

Compliance 301: Fiscal Responsiveness and Accountability

Are you Testing for Compliance?

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HIV/AIDS Bureau (HAB)

Health Resources and Services Administration (HRSA)



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Health Resources and Services Administration (HRSA) Overview

- Supports more than 90 programs that provide health care to people who are geographically isolated, economically or medically vulnerable through grants and cooperative agreements to more than 3,000 awardees, including community and faith-based organizations, colleges and universities, hospitals, state, local, and tribal governments, and private entities
- Every year, HRSA programs serve tens of millions of people, including people living with HIV/AIDS, pregnant women, mothers and their families, and those otherwise unable to access quality health care



HIV/AIDS Bureau Vision and Mission

Vision

Optimal HIV/AIDS care and treatment for all.

Mission

Provide leadership and resources to assure access to and retention in high quality, integrated care, and treatment services for vulnerable people living with HIV/AIDS and their families.



Ryan White HIV/AIDS Program

- Provides comprehensive system of HIV primary medical care, medications, and essential support services for low-income people living with HIV
 - More than half of people living with diagnosed HIV in the United States – more than 550,000 people – receive care through the Ryan White HIV/AIDS Program (RWHAP)
- Funds grants to states, cities/counties, and local community based organizations
 - Recipients determine service delivery and funding priorities based on local needs and planning process
- Payor of last resort statutory provision: RWHAP funds may not be used for services if another state or federal payer is available
- 84.9% of Ryan White HIV/AIDS Program clients were virally suppressed in 2016, exceeding national average of 59.8%



Source: HRSA. Ryan White HIV/AIDS Program Annual Client-Level Data Report 2016; CDC. HIV Surveillance Supplemental Report 2016;21(No. 4)



Learning Objectives

At the conclusion of this activity, the participant will be able to:

1. Identify the regulatory requirements that clarify and standardize federal requirements on imposition of charges, income from fees, maintenance of efforts, and other Uniform Guidance requirements.
2. Describe how to test for compliance with 45 CFR 75 and RWHAP National Monitoring Standards requirements related to imposition of charges, income from fees, and other requirements of federal grant awards and cooperative agreements.
3. Describe corrective actions to address non-compliance of federal grant awards and cooperative agreements.

Agenda

Other Legislative Requirements

- Imposition Charges
- Income for fees
- Maintenance of Effort
- Uniform Requirements

Imposition Charges



A few important terms

Charges are the imposition of fees upon payers for the delivery of billable services

Charge master/schedule of charges/fees imposed on a patient for services based on the patient's annual gross income. A schedule of charges may take the form of a flat rate or a varying rate (e.g., sliding fee)

Billable services are those for which there is a payer

Fee Schedule is a complete listing of billable services and their associated fees based on locally prevailing rates or charges. *A fee schedule is **not** a schedule of charges.* A fee schedule is not required by the RWHAP legislation, but having one in place is considered a best practice

Nominal Charge is a fee greater than zero

Payers can include Medicare, Medicaid, insurance companies and clients

Payments are the collection of fees from payers that are applied to cover some aspect of the costs of billable services



A Few Important Terms

Cap on charges: limitation on aggregate charges imposed during the calendar year based on patient's annual gross income. All fees are waived once the limit on annual aggregate charges is reached for that calendar year.

Waiver: recipients operating as free clinics (e.g. healthcare for the homeless clinics) have the option to waive the imposition of charges on RWHAP patients.

- Note that only a handful of recipients are operating as free clinics – therefore, all but these recipients should be charging patients over 100% FPL for services rendered – even if it is only \$1.

Legislative Requirements imposition charges

- A system to waive fees for clinics that do not charge for services
- Cannot deny services if client is not able to pay for services
- There is no charge on individuals whose income is at or below 100 percent of the Federal Poverty Level (FPL)
- Clients with incomes above the official poverty level must be charged for service
- The assessment of the charge (above 100%FPL) is at the discretion of the recipients including imposing a nominal fee subject to be provisions of public schedules (2605).
- RWHAP Part A, Part B, and Part C grant recipients are required to “provide assurances” that they have a schedule of charges for services and that those charges not exceed specified proportions of a clients’ annual gross income based on percent of the FPL. Sections 2605(e), 2617(c), and 2664(e) of the Public Health Service (PHS) Act.



