp. 291 (e) approved August 13, 1946."

"PART A--DECLARATION OF PURPOSE

LAW. "SEC. 601. The purpose of this title is to assist the several States--"(a) to inventory their existing hospitals (as defined in section 631 (e)), to survey the need for construction of hospitals, and to develop programs for construction of such public and other non profit hospitals as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital, clinc, and similar services to all their people; and

"(b) to construct public and other non profit hospitals in accordance with such programs."

I. General purposes of the legislation:

Dr. Smelzer of the American Hospital Association:

"The program has two purposes: First, to inventory existing hospitals and survey the need for additional hospitals and develop programs for the construction of such public and other non profit hospitals as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital, clinic and similar services to all of the people, and second, to construct public and other nonprofit hospitals in accordance with such programs. In other words, the design of this legislation is to develop an integrated system of hospitals and health centers that will make these facilities more readily available to an increased number of people, especially to serve rural or needy areas. The program is thus directly related to the health and welfare of the Nation." H. Hearings, page 43.

Congressman Harris:

"In studying this bill in detail, I have been impressed with the fact that certain broad fundamental principles have been recognized and meticulously preserved. These are: First, that hospitals and other facilities constructed with Federal aid become a part of a long-range planned health program, related to specific health needs as determined by competent local authority, and not as an incident to a public works program or some other purpose not specifically and directly related to health needs as such; second, that States' rights and local initiative be preserved and encouraged as essential to the success of the undertaking: and third, that the voluntary, nonprofit institution is duly recognized for the place it holds in its contribution to the Nation's health". H. Hearings, page 12.

There are numerous other statements relative to the general purposes of the legislation, notably by Senator Hill, co-sponsor of the bill, in the Senate on December 10, 1945, (S. Committee Print No. 3, page 48 et seq.) and S. Hearings, pages 76, 103, 160, 177, 180, 202, 267, 274; H. Hearings, pages 22, 37, 43, 45, 62, 78, 91, 101, 109, 114.

II. Survey and Planning Purpose

This feature of the legislation in addition to being commented upon favorably in most of the foregoing statements, received particular notice and approval. Dr. Mott of the Farm Security Administration.

"The requirement of 'master plans' by each State is also highly desirable. It gives promise of fundamental planning in the whole field of health services and must not be confined to considerations relating only to hospitalized illness. The planning will inevitably affect patterns of service and patterns of training, postgraduate education, and professional practice for many years to come. The various institutions cannot be planned in a vacuum but must be considered in the light of their role in any general health program that may be established, their role as educational institutions promoting the continuous professional growth of their staffs, and their role as real centers of health for all the people they serve. We may hope that many of these centers will come to represent the mobilization of all the health resources in the community, designed to apply the techniques of prevention, diagnosis, and therapy in a coordinated effort to promote positive physical and mental health". (S. Hearings, page 188)

Mr. J. W. Fitcher of the Ohio State Grange:

"We have communities in our State, and I presume it is true in others, which are now wanting to do something about constructing hospitals. One or two counties have voted bond issues for them and it is quite evident, unless there is some plan that is worked out, we are going to have a hodgepodge of hospital facilities, so I think that the

provision in this bill which requires a State agency to make a plan is a wise provision and through that plan it ought to be possible to have a hospital service as suggested in the interim report of your subcommittee, and I should like to endorse that hospital service". S. Hearings, page 169.

Dr. Bachmeyer of the Commission on Hospital Care:

"Too much emphasis cannot be placed upon the importance of a comprehensive and critical analysis of existing hospital facilities in any long-range planning program. It is an activity which requires extensive detailed study of all of the factors which affect both the use and extent of present facilities as well as the possible changes in public appreciation of hospital care, methods of finance, and medical care practice of the community. A study such as is needed would best be made at the State level rather than from a central national office." S. Hearings, page 244.

See also §§ 612 (a) (3) infra, § 623 (a) (4) infra. Note that the State program must be based on a statewide inventory and survey.

REGULATIONS: "§§ 10.72 The State hospital construction program shall be developed in the following manner:

(a) The State Agency shall determine need for hospital facilities of all types and health center facilities by applying the ratios heretofore specified and deducting existing facilities, except those justifying replacement under priority regulations.

(b) The State Agency shall determine through field investigation, and otherwise, the approximate locations within each area at which needed beds or health centers should most appropriately be built.

(c) After having determined hospital and public health center needs, the State Agency shall establish an overall construction program. This program shall set forth all such needs in accordance with the standards specified in §§ 10.12, 10.21, and 10.31 and shall show the relative need for each project included, irrespective of the availability of funds for construction and for maintenance and operation.

(d) The State Agency shall, from time to time, as necessary, but at least annually, review the overall hospital construction program. Annually, at a time fixed by the Surgeon General, the Agency shall submit to him a report, which shall contain such revisions of the construction program, as the Agency considers necessary.

(e) The State Agency shall establish a separate construction schedule on such forms and for such periods as the Surgeon General may prescribe. Insofar as funds are available for construction and for maintenance and operation, construction shall be scheduled in the order of relative need.

"PART B--SURVEYS AND PLANNING"

LAW:

" AUTHORIZATION OF APPROPRIATION"

"SEC. 611. In order to assist the States in carrying out the purposes of Section 601 (a), there is hereby authorized to be appropriated the sum of $3,000,000, to remain available until expended. The sums appropriated under this section shall be used for making payments to States which have submitted, and had approved by the Surgeon General, State applications for funds for carrying out such purposes."

The original bill, and the bill reported by the Senate Committee, authorized an appropriation of 5 million dollars. Since the House Committee had cut the Federal share of survey and planning funds from 50% to 33 1/3% it also cut the authorization to three million dollars. H. Report No. 2519, page 2.

See §§ 613, infra.

REGULATIONS: "§§ 101 Definitions ***

(u) Surgeon General. The Surgeon General of the United States Public Health Service."

"STATE APPLICATIONS"

LAW:

"SEC. 612. (a) To be approved, a State application for funds for carrying out the purposes of section 601 (a) must--

(1) designate a single State agency as the sole agency for carrying out such purposes: Provided, That after a State plan has been approved under section 623, any further survey or programming functions shall be carried out, pursuant to section 623 (a) (10), by the agency designated in accordance with section 623 (a) (1)."

A similar provision was contained in the original bill with the exception of the proviso which was added by the Senate Committee. This additional provision assures continuity of the State administrative powers after approval of the State plan. In the original bill there was no safeguard that the State would continue its survey and planning activities. See S. Hearings, pages 106, 129 and 272. Note the suggestions on pages 129 and 272 that the State Health Department be specifically named in the legislation as the single State agency for carrying out its purposes.

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§§ 10.1 Definitions ***

REGULATIONS: (t) State agency. As the context may require, either the agency designated by the State pursuant to section 612 (a) (1) of the Federal Hospital Survey and Construction Act or the agency designated to administer the State plan pursuant to section 623 (a) (1) of the Federal Act."

§ 612 (a) (2)

"SEC. 612 (a) (2) provide for the designation of a

LAW:

State advisory council which shall include representatives of non-government organizations or groups, and of State agencies, concerned with the operation, construction, or utilization of hospitals, including representatives of the consumers of hospital services selected from among persons familiar with the need for such services in urban or rural areas, to consult with the State agency in carrying out such purposes."

"Second, the application must provide for a State Advisory Council representing construction and use of hospitals, and the need for hospital services. The functions of this council, unlike those of the Federal Hospital Council, are all purely advisory". H. Report No. 2519, page 6.

There was no clear provision in the original bill for consumer representation on the advisory council. This was added by the Senate Committee in the light of commentary at the hearings. S. Hearings, pages 12, 132, 147. See Sec. 623 (a) (3) infra.

Note also the suggestion in S. Hearings, page 233 for the establishment of local advisory councils.

LAW: "SEC. 612 (a) (3) provide for making an inventory and survey in accordance with section 601 (a) containing all information required by the Surgeon General, and for developing a program in accordance with section 601 (a) and with regulations prescribed under section 622; . . ."

Although it was clear in the original bill that one of its purposes was to assist the States in surveying their hospital needs, this provision was not contained in the original bill; it was added by the Senate Committee.

For a complete discussion on the background and activities of the Commission on Hospital Care see the testimony of Dr. Bachmeyer, Director of the Study, S. Hearings, page 238 et seq.

"Too much emphasis cannot be placed upon the importance of a comprehensive and critical analysis of existing hospital facilities in any long-range planning program. It is an activity which requires extensive detailed study of all of the factors which affect both the use and extent of present facilities as well as the possible changes in public appreciation of hospital care, methods of finance, and medical care practice of the community. A study such as is needed would best be made at the State level rather than from a central national office.

Uniform standards of adequacy cannot be established to meet the needs of all areas of the country. Neither can the interrelationships among hospitals in different areas be standardized. Both must be designed to embody local practices and to equate community differences." (S. Hearings, page 244.)

Note also the testimony relative to the North Carolina survey, S. Hearings, pages273 et seq. 282 et seq. The comments on behalf of the American Institute of Architects at page 269 are also of interest. See also H.Hearings, page 63.

Senator Hill, S. Hearings, page 8:

"Several States now have health and hospital surveys in progress or under consideration. Several of these are to be carried on by State health departments. Very few States seem to have any specific appropriation enabling them to hire the necessary technical personnel to do a thorough job. The enactment of this legislation would augment these limited budgets and permit the types of survey necessary upon which to base a future construction program." See also the commentary on the desirability of the survey feature of the legislation, § 601, supra.

§ 612 (a) (4)

LAW:

"SEC. 612 (a) (4) provide that the State agency will make such reports, in such form and containing such information, as the Surgeon General may from time to time reasonably require, and give the Surgeon General, upon demand, access to the records on which such reports are based."

A somewhat similar provision with the omission of the word "reasonably" was contained in the original bill. The language adopted was suggested by the Senate Committee. Identical language is used in § 623 (a) (9) infra.

"SEC. 612 (b) The Surgeon General shall approve any application for funds which complies with the provisions of subsection (a).

LAW:

Under the original bill State applications for funds would have had to comply with such standards as the Surgeon General, with the approval of the Council, might prescribe. The Senate Committee felt it desirable to limit the range of Federal administrative discretion and provided that these functions be carried out in accordance with Regulations. S. Report No. 674, page 8; H. Hearings, page 120.

For a discussion of the practical limitations on the Surgeon General's powers by Congressional Appropriations Committees see S. Hearings, page 85. Note the discussion in the Senate Hearings between Senators Taft and Pepper on the relative Federal-State powers. S. Hearings, page 203. See the commentary § 635, infra, as to the powers of State agencies.

"ALLOTMENTS TO STATES"

LAW:

"SEC. 613 (a) Each State for which a State application under section 612 has been approved shall be entitled to an allotment of such proportion of any appropriation made pursuant to section 611 as its population bears to the population of all the States, and within such allotment it shall be entitled to receive 33 1/3 per centum of its expenditures in carrying out the purposes of section 601 (a) in accordance with its application: Provided, that no such allotment to any State shall be less than $10,000. The Surgeon General shall from time to time estimate the sum to which each State will be entitled under this section, during such ensuing period as he may determine, and shall thereupon certify to the Secretary of the Treasury the amount so estimated, reduced or increased, as the case may be, by any sum by which the Surgeon General finds that his estimate for any prior period was greater or less than the amount to which the State was entitled for such period. The Secretary of the Treasury shall thereupon, prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Surgeon General, the amount so certified.

(b) Any funds paid to a State under this section and not expended for the purposes for which paid shall be repaid to the Treasury of the United States."

(a) The original bill set forth the factors to be used in allotting survey and planning funds, viz, population, financial need and "such other factors as he (Surgeon General) finds relevant." The Senate Committee, however, spelled out a definite formula based solely on population with $10,000 as the minimum allotment.

The variable grant of 25% to 75% originally proposed was changed to a flat 50% grant and provision was made for loans of additional survey and planning funds to the States. The House Committee cut the flat grant to 33 1/3%, deleted the provision for loans and cut the sum authorized to be appropriated from five million to three million. H. Report No. 2519, pages 3, 7.

See § 611 supra. S. Hearings, page 72.

See §§ 624, infra, for construction allotment provisions.

(b) The original bill contained no provision for the repayment of survey and planning funds unexpended by the State. The Senate Committee added this provision.

§ 621

"PART C--CONSTRUCTION OF HOSPITALS AND RELATED FACILITIES"

LAW: "AUTHORIZATION OF APPROPRIATIONS".

"SEC. 621. In order to assist the States in carrying out the purposes of section 601 (b) there is hereby authorized to be appropriated for the fiscal year ending June 30, 1947, and for each of the four succeeding fiscal years, the sum of $75,000,000 for the construction of public and other non profit hospitals; and there are further authorized to be appropriated for such construction the sums provided in section 624. The sums appropriated pursuant to this section shall be used for making payments to States which have submitted, and had approved by the Surgeon General, State plans for carrying out the purposes of section 601 (b); and for making payments to political subdivisions of, public or other non profit agencies in, such States."

The bill, as originally introduced, provided for a program of indefinite duration, $100,000,000, for the first year and, after the first year, set no ceiling on the funds that could appropriated. The bill was reported out of the Senate committee with a limitation of 5 years on the duration of the program and a limit of 75 million dollars per year on funds that might be appropriated. S. Report No. 674, page 8.

In the House Hearings Dr. Boas of the Physician's Forum testified that:

"In the amended Senate bill, the appropriations for the hospital construction program have been cut to $75,000,000 per year for 5 years, an amount that would barely meet one-quarter of the known needs. The provisions of the original bill for $100,000,000 the first year, plus necessary amounts in succeeding years, would be preferable. This is particularly true

since the cost of necessary construction in subsequent years cannot possibly be accurately estimated at the present time, and the needs several years hence are quite unpredictable. Therefore, the less specific provision would be more desirable than the stipulation of a definite sum for future years. At the very least, the sum called for in the bill as it now stands should be doubled to make more of the needed hospital construction possible." (H. Hearings, page 146.)

The Surgeon General's testimony was as follows:

"Dr. Parran:"I would prefer to leave the matter within the discretion of Congress after the first year, and say an initial appropriation of $75,000,000 a year, also to have the bill operate over a 10-year period. If, on the other hand, the Congress wishes to impose a ceiling which--I hope that the ceiling would be lifted after the first year from $75,000,000 to $150,000,000, and that the bill would operate over a 10-year period.

Mr. Brown. That would not give the $2,000,000,000 or $2,500,000,000 that you say is necessary.

