

etary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Office of Surgeon General reestablished within the Office of the Assistant Secretary for Health, see Notice of Department of Health and Human Services, Office of the Assistant Secretary for Health, Mar. 30, 1987, 52 F.R. 11754.

§ 291e. Projects for construction or modernization

(a) Application; contents

For each project pursuant to a State plan approved under this part, there shall be submitted to the Surgeon General, through the State agency, an application by the State or a political subdivision thereof or by a public or other nonprofit agency. If two or more such agencies join in the project, the application may be filed by one or more of such agencies. Such application shall set forth—

- (1) a description of the site for such project;
- (2) plans and specifications therefor, in accordance with regulations prescribed under section 291c of this title;

(3) reasonable assurance that title to such site is or will be vested in one or more of the agencies filing the application or in a public or other nonprofit agency which is to operate the facility on completion of the project;

(4) reasonable assurance that adequate financial support will be available for the completion of the project and for its maintenance and operation when completed;

(5) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of construction or modernization on the project will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40; and the Secretary of Labor shall have with respect to the labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 3145 of title 40; and

(6) a certification by the State agency of the Federal share for the project.

(b) Approval by Surgeon General; requisites; additional approval by Secretary of Health and Human Services

The Surgeon General shall approve such application if sufficient funds to pay the Federal share of the cost of such project are available from the appropriate allotment to the State, and if the Surgeon General finds (1) that the application contains such reasonable assurance as to title, financial support, and payment of prevailing rates of wages; (2) that the plans and specifications are in accord with the regulations prescribed pursuant to section 291c of this title; (3) that the application is in conformity with the State plan approved under section 291d of this title and contains an assurance that in the operation of the project there will be compliance with the applicable requirements of the regulations prescribed under section 291c(e) of this title, and with State standards for operation and maintenance; and (4) that the applica-

tion has been approved and recommended by the State agency, opportunity has been provided, prior to such approval and recommendation, for consideration of the project by the public or nonprofit private agency or organization which has developed the comprehensive regional, metropolitan area, or other local area plan or plans referred to in section 246(b) of this title covering the area in which such project is to be located or, if there is no such agency or organization, by the State agency administering or supervising the administration of the State plan approved under section 246(a) of this title, and the application is for a project which is entitled to priority over other projects within the State in accordance with the regulations prescribed pursuant to section 291c(a) of this title. Notwithstanding the preceding sentence, the Surgeon General may approve such an application for a project for construction or modernization of a rehabilitation facility only if it is also approved by the Secretary of Health and Human Services.

(c) Opportunity for hearing required prior to disapproval

No application shall be disapproved until the Surgeon General has afforded the State agency an opportunity for a hearing.

(d) Amendments subject to same approval as original applications

Amendment of any approved application shall be subject to approval in the same manner as an original application.

(e) Outpatient facilities; requirements of applicants

Notwithstanding any other provision of this subchapter, no application for an outpatient facility shall be approved under this section unless the applicant is (1) a State, political subdivision, or public agency, or (2) a corporation or association which owns and operates a nonprofit hospital (as defined in section 291o of this title) or which provides reasonable assurance that the services of a general hospital will be available to patients of such facility who are in need of hospital care.

(July 1, 1944, ch. 373, title VI, § 605, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 453; amended Pub. L. 91–296, title I, §§ 111(a), 116(e), June 30, 1970, 84 Stat. 340, 342; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

Editorial Notes

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (a)(5), is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In subsec. (a) (5), “sections 3141–3144, 3146, and 3147 of title 40” substituted for “the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5)” and “section 3145 of title 40” substituted for “section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c)” on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

A prior section 291e, act July 1944, ch. 373, title VI, § 622, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041;

amended 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, authorized Surgeon General to prescribe general regulations, prior to the general amendment of this subchapter by Pub. L. 88-443. See section 291c of this title.

A prior section 291h(a), (c), act July 1, 1944, ch. 373, title VI, § 625, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 8, 63 Stat. 901, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88-443.

A prior section 291v(d), act July 1, 1944, ch. 373, title VI, § 654, as added July 12, 1954, ch. 471, § 3, 68 Stat. 463, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88-443.

