

the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such title VI, applicable to assistance under this part for construction and modernization of hospitals and medical facilities, has been issued by the Secretary of Health and Human Services with the approval of the President (45 CFR part 80).

[37 FR 182, Jan. 6, 1972, as amended at 39 FR 31767, Aug. 30, 1974]

§ 53.113 Community service.

(a) *Applicability.* The provisions of this section apply to every applicant which heretofore has given or hereafter will give a community service assurance.

(b) *Definitions.* As used in this section:

(1) The term *community service assurance* means an assurance required by regulations promulgated pursuant to section 603(e)(1) of the Act or the predecessor of that section (section 622(f), Public Health Service Act, enacted by Pub. L. 79-725, 60 Stat. 1041).

(2) The term *facility* has the same meaning as is given it in § 53.111(b)(1).

(3) The term *applicant* has the same meaning as is given it in § 53.111(b)(2).

(4) The term *fiscal year* has the same meaning as is given it in § 53.111(b)(3).

(c) *Assurance.* Before an application under this part is recommended by a State agency to the Secretary for approval, the State agency shall obtain an assurance from the applicant that the facility will furnish a community service.

(d) *Compliance.* In order to comply with its community service assurance an applicant must:

(1)(i) Make the services it furnishes available to the general public, or

(ii) Limit the availability of such services only on the basis of age, medical indigency, or type or kind of medical or mental disability, or

(iii) If the facility constitutes a medical or nursing care unit of a home or other institution, make such home or other institution available in accordance with paragraph (d)(1) (i) or (ii) of this section; *and*

(2)(i) Make arrangements, if eligible to do so, for reimbursement for services with:

(A) Those principal State and local governmental third-party payors which provide reimbursement for services that is not less than the actual cost of such services as determined in accordance with accepted cost accounting principles; and

(B) Those Federal governmental third-party programs, such as Medicare and Medicaid, to the extent that the applicant is entitled to reimbursement at reasonable cost under a formula established in accordance with applicable Federal law.

(ii) Take such additional steps as may be necessary to ensure that admission to and services of the facility will be available to beneficiaries of the governmental programs specified in paragraph (d)(2)(i) of this section without discrimination (or preference) on account of their being such beneficiaries.

(e) *Reports.* The annual statement required by section 646 of the Act and § 53.128(q), a copy of which must be submitted to the State agency in accordance with the requirements of § 53.111(e)(1), shall set forth the amount of the reimbursement received pursuant to each arrangement with a principal governmental third-party payor.

(f) *Evaluation and enforcement.* The State plan shall provide for evaluation and enforcement of the community service assurance in accordance with the following requirements:

(1) The State agency shall,

(i) At least annually, evaluate the compliance of facilities with such assurance; and

(ii) Establish procedures for the investigation of complaints that such assurance is not being complied with.

(2) The State plan shall provide for adequate methods of enforcement of the assurance, including effective sanctions to be applied against any facility which fails to comply with such assurance. Such sanctions may include, but need not be limited to, license revocation, termination of State assistance and court action.

(g) *Reports.* (1) The State agency shall, not less often than annually, report in writing to the Secretary its

§ 53.154

general evaluation of facilities' compliance with the assurance, the disposition of each complaint received by the State agency, proposed remedial action with respect to each facility found by the State agency to be not in compliance with the assurance, and the status of such remedial action.

(2) In addition, the State agency shall promptly report to the Regional Attorney and Regional Health Director of the Department of Health and Human Services the institution of any legal action against a facility or the State agency involving compliance with the assurance.

[39 FR 31767, Aug. 30, 1974, as amended at 42 FR 16780, Mar. 30, 1977]

Subpart M [Reserved]

Subpart N—Loan Guarantees and Direct Loans

§ 53.154 Waiver of right of recovery.

In determining whether there is good cause for waiver of any right of recovery which he may have against a non-profit private agency by reason of any payments made pursuant to a loan guarantee, or against a public agency by reason of the failure of such agency to make payments of principal and interest on a direct loan to such agency, the Secretary shall take into consideration the extent to which:

(a) The facility with respect to which the loan guarantee or direct loan was made will continue to be devoted by the applicant or other owner to use for the purpose for which it was constructed or another public or nonprofit purpose which will promote the purposes of the Act;

(b) There are reasonable assurances that for the remainder of the repayment period of the loan other public or non-profit facilities not previously utilized for the purpose for which the facility was constructed will be so utilized and are substantially equivalent in nature and extent for such purposes; and

(c) Such recovery would seriously curtail the provision of medical services to persons in need of such services in the area.

[37 FR 182, Jan. 6, 1972]

42 CFR Ch. I (10-1-03 Edition)

§ 53.155 Modification of loans.

No official of the Department of Health and Human Services will approve any proposal to modify the terms of a loan guaranteed under title VI of the Public Health Service Act (42 U.S.C. 291 *et seq.*) and this subpart which would permit the use of the guaranteed loan (or the guarantee) as collateral for an issue of tax-exempt securities.

[48 FR 42984, Sept. 21, 1983]

§ 53.156 Fees for modification requests.

(a) Fees will be charged for the processing of requests for parity, and for major and minor modifications of the terms of documents evidencing and securing direct and guaranteed loans. In accordance with the requirements of the User Charge Statute, 31 U.S.C. 9701(b), the Secretary determines the amount of the application fee that must be submitted with each type of modification.

(1) As used in this section, a *request for parity* allows new debt to share lien position (i.e. collateral) with an existing Hill-Burton loan.

(2) As used in this section, a *major modification* is any modification involving the release of \$100,000 or more of collateral; a corporate restructuring that involves a transfer of assets; master indenture requests; modifications to a sinking fund; defeasance requests and requests for additional secured indebtedness; and any, other modification that involves a comparably significant use of Department resources.

(3) As used in this section, a *minor modification* is any modification involving the release of less than \$100,000 of collateral; an easement; and any other modification that involves a comparable use of Department resources.

(b) A request for modification is to be accompanied by a certified check or money order in the amount of the appropriate fee, payable to the U.S. Treasury. The fees for modification requests submitted on or after October 28, 1986 are as follows:

- (1) \$1,500 for a minor modification,
- (2) \$4,500 for a major modification,
- and
- (3) \$5,500 for a request for parity.