Dr. Parran: "That would not, and especially as I think you pointed out, Mr. Brown, in connection with the mental health bill, nobody knows how much a dollar will buy 5 years from now."

Mr. Brown: "That is right."

Dr. Parran: "And that is the reason my first recommendation would be to leave it to Congress from year to year to determine the amounts to be appropriated under the bill after a specific authorization for the first year." (H. Hearings, page 29.)

The rationale for the committee's action may be found in the statement by Dr. Johnson of the American Medical Association.

"Objections to S. 191 have been voiced on the grounds that the appropriations provided are inadequate, calling for the expenditure of 375 millions of dollars by the Federal Government in a 5-year period. This sum may seem small by comparison with the present plant evaluation of existing hospitals registered by the council on medical education and hospitals of the American Medical Association, estimated at 5 billions of dollars, and with the sums planned for merely expanding and improving existing hospitals, conservatively estimated at about 500 millions of dollars, entirely apart from the construction of new hospitals. However, the program under this bill is experimental. It would be unwise to undertake a vast program of hospital construction without the experience and information that will be made available by this experiment.

"Furthermore, a reasonable limitation of funds should stimulate the States to evaluate their hospital needs more carefully and avoidunnecessary construction." (H. Hearings, page 103.)

The Senate Committee recognized the limitation in the bill:

> "It is pointed out that the Federal appropriations for construction authorized in this bill represent approximately 20 percent of the total costs of the hospital and public health facilities estimated by the Surgeon General to be needed. As State surveys are completed and State construction programs approved, it may be necessary for Congress to increase the amount of Federal assistance for construction, either by increasing the authorization ceilings or by extending the time period during which Federal funds may be appropriated for this purpose, or through both methods." (S. Report No. 674, page 6)

Senator Taft in the debate on the bill stated:

> "We have provided a 5-year plan calling for an expenditure of $75,000,000 a year. That will be sufficient to enable the project to be started. It will afford the tremendous advantage of inducing every State to make a comprehensive hospital plan for itself. . . . they will be given an incentive to tie together all the loose ends of the hospital system, to include public and private hospitals, and then to decide whether additional hospitals are needed, and, if so, where. We accomplish that, no matter how large the appropriation may be." S. Committee Print No. 3, page 81.

See §§ 624, infra. For a discussion of the problem of State-matching grants to non profit hospitals, see §§ 631 (g) infra.

Section 2 of P. L. 830, 80th Congress, H. R. 4816 provides:

> "There are hereby authorized to be appropriated for the fiscal year ending June 30, 1948, and for each of the three succeeding fiscal years, such sums as may be necessary to provide increased allotments for the construction of hospitals pursuant to the first sentence of Section 624 of the Public Health Service Act, as amended by the first Section of this act."

LAW: "GENERAL REGULATIONS"

"SEC. 622. Within six months after the enactment of this title, the Surgeon General, with the approval of the Federal Hospital Council and the Administrator, shall by general regulation prescribe . . ."

The subject and scope of Federal regulations were made more explicit in S. 191 as reported by Senate Committee than they had been in the original bill. The result was a more specific delegation of Federal and State responsibility with more power and discretion left to the States. Note that while the original bill provided for Federal grants to the States for administering their construction programs (approved plans), in line with the policy adopted, the provision was omitted when reported out by the Senate Committee. "The Committee took the position that the States should and would be able to handle this feature without Federal aid." S. Report No.674, page 8.

See also S. Hearings, page 145, H. Hearings, page 47, 121. Compare the testimony of Dr. Boas of the Physician's Forum (H. Hearings, page 146) urging that the Surgeon General be given power to establish specific as well as general regulations, with the testimony of T. R. Ogg of the American Farm Bureau Federation (H. Hearings page 121) urging that the State prescribe the regulations with the approval of the Surgeon General.

REGULATIONS: PART 10--GRANTS FOR SURVEY, PLANNING AND CONSTRUCTION OF HOSPITALS

Sections 10.1 to 10.79, inclusive, of this part contain Public Health Service Regulations issued pursuant to the provisions of section 622 of the Public Health Service Act as amended by the Hospital Survey and Construction Act (Public Law 725, 79th Congress) approved August 13, 1946, which added to the act a new Title VI entitled "Construction of Hospitals." Section 622 requires that within six months after enactment of the new title, the Surgeon General shall promulgate regulations prescribing general policies to be followed in setting up and administering State plans for construction of public and other nonprofit hospitals. Regulations issued under this section are subject to the approval of the Federal Hospital Council established by the act and of the Administrator. These regulations were approved by the Federal Hospital Council at a meeting held on November 14, 1946.

"SEC. 622 (a) The number of general hospital beds required to provide adequate hospital services to the people residing in a State, and the general method or methods by which such beds shall be distributed among base areas, intermediate areas, and rural areas. Provided, that for the purposes of this title, the total of such beds for any State shall not exceed four and one half per thousand population, except that in States having less than twelve and more than six persons per square mile the limit shall be five beds per thousand population, and in States having six persons or less per square mile the limit shall be five and one half beds per thousand population; but if, in any area (as defined in the regulations) within the State, there are more beds than required by the standards prescribed by the Surgeon General, the excess over such standards may be eliminated in calculating this maximum allowance.

The Surgeon General at page 61 in the S. Hearings testified:

"Based upon 4.5 general beds per 1,000 people as a reasonable estimate, we find a deficit of 165,000 general beds. 1/ In addition, it is estimated that 66,000 new beds are needed to replace obsolete facilities."

Earlier in the hearings the following is noted:

Senator Hall: "Dr. Smelzer, can you give us a rough idea as to how many beds per thousand will be adequate for hospital facilities in this country?"

Dr. Smelzer: "American Hospital Association, I think the conservative figure is five beds per thousand. I think Dr. Parran has used the figure 4.5 beds per thousand, and other authorities in other places also have a variation of that number, but I think it is the consensus of opinion now that it would require five beds per thousand." (S. Hearings, p. 24) In suggesting the limitations the Committee reported:

"From the testimony of many expert witnesses, your committee concluded that with proper distribution, 4.5 general hospital beds per 1,000 persons should serve as the basis on which Federal aid could be extended under this bill.

1/ "This estimate was reached through a study of date published in the Journal of the American Medical Association, vol. 121, No. 13, March 27, 1943. Estimates of replacement needs were based on the arbitrary assumption that at least 25% of existing facilities are obsolete and should be replaced in areas having less than 4.5 beds per 1,000 population. The estimates given to the subcommittee were based on a ration of 4.5 beds per 1,000 for persons in cities of 10,000 and over, and 3.0 per 1,000 for smaller towns and rural areas. Because of the rapidly growing use of hospitals, present estimates are based on 4.5 beds for all the population as the probable ultimate need."

Your committee therefore set 4.5 general beds per 1,000 persons as the upper limit for Federal aid and further provided that these beds are to be properly distributed among base areas, intermediate areas, and rural areas. In order to prevent inequities in the application of this limiting factor, it is also provided that in States having less than 12 and more than 6 persons per square mile, the upper limit shall be 5 general beds per 1,000 persons and in States having 6 or less persons per square mile the limit shall be 5.5 beds per 1,000 persons. In order that the high ratio of beds in some urban centers may not operate to prevent the furnishing of adequate facilities in other areas of a State, the beds now in excess of the upper limits in these may be disregarded in calculating allowable totals." (Senate Report No. 674, page 4) See also H. Report No. 2519, page 7; House Hearings pages 86, 101. Note however, the statement by E. L. Jones of the Modern Hospital Publishing Co., Inc:

"By experience in handling hundreds of hospital applications to the War Production Board, I am very certain that no one set bed ratio per thousand population standard can be set and adhered to. Such a standard can be set up only as a guidepost and many other factors must be given careful consideration when deciding on the essentiality of a hospital, or health center project. I was able to work out a set of criteria for use in judging projects in the War Production Board which worked out, on the whole, rather satisfactorily. We constantly encountered the problem, however, of certain groups of individuals seizing upon the standard bed ratio of 4½ beds per thousand for urban population and 2 beds per thousand for rural population the only yardstick to use. Attempts to adhere strictly to such a set standard inevitably lead to serious errors. I cite this fact merely to indicate the complexity of the problem." (S. Hearings page 372) For detailed discussions as to the number of beds needed in rural areas see S. Hearings, pages 89, 279, 298.

See § 631 (e) infra, for the definition of "hospital"

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§ 10.1 Definitions. Except as otherwise stated, the following terms shall have the following meanings

REGULATIONS: when used in the regulations in this part:

(a) Area. A logical hospital service area, taking into account such factors as population distribution, natural geographic boundaries, transportation and trade patterns, all parts of which are reasonably accessible to existing or proposed hospital facilities and which

has been designated by the State agency as a base, intermediate, or rural area. Nothing in the regulations in this part shall preclude the formation of any interstate area with the mutual agreement of the States concerned.

(b) Base area. Any area which is so designated by the State agency and has the following characteristics:

(1) Irrespective of the population of the area, it shall contain a teaching hospital or a medical school; this hospital must be suitable for use as a base hospital in a coordinated hospital system within the State; or (2) the area has a total population of at least 100,000 and contains or will contain on completion of the hospital construction program under the State plan at least one general hospital which has a complement of 200 or more beds for general use. This hospital must furnish internships and residencies in two or more specialties and must be suitable for use as a base hospital in a coordinated hospital system within the State.

(c) Intermediate area. Any area so designated by the State agency which: (1) has a total population of at least 25,000 and (2) contains, or will contain on completion of the hospital construction program under the State plan, at least one general hospital which has a complement of 100 or more beds and which would be suitable for use as a district hospital in a coordinated hospital system within the State.

(d) Rural area. Any area so designated by the State agency which constitutes a unit, no part of which has been included in a base or intermediate area.

"SEC. 622 (b) The number of beds required to provide adequate hospital services for tuberculosis patients, mental patients, and chronic-disease patients in a State, and the general method or methods by which such beds shall be distributed throughout the State: Provided, that for the purposes of this title the total number of beds for tuberculous patients shall not exceed two and one-half times the average annual deaths from tuberculosis in the State over the five-year period from 1940 to 1944, inclusive, the total number of beds for mental patients shall not exceed five per thousand population, and the total number of beds for chronic-disease patients shall not exceed two per thousand population.

I. Tuberculosis Beds:

The Surgeon General testified before the Senate Committee:

"It is estimated that 59,550 new beds are required for tuberculosis institutions, and, in addition, it has been found that approximately 16,000 beds are needed to replace obsolete facilities. 2/

See also S. Hearings page 137, S. Report No. 674, page 5.

2/ "This estimate for new beds is made on the basis of 2.5 beds per annual death from tuberculosis as recommended by the sanatorium standards committee of the National Tuberculosis Association. Previous estimates to the subcommittee were based on the old standard of 2 beds per annual death." (S. Hearings, page 61)

II. Mental beds:

The Surgeon General testified before the Senate Committee:

"We find a need for 115,558 new beds in nervous and mental institutions and of 97,000 additional beds for replacement of obsolete facilities. 3/

See also S. Hearings page 118, S. Report No. 674, page 5.

III. Chronic beds:

Dr. Sensenich of the American Medical Association testified:

"Chronic illness of other types, especially the slowly progressing illness of the aged, requires long periods of hospitalization and beds cannot be given over for these patients in hospitals planned for the care of acute illness. The aged person, having suffered a cerebral hemorrhage and paralyzed on one side, may live for years, cannot be permitted to occupy a bed which should be available for the individual with an acute appendix who must be operated and who will be in the hospital for 8 or 10 days, and the mother in childbirth; those are acute cases. Something else should be done with the individual with advanced cancer who is going to live for a considerable period of time, the old nephritic, the old heart case; that is a different category entirely. No doubt this fact will lead to the eventual establishment of more special hospitals for chronic diseases. It costs less to operate. You do not need all of the facilities you need for acute illness. Some units of government must support the indigent in these hospitals. State and local governments may be stimulated to accept their full responsibility.

(S. Hearings, pages 150, 364; See S. Report No. 674, page 6.)

3/ This estimate for new beds is made on the basis of 2.5 beds per annual death from tuberculosis as recommended by the sanatorium standards committee of the National Tuberculosis Association. Previous estimates to the subcommittee were based on the old standard of 2 beds per annual death." (S. Hearings, page 61.)

REGULATIONS:

§ 10.21 Maximum State allowance. The number of beds required to provide adequate hospital services for tuberculous patients, mental patients, and chronic disease patients in any State shall be:

(a) For tuberculous patients, 2.5 times the average annual deaths from tuberculosis in the State over the 5 year period from 1940 to 1944 inclusive;

(b) For mental patients, 5 per thousand population; and

(c) For chronic disease patients, 2 per thousand population.

The count of existing tuberculosis, mental, and chronic disease hospital beds shall include the beds in the hospitals of these respective categories as defined above, and also beds in any general hospital which are specifically assigned for the care of tuberculous, mental and chronic disease patients respectively, except where the beds so assigned in any institution number less than 10 in any category.

§ 10.21 Distribution. Whenever practicable, tuberculosis hospitals receiving grants under the Federal Act shall be built in centers of population and in proximity to general hospitals.

Whenever practicable, mental hospitals receiving grants under the Federal Act shall be located in centers of population and in proximity to general hospitals.

Whenever practicable, chronic disease hospitals shall be built in centers of population and in proximity to general hospitals.

LAW: "SEC. 622 (c) The number of public health centers and the general method of distribution of such centers throughout the State, which for the purposes of this title, shall not exceed one per thirty thousand population, except that in States having less than twelve persons per square mile it shall not exceed one per twenty thousand population.

The bill passed by the Senate permitted a higher ceiling for public health centers in sparsely settled States than originally provided for in the bill reported by the Senate Committee. This amendment was suggested on the floor of the Senate by Senator Murray. See Senate Committee Print No. 3, pages 66, 102. There was also testimony urging 1 health center to 15,000 people (H. Hearings page 151) and one health center to 10,000 people (H. Hearings, page 138)

For testimony as to the background and need for public health centers see Senate Hearings pages 102, 115, 187, 351; H. Hearings pages 87, 141 et. seq. See § 631 (f) infra, for the definition of public health center.

REGULATIONS: § 10.31 Maximum State allowance. The number of public health centers in a State (counting those existing as well as those provided with aid under the act), shall not exceed one per 30,000 State population, except in States having less than 12 persons per square mile the number shall not exceed one per 20,000 population. The following shall be excluded from the count of public health centers:

(a) Existing facilities which the State Agency, after consultation with the State health authority, has determined to be unsuitable for use as public health centers, and

(b) Auxiliary facilities such as laboratories and clinics, whether existing or proposed, and whether they are located within the same structure as the health department office or in a separate structure.