AMENDMENTS

1970—Subsec. (b)(4). Pub. L. 91-296, § 111(a), inserted provisions requiring that the appropriate area wide health planning agency be given an opportunity to consider the project for which an application is made before approval is given.

Subsec. (e). Pub. L. 91-296, § 116(e), substituted “an outpatient facility” for “a diagnostic or treatment center” and inserted provisions extending coverage to include corporations and associations which, although not owning or operating hospitals offer services of a general hospital to patients in need of hospital care.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in subsec. (b) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91-296, title I, § 111(a), June 30, 1970, 84 Stat. 340, provided that the amendment made by that section is effective with respect to applications approved under this subchapter after June 30, 1970.

Pub. L. 91-296, title I, § 116(e), June 30, 1970, 84 Stat. 342, applicable with respect to applications approved under this subchapter after June 30, 1970, see section 116(g) of Pub. L. 91-296, set out as a note under section 291o of this title.

APPLICATIONS APPROVED PRIOR TO AUG. 18, 1964

Pub. L. 88-443, § 3(b)(1), Aug. 18, 1964, 78 Stat. 462, providing that applications approved, and allotments appropriated prior to Aug. 18, 1964, shall be governed by this subchapter as in effect prior to such date, is set out as an Effective Date note under section 291 of this title.

FUNDS FOR MODERNIZATION PROJECTS; CONDITIONS TO BE MET BEFORE APPROVAL

Pub. L. 88-443, § 3(b)(5), Aug. 18, 1964, 78 Stat. 462, provided that no application with respect to a modernization project may be approved for purposes of receiving funds from an allotment under section 291(a)(2) of this title before July 1, 1965, or before a State plan has been approved, as well as certain other requirements. See Effective Date note set out under section 291 of this title.

Executive Documents

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Office of Surgeon General reestab-

lished within the Office of the Assistant Secretary for Health, see Notice of Department of Health and Human Services, Office of the Assistant Secretary for Health, Mar. 30, 1987, 52 F.R. 11754.

§ 291f. Payments for construction or modernization

(a) Certification of work by Surgeon General; conditions affecting payments

Upon certification to the Surgeon General by the State agency, based upon inspection by it, that work has been performed upon a project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment is due to the applicant, such installment shall be paid to the State, from the applicable allotment of such State, except that (1) if the State is not authorized by law to make payments to the applicant, or if the State so requests, the payment shall be made directly to the applicant, (2) if the Surgeon General, after investigation or otherwise, has reason to believe that any act (or failure to act) has occurred requiring action pursuant to section 291g of this title, payment may, after he has given the State agency notice of opportunity for hearing pursuant to such section, be withheld, in whole or in part, pending corrective action or action based on such hearing, and (3) the total of payments under this subsection with respect to such project may not exceed an amount equal to the Federal share of the cost of construction of such project.

(b) Additional payments in cases of amended applications

In case an amendment to an approved application is approved as provided in section 291e of this title or the estimated cost of a project is revised upward, any additional payment with respect thereto may be made from the applicable allotment of the State for the fiscal year in which such amendment or revision is approved.

(c) Administration expenses; use of portion of allotments to defray; manner of payment

(1) At the request of any State, a portion of any allotment or allotments of such State under this part shall be available to pay one-half (or such smaller share as the State may request) of the expenditures found necessary by the Surgeon General for the proper and efficient administration during such year of the State plan approved under this part; except that not more than 4 per centum of the total of the allotments of such State for a year, or \$100,000, whichever is less, shall be available for such purpose for such year. Payments of amounts due under this paragraph may be made in advance or by way of reimbursement, and in such installments, as the Surgeon General may determine.

(2) Any amount paid under paragraph (1) of this subsection to any State for any fiscal year shall be paid on condition that there shall be expended from State sources for such year for administration of the State plan approved under this part not less than the total amount expended for such purposes from such sources during the fiscal year ending June 30, 1970.

(July 1, 1944, ch. 373, title VI, § 606, as added Pub. L. 88-443, § 3(a), Aug. 18, 1964, 78 Stat. 454; amend-