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Memorandum

TO : Mr. Karl D. Yordy
Assistant Director, Division of
Regional Medical Programs, NIH

DATE: January 8, 1968

FROM : Edward J. Rourke
Assistant General Counsel

SUBJECT: Federal facility participation in regional medical programs--Section 328
and Title IX, PHS Act

attached

Your memorandum of September 28 presents two particular situations included in the regional medical program proposed for the Washington-Alaska area, and raises the question of whether the PHS hospitals involved in these situations may "participate".

As we understand these situations, we would think the PHS hospital participation is authorized by section 328, PHS Act, as recently amended by P. L. 90-174. We do not understand that you presently are seeking advice on whether the authority to make certain grants to Federal agencies as provided by section 507, PHS Act, as recently amended by P. L. 90-31, encompasses grants to such agencies directly under Title IX.^{1/}

Concerning Title IX, we do not construe it as authorizing a grant to another Federal agency. Such authority would be so contrary to the usual process by which Federal agencies receive funds as to call for express provision. It is not an authority to be derived by implication from such terms in Title IX as authorize grants to a "public" agency. In the context of Title IX we do not construe "public" to include Federal hospitals.

On the other hand, we see no legal reason why an eligible grantee, under an approved Title IX operational grant, may not include in his proposal (and budget) activities in which local Federal facilities might be utilized and receive appropriate reimbursement provided the Federal facility on its part is authorized to undertake

^{1/} The extraordinary authority of section 507 for one Federal agency to make grants to another, independent of the appropriation process, needs to be strictly construed. Our current impression is that the authority to "make a research, demonstration or training project grant" does not contemplate a grant under Title IX for regional medical programs directly to a Federal facility.

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the activity and so to utilize the funds provided. If the Federal facility is so authorized, the fact that the funds were originally derived by a grant from a Federal source through an eligible grantee under Title IX does not necessarily present a legal objection. We suggest the difference between a direct grant to a Federal agency on the one hand and its participation on the other in a locally developed operational plan is significant. By this approach for one thing, the integrity of Title IX calling for local community decisions, rather than Federal decisions, as to the use of community resources, including Federal hospitals, is preserved.

Turning to the authority of a PHS hospital to "participate", this authority would seem to be derived most clearly from section 328, PHS Act, as added by P. L. 90-174. You will note that in significant part section 328 authorizes the Secretary (1) to enter into arrangements with other health agencies for cooperative use of PHS facilities and services on a reciprocal or reimbursable basis that will benefit the training or research programs of the participants, and (2) to enter into arrangements with health care facilities for mutual use of "specialized health resources". We would interpret such "resources" to include a medical library, and we understand one of the proposals before you is to build up an existing PHS hospital library so that it will constitute an adequate resource for the entire medical community, not merely for the PHS hospital. We see no legal objection to a grantee's otherwise authorized use of funds granted under Title IX for this purpose under an appropriate agreement between the Secretary on behalf of the PHS hospital and the grantee that comes within the terms of section 328.

We assume comparable arrangements may encompass the other proposal you have for review (evaluation at a PHS hospital of a nursing service checklist developed through the grantee), but we are not clear as to the nature of this project or as to what fund transactions are contemplated. If after consideration of section 328 in the light of this proposal you have any legal questions, we will be glad to consider them.

We suggest the same approach for PHS hospitals can be applied to Veterans Administration or other Federal hospital facilities provided the VA hospital or other such facility has authority comparable to section 328, PHS Act, by which the facility can enter into cooperative arrangements with other health facilities in the community of its location. As to VA hospitals, we have noted the

amendment to its statutes by P. L. 89-785 authorizing certain cooperative community activities. Advice on the interpretation of this provision is, of course, a matter for the legal advisers of the VA.

Mr. Charles Gozonsky
Public Health Division, OS-CC, DHEW

September 28, 1967

Mr. Karl D. Yerdy^{Karl D. Yerdy}
Assistant Director, Division of Regional Medical Programs

Federal Facility Participation in Regional Medical Programs -
Effect of P.L. 90-31

Section 5 of the Mental Health Amendments of 1967 added a new Section 507 to the Public Health Service Act. Thus, appropriations to the Public Health Service available "for research, training, or demonstration project grants" will become available, effective July 1, 1968, to hospitals of the Public Health Service and of the Veterans Administration and other departments on the same terms and conditions as apply to nonfederal institutions.

Questions arise which relate to the extent to which Federal facilities may participate in regional medical programs. There are a number of immediate situations which require consideration. For example, in the operational grant application now under review submitted by the Washington-Alaska Regional Medical Program, two situations may be cited.

1. Among the many proposals submitted is a project relating to standards of nursing care which would develop a methodology for practicing nurses to assess their own performance and identify areas for improvement in nursing care. Obviously, high quality nursing care will extend the lives of patients suffering from heart disease, cancer, or stroke. Development of nursing standards employed in patient care has been under way in the Region. The project proposes to further develop, refine, and test the standards and a checklist. This will be done at University Hospital, following which the checklist will be evaluated in five hospitals in the Seattle-King County area. One of these hospitals is the U.S. Public Health Service Hospital in Seattle. The latter has indicated interest and cooperative support in the project.
2. There is no adequate medical library in Alaska. There is the beginning of such a library located in the Alaska Native Medical Center in Anchorage (Division of Indian Health). This contains some medical journals, periodicals, a few reference books, and a full time librarian. The Washington-Alaska Regional Medical Program proposal would augment the library facilities at the Anchorage hospital

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and thus provide services to the Anchorage area and, indeed, to all of Alaska. The Division of Indian Health would provide at its hospital, space and the services of the librarians. The Washington-Alaska RMP would augment the existing movable equipment by providing additional stacks, counters, etc., as well as books and subscriptions, to professional journals. The concept is endorsed by the Hospital, by the local community hospitals, the Anchorage Medical Society, and others.

It is noted that the applicant for the funds under our program is the School of Medicine at the University of Washington, acting in the capacity of the Washington-Alaska RMP. In neither of the aforementioned situations is there a proposal to make a grant to the Federal facility. From a program standpoint, it is highly desirable that the resources in a given region be utilized to their optimum in the implementation of regional medical program objectives. This should include, for example, greater assumption of community responsibility on the part of VA and PHS facilities. We do not perceive any legal barriers to the types of Federal facility participation in the operational phase of the RMP program as outlined above. However, if, in the future, it would appear desirable for the accomplishment of program objectives to transfer appropriated grants funds to such Federal facilities, a determination would appear appropriate as to whether Section 507 of the Public Health Service Act, as amended, applies to the regional medical program grants appropriation.

CHilsenroth:pma 9/28/67

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