§ 10.32 Distribution. The general method of distribution of public health centers throughout the State shall conform to the plan of organization of local health units within the State. In instances where the State Health Department is not the State Agency designated under section 623 (a) (1) of the Federal Act, the method of distribution shall be determined after consultation with the State health authority.

LAW: "SEC. 622 (d) The general manner in which the State Agency shall determine the priority of projects based on the relative need of different sections of the population and of different areas lacking adequate hospital facilities, giving special consideration to hospitals serving rural communities and areas with relatively small financial resources.

Priority - Generally:

Original bill provided that relative need would be determined in accordance with standards prescribed by the Surgeon General, with the approval of the Council. This provision was changed by the Senate Committee to the language finally adopted. This was in accordance with that Committee's decision that the Surgeon General's functions be carried out in accordance with regulations. Note the following in the Senate Hearings at page 67:

"May I draw Senator Taft's attention to certain language on page 7 of the bill, language which does seem very broad in giving authority. It says the State plan shall "set forth the relative need, determined in accordance with standards prescribed by the Surgeon General with the approval of the Federal Advisory Council".

Senator Ellender. "Yes; but we do not know what those standards are. They are not written in the bill."

Dr. Parran. That is quite right, sir.

Senator Ellender. That is why I was going to suggest to you whether or not it would not be best to have a provision in the bill that the funds shall first be used in a State to build hospital facilities where hospitalization is most needed in the State.

In other words, let us supply hospitalization for the people who cannot now get it because of inability to pay.

Dr. Parran. I should be in favor of having the intent of the Congress made clear on this point."

Dr. Smelzer of the American Health Association in the House Hearings commented:

"However, it seems wise that this act does not attempt to establish rigid standards of relative need. It is impossible now to make any final decision as to exactly what hospital facilities may be necessary to offer adequate service to all of the people and the act permits a changing definition of need to fit circumstances as they may be found. It may well happen that in addition to hospitals serving rural areas, there may be need for the construction of large teaching hospitals to serve these same areas. Such hospitals might establish the key to adequate quality of care in an entire State, and, in addition, function as training centers for physicians, nurses, and other technical workers required to staff outlying hospitals. The definition of need should, therefore, be developed by the State agency in accordance with existing circumstances under the guidance of Federal regulations and standards." H. Hearings, page 50.

Priority - Rural:

In the Senate Committee hearings Dr. Mott of the Farm Security Administration urged priority for rural construction:

"To avoid this possibility of failing to meet rural needs, I believe we need only make certain that absolute priority be given to a consideration of needs. In other words, the language should be so framed that no institution would be constructed in a less needy area before all more needy areas were provided for, merely because the less needy area could assure financial maintenance." (S. Hearings, page 193) See also pages 105, 116, 128, 165, 261, 292.

This priority provision generally met with approval in the House Hearings, see, H. Hearings, pages 118, 120, 191; H. Report No. 2519, page 4.

Priority - New Facilities:

Although priority for new facilities in areas without existing facilities is not spelled out literally in the legislation it is clear that such was the Congressional intention. Father Schwitalla of the Catholic Hospital Association.

"Senator LaFollette. In view of your answer, I will ask you another question, if I may. To what extent do you think it will be possible for the hospitals to meet the needs of rehabilitation?"

Reverend Schwitalla. I am inclined to believe that the hospitals will be able to meet this need, that they will not have to come to the Federal Government for extensive assistance in meeting the accumulated bill, the accrued bill for necessary repairs, rehabilitation, and moderization."

"Senator LaFollette. In other words, the larger proportion of whatever funds are appropriated, should this bill become law, would be devoted to the construction of new facilities?"

"Reverend Schwitalla. To meet the hitherto unmet needs; yes, Senator." (S. Hearings, page 41)

Dr. Mott of the Farm Security Administration:

"It may not be appropriate to outline construction priorities in the bill itself. Perplexing questions, moreover, as to the relative need for such facilities as general or tuberculosis hospital beds are bound to confront administrators and advisory councils. With regard to general hospitals, however, I believe that the first priority in constructing projects in approved State plans should clearly and explicitly be given to medical service areas without any existing institution. Such construction should precede construction which provides simply for replacement of existing institutions or extension on them." (S. Hearings, page 188)

See §§ 623 (a) (5) infra

REGULATIONS: §§ 10.41 Manner of determination. The general manner in which the State Agency shall determine the priority of projects included in the State construction program shall conform with the principles set out in §§ 10.40 to 10.47 inclusive.

§§ 10.42 Balance among categories of facilities. Insofar as practicable, the State Agency shall develop its construction program in relation to the proportionate need for each of the five categories of facilities (general, mental, tuberculosis, chronic, and health centers.)

In determing proportionate needs, consideration shall be given to existing facilities and those under construction without assistance under the Federal Act.

§ 10.43 All categories of facilities; additional facilities as against replacements. Initial installations and additions to existing hospitals and health centers shall be given priority over replacements, except:

(a) Where replacement is of minor character and necessary to the provision of needed additional facilities;

(b) Where, in the case of a hospital, replacement is essential to eliminate an existing needed hospital which constitutes a public hazard;

(c) Where, in the case of a public health center, the State health authority has certified that the existing facility is unsuitable for use as a public health center.

§ 10.44 General hospital category. The relative priority of these projects shall be determined after consideration of the following factors in the order of importance as given:

(a) The relative need for beds in the area (base, intermediate, or rural) in which the project will be located, taking into account the utilization of existing general hospital beds in the area and giving special consideration to projects providing service for persons located in rural communities and areas with relatively

small financial resources;

(b) The extent to which beds will be made available for groups of the population which by reason of race, creed, or color are less adequately served than other groups of the population.

§§ 10.45 Chronic disease category. Priority shall be given to those projects in which the chronic disease facilities will be operated as sub-units of general hospitals.

§§ 10.46 Public health centers. Highest priority in this category shall be given to the provision of facilities for local health units serving rural communities and areas with relatively small financial resources. Where the agency designated to administer the State plan is not the State health authority, the State Agency shall determine the relative priorities to be established after consultation with the State health authority.

§§ 10.47 Size and character. Insofar as practicable and without affecting the priority of hospitals serving rural communities and areas with relatively small financial resources, special consideration shall be given to applications for construction of projects of a size and character consistent with efficient and economical operation.

§§ 10.77 (b) Order of processing applications. The State Agency shall process applications received in the order of priority, except that the State Agency may approve, recommend and forward to the Surgeon General applications out of the order of priority if:

(1) The State Agency has afforded reasonable opportunity for development and presentation of projects in the order of priority, and

(2) If the State Agency certifies to the Surgeon General that financial resources for the construction, maintenance and operation of projects of higher priority are not then available.

The priority of a project under the State plan shall not be affected by the fact that other projects of lower priority have previously been approved and recommended by the State Agency.

LAW: "SEC. 622 (e) General standards of construction and equipment for hospitals of different classes and in different types of location."

The original bill did not contain any requirement for such regulations. It required the State to set forth a construction program in accordance with standards prescribed by the Surgeon General. See §§ 612 (b), 622, supra.

N. H. Cruikshank, testifying on behalf of the A. F. of L. urged, in addition, Federal standards of maintenance and operation:

"The bill as passed by the Senate provided that the Surgeon General should have among others, the responsibility and authority for prescribing general standards of construction and equipment for hospitals of different classes and in different types of locations. In our opinion this provision is greatly improved in H. R. 5628 by providing that the Surgeon General shall also have responsibility for prescribing standards for maintenance and for operation as well as for the construction and equipment of these facilities." (H. Hearings, page 138.)

Dr. Boas of the Physicians' Forum also urged Federal standards of maintenance and operation. H. Hearings, page 146. See also page 172. Senator Murray similarly urged Federal maintenance and operation standards, S. Report No. 674, page 19.

". . . having in mind the underlying purpose of preserving so far as practicable the independence of the States in carrying out their plans, the Senate Committee felt that the Congress should specify general requirements and limit the Federal Government's regulatory control to those requirements." (S. Report No. 674, page 8) The House Committee did not change the provision adopted by the Senate.

Note the statement by W. R. Ogg of the American Farm Bureau Federation at page 299 of the S. Hearings:

"These hospitals and related facilities should be locally owned, locally operated, and locally controlled. Adequate provision should be made for the maintenance of such facilities before grants are approved for construction purposes. Care should be exercised that Federal approval of standards is not utilized for the purpose of maintaining Federal control over such facilities. The allocation of funds to the States should be based upon the needs for such facilities and the financial inability of the States to provide needed facilities." See §§ 623 (a) (7) 635, infra.

REGULATIONS: §§ 10.51 General. Plans and specifications for each project submitted to the Surgeon General for approval under the Federal Act shall be prepared in accordance with the 'General Standards of Construction and Equipment' for hospitals of different classes and in different types of locations as prescribed by the Surgeon General set forth in Appendix A. The Surgeon General may approve plans and specifications which contain deviations from the requirements prescribed, if he is satisfied that the purposes of such requirements have been fulfilled.

The design and construction covered by the plans and specifications must conform with the applicable State and local laws, codes, and ordinances and with the approved State plan. The plans and specifications must be complete and adequate for contract purposes and have the approval and recommendation of the State Agency.

Equipment shall be provided in the kind and to the extent necessary for the proper functioning of the facility as planned.

§§ 10.75Construction standards. The State Agency shall adopt general standards of construction and equipment for the various types of hospitals and health centers assisted under this program. The standards adopted shall not be less than the general standards prescribed by the Surgeon General and set forth in Appendix A.

See "Appendix A - General Standards of Construction and Equipment."

LAW: "SEC. 622 (f) That the State plan shall provide for adequate hospital facilities for the people residing in a State, without discrimination on account of race, creed, or color, and shall provide for adequate hospital facilities for persons unable to pay therefor. Such regulation may require that before approval of any application for a hospital or addition to a hospital is recommended by a State Agency, assurance shall be received by the State from the applicant that (1) such hospital or addition to a hospital will be made available to all persons residing in the territorial area of the applicant, without discrimination on account of race, creed, or color, but an exception shall be made in cases where separate hospital facilities are provided for separate population groups, if the plan makes equitable provision on the basis of need for facilities and services of like quality for each such group; and . . . ."

This provision was not contained in the original bill; it was added by the Senate Committee. S. Report No. 674, page 9.

Mrs. T. W. Johnson, testifying on behalf of Alpha Kappa Alpha Sorority stated:

"The problem of providing adequate hospital and medical care for Negroes, who constitute the largest minority group, is certainly a problem that must be equally emphasized if we are to provide adequately for the total health needs of the country. The Negro in America is cut off from many health benefits by reason of his location or residence in areas of America where there are no health services; or in areas where he is not admitted to such services; or in areas where his low-

income status prohibits the purchase of these services. . . . Our organization asked for certain antidiscriminatory amendments to the Senate bill which were essentially included. In the Senate version of S. 191, page 24, lines 17 through 24, ending with the word 'group', there is a provision on discrimination because of race, creed, or color. The designated purpose for this provision was that this statute would prohibit inequitable distribution of separate facilities because of race, creed, or color. However, we believe that the original intent of this section is not quite clear where the word 'provided' is used in line 21. We should like to change the word 'provided' to 'required by State law.' We should like also to change the word 'shall' in line 20 of that section to 'may'. Even though in a grant-in-aid program which is to be administered and financed partly by a State, State law would obtain, hence, separate hospital facilities would be mandatory and the word 'shall' would probably be correct. However, we prefer the word 'may', which is discretionary rather than mandatory." H. Hearings, pages 185, 186. See also, S. Hearings, page 319.

The legislation and the statements in the Committee reports, S. Report No. 674, page 9, H. Report No. 2519, page 8, were quite explicit as to what the regulations should contain.

REGULATIONS: "§§ 10.61 General. The State plan shall provide for adequate hospital facilities for the people residing in a State without discrimination on account of race, creed, or color and shall provide for adequate hospital facilities for persons unable to pay therefor.

"§§ 10.62 Non-discrimination. Before a construction application is recommended by a State Agency for approval, the State Agency shall obtain assurance from the applicant that the facilities to be built with aid under the Act will be made available without discrimination on account of race, creed, or color to all persons residing in the area to be served by that hospital. However, in any area where separate hospital facilities are provided for separate population groups, the State Agency may waive the requirement of assurance from the construction applicant if (a) it finds that the plan otherwise makes equitable provision on the basis of need for facilities and services of like quality for each such population group in the area, and

(b) such finding is subsequently approved by the Surgeon General. Facilities provided under the Federal Act will be considered as making equitable provision for separate population groups when the facilities to be built for the group less well provided for heretofore are equal to the proportion of such group in the total population of the area, except that the State plan shall not program facilities for a separate population group for construction beyond the level of adequacy for such group."

LAW: "SEC. 622 (f) (2) There will be made available in each such hospital or addition to a hospital a reasonable volume of hospital services to persons unable to pay therefor, but an exception shall be made if such a requirement is not feasible from a financial standpoint."

This provision, added by the Senate Committee was not in the original bill. Senate Report No. 674, page 9.

Note that this is permissive and that the Surgeon General is not required to issue such a regulation. See S. Report No. 674, page 9, H. Report No. 2519, page 8. Some thought was given however to a definite requirement that recipients of Federal funds handle a certain number of indigent patients, S. Hearings, page 190. Note also the testimony of Dr. Boas of the Physicians Forum:

"The provision exempting hospitals from providing services to persons unable to pay, if it is financially impracticable to accept them is unfortunate indeed, since it is these very patients who are most in need of such care throughout the country. It would be highly desirable to remove this condition if at all possible. But should such a condition appear to be financially inevitable, there should at least be an anti-discrimination clause attached to this proviso, for other wise there is the distinct danger that the institutions supplying separate facilities for different population groups might bar the indigent of a minority group only." H. Hearings, page 147.

REGULATIONS: "§§ 10.61 General. The State plan shall provide for adequate hospital facilities for the people residing in a State without discrimination on account of race, creed, or color and shall provide for adequate hospital facilities for persons unable to pay therefor.

"§§ 10.63 Hospital services for persons unable to pay therefor. Before a construction application is recommended by a State Agency for approval, the State Agency shall obtain assurance that the applicant will furnish a reasonable volume of free patient care. As used in this section, 'free patient care' means hospital service offered below cost or free to persons unable to pay therefor, including under 'persons unable to pay therefor,' both the legally indigent and persons who are otherwise self-supporting but are unable to pay the full cost of needed hospital care. Such care may be paid for wholly or partly out of public funds or contributions of individuals and private and charitable organizations such as community chests or may be contributed at the expense of the hospital itself. In determining what constitutes a reasonable volume of free patient care, there shall be considered conditions in the area to be served by the applicant, including the amount of free care that may be available otherwise than through the applicant. The requirement of assurance from the applicant may be waived if the applicant demonstrates to the satisfaction of the State Agency, subject to subsequent approval by the Surgeon General, that furnishing such free patient care is not feasible financially."

