
42 C.F.R. § 124.707

Waiver of recovery where facility is sold or transferred to a proprietary entity.

(a) *Conditions of the waiver.* The Secretary may waive the recovery rights of the United States arising under § 124.703(a) if the entity to which the facility was sold or transferred:

- (1) Has filed a written request for the waiver within the time limits prescribed by this section;
- (2) Has established an irrevocable trust in accordance with this section, in an amount equal to the greater of the amount that would otherwise have been recovered pursuant to § 124.705 (including accrued interest as calculated under § 124.706) or twice the cost of the remaining uncompensated services obligation of the facility as of the date of the change of status, that will be used by the entity only to provide services to those unable to pay in accordance with the requirements of subpart F of this part; and
- (3) Has agreed to comply with the community service regulations set out in subpart G of this part.

(b) *Procedures for obtaining waiver.* (1) Within 30 days after the date of receipt of the information described in § 124.704(b), the Secretary will send a letter to the new owner of the facility advising of the United States' right of recovery and the opportunity to obtain a waiver. For the purpose of advising the new owner of the amount to be placed in the irrevocable trust should the owner wish to obtain a waiver, the letter will also state the dollar amount of the remaining uncompensated care obligation and the amount that would be due under § 124.705, computed as follows:

(i) *Computation of uncompensated care obligation.* (A) For a facility which changes status before the date that subpart F of this part is effective for the facility, the remaining uncompensated services obligation is zero.

(B) For a facility which changes status after the date that subpart F of this part is effective for the facility, the Secretary will multiply the annual compliance level, computed under the 10% method specified in 42 CFR 124.503(a)(1)(ii), for the fiscal year in which the change of status occurs times the number of years remaining in the facility's uncompensated services obligation. From this amount, the Secretary will subtract amounts of excess or add amounts of deficit for each fiscal year prior to the change of status for which the Secretary has previously conducted an audit of uncompensated services accounts. Excess and deficits will be adjusted by the percent change in the National Consumer Price Index for Medical Care between the year in which the excess or deficit occurred and the year in which the status change occurred. For each fiscal year prior to the change of status which the Secretary has not audited, the Secretary will add to the remaining obligation an amount equal to the annual compliance level in each such year adjusted by the percent change in the National Consumer Price Index for Medical Care between that year and the year of the status change. The amount computed as the total remaining obligation will then be multiplied by two. If the transferee chooses to accept the Secretary's calculation, no further assessments will be made of uncompensated care provided prior to the change of status date. If the transferee does not accept the calculation, the transferor or transferee may hire, and may charge against the irrevocable trust established under this section, an independent auditor to certify the compliance

level and any excess or deficit for the period from May 18, 1979, up to and including the date of the change of status, using standard Departmental procedures supplemented with instructions provided by the Secretary, and submit the results in accordance with paragraph (b)(2)(ii) of this section. The audit may be conducted for any years *not* included in a previous site assessment conducted by the Department. If the Secretary agrees that a change is appropriate, the Secretary will use this information to adjust the calculation as set out in paragraph (b) (3) of this section. If the independent auditor certifies that qualified care was rendered either at the facility or at a replacement facility operated by the transferee between the date of the change of status and the date of establishment of the trust, and the Secretary agrees, the post transfer level of care shall not affect the calculation of the total remaining uncompensated care obligation to be doubled, but instead shall be recognized as a credit to be drawn from the trust as provided in paragraph (c)(1)(ii) of this section. In the case of a facility with respect to which a grant was made under title XVI of the Act, the remaining period of obligation will be the remainder of the expected useful life of the facility, as follows: 40 years for buildings, 30 years for additions, 20 years for building renovations, 20 years for fixed equipment and 12 years for major movable equipment.

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