Expectations

- Develop a policy and procedure that establishes eligibility based on individual FPL and ability to pay.
- A publicly posted schedule of charges, which may include a documented decision to impose only a nominal charge
- Process for obtaining and documenting client charges and payments (billing system)
- Personnel are aware of and follow the policy regarding imposition of charges and the following related requirements
- No charges are imposed on clients with incomes at or below 100% of the FPL that individuals with incomes above 100% of the FPL must be impose a charge or a nominal fee.



Expectations

Have a policy and procedure that:

- Tracks first party client charges annually;
- Once cap is met does not charge the client for services for the remainder of the year;
- Has system for tracking clients charges;
- Process for alerting billing system that a client has reached the aggregate annual cap on charges;
- Has method for informing clients of policy; and
- A person responsible for annual eligibility.

Expectations

Persons in family household	2018 Poverty guideline
1	\$12,140
2	16,460
3	20,780
4	25,100
5	29,420
6	33,740
7	38,060
8	42,380



Process update the U S Government Guidelines annually

- Published annually in the Federal Register
- Health and Human Services posts them on the Web

<http://aspe.hhs.gov/poverty/index.shtml#latest>

Expectations

*Annual
Limitation on
Imposition of
Charges
based
Individual
Income*

At or below
100% of FPL
– 0%

101% - 200%
of Poverty –
No more
than 5% of
gross annual
income

201% - 300%
of Poverty –
No more
than 7% of
gross annual
income

>300% of
Poverty –
No more
than 10% of
gross annual
income

Expectations

- Some examples for the policy of client charges for care services that may count towards the annual limitation on client charges include:
 - Enrollment Fees
 - Deductibles
 - Co-payments
 - Payments to other providers for care
 - Health Insurance Premiums
 - Co-insurance
 - Other cost sharing

Income from Fees



Policies on Income

- As the healthcare landscape changes, RWHAP recipients and subrecipients may generate higher levels of program income (third-party reimbursement, Medicaid expansion, etc.)
- In response, HAB provides the following resources:
 - Policy Clarification Notice 15-03
 - Accompanying FAQs
 - A renewed monitoring and technical assistance (TA) effort regarding the long standing requirements about tracking, spending, and reporting program income.

Program Income - Definition

- Per 45 CFR §75.2
- Program income means gross income earned by the non-federal entity that is directly generated by a supported activity or earned as a result of the federal award during the period of performance except as provided on 45 CFR §75.307(f).
- Program income includes but is not limited to income from fees for services performed, the use or rental of [sic.] real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulation, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them.



Program Income – Use Alternatives

- Alternatives for use (45 CFR §75.307(e))

Alternative	Use of program income
Additive	Added to funds committed to the project or program and used to further eligible project or program objectives
Deductive	Deducted from total allowable costs of the project or program to determine the net allowable costs on which the Federal share of costs will be based
Combination	Uses all program income up to (and including) \$25,000 as specified under the additive alternative and any amount of program income exceeding \$25,000 under the deductive alternative
Matching	Used to satisfy all or part of the non-Federal share of a project or program

- HRSA/HAB must specify the alternative and allowable use of program income on the Notice of Award –
ADDITION ALTERNATIVE

Program Income – Notice of Award

n. Trainee Travel:	\$0.00	14. APPROVED DIRECT ASSISTANCE BUDGET:(In lieu of cash)	
o. TOTAL DIRECT COSTS:	\$517,065.00	a. Amount of Direct Assistance	\$0.00
p. INDIRECT COSTS (Rate: % of S&W/TADC) :	\$0.00	b. Less Unawarded Balance of Current Year's Funds	\$0.00
q. TOTAL APPROVED BUDGET:	\$517,065.00	c. Less Cumulative Prior Awards(s) This Budget Period	\$0.00
i. Less Non-Federal Share:	\$0.00	d. AMOUNT OF DIRECT ASSISTANCE THIS ACTION	\$0.00
ii. Federal Share:	\$517,065.00		
15. PROGRAM INCOME SUBJECT TO 45 CFR 75.307 SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING ALTERNATIVES:			
A=Addition B=Deduction C=Cost Sharing or Matching D=Other			[A]
Estimated Program Income: \$0.00			
16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY HRSA, IS ON THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:			
a. The grant program legislation cited above. b. The grant program regulation cited above. c. This award notice including terms and conditions, if any, noted below under REMARKS. d. 45 CFR Part 75 as applicable. In the event there are conflicting or otherwise inconsistent policies applicable to the grant, the above order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.			
REMARKS: (Other Terms and Conditions Attached [X]Yes []No)			



