

performing its functions under section 300l-2<sup>1</sup> of this title in a manner satisfactory to the Secretary,

to enable the agency to establish and maintain an Area Health Service Development Fund from which it may make grants and enter into contracts in accordance with section 300l-2(c)(3)<sup>1</sup> of this title.

**(b) Determination of amounts; maximum amounts**

(1) Except as provided in paragraph (2), the amount of any grant under subsection (a) of this section shall be determined by the Secretary after taking into consideration the population of the health service area for which the health systems agency is designated, the average family income of the area, and the supply of health services in the area.

(2) The amount of any grant under subsection (a) of this section to a health systems agency for any fiscal year may not exceed the product of \$1 and the population of the health service area for which such agency is designated.

**(c) Applications; submission and approval as prerequisite; form and contents**

No grant may be made under subsection (a) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and contain such information as the Secretary may require.

**(d) Authorization of appropriations**

For the purpose of making payments pursuant to grants under subsection (a) of this section, there are authorized to be appropriated \$25,000,000 for the fiscal year ending June 30, 1975, \$75,000,000 for the fiscal year ending June 30, 1976, \$120,000,000 each for the fiscal years ending September 30, 1977, and September 30, 1978, \$20,000,000 for the fiscal year ending September 30, 1981, and \$30,000,000 for the fiscal year ending September 30, 1982.

(July 1, 1944, ch. 373, title XVI, §1640, as added Pub. L. 93-641, §4, Jan. 4, 1975, 88 Stat. 2273; amended Pub. L. 95-83, title I, §103(c), Aug. 1, 1977, 91 Stat. 383; Pub. L. 96-79, title I, §127(e), Oct. 4, 1979, 93 Stat. 629.)

REFERENCES IN TEXT

Sections 300l-2, 300l-4, and 300n-4 of this title, referred to in subsec. (a), were repealed effective Jan. 1, 1987, by Pub. L. 99-660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799.

Section 300l-1 of this title, referred to in subsec. (a)(3), was in the original a reference to section 1512 of act July 1, 1944, which was repealed effective Jan. 1, 1987, by Pub. L. 99-660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799. Pub. L. 102-531, title III, §307, Oct. 27, 1992, 106 Stat. 3495, enacted section 1502A of act July 1, 1944, which is classified to section 300l-1 of this title.

AMENDMENTS

1979—Subsec. (d). Pub. L. 96-79 authorized appropriations of \$20,000,000 for fiscal year ending Sept. 30, 1981, and \$30,000,000 for fiscal year ending Sept. 30, 1982.

1977—Subsec. (d). Pub. L. 95-83 substituted "each for the fiscal years ending September 30, 1977, and September 30, 1978" for "for the fiscal year ending June 30, 1977".

**PART E—PROGRAM TO ASSIST AND ENCOURAGE VOLUNTARY DISCONTINUANCE OF UNNEEDED HOSPITAL SERVICES AND CONVERSION OF UNNEEDED HOSPITAL SERVICES TO OTHER HEALTH SERVICES NEEDED BY COMMUNITY**

AMENDMENTS

1979—Pub. L. 96-79, title II, §202(a), title III, §301(a), Oct. 4, 1979, 93 Stat. 632, 636, added part E relating to program to assist and encourage voluntary discontinuance of unneeded hospital services and conversion of unneeded hospital services to other health services needed by the community and redesignated former part E as part C.

**§ 300t-11. Grants and assistance for establishment of program**

The Secretary shall, by April 1, 1980, establish a program under which—

(1) grants and technical assistance may be provided to hospitals in operation on October 4, 1979, (A) for the discontinuance of unneeded hospital services, and (B) for the conversion of unneeded hospital services to other health services needed by the community; and

(2) grants may be provided to State Agencies designated under section 300m(b)(3)<sup>1</sup> of this title for reducing excesses in resources and facilities of hospitals.

(July 1, 1944, ch. 373, title XVI, §1641, as added Pub. L. 96-79, title III, §301(a), Oct. 4, 1979, 93 Stat. 636.)

REFERENCES IN TEXT

Section 300m of this title, referred to in par. (2), was in the original a reference to section 1521 of act July 1, 1944, which was repealed effective Jan. 1, 1987, by Pub. L. 99-660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799. Pub. L. 101-354, §2, Aug. 10, 1990, 104 Stat. 410, enacted section 1503 of act July 1, 1944, which is classified to section 300m of this title.

