

OBLIGATIONS RELATED TO AGREEMENT WITH PRIVATE ENTITIES

Pub. L. 105-277, div. A, §101(f) [title II], Oct. 21, 1998, 112 Stat. 2681-337, 2681-349, provided in part: "That hereinafter obligations may be incurred related to agreement with private entities without receipt of advance payment."

**§ 238I. Recovery**

**(a) Right of United States to recover base amount plus interest**

If any facility with respect to which funds have been paid under the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.] (as such Act was in effect prior to October 1, 1981) is, at any time within twenty years after the completion of remodeling, construction, or expansion or after the date of its acquisition—

(1) sold or transferred to any entity (A) which would not have been qualified to file an application under section 222 of such Act [42 U.S.C. 2689j] (as such section was in effect prior to October 1, 1981) or (B) which is disapproved as a transferee by the State mental health agency or by another entity designated by the chief executive officer of the State, or

(2) ceases to be used by a community mental health center in the provision of comprehensive mental health services,

the United States shall be entitled to recover from the transferor, transferee, or owner of the facility, the base amount prescribed by subsection (c)(1) plus the interest (if any) prescribed by subsection (c)(2).

**(b) Notice of sale, transfer, or change**

The transferor and transferee of a facility that is sold or transferred as described in subsection (a)(1), or the owner of a facility the use of which changes as described in subsection (a)(2), shall provide the Secretary written notice of such sale, transfer, or change within 10 days after the date on which such sale, transfer, or cessation of use occurs or within 30 days after October 22, 1985, whichever is later.

**(c) Base amount; interest**

(1) The base amount that the United States is entitled to recover under subsection (a) is the amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district in which the facility is situated) of so much of the facility as constituted an approved project or projects as the amount of the Federal participation bore to the cost of the remodeling, construction, expansion, or acquisition of the project or projects.

(2)(A) The interest that the United States is entitled to recover under subsection (a) is the interest for the period (if any) described in subparagraph (B) at a rate (determined by the Secretary) based on the average of the bond equivalent rates of ninety-one-day Treasury bills auctioned during that period.

(B) The period referred to in subparagraph (A) is the period beginning—

(i) if notice is provided as prescribed by subsection (b), 191 days after the date on which such sale, transfer, or cessation of use occurs, or

(ii) if notice is not provided as prescribed by subsection (b), 11 days after such sale, transfer, or cessation of use occurs,

and ending on the date the amount the United States is entitled to recover is collected.

**(d) Waiver of recovery rights**

The Secretary may waive the recovery rights of the United States under subsection (a) with respect to a facility (under such conditions as the Secretary may establish by regulation) if the Secretary determines that there is good cause for waiving such rights.

**(e) Pre-judgment lien**

The right of recovery of the United States under subsection (a) shall not, prior to judgment, constitute a lien on any facility.

(July 1, 1944, ch. 373, title II, §243, formerly title V, §515, formerly Pub. L. 88-164, title II, §225, as added Pub. L. 94-63, title III, §303, July 29, 1975, 89 Stat. 326; amended Pub. L. 95-622, title I, §110(c), Nov. 9, 1978, 92 Stat. 3420; renumbered title V, §515, and amended Pub. L. 97-35, title IX, §902(e)(2)(A), Aug. 13, 1981, 95 Stat. 560; renumbered title XXI, §2115, Pub. L. 98-24, §2(a)(1), Apr. 26, 1983, 97 Stat. 176; Pub. L. 99-129, title II, §226(a), Oct. 22, 1985, 99 Stat. 546; renumbered title XXIII, §2315, Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, §2513, Pub. L. 100-607, title II, §201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, §2613, Pub. L. 100-690, title II, §2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, §2713, Pub. L. 101-381, title I, §101(1), (2), Aug. 18, 1990, 104 Stat. 576; Pub. L. 102-229, title II, §208, Dec. 12, 1991, 105 Stat. 1716; Pub. L. 102-239, §1, Dec. 17, 1991, 105 Stat. 1912; renumbered title II, §243, Pub. L. 103-43, title XX, §2010(a)(1)-(3), June 10, 1993, 107 Stat. 213.)

REFERENCES IN TEXT

The Community Mental Health Centers Act, referred to in subsec. (a), is title II of Pub. L. 88-164, as added by Pub. L. 94-63, title III, §303, July 29, 1975, 89 Stat. 309, and amended, which was classified principally to subchapter III (§2689 et seq.) of chapter 33 of this title prior to its repeal by Pub. L. 97-35, title IX, §902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560. Section 222 of the Community Mental Health Centers Act was classified to section 2689j of this title prior to its repeal.

CODIFICATION

Section was classified to section 300aaa-12 of this title prior to renumbering by Pub. L. 103-43, to section 300cc-14 of this title prior to renumbering by Pub. L. 100-607, to section 300aa-14 of this title prior to renumbering by Pub. L. 99-660, to section 229d of this title prior to renumbering by Pub. L. 98-24, and to section 2689m of this title prior to renumbering by Pub. L. 97-35.

AMENDMENTS

1991—Subsec. (d). Pub. L. 102-229 and Pub. L. 102-239 amended subsec. (d) identically, substituting "subsection (a)" for "subsection (a)(2)".