LAW:

"SEC. 622 (g) General methods of administration of the plan by the designated State agency, subject to the limitations set forth in section 623 (a) (6) and (8)."

This provision was added by the Senate Committee. Note the statement that the authorization to the Surgeon General for issuing regulations on general methods of administration, "relates soley to administration of the construction program by the State agency, and does not in any way relate to the administration of hospitals constructed under the program." S. Report No. 674, Page 9; see § 62 (a) (6) and 635, infra.

REGULATIONS: See § 10.71 to 10.78 inclusive.

LAW: "State Plans

"SEC. 623. (a) After such regulations have been issued, any State desiring to take advantage of this part may submit a State plan for carrying out the purposes of section 601 (b). Such State plan must . ."

See the commentary on § 601 (b) supra. Note the following discussion between Senator Murray and Dr. Smelzer of the American Hospital Association:

"The Chairman. You provide in the bill, also, to restrict the proposed Federal grant exclusively to States which have submitted and have approved state-wide plans. Do you think that is a wise provision? It may be that in some States there may be opposition to this and they may therefore block the development of the plans. Would it be fair, then, to deprive localities of the right to take advantage of the funds provided under this bill because some group in the State is preventing them from going forward under this plan?

Dr. Smelzer: I think there ought to be some opportunity for appeal there, but I think there must be some safeguard at some level. You cannot, however, whip a State into taking advantage of this act." S. Hearings, Page 31.

LAW: "SEC. 623 (a) (1) designate a single State Agency as the sole agency for the administration of the plan, or designate such agency as the sole agency for supervising the administration of the plan;"

This provision was contained in the original bill.

See §§ 612 (a) (1), supra.

For a discussion as to whether the survey-planning agency and construction agency might be the same, see S. Hearings, pages 106, 129. Also note at pages 129 and 272 the suggestions that the State Health Departments be specifically named in the bill for carrying out its purposes.

REGULATIONS: "§§ 10.1 Definitions . . .

(t) State Agency. As the context may require, either the Agency designated by the State pursuant to section 612 (a) (1) of the Federal Hospital Survey and Construction Act or the agency designated to administer the State plan pursuant to section 623 (a) (1) of the Federal Act."

LAW: "623 (a) (2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) hereof will have authority to carry out such plan in conformity with this part."

This provision was contained in the original bill.

§ 623 (a) (3)

LAW: "SEC: 623 (a) (3) provide for the designation of a State advisory council which shall include representatives of nongovernmental organizations or groups, and of State agencies, concerned with the operation, construction, or utilization of hospitals, including representatives of the consumers of hsopital services selected from among persons familiar with the need for such services in urban or rural areas to consult with the State agency in carrying out such plans."

See § 612 (a) (2) Supra

Functions of State councils are purely advisory, H. Report No. 2519, Page 6. See also H. Hearings, pp. 163, 182.

The original Senate bill did not provide for an advisory council during the construction phase of a State program, although provision was made for such a council (without consumer representation) for the survey and planning stage. The hearings brought out this fact as well as the desirability of consumer representation, S. Hearings, pp. 132, 147.

See Also H. Hearings, pp. 46, 150, 156.

LAW: "SEC. 623 (a) (4) set forth a hospital construction program (A) which is based on a State-wide inventory of existing hospitals and survey of need; (B) which conforms with the regulations prescribed by the Surgeon General under section 622 (a), (b), and (c); (C) which, in the case of a State which has developed a program under part B of this title, conforms to the program so developed except for any modification required in order to comply with regulations prescribed pursuant to section 622 (a), (b), and (c), and except for any modification recommended by the State agency designated pursuant to paragraph (1) of this subsection and approved by the Surgeon General; and (D) which meets the requirements as to lack of discrimation on account of race, creed, or color, and for furnishing needed hospital services to persons unable to pay therefor, required by regulations prescribed under section 622 (f)."

(A) Inventory

Although it was intended that the States would inventory their facilities and survey their needs, the original bill did not contain this specific requirement for developing a hospital construction program. The Senate Committee's revision inserted the provision. See § 601, 612 (a) (3), supra.

(b) Conformance to Regulations. Under the original bill the State's program was to be in accord with standards prescribed by the Surgeon General and be sufficient to provide adequate facilities. Since the Senate Committee provided that the Surgeon General would issue regulations establishing the number of beds required to provide adequate facilities, § 622 supra, it likewise provided that the State in its program would comply with these regulations and plan its facilities accordingly.

(c) Conformance to Program. The original bill contained the provision requiring the State plan to conform to the program developed with the aid of Federal funds for survey and planning, except where modification was required to comply with Federal standards (regulations). The Senate Committee added the second exception, viz., when modification is recommended by the State agency designated to administer the construction program. This second exception thereby assures that the second State agency will have some authority as to the contents of the State plan, the administration of which will be its responsibility.

(d) Meets Requirements. The original bill did not contain the provision which was added by the Senate Committee along with §§ 622 (f) supra.

Coordinated Hospital system: See S. Hearings, pages 49, 91, 165, 252; H. Hearings, pages 15, 50, 110.

REGULATIONS: "§§ 10.1 (e) Coordinated hospital system. An interrelated network of general hospitals throughout a State in which one or more base hospitals provide districts hospitals and the latter in turn provide rural and other small hospitals with such services relative to diagnosis, treatment, medical research and teaching as cannot be provided by the smaller hospitals individually.

"§§ 10.71 General. The State plan shall provide for general methods of administration which are in accord with the principles set out in §§ 10.72 to 10.78, inclusive.

"§§ 10.72 Construction program. The State hospital construction program shall be developed in the following manner:

(a) The State Agency shall determine need for hospital facilities of all types and health center facilities by applying the ratios heretofore specified and deducting existing facilities, except those justifying replacement under priority regulations.

(b) The State Agency shall determine through field investigation, and otherwise, the approximate locations within each area at which needed beds or health centers should most appropriately be built.

(c) After having determined hospital and public health center needs, the State Agency shall establish an overall construction program. This program shall set forth all such needs in accordance with the standards specified in §§10.12, 10.21, and 10.31 and shall show the relative need for each project included, irrespective of the availability of funds for construction and for maintenance and operation.

(d) The State Agency shall, from time to time as necessary, but at least annually, review the overall hospital construction program. Annually, at a time fixed by the Surgeon General, the Agency shall submit to him a report, which shall contain such revisions of the construction program, as the Agency considers necessary.

(e) The State Agency shall establish a separate construction schedule on such forms and for such periods as the Surgeon General may prescribe. Insofar as funds are available for construction and for maintenance and operation, construction shall be scheduled in the order of relative need.

"§10.76 Publicizing the State plan.

(a) Prior to submission of the State plan to the Surgeon General, the State Agency shall publish a general description of the provisions proposed to be included in the State plan and shall give reasonable notice of a public hearing at which all interested persons or

organizations will be given an opportunity to be heard.

(b) After the Surgeon General has approved the State plan, the State Agency shall publish a general description of its provisions in newspapers having general circulation throughout the State and shall make the approved State plan available for examination, upon request, to all interested persons or organizations."

LAW: "SEC. 623 (a) (5) set forth the relative need determined in accordance with the regulations prescribed under section 622 (d) for the several projects included in such programs, and provide for the construction, insofar as financial resources available therefor and for maintenance and operation make possible, in the order of such relative need."

See §622 (d), supra. The original bill contained a similar provision providing that relative need would be determined in accordance with "standards" prescribed by the Surgeon General. See also S. Hearings, page 71, H. Hearings, pp. 50, 63; S. Report No. 674, page 10.

REGULATIONS: "§ 10.41 Manner of determination. The general manner in which the State Agency shall determine the priority of projects included in the State construction program shall conform with the principles set out in §10.40 to 10.47, inclusive.

"§10.42 Balance among categories of facilities. Insofar as practicable, the State Agency shall develop its construction program in relation to the proportionate need for each of the five categories of facilities (General, mental, tuberculosis, chronic, and health centers). In determining proportionate needs, consideration shall be given to existing facilities, and those under construction without assistance under the Federal Act.

"§10.43 All categories of facilities; additional facilities as against replacements. Initial installations and additions

to existing hospitals and health centers shall be given priority over replacements, except:

(a) Where replacement is of minor character and necessary to the provision of needed additional facilities;

(b) Where, in the case of a hospital, replacement is essential to eliminate an existing needed hospital which constitutes a public hazard;

(c) Where, in the case of a public health center, the State health authority has certified that the existing facility is unsuitable for use as a public health center.

"§ 10.44 General hospital category. The relative priority of these projects shall be determined after consideration of the following factors in the order of importance as given:

(a) The relative need for beds in the area (base, intermediate, or rural) in which the project will be located, taking into account the utilization of existing general hospital beds in the area and giving special consideration to projects providing service for persons located in rural communities and areas with relatively small financial resources.

(b) The extent to which beds will be made available for groups of the population which by reason of race, creed, or color are less adequately served than other groups of the population.

"§§ 10.45 Chronic disease category. Priority shall be given to those projects in which the chronic disease facilities will be operated as sub-units of general hospitals.

"§§ 10.46 Public health centers. Highest priority in this category shall be given to the provision of facilities for local health units serving rural communities and areas with relatively small financial resources. Where the agency designated to administer the State plan is not the State health authority, the State Agency shall determine the relative priorities to be established after consultation with the State health authority.

"§§ 10.47 Size and character. Insofar as practicable and without affecting the priority of hospitals serving rural communities and areas with relatively small financial resources, special consideration shall be given to applications for construction of projects of a size and character consistent with efficient and economical operation."

LAW: "SEC. 623 (a) (6) provide such methods of administration of the State plan, including methods relating to the establishment and maintenance of personnel standards on a merit basis (except that the Surgeon General shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods), as the Surgeon General prescribes by regulation under section 622 (g)."

While the original bill contained a provision for methods of administration, it was silent on the requirements for a merit system. The Senate Committee inserted this requirement which conforms with other Federal grants-in-aid programs. Note that the merit system requirement does not apply to personnel operating hospitals.

See §§ 622 (g), supra.

REGULATIONS: "§§ 10.73 Personnel administration. A system of personnel administration on a merit basis shall be established and maintained with respect to the personnel employed in the administration of the State plan. Such a system shall include provision for:

(a) Impartial administration of the merit system;

(b) Operation on the basis of published rules or regulations;

(c) Classification of all positions on the basis of duties and responsibilities and establishment of qualifications necessary for the satisfactory performance of such duties

and responsibilities;

(d) Establishment of compensation schedules adjusted to the responsibility and difficulty of the work;

(e) Selection of permanent appointees on the basis of examinations so constructed as to provide a genuine test of qualifications and so conducted as to afford all qualifie applicants opportunity to compete;

(f) Advancement on the basis of capacity and meritorious service; and

(g) Tenure of permanent employees.

Substantial compliance with the merit system policies of the Public Health Service as set forth in Appendix B will be deemed to meet the requirements of the regulations in this part."

LAW: "SEC. 623 (a) (7) provide minimum standards (to be fixed in the discretion of the State) for the maintenance and operation of hospitals which receive Federal aid under this part."

Nothing was contained in the original bill on minimum State standards of maintenance and operation. The Senate Committee added this provision. Congressman Priest's H. R. 5628, (revised version of S. 191) provided, in addition, for the establishment of Federal maintenance and operation standards. Note that one of Senate Murray's objectives was the failure of the bill to provide for such Federal standards. S. Report No. 674, page 19, S. Committee Print No. 3, page 100; See the Commentary on § 622, (e) supra.

In the Senate Hearings the following is noted at page 282:

"Senator Donnell.

You prefer to have these matters of control and maintenance left in local hands?

Mr. Reynolds (N.C. State Health Officer) North Carolina would make decisions as to its plans and then the plan would be submitted to the Surgeon General for approval.

Senator Donnell.

I am talking about the maintenance after the hospital is constructed. Would you rather have the actual control of the maintenance and operation of the hospital left to the State?

Dr. Reynolds.

Absolutely." In the H. Hearings Dr. Smelzer of the American Hospital Association noted:

"The danger of excessive Federal dictation is avoided by careful definition of the areas within which the Surgeon General and the Federal hospital council may prescribe standards. These areas have been so established as to assure that the survey and construction programs will be reasonably uniform throughout all of the States that participate in the program and yet they likewise assure that Federal control shall not extend to the operation or direction of those hospitals once they have been constructed. There is a requirement that the participating States shall legislate as to such standards of maintenance and operation, but the act wisely recognizes that this is a State responsibility with which the Federal Government should not interfere. H. Hearings, page 46.

Osteopathy and Minimum Standards:

"The bill as amended by the Committee makes clear that the provision of minimum standards for the maintenance andoperation of hospitals shall be a matter entirely for determination by the respective States. *** Questions such as the place of osteopathy in general hospital service would be determined by State law." S. Report No. 674, page 11.

See the statements by Dr. Johnson of the American Hospital Association H. Hearings, page 103; L. I. Gourley, and Dr. Swope, of the American Osteopathic Association, H. Hearings, pages 179, 183.

REGULATIONS: § 10.75. Construction standards. The State Agency shall adopt general standards of construction and equipment for the various types of hospitals and health centers assisted under this program. The standards adopted shall not be less than the general standards prescribed by the Surgeon General and set forth in Appendix A."

LAW: "SEC 623 (a) (8) provide for affording to every applicant for a construction project an opportunity for hearing before the State agency."

There was no similar provision in the original bill; it was added by the Senate Committee. Note that the bill, as reported by the committee also permitted an applicant to appeal to the U. S. Circuit Court of Appeals. The House Committee deleted such provision. See §632 (b) (1), infra, H. Hearings, pp. 68. 80.

REGULATIONS: "§10.74 Fair Hearings. The State Agency shall establish such rules and regulations as will provide an opportunity for an appeal to and a fair hearing before the State Agency to every applicant for a construction project who is dissatisfied with any action of the State agency regarding its application."

LAW: "Sec. 623 (a) (9) provide that the State agency will make such reports in such form and containing such information as the Surgeon General may from time to time reasonably require, and give the Surgeon General upon demand, access to the records upon which such information is based; and"

A somewhat similar provision, with the word "reasonably" omitted, was contained in the original bill. The language adopted was suggested by the Senate Committee. Identical language is contained in §612 (a) (4). infra.

