
42 C.F.R. § 53.111

Services for persons unable to pay.

(a) *Applicability.* The provisions of this section apply to every applicant which heretofore has given or hereafter will give an assurance that it will make available a reasonable volume of services to persons unable to pay therefor but shall not apply to an applicant (1) for more than 20 years after the completion of construction of any facility with respect to which funds have been paid under section 606 of the Act or (2) beyond the period during which any amount of a direct loan made under sections 610 or 623 of the Act, or any amount of a loan with respect to which a loan guarantee and interest subsidy has been provided under sections 623 and 624 of the Act remains unpaid.

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

(1) The term *facility* includes hospitals, facilities for long-term care, outpatient facilities, rehabilitation facilities, and public health centers;

(2) The term *applicant* means an applicant for, or recipient of, a grant, a loan guarantee or a loan under the Act;

(3) *Fiscal year* means the fiscal year of the applicant;

(4) The term *operating costs* means the actual operating costs of the applicant for a fiscal year as determined in accordance with cost determination principles and requirements under title XVIII of the Social Security Act (42 U.S.C. 1395): *Provided*, That such “operating costs” shall be determined for the applicant's entire facility and for all patients regardless of the source of payment for such care: *And provided further*, That in determining such operating costs there shall be deducted the amount of all actual or estimated reimbursements, as applicable, for services received or to be received pursuant to title XVIII and XIX of the Social Security Act (42 U.S.C. 1395 and 1936);

(5) The term *reasonable cost* means the cost of providing services to a specific patient determined in accordance with the cost determination principles and requirements under title XVIII of the Social Security Act (42 U.S.C. 1395) and subpart D of the regulations thereunder (20 CFR part 405, ^[1] part 401 *et seq.*);

(6) The term *uncompensated services* means services which are made available to persons unable to pay therefor without charge or at a charge which is less than the reasonable cost of such services. The level of such services is measured by the difference between the amount charged such persons for such services and the reasonable cost thereof;

(7) *Reasonable volume of services to persons unable to pay therefor* means a level of uncompensated services which meets a need for such services in the area served by an applicant and which is within the financial ability of such applicant to provide.

(c) *Assurance.* (1) 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 there will be made available in

the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor. The requirement of an assurance from an applicant shall be waived if the applicant demonstrates to the satisfaction of the State agency, subject to subsequent approval by the Secretary, that such a requirement is not feasible from a financial viewpoint.

(2) Prior to recommending that such requirement be waived, the State agency shall publish in a newspaper of general circulation in the area served by the applicant a notice of the request for such waiver and invite public comment thereon, allowing not less than 30 days therefor. All comments received shall be available for public inspection, and shall be considered by the State agency in arriving at its recommendation. Notice of the determination on the request for waiver shall be given to all interested persons and to the public before the approval of the Secretary is sought.

(d) *Presumptive compliance guideline.* An applicant which, for a fiscal year, (1) budgets for the support of, and makes available on request, uncompensated services at a level not less than the lesser of 3 percent of operating costs or 10 percent of all Federal assistance provided to or on behalf of the applicant under the Act, or (2) certifies that it will not exclude any person from admission on the ground that such person is unable to pay for needed services and that it will make available to each person so admitted services provided by the facility without charge or at a charge below reasonable cost which does not exceed any such person's ability to pay therefor as determined in accordance with criteria established pursuant to paragraph (g), shall be deemed in presumptive compliance with its assurance. In the case of a loan guarantee with interest subsidy or a direct loan guarantee be sold by the Secretary with an interest subsidy, the amount of Federal assistance shall include the total amount of the interest subsidy which the Secretary is, or will be, obligated to pay over the full life of the loan, as well as any other payments which the Secretary makes on behalf of the applicant in connection with the loan guarantee or the direct loan which has been sold.

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