1985—Pub. L. 99-129 amended section generally. Prior to amendment, section read as follows: "If any facility of a community mental health center acquired, remodeled, constructed, or expanded with funds provided under the Community Mental Health Centers Act is, at any time within twenty years after the completion of such remodeling, construction, or expansion or after the date of its acquisition with such funds—

“(1) sold or transferred to any person or entity (A) which is not qualified to file an application under section 222 of the Community Mental Health Centers Act, or (B) which is not approved as a transferee by the State agency of the State in which such facility is located, or its successor; or

“(2) not used by a community mental health center in the provision of comprehensive mental health services, and the Secretary has not determined that there is good cause for termination of such use, the United States shall be entitled to recover from either the transferor or the transferee in the case of a sale or transfer or from the owner in the case of termination of use an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the United States district court for the district in which the center is situated) of so much of such facility or center as constituted an approved project or projects, as the amount of the Federal participation bore to the acquisition, remodeling, construction, or expansion cost of such project or projects. Such right of recovery shall not constitute a lien upon such facility or center prior to judgment.”

1981—Pub. L. 97-35 substituted “the Community Mental Health Centers Act” for “this subchapter” and “section 222 of the Community Mental Health Centers Act” for “section 2689j of this title”.

1978—Pub. L. 95-622 substituted “this subchapter” for “this part”.

#### EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99-129, title II, § 226(b), Oct. 22, 1985, 99 Stat. 547, provided that: “In the case of any facility that was or is constructed, remodeled, expanded, or acquired on or before the date of enactment of this Act [Oct. 22, 1985] or within 180 days after the date of enactment of this Act, the period described in clause (i) or (ii), as the case may be, of section 2115(c)(2)(B) [now 243(c)(2)(B)] of the Public Health Service Act [42 U.S.C. 2387(c)(2)(B)(i), (ii)] (as amended by subsection (a) of this section) shall begin no earlier than 181 days after the date of enactment of this Act.”

#### EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-35, title IX, § 902(h), Aug. 13, 1981, 95 Stat. 561, provided that: “The amendments made by this section [amending this section and sections 201, 225a [now 238d], 229b [now 238j], 243, 246, 289k-1, 300d-4, 300d-6, 300l-2, 300m, 300m-3, 9412, and 9511 of this title, repealing sections 247b-1, 247b-2, 255, 300d to 300d-3, 300d-5, 300d-7 to 300d-9, 300d-21, 2689 to 2689l, 2689n to 2689p, 2689r to 2689aa, 9411, 9421 to 9423, 9431 to 9438, 9451, 9452, 9461 to 9465, 9471 to 9473, 9481, 9491 to 9493, 9502, 9512, 9521, and 9523 of this title, repealing provisions set out as notes under sections 246 and 2689 of this title, and transferring section 2689m to section 229d [now 238l] of this title] shall take effect October 1, 1981.”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-622, title I, § 110(c), Nov. 9, 1978, 92 Stat. 3420, provided that the amendment made by that section is effective July 29, 1975.

#### EFFECTIVE DATE

Section effective July 1, 1975, see section 608 of Pub. L. 94-63, set out as an Effective Date of 1975 Amendment note under section 247b of this title.

#### OTHER LEGAL RIGHTS OF UNITED STATES NOT ADVERSELY AFFECTED BY 1985 AMENDMENT

Pub. L. 99-129, title II, § 226(c), Oct. 22, 1985, 99 Stat. 547, provided that: “The amendments made by subsection (a) of this section [amending this section] shall not adversely affect other legal rights of the United States.”

### § 238m. Use of fiscal agents

#### (a) Contracting authority

The Secretary may enter into contracts with fiscal agents—

(1)(A) to determine the amounts payable to persons who, on behalf of the Indian Health Service, furnish health services to eligible Indians,

(B) to determine the amounts payable to persons who, on behalf of the Public Health Service, furnish health services to individuals pursuant to section 247d or 249 of this title,

(2) to receive, disburse, and account for funds in making payments described in paragraph (1),

(3) to make such audits of records as may be necessary to assure that these payments are proper, and

(4) to perform such additional functions as may be necessary to carry out the functions described in paragraphs (1) through (3).

#### (b) Contracting prerequisites

(1) Contracts under subsection (a) may be entered into without regard to section 6101 of title 41 or any other provision of law requiring competition.

(2) No such contract shall be entered into with an entity unless the Secretary finds that the entity will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent.

#### (c) Advances under contracts

A contract under subsection (a) may provide for advances of funds to enable entities to make payments under the contract.

#### (d) Applicable statutory provisions

Subsections (d) and (e)<sup>1</sup> of section 1395u of this title shall apply to contracts with entities under subsection (a) in the same manner as they apply to contracts with carriers under that section.

#### (e) “Fiscal agent” defined

In this section, the term “fiscal agent” means a carrier described in section 1395u(f)(1)<sup>1</sup> of this title and includes, with respect to contracts under subsection (a)(1)(A), an Indian tribe or tribal organization acting under contract with the Secretary under the Indian Self-Determination Act (Public Law 93-638) [25 U.S.C. 5321 et seq.]

(July 1, 1944, ch. 373, title II, § 244, formerly title XXI, § 2116, as added Pub. L. 99-272, title XVII, § 17003, Apr. 7, 1986, 100 Stat. 359; renumbered title XXIII, § 2316, Pub. L. 99-660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2514, Pub. L. 100-607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2614, Pub. L. 100-690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2714, Pub. L. 101-381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 244, Pub. L. 103-43, title XX, § 2010(a)(1)-(3), June 10, 1993, 107 Stat. 213.)

#### REFERENCES IN TEXT

Subsections (d), (e), and (f) of section 1395u of this title, referred to in subsecs. (d) and (e), were repealed by Pub. L. 108-173, title IX, § 911(c)(5), Dec. 8, 2003, 117 Stat. 2384.

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