Program Income - Sources

- Fees, payments, or reimbursement for the provision of a specific service, such as patient care reimbursements received by billing public (Medicare, Medicaid, or Children's Health Insurance Program) or private health insurance.
- Charges imposed on clients for services, as required by RWHAP Parts A, B, and C legislation.
- The difference between the third party reimbursement and the 340B drug purchase price.



Program Income – Allowable Use

- To support a comprehensive system of care for low-income individuals living with HIV...
 - ✓ Core medical services including EIS
 - ✓ Administrative expenses, including planning and evaluation
 - ✓ Clinical quality management activities
 - ✓ Support Services
- Not subject to statutory distribution requirements or caps (e.g., 10% admin, CQM, 75% core medical, 50% Early Intervention Services (EIS), etc.)

Spending Tracking and Reporting

- Program income may be used for any allowable cost under the RWHAP Part A,B, C, D and F(dental).
- Refer to:
 - PCN 15-03 Program Income
 - PCN 16-02 RWHAP Services: Eligible Individuals & Allowable Uses of Funds
- Minimum distribution levels and caps do not apply
- Do not need HRSA prior approval for scope changes

Program Income – Expenditure

To the extent available, recipients and subrecipients must disburse funds available from program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds **before requesting additional cash payments** (45 CFR §75.305(b)(5)).

Estimate accrued program income and determine RWHAP funds that will be needed during current project period.

Spending Tracking and Reporting

Per 45 CFR § 75.302(b), source and use of program income must be tracked and reported separately identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received.

Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the Federal awarding agency, and name of the pass-through entity, if any records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation

Spending Tracking and Reporting

How can we spend program income first and still spend our grant funds within the budget period?

It is all about **BUDGETING**. Recipients should develop a reasonable and transparent process for budgeting for and expending federal funds and related program income.

Recipients must proactively project the extent to which program income will be received, and budget accordingly.

Program Income - Reporting

SF-425 Federal Financial Report

Program Income:	
l. Total Federal share of program income earned	
m. Program income expended in accordance with the deduction alternative	
n. Program income expended in accordance with the addition alternative	
o. Unexpended program income (line l minus line m or line n)	

Audience Participation -

340B Drug Pricing Program
Spending, Tracking, and Reporting
Allowable Uses

340B Drug Pricing Program

What is 340B generated revenue?

Is it program income?

340B Drug Pricing Program

The discount itself is not program income

Third party reimbursement for drugs sold
at the discounted purchase price

— the 340B purchase price

= \$0 Program income

Allowable Uses of Program Income

Can program income be used for construction?

Spending Tracking and Reporting

What sort of documentation should be retained related to program income earned and expended, and what is the retention period?

Allowable Uses of Program Income

Can program income be used for pre-exposure prophylaxis (PrEP)?

Allowable Uses of Program Income

Can program income be used to pay salaries in excess of the salary rate limitation?

Allowable Uses of Program Income

Can program income be used to hire more case managers and to provide outpatient substance abuse care if such activities were not in the approved application and budget?

Spending Tracking and Reporting

If a recipient has a RWHAP Part C grant, a Part D grant, and a Part A subaward—may they distribute the aggregate total program income to each based on the relative size of each award?

Maintenance of Effort

Legislative Background

RWHAP Part A - SEC. 2605. [300ff–15] APPLICATION.