LAW: "Sec. 623 (a) (10) provide that the State agency will from time to time review its hospital construction program and submit to the Surgeon General any modifications thereof which it considers necessary."

The original bill required the State plan to include provisions for the State Agency's submission of "any necessary modifications" of its construction program. The question as to who would determine that necessity was left to interpretation. As passed by the Senate the requirement refers to modification "which it /the State Agency/ considers necessary".

It was suggested in the hearings that the bill provide for at least an annual review by the States of their construction programs. S. Hearing, p. 258. Note that the Regulations have incorporated this suggestion. See also H. Hearings, pp. 24, 59.

REGULATIONS: "10.72 (d) The State Agency shall, from time to time as necessary, but at least annually review the overall hospital construction program. Annually, at a time fixed by the Surgeon General, the Agency shall submit to him a report, which shall contain such revisions of the construction program, as the Agency considers necesary."

LAW: "Sec. 623 (b) The Surgeon General shall approve any State plan and any modification thereof which complies with the provisions of subsection (a). If any such plan or modification thereof shall have been disapproved by the Surgeon General for failure to comply with subsection (a), the Federal Hospital Council shall, upon request of the State agency, afford it an opportunity for hearing. If such Council determines that the plan or modication complies with the provisions of such subsection, the Surgeon General shall thereupon approve such plan or modication."

The original bill contained only the first sentence. The Senate Committee added the remaining two sentences stating:

"In any case in which the Surgeon General disapproves a plan, the Federal Hospital Council must afford the State Agency an opportunity for hearing, and if the Council determines that the plan complies with such requirements the Surgeon General must approve the plan." S. Report No. 674. p. 10. This was in accord with the Committee's aims to limit administrative discretion (see §612 (b) supra), and increase the powers of the Federal Hospital Council (see §623 (a) supra). See S. Hearings p. 301.

Compare the appellate procedure set up here with that established for construction applications. §632 (b) (1), infra. Dr. Smelzer of the American Hospital Association stated:

"The Federal Hospital council also has a semijudicial function in the approval of State plans for hospital construction; but again, it is exercised from the standpoint of technical wisdom and experience. In the development of this act it was realized that there should be some provision for appeal from possible arbitrary action on the part of a single administrative office in the approval or disapproval of State plans. Yet, because of the technical and complex considerations involved, it seems impracticable to provide an appeal to the court because of the difficulties of familiarizing any court with the problems necessary to proper decision . . .

However, court appeal has been provided in the case of an individual project whose application has been refused by the Surgeon General and in the case of a State whose further funds have been cut off by the Surgeon General for alleged mishandling. In these cases, a clear-cut legal issue can be developed for a court decision upon the basis of the law. But in the approval of State plans, the question is less a matter of legal right that it is of professional wisdom, and this is a matter for experienced judgement. In fairness to all, such an important decision which may affect the welfare of all of the people of the State should not be confided to one individual: some right of appeal from any possible arbitrary one man decision is needed. The Federal Hospital council, with a membership of persons who are authorities in fields pertaining to hospital and health care, and who will be in everyday day contact with the working conditions governing a wise decision, seems to be the appropriate body to hear such an appeal with regard to the approval of the State plan." H. Hearings, p. 48.

LAW: "Sec. 623 (c) No changes in a State plan shall be required within two years after initial approval thereof, or within two years after any change thereafter required therein, by reason of any change in the regulations prescribed pursuant to section 622, except with the consent of the State, or in accordance with further action by Congress."

No similar provision was contained in the original bill. The Senate Committee added the provision in line with its policy of more clearly delineating State and Federal functions and limiting the Surgeon General's powers. See §612 (b), supra, §635 infra.

"...After a State plan has been approved by the Surgeon General, no change in the plan may be required by reasons of changes in the regulations for a period of 2 years, except with the consent of the State or in accordance with action by the Congress. However, this would not prevent modification of the plan by the State agency on its own initiative, but no such modification would be effective unless approved by the Surgeon General in the same manner as the original plan." S. Report No. 674, p. 10.

LAW: "Sec. 623 (d) If any State, prior to July 1, 1948, has not enacted legislation providing that compliance with minimum standards of maintenance and operation shall be required prior to that date (or, at the option of the State, required within such time after enactment of the legislation as the Surgeon General finds reasonable) in the case of hospitals which shall have received Federal aid under this title, such State shall not be entitled to any further allotments under Section 624 until such time as such State has enacted such legislation. Upon enactment of such legislation after July 1, 1948, the prohibition in this subsection against further allotments to such State under this part shall no longer be effective and such State shall, subject to the other requirements of this part, be entitled to allotments under Section 624 for the fiscal year in which such legislation is enacted and for the preceding fiscal year."

The original bill contained no provision such as this. It was added by the Senate Committee:

"The bill as amended by the committee makes clear that the provision of minimum standards for the maintenance and operation of hospitals shall be a matter entirely for determination by the respective States. A provision was included, however, to the effect that each State must, prior to July 1, 1947, enact legislation establishing minimum standards for the maintenance and operation of hospitals which shall have received Federal aid under this bill. Questions such as the place of osteopathy in general hospital services would be determined by State law. Any State which failed to enact such legislation would be deprived of further allotments under the bill." (Senate Report No. 674, p. 11).

The House Committee extended the time to July 1, 1948. House Report No. 2519, p. 9. This section therefore as originally enacted read as follows:

"Sec. 623 (d) If any State, prior to July 1, 1948, has not enacted legislation providing that compliance with minimum standards of maintenance and operation shall be required in the case of hospitals which shall have received Federal aid under this title, such State shall not be entitled to any further allotment under Section 624."

P. L. 723, 80th Congress, H. R. 6339 amended this section.

"ALLOTMENTS TO STATES"

LAW: "SEC. 624. Each State for which a State plan has been approved prior to or during a fiscal year shall be entitled for such year to an allotment of a sum bearing the same ratio to the sums authorized to be appropriated pursuant to section 621 for such year as the product of (a) the population of such State and (b) the square of its allotment percentage (as defined in section 631 (a)) bears to the sum of the corresponding products for all of the States: provided, that no such allotment to any State shall be less than $100,000. But for the purposes of this proviso the term 'State' shall not include the Virgin Islands. The amount of the allotment to a State shall be available, in accordance with the provisions of this part, for payment of 33-1/3 per centum of the cost of approved projects within such State. The Surgeon General shall calculate the allotments to be made under this section and notify the Secretary of the Treasury of the amounts thereof. Sums allotted to a State for a fiscal year for construction 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. Any amount of the sums authorized to be appropriated for a fiscal year which is not appropriated for such year, or which is not allotted in such year by reason of the failure of any State or States to have plans approved under this part, and any amount allotted to a State but remaining unobligated at the end of the period for which it is available to such State, is hereby authorized to be appropriated.

for the next fiscal year in addition to the sum otherwise authorized under section 621."

I. Extent of Federal Participation:

The original bill provided for a sliding scale of grants, in which the Federal contribution ranged from 25% in the wealthiest State, to 75% in the poorest State. The Surgeon General in the S. Hearings, p. 73, stated:

"In that connection, it has been suggested that the Federal percentage extends between limits which are too wide; that is 25 to 75 per cent. ...the Surgeon General fixes the Federal percentage on the basis of the States' relative financial needs." See also S. Hearings, pages 20, 29, 74, 75, 93, 159.

Consistent with the Senate Committee's efforts to narrow the range of Federal Administrative discretion, the Committee undertook "to incorporate in its amendment an allotment procedure which leaves no administrative discretion in its application." S. Report No. 674, p. 11. (See discussion in part II below, on determination of State's allotment.) The Committee also raised the minimum partici ation from 25 to 33-1/3 percent. The variable Federal percentage however was changed by the House Committee to a flat grant of 33-1/3%. H. Report No. 2519, pages 3, 10. The Conference Report, which was never adopted, proposed raising the flat grant to 40%. Conference Report, p. 13. See §621, supra, for a discussion of the overall limit of Federal participation.

II. Determination of State's Allotment

The original bill set forth three factors for determining the allotment of construction funds to the States. Dr. Smelzer of the American Hospital Association stated:

"This bill provides for the allotment of funds for consturction to the States on the basis of three factors: (a) the population, (b) financial need of the respective States, and (c) in the case of allotments for construction of hospitals, the relative need for such construction. The allotment having been determined, the State matches Federal funds on a percentage basis, varying between 25 percent by the poorest States and 75 percent by the walthiest State. The variation within the range of these percentages is determined for the several States on the basis of their relative financial need which we understand is a mathematically measurable factor." (S. Hearings, p. 13). See also S. Hearings. p. 29.

However, "The Committee was of the opinion that relative need for construction, as such, should not be used as an allotment factor, since no statutory definition of such need appears practicable in advance of the detailed surveys." S. Report No. 674, p. 11. The Committee than proceeded to spell out the formula:

"For each State there would be determined by statutory formula (sec. 631 (a)) a Federal percentage, which would be utilized as a factor in determining the allotments as among the States (sec. 624), and also to fix the proportion of the cost of individual projects in the respective States which would be paid from Federal funds. (Sec. 625 (b)). This Federal percentage which would be redetermined every 2 years (sec. 631 (b)), is such that the non-Federal share of project costs would vary in proportion to the per capita income of the State, but with upper and lower limits specified. A State with a per capita income equal to the national average would have a Federal percentage of 50, and would therefore have to furnish from State or local resources, one-half the cost of each construction project within the State. In a State with a per capita income only half of that of the Nation as a whole, the Federal Government would bear 75 percent of the cost of projects, the maximum Federal percentage provided; while in a State with a per capita income one and one-third times the national average the Federal percentage would be 33-1/3, the minimum authorized. For projects in Alaska and Hawaii, the Federal percentage would be 50; for those in Puerto Rico, 75.

"To determine the allotments among the States their populations would be multiplied twice by their respective Federal percentages (i. e., be multiplied by the square of their Federal percentages), and the authorized appropriations would be divided in proportion to the populations weighed in this manner. This would mean that if the States use their entire allotments the total expenditures in the States, from Federal funds and from State and local sources combined, would vary in proportion to population and (within the specified limits) per capita income; a result which, as stated above, would mean an apportionment roughly adjusted to hospital construction needs." S. Report No. 674, pp. 11, 12.

This formula may be spelled out as follows:

$$\text{STATE'S ALLOTMENT} = \frac{\text{STATE POPULATION} \times (\text{FEDERAL \%})^2 \times \text{AUTHORIZED APPROPRIATION}}{\text{SUM OF POPULATIONS OF ALL STATES WEIGHTED AS ABOVE BY THE SQUARE OF ITS FEDERAL PERCENTAGE}}$$

See §631 (a), infra, for determination of the Federal allotment percentage.

It is noted therefore that, while survey and planning funds are allotted on a straight population basis, the formula for allotting construction funds takes into consideration the difference in wealth among the States as well as population since the deficit in hospital facilities is greater in States with less financial resources.

"For the Federal per capita amount under the fairly complicated but precise formula set forth in the bill, the Federal funds would vary from 25 cents per capita to approximately $1.00" (Dr. Parran, H. Hearings, p. 30). See Part VI for minimum allotment provision.

III. Availability of Allotment

(a) Necessity for a State Plan

"Allotments are to be made only to those States with approved hospital construction plans. A State may receive an allotment for a fiscal year if its plan has been approved either prior to or during that year." (S. Report No. 674, p. 12.) See §623 (a) supra.

(b) Two-year provision

"The Committee amendment provides that money allotted to a State for a fiscal year shall be available to it for that and the succeeding year. The amendment provides that if funds allotted to a State should lapse, or if in any year the appropriations or the allotments should be less than the authorized amount, any such residue of funds appropriated or of funds authorized but not appropriated is to be added to the following year's authorization and to be subject to reappropriation or appropriation for the purposes of the program." (S. Report No. 674, p. 12.)

Survey and Planning Allotments, See §611, supra.

IV. State Matching of Federal Funds

No provision was contained in the original or final bill for the matching of Federal funds on the part of the States. It was however, a problem considered in the hearings and by the Senate Committee. Dr. Eliot of the Childrens' Bureau testified:

"As the bill is now written, the State is not required to participate financially. Unless State funds are available to pay part of the construction costs when necessary, hospitals and health centers will be constructed only where the locality is able to provide the full amount that must be put up to match the Federal grant." (S. Hearings, p. 130).

Dr. Mott of the Farm Security Administration stated:

"It would be unfortunate if this bill were not modified to require financial participation by the States, as is done under the public assistance titles of the Social Security Act. Such participation seems almost essential if needy rural communities are to get necessary facilities." S. Hearings, p. 189.

Mr. Russell Smith of the National Farmers' Union stated:

"We believe, moreover, that such appropriations ought to follow the matching principle instead of following the grant-in-aid principle of the hospital program herein authorized, but we believe that the very sharp inequalities in financial competence as between States make it desirable that the Federal contribution should be 60 percent and that of the States 40 percent." (S. Hearings, p. 258. See also S. Hearings, pages 107, 299)

The Senate Committee, however, in its report at p. 6 stated:

"Although the Committee endorses the principle of State supplementation of Federal funds in order to assure facilities for the neediest

areas, no solution could be found which would be both workable and at the same time compatible with the objectives and intent of this legislation. For this reason, the Committee decided against any express requirement at this time that the State Government contribute to any local project."

V. Allotments for Administrative Expenses

The original bill provided for Federal grants to the States for the administration of their construction programs. Mr. W. H. Ogg of the American Farm Bureau Federation, in his testimony raised a question as to the amount of funds:

"During the first year, $5,000,000 is provided to assist State agencies in meeting administrative expenses in carrying out State plans under this act; and thereafter, such annual appropriations as may be necessary are authorized. We question the advisability of appropriating this amount of Federal funds to the States for administrative expenses." S. Hearings, p. 299.

However, in line with the philosophy adopted by the Senate Committee of reserving greater power and discretion to the States, the bill when reported out by the Committee omitted the provision for such Federal assistance. "The Committee took the position that the States should and would be able to handle this feature without Federal aid." S. Report No. 674, p. 8.

VI. Minimum Allotment

Section 1 of P. L. 830, 80th Congress, H. R. 4816 added the proviso to the first sentence of §624, providing for a minimum State allotment of $100,000 to all States other than the Virgin Islands.

Section 2 of P. L. 830 further provides:

"There are hereby authorized to be appropriated for the fiscal year ending June 30, 1948, and for each of the three succeeding fiscal years, such sums as may be necessary to provide increased allotments for the construction of hospitals pursuant to the first sentence of Section 624 of the Public Health Service Act, as amended by the first section of this Act."

