

lawfully inure, to the benefit of any private shareholder or individual.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

State agency means (1) in the case of a facility with respect to which a grant was made under title VI of the Public Health Service Act or any of the statutes listed in §124.701(b), the State agency designated pursuant to section 604 of the Public Health Service Act or its successor agency, and (2) in the case of a facility with respect to which a grant was made under title XVI of the Public Health Service Act, the State health planning and development agency designated pursuant to title XV of the Public Health Service Act.

Then value means the value of the facility on the date the facility is sold, transferred or ceases to be used for a permissible use as described in §124.704.

§ 124.703 Federal right of recovery.

(a) If any facility is at any time within 20 years after the completion of the grant-assisted construction or modernization sold or transferred to any entity which is either not qualified for a grant under the statute pursuant to which the grant was awarded or not approved as a transferee by the State agency, the United States shall be entitled to recover on the basis of joint and several liability from any transferor, transferee, or successive transferee of the facility an amount determined in accordance with this subpart.

(b) If any facility at any time within 20 years after the completion of the grant-assisted construction or modernization ceases to be a public or other non-profit facility that would have been eligible for a grant under the statute pursuant to which the grant was awarded, the United States shall be entitled to recover from the owners of the facility an amount determined in accordance with this subpart.

§ 124.704 Notification of sale, transfer, or change of use.

(a) The transferor of a facility that is sold or transferred as described in §124.703(a), or the owner of a facility

which ceases to be a public or other nonprofit facility as described in §124.703(b), shall provide the Secretary written notice of such sale, transfer, or other change not later than 10 days after the date on which the sale, transfer, or change occurs.

(1) *Transfer.* For purposes of this subpart, a transfer occurs when a facility is conveyed to another entity through lease, merger, bankruptcy, foreclosure, or other arrangement.

(2) *Cease to be.* For purposes of this subpart,

(i) A facility "ceases to be" a facility for which a grant could have been made under the statute pursuant to which the grant was awarded when it is no longer operated as such a facility; and

(ii) A facility "ceases to be a public or nonprofit facility" when an entity that is not a public or other non-profit corporation or association assumes management responsibilities with respect to the facility which, in the Secretary's judgment, are so pervasive as to constitute operation of the facility. The manager will not be deemed to be the operator of the facility if the management agreement contains both of the following provisions:

The Board of Directors of the facility retains authority to terminate the agreement at any time upon reasonable notice to the contractor.

No employee of the contractor may be a member of the facility's Board of Directors.

In the absence of either of these provisions the Secretary will consider the degree of control granted to the managing organization over patient admission, determination of what services will be provided, and charges for services provided in the facility.

(b) *Content of Notice.* The notice required by paragraph (a) of this section shall be sent to the Secretary by certified mail, and shall contain or be accompanied by

(1) The date of the sale, transfer, or other event that gives rise to the notice;

(2) Copies of any sales contracts, lease agreements, management contracts or other documents pertinent to the event giving rise to the notice;

(3) Estimates of current assets, current liabilities, book value of equipment, the expected value of land on the