

rules using the compliance standards applicable under the rules as promulgated on May 18, 1979, based on procedures determined by the Secretary to be sufficient to establish that the facility provided such amounts of uncompensated services in the period(s) being assessed.

(c) *Determinations of financial inability.* In determining whether a facility was or is financially able to meet its annual compliance level, the Secretary will consider any comments submitted by interested parties. In making this determination, the Secretary will consider factors such as:

- (1) The ratio of revenues to expenses;
- (2) The occupancy rate;
- (3) The ratio of current assets to current liabilities;
- (4) The average cost per patient day;
- (5) The number of days of operating expenses in accounts payable;
- (6) The number of days of revenues in accounts receivable;
- (7) The sinking fund (or depreciation fund) balance;
- (8) The debt coverage ratio; and
- (9) The availability of restricted or unrestricted funds (such as an endowment) available for charitable use.

[52 FR 46031, Dec. 3, 1987; 52 FR 48362, Dec. 21, 1987; 53 FR 5576, Feb. 25, 1988; 59 FR 44639, Aug. 30, 1994]

§ 124.512 Enforcement.

(a) If the Secretary finds, based on his/her investigation under § 124.511, that a facility did not comply with the requirements of this subpart, the Secretary may take any action authorized by law to secure compliance, including but not limited to, voluntary agreement or a request to the Attorney General to bring an action against the facility for specific performance.

(b) A facility, including a facility certified under § 124.513, § 124.514, or § 124.516, that has denied uncompensated services to any person because it failed to comply with the requirements of this subpart will not be in compliance with its assurance until it takes whatever steps are necessary to remedy fully the noncompliance, including:

- (1) Provision of uncompensated services to applicants improperly denied;

- (2) Repayment of amounts improperly collected from persons eligible to receive uncompensated services; and

- (3) Other corrective actions prescribed by the Secretary.

(c) The Secretary may disallow all of the uncompensated services claimed in a fiscal year where the Secretary finds that the facility was in substantial noncompliance with its assurance because it failed to:

- (1) Have a system for providing notice to eligible persons as required by § 124.504(c), § 124.513(b)(2), § 124.514(b)(2), or § 124.516(b)(2)(i)(A), as applicable;

- (2) Comply with the applicable reporting requirements of § 124.509;

- (3) Have a system for maintaining records of uncompensated services provided in accordance with § 124.510; or

- (4) Take corrective action prescribed pursuant to paragraph (b) of this section.

(d) In the absence of a finding of substantial compliance or substantial noncompliance in a fiscal year, the Secretary may disallow uncompensated services claimed by a facility in that fiscal year to the extent that the Secretary finds that such services are not documented as uncompensated services under § 124.510 or are subject to disallowance under § 124.513(d) or § 124.514(d), as applicable.

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

§ 124.513 Public facility compliance alternative.

(a) *Effect of certification.* The Secretary may certify a facility which meets the requirements of paragraphs (b) and (c) of this section as a "public facility". A facility which is so certified is not required to comply with this subpart except as otherwise herein provided.

(b) *Criteria for qualification.* A public facility may qualify for certification under this section if all of the following criteria are met:

- (1) It is a facility which is owned and operated by a unit of State or local government or a quasi-public corporation as defined at 42 CFR 124.2(m).