"APPROVAL OF PROJECTS AND PAYMENTS FOR CONSTRUCTION"

LAW: "SEC 625. (a) For each project for construction pursuant to a State plan approved under this part, there shall be submitted to the Surgeon General through the State agency an application by the State or a political subdivision thereof or by a public or other nonprofit agency. Such application shall set forth (1) a description of the site for such project, (2) plans and specifications therefor in accordance with the regulations prescribed by the Surgeon General under section 622 (e), (3) reasonable assurance that title to such site is or will be vested solely in the applicant, (4) reasonable assurance that adequate financial support will be available for the construction of the project and for its maintenance and operation when completed, and (5) reasonable assurance that the rates of pay for laborers and mechanics engaged in construction of the project will be not less than the prevailing local wage rates for similar work as determined in accordance with Public Law 403 of the Seventy-fourth Congress, approved August 30, 1935, as amended. The Surgeon General shall approve such application if sufficient funds to pay 33-1/3 per centum of the cost of construction of such project are available from the allotment to the State, and if the Surgeon General finds (A) that the application contain such reasonable assurances as to the title, financial support, and payment of prevailing rates of wages,

(B) that the plans and specifications are in accord with the regulations prescribed pursuant to section 622, (C) that the application is in conformity with the State plan approved under section 623 and contains an assurance that the applicant will conform to the applicable requirements of the State plan and of the regulations prescribed pursuant to section 622 (f) regarding the provision of facilities without discrimination on account of race, creed, or color, and for furnishing needed hospital facilities for persons unable to pay therefor, and an assurance that the applicant will conform to State standards for operation and maintenance, and (D) that it has been approved and recommended by the State agency and is entitled to priority over other projects within the State in accordance with the regulations prescribed pursuant to section 622 (d). No application shall be disapproved until the Surgeon General has afforded the State agency an opportunity for a hearing."

I. General

While the original bill contemplated submission of construction applications through the State agency to the Surgeon General, the channelling through the State Agency was not specifically required. The Senate revision made such procedure mandatory. The original bill contained a somewhat similar provision for site description, plans and specifications, title and financial support. The Senate Committee made the requirements more specific and added the prevailing wage requirement. S. Report No. 674, p. 12. Note that it is mandatory for the Surgeon General to approve applications meeting the specified requirements. The Surgeon General under the original bill would have had power "to determine whether or not to approve such project."

II. Maintenance and Operation

See §623 (a) (7) supra.

During the course of the Senate Hearings Senator Taft stated at p. 26:

"We had that question in the last hospital bill and decided it was perfectly foolish to build the hospital unless you were prepared to support it; that, if you cannot support it, either a grant ought not to be made or else we would have to consider possibly Federal aid for the maintenance of a hospital."

W. R. Ogg of the American Farm Bureau Federation noted:

"It is also vitally important to make certain that these newly constructed facilities can be maintained and supported after they are constructed. The language of the bill, therefore, should be clarified and strengthened so as to assure that before any grant is made for constructing or improving local hospital facilities, adequate assurance is given that financial resources will be available for maintenance and operation of these facilities from local resources." S. Hearings, p. 301. See also H. See also H. Hearings, pages 51, 211.

During the hearings considerable attention was given to the problem of maintenance and operation. It was generally recognized that while this bill failed to provide for assistance in maintenance and operation, the problem was nevertheless a serious one and would merit the attention of Congress. One of Senator Murray's objections to the bill was its failure to provide Federal funds for maintenace and operation thus leaving "unresolved the problem of aiding the most needy communities." S. Report No. 674, p. 20. Discussions are to be found in S. Hearings, pp. 63, 79, 83, 130, 149, 151, 192, 264, 284, 320, 377; House Hearings pp. 50, 127, 139, 147, 150, 187, Senate Committee Print No. 3, p. 73.

III. Wage Rates

This requirement was added by the Senate Committee although there was some question whether it should be applied in rural as well as urban areas. See the discussion in S. Hearings, p. 198. Note, however, the statement by W. R. Ogg of the American Farm Bureau Federation in the House Hearings, p. 8:

"We are strongly opposed to the inclusion of the requirement in section 625, that all projects must be given assurances in their applications that prevailing rates of wages will be paid in the construction of such projects, to be determined in accordance with Public Law No. 403, approved August 30, 1935. This provision has no place in such a bill as this. It will hamper and retard this program; add unduly to the cost of construction in rural areas, and should be eliminated. We also strongly favor the inclusion of mandatory provisions for representation of agriculture on the national and State advisory councils."

It should be noted that it is the opinion of some legal authorities that the provisions of the Bacon-Davis and Walsh-Healey Acts would probably extend to the Hospital Survey and Construction Act even if this specific provision were not included in the Act. It was with a view to avoiding any possible misunderstanding on this point, however, that this provision was incorporated in the Act during the hearings on the bill before the Senate Committee.

It is to be noted further that the requirement of the Act is that the wage rates shall not be lower than those prevailing in the community. It is not expected or required, therefore, that the wages paid in remote, rural areas shall be those prevailing in metropolitan areas.

Discrimination and Charitable Care

See §622 (f) supra.

Priority

See §622 (d), 623 (a) (5), supra

REGULATIONS: "10.77 (d) Certification to the Surgeon General. After the State Agency has approved a construction application, it shall recommend it to the Surgeon General for approval and shall certify:

(1) That the application contains reasonable assurance as to title, payment of prevailing rates of wages, and financial support for the non-Federal share of the cost of construction and the entire cost of maintenance and operation when completed;

(i) Availability of funds for the non-Federal share of construction costs shall mean (a) funds immediately available, placed in escrow, or acceptably pledged, or (b) funds or fund sources specifically earmarked in a sum sufficient for that purpose or (c) other

assurances acceptable to the Surgeon General.

(ii) To assure the availability of funds for maintenance and operation, the application for the construction of a new project must include a proposed operating budget, on a form prescribed by the Surgeon General, for the two year period immediately following its completion. In the case of an addition to an existing facility, the application must include a statement showing that funds are or will be available to meet the difference between proposed expenditures and anticipated income from the operation of the constructed addition for the two year period immediately following its completion.

(2) That the plans and specifications are in accord with Appendix A;

(3) That the application is in conformity with the State plan approved by the Surgeon General and contains and assurance that the applicant will conform to the applicable requirements of the plan;

(4) That the application contains an assurance that the applicant will conform to the requirements of §§ 10.61, 10.62, and 10.63 regarding the provsion of facilities without discrimination on account of race, creed, or color, and for furnishing needed hospital facilities for persons unable to pay therefor;

(5) That the application contains an assurance that the

applicant will conform to State standards for operation and maintenance and to all applicable State Laws and State and local codes, regulations, and ordinances;

(6) That the application is entitled to priority over other projects within the State and that in making this determination the State agency has complied with paragraph (b) of this section; and

(7) That the State Agency has approved the application."

LAW:

"Sec. 625 (b) Upon approving an application under this section, the Surgeon General shall certify to the Secretary of Treasury an amount equal to 33-1/3 per centum of the estimated cost of construction of the project and designate the appropriation from which it is to be paid. Such certification shall provide for payment to the State, except that if the State is not authorized by law to make payments to the applicant the certification shall provide for payment direct to the applicant. Upon certification by the State Agency, based upon inspection by it, that work has been performed upon a project or purchases have been made in accordance with the approved plans and specifications, and that payment of an installment is due to the applicant, the Surgeon General shall certify such installment for payment by the Secretary of the Treasury; except that if the Surgeon General after investigation or otherwise, has ground to believe that a default has occurred requiring action pursuant to section 632 (a) he may, upon giving notice of hearing pursuant to such subsection, withhold certification pending action based on such hearing."

---

1 General

This provision, enacted as recommended by the Senate Committee, differs somewhat from the provision proposed in the original bill. The 33-1/3% provision was inserted by the House Committee as a substitute for "Federal percentage."

See §624, supra. Certification under the original bill would have been made "after such inspection and on such conditions" as the Surgeon General shall determine. Note that under 625 (a) supra approval by the Surgeon General is mandatory and that under this subsection certification as to amount is likewise mandatory following application approval.

II. Inspection

The original bill provided for certification "after such inspections and on such conditions designed to assure satisfactory completion of the project as the Surgeon General shall determine." In this connection the Surgeon General was to utilize the services of the Federal Works Agency. The Senate Committee omitted this provision. See H. Hearings. p. 209.

"Under the original bill all inspections would have been made by Federal agencies, but under the bill as reported this function would become primarily a State responsibility, with the Federal Government making only such checks as might be necessary to assure itself that the States were discharging their responsibility or to investigate alleged defaults." S. Report. No. 674, p. 13.

This was consistent with the Senate Committee's policy of delegating additional functions to the States. See §612 (b), 622 supra, 635 infra.

III. Direct Payment to Applicants

This provision was contained in the original bill and was commented upon in the Senate Hearings, p. 107. Note that payments to the States are mandatory except in the situation spelled out in the Act.

REGULATIONS: "§10.78 Requests for construction payments--(a) Certification by State Agency. The State Agency shall certify to the Surgeon General the amount of payments due to an applicant for the cost of work performed and materials and equipment furnished.

Requests for payment under the construction contract shall be submitted in each of three stages, as follows:

(1) The first installment when not less than 25 percent of the work of construction of the building has been completed.

(2) The second installment when the mechanical work has been substantially roughed in, and

(3) The third installment when work under the construction contract is completed and final inspection made.

Requests for payment of the Federal share of other allowable costs such as architect's fee, inspection cost, and cost of equipment shall be included in requests for payments made at one or more of the stages indicated in this paragraph.

All costs that have not been determined at the time the third payment for work performed under the construction contract is requested shall form the basis fof a request for final payment of the Federal share of the entire project.

With consent of the Surgeon General, the State Agency may adopt a different schedule of payments, but in no case shall such payments be less frequent than those scheduled in this paragraph.

(b) Inspection by State Agency. As a basis for certification by the State Agency that payment of an installment is due an applicant, the State Agency, without expense to the Federal government shall make adequate inspections to determine that the work has been performed upon a project or purchases have been made in accordance with the approved plans and specifications."

LAW: "Sec. 625 (c) Amendment of any approved application shall be subject to approval in the same manner as an original application. Certification under subsection (b) may be amended, either upon approval of an amendment of the application or upon revision of the estimated cost of the project. An amended certification may direct that any additional payment be made from the applicable allotment for the fiscal year in which such amended certification is made."

Enacted as set forth in the original bill. See S. Report No. 675, p. 13

REGULATIONS: "§ 10.77 (e) Amendments to application. An amendment to any application approved by the Surgeon General shall be processed in the same manner as an original application, except that the original application's conformity with priority regulations shall suffice for the amendment. Minor changes not provided for under paragraph (c) (7) of this section are not considered amendments."

LAW: "Sec. 625 (d) The funds paid under this section for the construction of an approved shall be used solely for carrying out such project as so approved."

This provision was contained in the original bill.

REGULATIONS: "§§10.79 (b) Construction payments. Where the State may receive Federal funds for applicants for construction project grants, or the State itself is an applicant, adequate records of account and fiscal controls shall be established and maintained by the State to assure proper accounting of all funds received and disbursed. Similar suitable accounts shall be maintained to show the receipt and disbursement of State, local or other funds used for matching purposes.

The State Agency shall require that applicants receiving Federal funds establish and maintain adequate accounting and fiscal records to reflect the receipt and expenditure of funds allotted and paid for construction projects. Separate accounts by source shall be maintained of all funds received for construction projects. These records shall be maintained regardless of whether Federal funds are received through the State Agency or directly from the Federal government.

The State which by law are authorized to make payments to applicants shall promptly pay such applicants funds

certified for payment by the Surgeon General for approved construction projects."

§ 10.78 Requests for construction payments--(a) Certification by State Agency. The State Agency shall certify to the Surgeon General the amount of payments due to an applicant for the cost of work performed and materials and equipment furnished.

Requests for payment under the construction contract shall be submitted in each of three stages, as follows:

(1) The first installment when not less than 25 percent of the work of construction of the building has been completed.

(2) The second installment when the mechanical work has been substantially roughed in, and

(3) The third installment when work under the construction contract is completed and final insnection made.

Requests for payment of the Federal share of other allowable costs such as architect's fee, inspection cost, and cost of equipment shall be included in requests for payments made at one or more of the stages indicated in this paragraph.

All costs that have not been determined at the time the third payment for work performed under the construction contract is requested shall form the basis of a request for final payment of the Federal share of the entire

project.

With the consent of the Surgeon General, the State Agency may adopt a different schedule of payments, but in no case shall such payments be less frequent than those scheduled in this paragraph.

LAW: "Sec. 625 (e) If any hospital for which funds have been paid under this section shall, at any time within twenty years after the completion of construction, (A) be sold or transferred to any person, agency, or organization, (1) which is not qualified to file an application under this section, or (2) which is not approved as a transferee by the State Agency designated pursuant to section 623 (a) (1), or its successor, or (b) cease to be a nonprofit hospital as defined in section 631 (g), the United States shall be entitled to recover from either the transferor or the transferee (or, in the case of a hospital which has ceased to be a nonprofit hospital, from the owners thereof) 33-1/3 per centum of the then value of such hospital, as determined by agreement of the parties or by action brought in the district court of the United States for the district in which such hospital is situated."

No similar provision was contained in the original bill. During the hearings the Senate Committee was urged to incorporate such a provision and did so in its report on the bill. S. Hearings, pp. 132, 189, 357. S. Report No. 674, p. 13.

"Part D--Miscellaneous

"Definitions

"Sec. 631. For the purpose of this title--

LAW: "(a) the allotment percentage for any State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the continental United States (excluding Alaska), except that (1) the allotment percentage shall in no case be more than 75 per centum or less than 33-1/3 per centum, and (2) the allotment percentage for Alaska and Hawaii shall be 50 per centum each, and the allotment percentage for Puerto Rico and the Virgin Islands shall be 75 per centum."

See §624 supra, for determination of States' allotment.

