

6. Public hearings in the course of agency review, if requested by one or more persons directly affected by the review. For purposes of this paragraph, a "person directly affected by the review" is as defined in 42 CFR 122.306 (a)(7).

CRITERIA

The specific criteria adopted and utilized by a health systems of this agency to conduct reviews of applications for grants under section 1625 of the Act shall include at least the following:

1. The relationship of the health services of the facility to the applicable health systems plan and annual implementation plan.
2. The relationship of the health services of the facility to the long-range development plan (if any) of the applicant.
3. The need that the population served or to be served by the facility has for the health services of such facility.
4. The availability of alternative, less costly, or more effective methods of providing the health services which the facility provides.
5. The relationship of the health services provided by the facility to the existing health care system of the area.
6. The availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of services by the facility and the availability of alternative uses of such resources for the provision of other health services.
7. The special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service area in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multidisciplinary clinics, and other speciality centers.
8. The special needs and circumstances of health maintenance organizations for which assistance may be provided under title XIII.
9. The costs and methods of the proposed construction or modernization, including the costs and methods of energy provision.
10. The probable impact of the project reviewed on the applicant's costs of providing health services.

Subpart H—Recovery of Grant Funds

AUTHORITY: Secs. 609 and 1622 of the Public Health Service Act as amended 98 Stat. 112 (42 U.S.C. 291i and 300s-1a).

SOURCE: 51 FR 7939, Mar. 7, 1986, unless otherwise noted.

§ 124.701 Applicability.

The provisions of this subpart apply to facilities with respect to which grant funds were paid for construction or modernization—

(a) Under title VI or XVI of the Public Health Service Act; or

(b) Pursuant to the authority of the Secretary under any of the following statutes:

(1) The Public Works Acceleration Act of 1962, Pub. L. 87-658 (42 U.S.C. 2641 *et seq.*);

(2) The District of Columbia Medical Facilities Construction Act of 1968, 82 Stat. 631 (Pub. L. 90-457);

(3) The Appalachian Regional Development Act of 1965, as amended (40 U.S.C. App.).

§ 124.702 Definitions.

As used in this subpart—

Act means the Public Health Service Act.

Department means the Department of Health and Human Services.

Expected useful life means the period of time during which the structure may reasonably be expected to perform the function for which it was designed or intended.

Facility means a facility with respect to which grant funds were paid under any of the authorizations listed in § 124.701.

Fiscal year means the facility's fiscal year.

Nonprofit, as applied to any facility, means a facility that is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

State agency means (1) in the case of a facility with respect to which a grant was made under title VI of the Public Health Service Act or any of the statutes listed in § 124.701(b), the State agency designated pursuant to section 604 of the Public Health Service Act or its successor agency, and (2) in the case of a facility with respect to which a

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grant was made under title XVI of the Public Health Service Act, the State health planning and development agency designated pursuant to title XV of the Public Health Service Act.

Then value means the value of the facility on the date the facility is sold, transferred or ceases to be used for a permissible use as described in §124.704.

§ 124.703 Federal right of recovery.

(a) If any facility is at any time within 20 years after the completion of the grant-assisted construction or modernization sold or transferred to any entity which is either not qualified for a grant under the statute pursuant to which the grant was awarded or not approved as a transferee by the State agency, the United States shall be entitled to recover on the basis of joint and several liability from any transferor, transferee, or successive transferee of the facility an amount determined in accordance with this subpart.

(b) If any facility at any time within 20 years after the completion of the grant-assisted construction or modernization ceases to be a public or other non-profit facility that would have been eligible for a grant under the statute pursuant to which the grant was awarded, the United States shall be entitled to recover from the owners of the facility an amount determined in accordance with this subpart.

§ 124.704 Notification of sale, transfer, or change of use.

(a) The transferor of a facility that is sold or transferred as described in §124.703(a), or the owner of a facility which ceases to be a public or other nonprofit facility as described in §124.703(b), shall provide the Secretary written notice of such sale, transfer, or other change not later than 10 days after the date on which the sale, transfer, or change occurs.

(1) *Transfer.* For purposes of this subpart, a transfer occurs when a facility is conveyed to another entity through lease, merger, bankruptcy, foreclosure, or other arrangement.

(2) *Cease to be.* For purposes of this subpart,

(i) A facility “ceases to be” a facility for which a grant could have been made under the statute pursuant to which

the grant was awarded when it is no longer operated as such a facility; and

(ii) A facility “ceases to be a public or nonprofit facility” when an entity that is not a public or other non-profit corporation or association assumes management responsibilities with respect to the facility which, in the Secretary’s judgment, are so pervasive as to constitute operation of the facility. The manager will not be deemed to be the operator of the facility if the management agreement contains both of the following provisions:

The Board of Directors of the facility retains authority to terminate the agreement at any time upon reasonable notice to the contractor.

No employee of the contractor may be a member of the facility’s Board of Directors.

In the absence of either of these provisions the Secretary will consider the degree of control granted to the managing organization over patient admission, determination of what services will be provided, and charges for services provided in the facility.

(b) *Content of Notice.* The notice required by paragraph (a) of this section shall be sent to the Secretary by certified mail, and shall contain or be accompanied by

(1) The date of the sale, transfer, or other event that gives rise to the notice;

(2) Copies of any sales contracts, lease agreements, management contracts or other documents pertinent to the event giving rise to the notice;

(3) Estimates of current assets, current liabilities, book value of equipment, the expected value of land on the new owner’s books, and the remaining depreciation for all fixed assets involved in the transaction calculated on a straight line basis using commonly adopted expected useful lifetimes.

(c) *Failure to provide notice.* Failure to provide the information required by paragraph (b) of this section, will be considered failure to provide the notice required by this section. In any case in which such information has not been provided, the Secretary will, promptly upon receiving an incomplete notice or otherwise discovering that a sale, transfer or other event giving rise to a recovery may have occurred, send a