**UNNEEDED HOSPITAL SERVICES; STUDY AND REPORT OF EFFECT OF ELIMINATION**

Section 302 of Pub. L. 96-79, as amended by Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695, which provided that the Secretary of Health and Human Services conduct a study of the effect on the elimination of unneeded hospital services made during the two fiscal year period ending Sept. 30, 1981, by the program authorized by this part, and not later than Jan. 1, 1982, report the results of the study to Congress, was repealed by Pub. L. 97-414, §9(h), Jan. 4, 1983, 96 Stat. 2064.

**§ 300t-12. Grants for discontinuance and conversion**

**(a) Terms and conditions; determination of amount; authorized uses**

(1) A grant to a hospital under the program shall be subject to such terms and conditions as the Secretary may by regulation prescribe to assure that the grant is used for the purpose for which it was made.

(2) The amount of any such grant shall be determined by the Secretary. The recipient of such a grant may use the grant—

(A) in the case of a grantee which discontinues the provision of all hospital services or all inpatient hospital services or an identifiable part of a hospital facility which provides

<sup>1</sup> See References in Text note below.

inpatient hospital services, for the liquidation of the outstanding debt on the facilities of the grantee used for the provision of the services or for the liquidation of the outstanding debt of the grantee on such identifiable part;

(B) in the case of a grantee which in discontinuing the provision of an inpatient hospital service converts or proposes to convert an identifiable part of a hospital facility used in the provision of the discontinued service to the delivery of other health services, for the planning, development (including construction and acquisition of equipment), and delivery of the health service;

(C) to provide reasonable termination pay for personnel of the grantee who will lose employment because of the discontinuance of hospital services made by the grantee, retraining of such personnel, assisting such personnel in securing employment, and other costs of implementing arrangements described in subsection (c) of this section; and

(D) for such other costs which the Secretary determines may need to be incurred by the grantee in discontinuing hospital services.

**(b) Application; submission and approval; form; required provisions; review by health systems agency; basis of State Agency's recommendations; urban or rural poverty population considerations; approval by Secretary; restrictions and special considerations**

(1) No grant may be made to a hospital unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form and submitted in such manner as the Secretary may prescribe and shall include—

(A) a description of each service to be discontinued and, if a part of a hospital is to be discontinued or converted to another use in connection with such discontinuance, a description of such part;

(B) an evaluation of the impact of such discontinuance and conversion on the provision of health care in the health service area in which such service is provided;

(C) an estimate of the change in the applicant's costs which will result from such discontinuance and conversion; and

(D) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on a project will be paid wages at rates not less than those prevailing on similar construction 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 such labor standards the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 FR 3176; 5 U.S.C. Appendix) and section 3145 of title 40;

(E) such other information as the Secretary may require.

(2)(A) The health systems agency for the health service area in which is located a hospital applying for a grant under the program shall (i) in making the review of the applicant's application under section 300l-2(e)<sup>1</sup> of this title,

determine the need for each service or part proposed to be discontinued by the applicant, (ii) in the case of an application for the conversion of a facility, determine the need for each service which will be provided as a result of the conversion, and (iii) make a recommendation to the State Agency for the State in which the applicant is located respecting approval by the Secretary of the applicant's application.

(B) A State Agency which has received a recommendation from a health systems agency under subparagraph (A) respecting an application shall, after consideration of such recommendation, make a recommendation to the Secretary respecting the approval by the Secretary of the application. A State Agency's recommendation under this subparagraph respecting the approval of an application (i) shall be based upon (I) the need for each service or part proposed to be discontinued by the applicant, (II) in the case of an application for the conversion of a facility, the need for each service which will be provided as a result of the conversion, and (III) such other criteria as the Secretary may prescribe, and (ii) shall be accompanied by the health systems agency's recommendation made with respect to the approval of the application.

(C) In determining, under subparagraphs (A) and (B), the need for the service (or services) or part proposed to be discontinued or converted by an applicant for a grant, a health systems agency and State Agency shall give special consideration to the unmet needs and existing access patterns of urban or rural poverty populations.

(3)(A) The Secretary may not approve an application of a hospital for a grant—

(i) if a State Agency recommended that the application not be approved, or

(ii) if the Secretary is unable to determine that the cost of providing inpatient health services in the health service area in which the applicant is located will be less than if the inpatient health services proposed to be discontinued were not discontinued.

(B) In considering applications of hospitals for grants the Secretary shall consider the recommendations of health systems agencies and State Agencies and shall give special consideration to applications (i) which will assist health systems agencies and State Agencies to meet the goals in their health systems plans and State health plans, or (ii) which will result in the greatest reduction in hospital costs within a health service area.