The original bill provided that the allotment percentage (Federal percentage) would be determined by regulation, ranging from 25% to 75% on the basis of the relative financial needs of the States. While not spelled out it was contemplated that such needs would be measured by the per capita income data available from the Department of Commerce. The Senate Committee in its revision was specific in the method of computing the percentage: §631 (b) infra. The formula provided for was as follows:

"For each State there would be determined by statutory formula (sec. 631 (a)) a Federal percentage, which would be utilized as a factor in determining the allotments as among the States (sec. 624), and also to fix the proportion of the cost of individual projects in the respective States which would be paid from Federal funds (sec. 625 (b)). This Federal percentage, which would be redetermined every 2 years (sec. 631 (b)), is such that the non-Federal share of project costs would vary in proportion to the per capita income of the State, but with upper and lower limits specified. A State with a per

capita income equal to the national average would have a Federal percentage of 50, and would therefore have to furnish from State or local sources one-half the cost of each construction project within the State. In a State with a per capita income only half of that of the Nation as a whole, the Federal Government would bear 75 percent of the cost of projects, the maximum Federal percentage provided; while in a State with a per capita income one and one-third times the national average the Federal percentage would be 33-1/3, the minimum authorized. For projects in Alaska and Hawaii, the Federal percentage would be 50; for those in Puerto Rico, 75." S. Report No. 674, p. 11.

It may be spelled out in the following manner:

$$100\% - \frac{50\% \times \text{State average per capita income}}{\text{Average per capita Continental U. S. income}}$$

Note that in the original and approved Senate bills the allotment percentage was also to be used in determining the extent of Federal participation in individual projects. This variable percentage was changed by the House Committee to the flat 33-1/3% of construction costs. H. Report No. 2519, p. 3. §624 supra

The provision with respect to the Virgin Islands was added by P.L. 713, 80th Congress, H.R. 5889.

LAW: "Sec. 631 (b) the allotment percentages shall be promulgated by the Surgeon General between July 1 and August 31 of each even-numbered year, on the basis of the average of the per capita incomes of the States and of the continental United States for the three most recent consecutive years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning July 1 next succeeding such promulgation; Provided, That the Surgeon General shall promulgation shall be conclusive for the fiscal year ending June 30, 1947."

While the original bill provided simply that the allotment percentages would be determined by regulation on the basis of relative financial need, the Senate Committee's revision specifically set forth the basis of measuring such relative need, viz., per capita income figures for the three most recent consecutive years.

Dr. Parran in the House hearings stated:

"The effect of economic status on the distribution of health facilities has been considered in the variable grants provided in this legislation. Only two factors, State population and average per capita income, are used in determining each State's construction allotment. If all State allotment are completely utilized, the result is an increasingly larger per capita total expenditure in the poorer States, where there is the greater need." H. Hearings, p. 16.

LAW: "Sec. 631 (c) the population of the several States shall be determined on the basis of the latest figures certified by the Department of Commerce."

This provision, while not conained in the original bill, was added by the Senate Committee.

REGULATIONS: (c) Population. In computing the population of the State or any area thereof for purposes of the regulations in this part, the State Agency shall use the latest figures of civilian population certified by the Federal Department of Commerce with such adjustments as may be necessary to reflect changing local conditions. Such adjustments shall not result in any increase in the total population of the State over the figures certified by the Department of Commerce."

LAW: "Sec. 631 (d) the term 'State' includes Alaska, Hawaii, Puerto Rico, the Virgin Islands, and the District of Columbia."

This provision contained in the original bill did not include the Virgin Islands. The Virgin Islands were added by P. L. 713, 80th Congress, H. R. 5889.

LAW: "Sec. 631 (e) the term 'hospital' (except as used in section 622 (a) and (b)) includes public health centers and general tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, out-patient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals, but does not include any hospital furnishing primarily domiciliary care."

With the exception of the parenthetical clause the definition is identical with the one contained in the original bill. During the Senate hearings Dr. Atwater of the A.P.H.A. stated:

"The modern hospital, as you gentlemen well know, already is something far beyond a structure of bricks and mortar, containing a given number of beds for occupancy by sick people. It represents a combination of facilities and staff that serves the dual purpose of caring for patients and training personnel. Moreover, it is a nucleus or organization for medical service. Under a new concept, as defined in S. 191, the hospital and health center combined seems destined to become the nucleus for public health organizations as well." S. Hearings, p.104. During the course of the House hearings, Dr. Parran urged broadening the definition to include office space for physicians and dentists, particularly veterans. H. Hearings, p. 33. William P. MacCracken, Jr. of the American Optometric Association requested the inclusion of optometric services. H. Hearings, p.203.

REGULATIONS: "§ 10.1 (f) Hospital. Public health centers and general, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, out-patient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals, but not institutions furnishing

primarily domiciliary care. The term "hospital" except as applied generally to include public health centers, shall be restricted to institutions providing community service for in-patient medical or surgical care of the sick or injured; this includes obstetrics. It shall exclude Federal hospitals and institutions found to constitute a public hazard.

(g) Allied special hospital. Cardiac, eye-ear-nose-throat isolation, maternity, children's orthopedic, and skin and cancer, as well as other hospitals providing similar specialized types of care commonly given in general hospitals. The term excludes mental, tuberculosis, and chronic disease hospitals.

(h) Chronic disease hospital. A hospital, the primary purpose of which is medical treatment of chronic illness, including the degenerative diseases, and which furnishes hospital treatment and care, administered by or under the direction of persons licensed to practice medicine in the State. The term includes such convalescent homes as meet the foregoing qualifications. It excludes tuberculosis and mental hospitals, nursing homes, and also institutions, the primary purpose of which is domiciliary care.

(i) General hospital. Any hospital for in-patient medical or surgical care of acute illness or injury and for obstetrics, of which not more than 50% of the total patient

days during the year are customarily assignable to the following categories of cases: Chronic, convalescent, and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis.

(j) Mental hospital. A hospital for the diagnosis and treatment of nervous and mental illness but excluding institutions for the feeble-minded and epileptics.

(l) Psychopathic hospital. A type of mental hospital where patients may receive intensive treatment and where only a minimum of continued treatment facilities will be afforded.

(m) Tuberculosis hospital. A hospital for the diagnosis and treatment of tuberculosis, excluding preventoria.

(n) Hospital bed. A bed for an adult or child patient. Bassinets for the newborn in a nursery, beds in labor rooms and in health centers, and other beds used exclusively for emergency purposes are not included in this definition."

LAW: "Sec. 631 (f) the term 'public health center' means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers."

In the original bill the term was defined to mean "a pubicly owned facility for the provision of public health services and medical care---." The last three words were omitted in the revision by the Senate Committee.

Note the Surgeon General's statement:

"An important provision in this bill is that for construction of public health centers, the term "health center" is not new in this country but its concept has within recent years undergone substantial change. Just as the modern hospital is essential for diagnosis and treatment of illness, the public health center is necessary as the proper workshop for the modern health department. In addition, particularly in more remote areas, the health center may be the only means of providing needed emergency beds." H. Hearings, p. 22. See also S. Hearings, p. 147; H. Hearings, pp. 33, 37, 86.

"10.1 (p) Public Health Center. A publicly owned facility utilized by a local health unit for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.

(q) Local health unit. A single county, city, county-city, or local district health unit, as well as a State health district unit where the primary function of the State district unit is the direct provision of public health services to the population under its

jurisdiction.

(r) Public health services. Services provided through organized community effort in the endeavor to prevent disease, prolong life, and maintain a high degree of physical and mental efficiency. In addition to the services which the community already provides as a matter of practice, the term shall include such additional services as the community from time to time may deem it desirable to provide."

LAW: "Sec. 631 (g) the term 'nonprofit hospital' means any hospital owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual."

The original bill contained a similar definition except that the words "or may lawfully inure" were omitted. The Senate Committee added these works thus conforming the definition to other Federal Acts such as §101 (6) of the Internal Revenue Code.

Except possibly for war emergency grants under the Lanham Act there was apparently no precedent for Federal grants to nonprofit instituiions. S. Hearings, p. 22. The role and importance of the voluntary nonprofit organization in the hospital system was well developed in the hearings. Dr. Smelzer of the American Hospital Association testified before both Committees:

> "This committee is undoubtedly familiar with the background of the nonprofit community hospital. Organized by the citizens of the the community, these hospitals now render a major portion of the general hospital care to the citizens of this country. Many of these voluntary hospitals are operated by the various churches. Their organization and support results from the finest attitudes in our society. Private charity through these organization endeavors to assist in the healing of all members of society. This bill provides that Federal funds may be granted to nonprofit hospitals and to hospitals owned and operated by subdivision of Government. The voluntary hospitals of this country have played a dominant role in developing improvements in hospital methods and in raising the quality of hospital care for the people of this country. Public hospitals are needed, particularly for the care of mental patients and the tuberculous. However, it is fortunate that in legislation with the broad aims indicated in this bill, provision is made for maintaining the best in our present system of hospital service by making possible grants to both nonprofit and governmental hospitals." S. Hearings, p. 140.

> "But in 1944, 58 percent of the average daily census, that is bed occupancy, of civilian general hospitals, was in nonprofit hospitals, 34 percent was in public institutions, and less than 7 percent in proprietary hospitals. Thus, it appears that a large proportion of general hospital treatment is furnished in nonprofit hospitals. This legislation, in its recognition of nonprofit hospitals

may be said to offer its assistance to that class of instructions which are already carrying the major burden of hospital care." H. Hearings, p. 49; see also p. 66.

Senator Taft gave some consideration to a loan rather than a grant:

"I raise a little question as to whether it should not be in terms of a long-term loan to be paid by the private hospital, a long-term loan at a low rate of interest paid back over 50 years--something of that kind. It seems to me that would be a little more reasonable than an outright public gift to any kind of private hospital. At least, it seems to me a rather radical departure from established practice." S. Hearings p. 22. Elsewhere in the Senate Hearings (pp. 300, 364) there was testimony that public grants be confined to public institutions. The Senate Committee however retained the original provision for grants to nonprofit institutions and added §625 (e) supra, thus protecting the public investment for a 20 year period.

The Congressional sentiment was summarized by Senator Taft during the course of the Senate debate on the bill:

"Mr. Taft. Mr. President, I wish to refer to a matter which I overlooked. The bill, as we have heard, offers Federal aid through the States, under State plans, to private charitable hospitals not operated for profit. That is a departure from some principles. Some of those hospitals are denominational in character; others are purely charitable. Ordinarily I would not be in favor of such a grant; but the hospital situation is peculiar. If we undertake to confine hospital aid to public hospitals, in effect we freeze the present hospital system where it is. It has performed a tremendously helpful service, incidentally relieving the States and cities of enormous expense which they would have had to meet if they had operated the hospitals as general hospitals. I feel that in order to permit that system to continue to grow as it has grown, in order that the private system may grown alongside the public system, we are justified in extending Federal aid to private hospitals as well as to public hospitals, in cases in which the State has surveyed the situation and has approved the construction of a hospital or of an addition to a particular hospital in a certain section. It seems to me that in that event it is perfectly proper that Federal aid be extended to such private hospitals as well as to public hospitals "S. Committee Print No. 3, p. 82."

REGULATIONS: "§10.1 (k) Nonprofit hospital. Any hospital owned and operated by a corporation or association, no part of the net earnings of which is applied, or may lawfully be applied, to the benefit of any private shareholder or individual."

LAW: "Sec. 631 (h) the term 'construction' includes construction of new buildings, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings; including architects' fees, but excluding the cost of off-site improvements and, except with respect to public health centers, the cost of the acquisition of land;"

The original bill and the bill as reported by the Senate Committee included in the definition Landscaping, legal fees and "all other expenses incidental to construction." S. Report No. 674, p. 13. The House Committee, deleted these provisions. H. Report No. 2519, p. 12. The conference Report No. 2697, p. 13, accepted the House changes.

Type of facility eligible:

"Illustrative of corollary facilities which would be eligible for Federal aid would be nurses' home or training facilities, out-patient and laboratory facilities in connection with hospitals, laboratories, and clinics in connection with State or local health departments.

The construction which might be aided financially from Federal funds under this program would include the building of new structures, or the extension, remodeling, or alteration of existing structures, including equipment. There would be no Federal participation in the cost of land." S. Hearings, p.50. Equipment: note the following discussion on the Senate floor:

Mr. Langer: What is the Senator's opinion as to whether, under the provisions of the bill, X-ray machines could be bought?

Mr. Wagner: They could be bought.

Mr. Langer: The Senator believes X-ray machines could be bought. Could beds be bought under its provisions?

Mr. Wagner: Yes.

Mr. Langer: And all the furnishings for a hospital?

Mr. Wagner: Yes.

Mr. Langer: The Senator would call such items a part of the construction cost?

Mr. Wagner: Yes, they would constitute a part of the construction cost.
S. Comm. Print No. 3, p. 96.

LAW: "Sec. 631 (i) the term 'cost of construction' means the amount found by the Surgeon General to be necessary for the construction of a project."

This provision was contained in the original bill.

"Withholding of Certification

LAW:

"Sec. 632 (a) Whenever the Surgeon General, after reasonable notice and opportunity for hearing to the State agency designated in accordance with section 612 (a) (1), finds that the State agency is not complying substantially with the provisions required by section 612 (a) to be contained in its application for funds under part B, or after reasonable notice and opportunity for hearing to the State agency designated in accordance with section 623 (a) (1) finds (1) that the State agency is not complying substantially with the provisions required by section 623 (a), or by regulations prescribed pursuant to section 622, to be contained in its plan submitted under section 623 (a), or (2) that any funds have been diverted from the purposes for which they have been allotted or paid, or (3) that any assurance given in an application filed under section 625 is not being or cannot be carried out, or (4) that there is a substantial failure to carry out plans and specifications approved by the Surgeon General under section 625, the Surgeon General may forthwith notify the Secretary of the Treasury and the State agency that no further certification will be made under part B or part C, as the case may be, or that no further certification will be made for any project or projects designated by the Surgeon General as being affected by the default, as the Surgeon General may determine to be appropriate under the circumstances;

and, except with regard to any project for which the application has already been approved and which is not directly affected by such default, he may withhold further certifications until there is no longer any failure to comply, or, if compliance is impossible, until the State repays or arranges for the repayment of Federal monies which have been diverted or improperly expended.

A somewhat similar provision was contained in the original bill which required the Surgeon General to withhold payments to the States if, after hearing, he found failure to comply with any requirements of a State application for survey and planning funds or of a State plan. Withholding would continue until there was no longer failure to comply. The Senate Committee revised the provision to permit withholding under such circumstances as well as in the event of fund diversion or failure to comply with construction plans and specifications; also that payments to the State or construction applicant might be withheld, as appropriate, and withholding may continue until there is no longer failure to comply or until repayment of Federal funds is arranged.

Note that the bill as reported by Senate Committee gave similar opportunity to a construction applicant for a hearing before the Surgeon General. S. Report No. 674, pp. 13, 14. The House Committee restricted the opportunity to the State. See §632 (b), infra.