(a) IN GENERAL.—To be eligible to receive a grant under section 2601, an eligible area shall prepare and submit to the Secretary an application, in accordance with subsection (c) regarding a single application and grant award, at such time, in such form, and containing such information as the Secretary shall require, including assurances adequate to ensure—

(1) (A) that funds received under a grant awarded under *this subpart* will be utilized to supplement not supplant State funds made available in the year for which the grant is awarded to provide HIV-related services as described in section 2604(b)(1);

Legislative Background

Part B - SEC. 2617 b (7) E

(E) the State will maintain HIV-related activities at a level that is equal to not less than the level of such expenditures by the State for the 1-year period preceding the fiscal year for which the State is applying to receive a grant under *section 2611*;

Part C - SEC. 2664 (d)

(d) MAINTENANCE OF SUPPORT.—The Secretary may not make a grant under this part unless the applicant for the grant agrees to maintain the expenditures of the applicant for early intervention services at a level equal to not less than the level of such expenditures maintained by the State for the fiscal year preceding the fiscal year for which the applicant is applying to receive the grant.

Maintenance Of Effort (MOE)- Purpose

RWHAP Part A, B and C funds are not intended to be the sole source of support for HIV care and treatment services.

Maintenance of Effort requirement is a way to ensure that the RWHAP funds are used to supplement HIV/AIDS services and not supplant existing funding

Requirements

- In-kind contributions must be fairly valued, have a relation to HIV core medical and support services and may include office equipment and services;
- Cash contributions must fund core medical and support services;
- Grantee must document compliance, CEO must sign assurances; method(s) must be written and auditable;
- Each political subdivision in the EMA/TGA or the State or city government agency must explain its methodologies to the recipient
- The recipient must have a clear, written paper trail that documents the methodologies and definitions, and
- The grantee must make a reasonable attempt to determine core medical services and support services expenditures by political subdivisions;
- Level of effort does not include volunteer services, donation or one time expenses. Do not meet consistency test

Maintenance Of Effort (MOE)- documentation

Activity	Agency Department	Prior grant year amount	This grant year amount	Actual expenditures	estimation	Contact Person
HIV Surveillance	Health Department	\$1,360,500	\$1,330,000	Yes		
HIV Care Grants to Communities	Health Department	\$2,350,000	\$2,300,000	yes		
Central Lab Costs (unreimbursed for HIV and viral load tests)	Health Department	\$175,000	\$120,000	Yes		
K-12 HIV curriculum development and implementation grants	Education Department	\$875,000	\$300,000	Yes		
HIV specific medications	County Department of Corrections	\$1,800,000	\$1,135,000	Yes		
Supplemental state appropriations ADAP	Health Department	\$1,000,000	\$800,000	Yes		
HIV/AIDS Foster Care supplemental payments	Dept of Human Services	2,438,00	\$2,400,000	yes		
Totals		9,998,500	8,385,000			

Maintenance Of Effort (MOE)

Item	Agency/Department/ Other Unit of Government	FY 17 Amount	FY 18 Amount
1	Health Department	\$1,360,500	\$1,330,000
2	Health Department	\$2,350,000	\$2,300,000
3	Health Department	\$175,000	\$120,000
4	Department of Education	\$875,000	\$300,000
5	Department of Corrections	\$1,800,000	\$1,135,000
6	Health Department	\$1,000,000	\$800,000
7	Department of Human Services	\$2,438,000	\$2,400,000
	TOTALS	\$9,998,500	\$8,385,000

Uniform Guidance

Uniform Guidance

The Office of Management and Budget's (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (commonly called "Uniform Guidance") is an authoritative set of rules and that synthesizes and supersedes guidance from earlier OMB circulars.

45 CFR 75 - Overview

Administrative Requirements

- A-110/2 CFR 215 (45 CFR 74) Nonprofits, Institutions of Higher Education, Hospitals
- A-102 (45 CFR 92) State, Local and Tribal Governments

Cost Principles

- A-122 Nonprofits (2 CFR 230)
- A-21 Institutions of Higher Education (2 CFR 220)
- A-87 State, Local, Tribal Governments (2 CFR 225)