**(c) Certification of protective arrangements for employment benefits and interests; guidelines; satisfactory arrangement determinations**

(1) Except as provided in paragraph (3), the Secretary may not approve an application submitted under subsection (b) of this section unless the Secretary of Labor has certified that fair and equitable arrangements have been made to protect the interests of employees affected by the discontinuance of services against a worsening of their positions with respect to their employment, including arrangements to preserve the rights of employees under collective-bargaining agreements, continuation of collective-bargaining rights consistent with the provisions

<sup>1</sup> See References in Text note below.

of the National Labor Relations Act [29 U.S.C. 151 et seq.], reassignment of affected employees to other jobs, retraining programs, protecting pension, health benefits, and other fringe benefits of affected employees, and arranging adequate severance pay, if necessary.

(2) The Secretary of Labor shall by regulation prescribe guidelines for arrangements for the protection of the interests of employees affected by the discontinuance of hospital services. The Secretary of Labor shall consult with the Secretary of Health and Human Services in the promulgation of such guidelines. Such guidelines shall first be promulgated not later than the promulgation of regulations by the Secretary for the administration of the grants authorized by section 300t-11 of this title.

(3) The Secretary of Labor shall review each application submitted under subsection (b) of this section to determine if the arrangements described in paragraph (1) have been made and if they are satisfactory and shall notify the Secretary respecting his determination. Such review shall be completed within—

(A) ninety days from the date of the receipt of the application from the Secretary of Health and Human Services, or

(B) one hundred and twenty days from such date if the Secretary of Labor has by regulation prescribed the circumstances under which the review will require at least one hundred and twenty days.

If within the applicable period, the Secretary of Labor does not notify the Secretary of Health and Human Services respecting his determination, the Secretary of Health and Human Services shall review the application to determine if the applicant has made the arrangements described in paragraph (1) and if such arrangements are satisfactory. The Secretary may not approve the application unless he determines that such arrangements have been made and that they are satisfactory.

**(d) Records and audits requirements**

The records and audits requirements of section 292e<sup>2</sup> of this title shall apply with respect to grants made under subsection (a) of this section.

**(e) "Hospital" defined**

For purposes of this part, the term "hospital" means, with respect to any fiscal year, an institution (including a distinct part of an institution participating in the programs established under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.]—

(1) which satisfies paragraphs (1) and (7) of section 1861(e) of such Act [42 U.S.C. 1395x(e)],

(2) imposes charges or accepts payments for services provided to patients, and

(3) the average duration of a patient's stay in which was thirty days or less in the preceding fiscal year,

but such term does not include a Federal hospital or a psychiatric hospital (as described in section 1861(f)(1) of the Social Security Act [42 U.S.C. 1395x(f)(1)]).

(July 1, 1944, ch. 373, title XVI, §1642, as added Pub. L. 96-79, title III, §301(a), Oct. 4, 1979, 93

Stat. 637; amended Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Section 300t-2, of this title, referred to in subsec. (b)(2)(A), was repealed effective Jan. 1, 1987, by Pub. L. 99-660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799.

The National Labor Relations Act, referred to in subsec. (c)(1), is act July 5, 1935, ch. 372, 49 Stat. 452, as amended, which is classified generally to subchapter II (§151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

Section 292e of this title, referred to in subsec. (d), was in the original a reference to section 705 of act July 1, 1944. Section 705 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102-408, title I, §102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102-408 enacted a new section 705 of act July 1, 1944, relating to eligibility of borrowers and terms of insured loans, and a new section 706, relating to certificates of loan insurance, which are classified to sections 292d and 292e, respectively, of this title.

The Social Security Act, referred to in subsec. (e), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

In subsec. (b)(1)(D), "sections 3141-3144, 3146, and 3147 of title 40" substituted for "the Act of March 3, 1931 (40 U.S.C. 276a-276a-5, known as the Davis-Bacon Act)" and "section 3145 of title 40" substituted for "section 2 of the Act of June 13, 1934 (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.

CHANGE OF NAME

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subsec. (c)(2) and (3), pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

**§ 300t-13. Grants to States for reduction of excess hospital capacity**

**(a) "Excess hospital capacity" defined; particular activities**

For the purpose of demonstrating the effectiveness of various means for reducing excesses in resources and facilities of hospitals (referred to in this section as "excess hospital capacity"), the Secretary may make grants to State Agencies designated under section 300m(b)(3)<sup>1</sup> of this title to assist such Agencies in—

(1) identifying (by geographic region or by health service) excess hospital capacity,

(2) developing programs to inform the public of the costs associated with excess hospital capacity,

(3) developing programs to reduce excess hospital capacity in a manner which will produce the greatest savings in the cost of health care delivery,

(4) developing means to overcome barriers to the reduction of excess hospital capacity,

(5) in planning, evaluating, and carrying out programs to decertify health care facilities providing health services that are not appropriate, and

<sup>2</sup> See References in Text note below.

<sup>1</sup> See References in Text note below.