

(B) If the opening date is not available, it means the date on which the Secretary approved the final part of the facility's application for assistance under title VI of the Act;

(C) If the date of final approval is not available, it means whatever date the Secretary determines most reasonably approximates the date of final approval.

(2) *Facilities assisted under title XVI.* The provisions of this subpart apply to a facility assisted under title XVI of the Act at all times following the Secretary's approval of the facility's application for assistance under title XVI, except that if the facility does not at the time of that approval provide health services, the assurance applies at all times following the facility's initial provision of health services to patients, as determined by the Secretary.

§ 124.502 Definitions.

As used in this subpart—

(a) *Act* means the Public Health Service Act, as amended.

(b) *Allowable credit* for services provided to a specific patient means the lesser of the facility's usual charge for those services, or the usual charge multiplied by the percentage which the total allowable cost as reported by the facility in the facility's preceding fiscal year under title XVIII of the Social Security Act (42 U.S.C. 1395, *et seq.*) and the implementing regulations (42 CFR part 413) bears to the facility's total patient revenues for the year.

(c) *Applicant* means a person who requests uncompensated services or on whose behalf uncompensated services are requested.

(d) *CPI* means the National Consumer Price Index for medical care.

(e) *Facility* means an entity that received assistance under title VI or XVI of the Act and provided an assurance that it would provide a reasonable volume of services to persons unable to pay for the services.

(f) *Federal assistance* means assistance received by the facility under title VI or title XVI of the Act and any assistance supplementary to that title VI or title XVI assistance received by the facility under any of the following acts: the District of Columbia Medical Facilities Construction Act of 1968, 82

Stat. 631 (Pub. L. 90-457); the Public Works Acceleration Act of 1962 (42 U.S.C. 2641, *et seq.*); the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121, *et seq.*); the Appalachian Regional Development Act of 1965, as amended (40 U.S.C. App.); the Local Public Works Capital Development and Investment Act of 1976 (Pub. L. 94-369). In the case of a loan guaranteed by the Secretary with an interest subsidy, the amount of Federal assistance under title VI or title XVI for a fiscal year is the total amount of the interest subsidy that the Secretary will have paid by the close of that fiscal year, as well as any other payments which the Secretary has made as of the beginning of the fiscal year on behalf of the facility in connection with the loan guarantee or the direct loan which has been sold.

(g) *Fiscal year* means the facility's fiscal year.

(h) *Nursing home* means a facility which received Federal assistance for and operates as a *facility for long-term care* as defined at, as applicable, section 645(h) or section 1624(6) of the Act.

(i) *Operating costs* for any fiscal year means the total operating expenses of a facility as set forth in an audited financial statement, minus the amount of reimbursement, if any, received (or if not received, claimed) in that year under titles XVIII and XIX of the Social Security Act.

(j) *Persons unable to pay* means persons who meet the eligibility criteria set out in §124.505.

(k) *Request for uncompensated services* means any indication by or on behalf of an individual seeking services of the facility of the individual's inability to pay for services. A request for uncompensated services may be made at any time, including following institution of a collection action against the individual.

(l) *Secretary* means the Secretary of Health and Human Services or [his or her] delegatee.

(m) *Uncompensated services* means:

(1) For facilities other than those certified under §124.513, §124.514, §124.515, or §124.516, health services that are made available to persons unable to pay for them without charge or at a charge which is less than the allowable credit for those services. The

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amount of uncompensated services provided in a fiscal year is the total allowable credit for services less the amount charged for the services following an eligibility determination. Excluded are services provided more than 96 hours following notification to the facility by a quality improvement organization that it disapproved the services under section 1155(a)(1) or section 1154(a)(1) of the Social Security Act.

(2) For facilities certified under § 124.513, § 124.514, § 124.515, or § 124.516, services as defined in paragraph (m)(1) of this section and services that are made available to persons unable to pay for them under programs described by the documentation provided under § 124.513(c)(2), § 124.514(c)(2), or § 124.516(c)(2), as applicable, or pursuant to the terms of the applicable grant or agreement as provided in § 124.515. Except as provided in § 124.516, excluded are services reimbursed by Medicare, Medicaid, or other third party programs, including services for which reimbursement was provided as payment in full, and services provided more than 96 hours following notification to the facility by a quality improvement organization that it disapproved the services under section 1155(a)(1) or section 1154(a)(1) of the Social Security Act.

[52 FR 46031, Dec. 3, 1987, as amended at 59 FR 44639, Aug. 30, 1994]

§ 124.503 Compliance level.

(a) *Annual compliance level.* Subject to the provisions of this subpart, a facility is in compliance with its assurance to provide a reasonable volume of services to persons unable to pay if it provides for the fiscal year uncompensated services at a level not less than the lesser of—

(1) Three percent of its operating costs for the most recent fiscal year for which an audited financial statement is available;

(2) Ten percent of all Federal assistance provided to or on behalf of the facility, adjusted by a percentage equal to the percentage change in the CPI between the year in which the facility received assistance or 1979, whichever is later, and the most recent year for which a published index is available.

(b) *Deficits.* If in any fiscal year a facility fails to meet its annual compli-

ance level, it shall provide uncompensated services in an amount sufficient to make up that deficit in subsequent years, and its period of obligation shall be extended until the deficit is made up.

(1) *Types of deficits.* For purposes of determining the timing and amount of any deficit make-up, there are two types of deficits:

(i) *Justifiable deficits.* A justifiable deficit is one in which the facility did not meet its annual compliance level due to either financial inability (as determined under § 124.511(c)) or, although otherwise in compliance with this subpart, a lack of eligible applicants for uncompensated services during the fiscal year.

(ii) *Noncompliance deficits.* A noncompliance deficit is one in which the facility failed to meet its annual compliance level due to noncompliance with this subpart.

(2) *Timing of deficit make-up—(i) Justifiable deficits.* (A) A facility assisted under title VI of the Act may make up a justifiable deficit at any time during its period of obligation or in the year (or years, if necessary) immediately following its period of obligation.

(B) A facility assisted under title XVI of the Act is not required to make up a justifiable deficit.

(ii) *Noncompliance deficits.* (A) A facility must begin to make up a noncompliance deficit in the fiscal year following the finding of noncompliance by the Secretary.

(B) A facility which claimed financial inability under § 124.509(a)(2)(iii) and is found by the Secretary, pursuant to § 124.511(c), to have been financially able to provide uncompensated services in the year in which the deficit was incurred shall begin to make up the deficit beginning in the fiscal year following the Secretary's finding.

(C) A facility required to make up a noncompliance deficit but which is determined by the Secretary, pursuant to § 124.511(c), to be financially unable to do so in the year following the Secretary's finding of noncompliance shall make up the deficit in accordance with a schedule set by the Secretary.

(3) *Deficit make-up amount.* (i) The amount of a deficit in any fiscal year is the difference between the facility's