LAW: "Sec. 632 (b) (1) If the Surgeon General refuses to approve any application under section 625, the State Agency through which the application was submitted, or if any State is dissatisfied with the Surgeon General's action under subsection (a) of this section, such State may appeal to the United States circuit court of appeals for the circuit in which such State is located. The summons and notice of appeal may be served at any place in the United States. The Surgeon General shall forthwith certify and file in the court the transcript of the proceedings and the record on which he based his action."

The original bill contained no similar appeals provision:

"Senator Smith: It has been suggested that there ought to be some sort of appeal board set up. Have you given consideration to that in the bill?

Dr. Parran: I have not given detailed consideration to such a provision. The way the bill is now written, no individual project can be considered unless it is recommended by the State Agency. It is very likely some testimony may be offered to the committee citing the differences of administration between a large city and State.

Under such circumstances, a city may feel aggrieved. The language at present is that a project may not be considered unless it is recommended by the State Agency.

Then commenting more directly on your question, Senator, it would be entirely feasible, I should think, to put in an appeal mechanism. I see no reason now why I should offer any objection to such provision." S. Hearings, p. 91.

The bill as reported by the Senate Committee permitted a construction applicant as well as a State to appeal to the U. S. Circuit Court of Appeals. S. Report No. 674, p. 14. In his letter of January 31, 1946 to the Chairman of the House Committee, the President

objected to the court review provision. (It was omitted in the House version of the bill, H. R. 5628, introduced by Congressman Priest).

In the House hearings Dr. Parran stated:

"Dr. Parran. I do not object to private citizens being on the committee. I am objecting to the Court of Appeals provision, because I think it is likely to tie up any action for, maybe, for extended periods.

In respect of the objections to the power of the council, I want to be perfectly fair and repeat that I said to the Senate Committee that this is a matter for the Congress to determine. The Surgeon General, I feel, could administer the bill either way. The President has spoken on this score and I support his point of view." H. Hearings, p. 27.

W. H. Cruikshank of the A.F. of L. testified:

"There is one other respect in which we think H. R. 5628 represents an important improvement over the bill as passed by the Senate. I refer to the provision in the Senate bill that any State or locality or private nonprofit organization applying for funds under the terms of the bill and which is not satisfied with the determination of the Surgeon General denying a construction project may appeal to the United States Circuit Court of Appeals. We feel that this would establish a bad precedent in that it would for the first time under a Federal program of grants-in-aid provide for the overruling of an administrative decision on the part of a responsible administrator by the courts. We fear that the practical effect of this provision of the Senate measure would be endless delay and litigation. There are sufficient safeguards in existing law to prevent the misuse or misapplication of funds, and therefore this provision does not appear to us to be necessary." H. Hearings, p. 138. See also H. Hearings, p. 204.

The House Committee restricted to the State the opportunity of appealing to the courts:

"Under this subsection in the bill as passed by the Senate the applicant was given the right to appeal to court if his application was denied by the Surgeon General. Consistent with the change made in section 625 of the proposed new title IV, under which the State Agency alone rather than both the applicant and the State agency must be afforded a hearing before the Surgeon General may disapprove an application, the committee amendment in this subsection gives the right of appeal to the State Agency rather than to the applicant." H. Report No. 2519, p. 13.

In signing S. 191, the President retained his original objection.

LAW: "Sec. 632 (b) (2) The findings of fact by the Surgeon General, unless substantially contrary to the weight of the evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Surgeon General to take further evidence and the Surgeon General may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the transcript and record of the further proceedings. Such new or modified of fact shall likewise be conslusive unless substantially contrary to the weight of the evidence."

"(3) The court shall have jurisdiction to affirm the action of the Surgeon General or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended."

These provisions were added by the Senate Committee, see § 632 (b) (1) supra.

"If any State is dissatisfied with the Surgeon General's action under the withholding provision, or if he refuses to approve an application, there may be an appeal to the United States Circuit of Appeals, which would have jurisdiction to affirm his action or to set it aside, in whole or in part. The hearing in court would be upon the record made before the Surgeon General. The findings of fact by the Surgeon General unless substantially contrary to the weight of the evidence, would be conclusive upon the court. The court would thus be required to accept the administrative findings unless it thought them clearly wrong, but would not be precluded from reexamining them merely because evidence in support of them might be characterized as "substantial." S. Report No. 674, p. 14.

LAW: "Federal Hospital Council; Administration of Title

"Sec. 633. (a) The Surgeon General is authorized to make such administrative regulations and perform such other functions as he finds necessary to carry out the provisions of this title. Any such regulations shall be subject to the approval of the Administrator."

See §622, supra, and §635, infra, for more detailed discussions of the Surgeon General's powers. Note that Administrative regulations, unlike those issued pursuant to §622, do not require the approval of the Federal Hospital Council. Under the bill, as originally introduced, the Surgeon General would have been authorized to "make such regulations and perform such other functions as he finds necessary to carry out the provisions of this title."

LAW:

"Sec. 633 (b) In administering this title, the Surgeon General shall consult with a Federal Hospital Council consisting of the Surgeon General, who shall serve as Chairman ex officio, and eight members appointed by the Administrator. Four of the eight appointed members shall be persons who are outstanding in fields pertaining to hospital and health activities, three of whom shall be authorities in matters relating to the operations of hospitals, and the other four members shall be appointed to represent the consumers of hospital services and shall be persons familiar with the need for hospital services in urban or rural areas. Each appointed member shall hold office for a term of four years, except that any member appointed to fill a vacancy occuring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and the terms of office of the members first taking office shall expire, as designated by the Administrator at the time of appointment, two at the end of the first year, two at the end of the second year, two at the end of the third year, and two at the end of the fourth year after the date of appointment. An appointed member shall not be eligible to serve continuously for more than two terms but shall be eligible for reappointment if he has not served

immediately preceding his reappointment. The council is authorized to appoint such special advisory and technical committees as may be useful in carrying out its functions. Appointed Council members and members of advisory or technical committees, while serving on business of the Council, shall receive compensation at rates fixed by the Administrator, but not exceeding $25 per day, and shall also be entitled to receive an allowance for actual and necessary travel and subsistence expenses while so serving away from their places of residence. The Council shall meet as frequently as the Surgeon General deems necessary, but not less than once each year. Upon request by three or more members, it shall be the duty of the Surgeon General to call a meeting of the Council."

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1. Composition of the Council

The original bill, and the Senate revision both provided for a Council consisting of the Surgeon General as chairman ex-officio and eight members appointed by the Federal Security Administrator. The original provision was for a Federal Advisory Council in which the eight persons were to be outstanding in fields pertaining to hospital and health activities, a majority of whom were to be authorities on hospital operation. The Senate Committee heard considerable testimony on the composition of the Council. S. Hearings, pp. 110, 139, 192, 229, 257, 266, 368.

The bill as revised by the Senate Committee provided for a Federal Hospital Council, of which 3 of the 8 members would be representatives of the consumers of health services and that 3 of the 5 technical members be authorities on hospital operation. The committee also authorized the council to appoint special advisory and technical committees. S. Report No. 674, p. 14.

The Senate rejected Senator Murray's amendment for equal public and professional representation. S. Print No. 3, pp. 66, 70.

The House Committee also heard voluminous testimony as to the Council's composition. House Hearings, pp. 23, 27, 47, 29, 75, 96, 103, 136, 138, 146, 162, 172, 180. The committee changed the representation to 4 professional and 4 consumer representatives retaining the requirement that 3 of the technical members be authorities on hospital operation. H. Report No. 2519, p. 13. The conference Report, which was not adopted proposed a return to the Senate's 5 to 3 representation. C. Report No. 2697, p. 13.

Note the discussion on political affiliation of Council members, S. Hearings p. 141; the advisability of having appointments confirmed by the Senate, S. Hearings, pp. 140, 155; osteopathic representation, H. Hearings, p. 180; and a larger Council of 12 or 16 members, H. Hearings, p. 162.

II. Functions of the Council

Under the original bill the advisory council was given general powers of advising the Surgeon General on the administration of the program including the power of prior approval of standards for carrying out the program. Consistent with changing the designation of the "advisory" council to a "hospital" council, the Senate Committee retained the general powers of advising the Surgeon General, granted power for prior approval of regulations on the formation and administration of State plans and granted power for the conduct of hearings on disapproval of State plans with final authority to approve such plans. See §622, 623 (b), supra. "The name of the Council has been changed from the Federal Advisory Council of the original bill, inasmuch as its functions are not merely advisory." S. Report No. 674, p. 14. The Committee's action was not unanimous; Senator Murrary strenously objected. S. Report No. 674, p. 18.

On the Senate floor Senator Taft attempted to point out that the Council would not exercise administrative powers viz. that in its regulation making functions it acted in a quasi-legislative capacity and in its appeals functions it acted in a quasi-judicial capacity. S. Committee Print No. 3, p. 60. The President's letter of January 31, 1946, to the Chairman of the House Committee objected to the proposed functions of the Council, particularly the power to veto the Surgeon General.

In the light of this background a considerable amount of time was devoted in the House Hearings to functions of the Council. H. Hearings pp. 47, 49, 102, 144, 145, 162, 182, 204, 222. The statement of Dr. Boas of the Physicians Forum at p. 145 best sums up the testimony:

"Most important among these unfortunate provisions is the establishment of the Federal Hospital Council as an administrative

body with power to override the actions of the responsible administrator, the Surgeon General. This part-time council, composed of members who continue with their usual occupations and whose primary allegiance is to associations and groups outside the Federal Government, are given final authority. As Senator Murray has stated, "The proposed council is probably unprecedented. It could make for muddled, inefficient, and even bad administration * * *. Once appointed, they, the council members, are entirely independent both of the Surgeon General and the Administrator. There is no procedure for appeal from the action or inactions of this council * * * which is accountable to nobody, reponsible to nobody. Yet this new kind of independent agency has important administrative duties, quasi-judicial functions, and a veto power over the Surgeon General in * * * carrying out a program that involves granting large sums of money from the Federal Treasury." Such a council thus becomes a semi-autonomous administrative body, which is insultated from the general administration of the statute and inaccessible to control through public opinion. We strongly urge that the council be made only an Advisory Council in the manner suggested by Senator Murray, whereby it would be assured that the council would be consulted, that it would make its views known if it thinks it has been ignored by the Surgeon General and that the President and Congress could be informed of what is happening.

See however, the statement at p. 96 by Dr. Sensenich of the A.M.A.

The House Committee did not change the Council's functions. The President in approving S. 191 retained his original objection.

§633 (c)

LAW: "Sec. 633 (c) In administering the provisions of this title, the Surgeon General, with the approval of the Administrator, is authorized to utilize the services and facilities of any executive department in accordance with an agreement with the head thereof. Payment for such services and facilities shall be made in advance or by way of reimbursement, as may be agreed upon between the Administrator and the head of the executive department furnishing them."

This paragraph was contained in the original bill. See S. Hearings, p. 133.

"Conference of State Agencies

LAW: "Sec. 634. Whenever in his opinion the purposes of this title would be promoted by a conference, the Surgeon General may invite representatives of as many State agencies, designated in accordance with section 612 (a) (1) or section 623 (a) (1), to confer as he deems necessary or proper. Upon the application of five or more of such State agencies, it shall be the duty of the Surgeon General to call a conference of representatives of all State agencies joining in the request. A conference of the representatives of all such State agencies shall be called annually by the Surgeon General."

This paragraph was contained in the original bill.

See the suggestion in H. Hearings, p. 98 that the Federal Hospital Council be included in such meetings.

LAW: "State Control of Operations"

"Sec. 635. Except as otherwise specifically provided, nothing in this title shall be construed as conferring on any Federal Officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any hospital with respect to which any funds have been or may be expended under this title."

The original bill did not contain this paragraph. The Senate was urged to incorporate such a provision into the legislation. See S. Hearings pp 146, 282, 366; S. Report No. 674, p. 15.

Senator Taft on the Senate floor stated:

"Mr. President, in general we have tried, therefore, to throw as much initiative on the States as possible, so as to remove as much discretion as possible from the Federal administrative officials. This job is not primarily an administrative one. We have tried to prescribed in the proposed statute, so far as we could, the rules with which the States must comply, because in the hospital field such rules ar very technical. To some extent we had to delegate to the Federal Hospital Council the power to prescribe standards. We did so, but we ask them to act now, and we refuse to permit them to change the rules for 2 years so that the States may know where they are and may make their plans.

So what we have tried to do is, first, to get away from too much delegation of congressional power to the administrative boards, as some of the social-security laws have done, and also to leave as much discretion and power as possible in the hands of the State governments themselves." S. Committee Print No. 3, p.80

Note, however, that in the House hearings there was some testimony that too much power had been given to the Surgeon General. W. R. Ogg of the American Farm Bureau Federation stated:

"Another principle which we believe is of fundamental importance in such legislation is to foster and preserve the maximum of local initiative and responsibility, and to avoid centralized control. One of the weaknesses in the bill as originally intro-

duced was that it vested too much discretion and control of the program in the Surgeon General. In order to correct this weakness, numerous amendments were agreed to by the Senate. While the bill has been much improved by these amendments, the measure still places too much determinations and too much control in the hands of the Surgeon General, and too little responsibility in the cooperating State agency." H. Hearings, p. 120.

On the other hand General Fleming of the Federal Works Administration felt that applicants for Federal funds should not be required to go through State agencies. H. Hearings, pp. 213, 219. See also §612 (b), supra.

REGULATIONS — See §10.71 to §1079 delineating the functions of the State Agencies.

LAW:

"Sec. 3. Paragraph (2) of section 208 (b) of the Public Health Service Act, as amended, is amended by inserting "(a)" before the words "to assist"; by striking out the word "paragraph" and inserting in lieu thereof the word "clause"; and by striking out the period at the end of such paragraph and inserting in lieu thereof a comma and the following: " and (b) to assist in carrying out the purposes of title VI of this Act, but not more than twenty such officers appointed pursuant to this clause shall hold office at the same time."

"Sec. 4. Section 1 of the Public Health Service Act is amended to read:

"Section 1. Titles I to VI, inclusive, of this Act may be cited as the 'Public Health Service Act.' "

"Sec. 5. The Act of July 1, 1944 (58 Stat. 682), is hereby further amended by changing the number of title VI to title VII and by changing the numbers of sections 601 to 612, inclusive, and references thereto, to sections 701 to 712, respectively.

Approved August 13, 1946."

Sec H. Report No. 2519, p. 14. Section 3 was added by the House Committee in order to enable the Public Health Service to secure a sufficient number of adequately trained officers for the operation of the program.