Single Audit

- A-133 – Single Audit
- A-50 – Single Audit Follow-up

A-89 – Catalog of Federal Domestic Assistance

45 CFR 75 - Overview

Compliance Requirements At A Glance			
Grantee Type	Admin Requirements	Cost Principles	Audit Requirements
State & Local Governments	45 CFR Part 92 (A-102)	2 CFR Part 225 (A-87)	A-133 (PDF)
College & Universities	45 CFR Part 74 (A-110)	2 CFR Part 220 (A-21)	
Non-Profits		2 CFR Part 230 (A-122)	
Hospitals		45 CFR Part 74, Appx. E	
For-Profits		48 CFR Subpart 31.2 (FAR 31.2)	
Foreign	45 CFR Part 74	As stated above for grantee type	HHS GPS (<u>Same as</u>) 45 CFR Part 74.26)

45 CFR 75 - Overview

45 CFR 75 GOALS

- Streamline guidance for Federal awards to ease administrative burden
- Strengthen oversight over Federal funds to reduce risks of waste, fraud, and abuse
- Increase efficiency and effectiveness of Federal awards

45 CFR 75 - Overview

Subparts

- A** – Acronyms and Definition
- B** – General Provisions
- C** – Pre-Federal Award Requirements and Contents of Federal Awards
- D** – Post Federal Award Requirements
- E** – Cost Principles
- F** – Audit Requirements

Subpart C: Section 75.205

Pre Federal Award Requirements

Risk Assessment Framework

Pre-award financial risk assessment

- Financial stability
- Prior single audits (A-133)

Adequacy of management systems

History of performance

Capacity to meet award requirements

Subpart D: Section 75.302

Financial Management System

Financial management systems of each non-Federal entity must provide for the following:

- Identification, in its accounts, of all federal awards received and expended and the federal programs under which they were received. Information should include
 - Catalog of Federal Domestic Assistance (CFDA) number and title
 - Federal award identification number and year
 - Federal awarding agency
 - Pass through entity (PTE), if applicable
 - Accurate, current, and complete disclosure of the financial results of each federal award or program

Subpart D: Section 75.302

Financial Management System

- Records that identify the source and application of funds for federally-funded activities
- Effective control over, and accountability for all funds, property and other assets
- Comparison of expenditures with budget amounts for each federal award
- Written procedures for determining the allowability of costs in accordance with Cost Principles

Subpart D: Section 75.351

Post Award Requirements

Recipient

- The entity that receives the RWHAP award directly from HRSA
- Many RWHAP recipients (recipient or subrecipients) are also “pass-through” entities
- Pass-through entity is an entity that provides a sub-award to a sub-recipient to carry out part of the RWHAP activity

Subrecipient

- The entity that receives a subaward from a pass-through entity to carry out part of the RWHAP programmatic activity (e.g., RWHAP provider)
- Is responsible for adherence to applicable Federal RWHAP program requirements
- Has its performance measured in relation to whether objectives of the RWHAP were met
- Uses Federal funds to carry out the RWHAP program for a public purpose as specified in authorizing

Subpart D: Section 75.351

Post Award Requirements

Contractor (definition)

Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used **in this part does not include a legal instrument, even if the non-Federal entity considers it a contract**, when the substance of the transaction meets the definition of a Federal award or sub-award (see *Sub-award*).

Subaward (definition)

Sub-award means an award provided by a pass-through entity to a sub-recipient for the sub-recipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A sub-award may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subpart D : Section 75.351

Post Federal Award Requirements

Internal Controls §75.303

Requirements from Part 6 of the Single Audit Compliance Supplement Should be in compliance with guidance in “Standards for Internal Control in the Federal Government,” issued by the Comptroller General of the United States aka the “Internal Control Integrated Framework” or the Green Book

- ✓ Operations – effectiveness and efficiency of operations
- ✓ Reporting –reliability of reporting for internal/external use
- ✓ Compliance-compliance with applicable laws and regulations

Subpart D: Section 75.329 Procurement

Implementation

- Written policies and procedures which reflect applicable federal, state and local laws
- Maintain oversight to ensure contractors and subrecipients perform in accordance with terms of the agreement
- Procedures must be designed to avoid acquisition of unnecessary or duplicative items, including documenting an analysis of lease vs. buy considerations
- Encouraged to use intergovernmental agreements where appropriate
- must be conducted in a manner providing full and open competition
- Restrictive of competition
 - placing unreasonable requirements on firms in order to qualify
 - requiring unnecessary experience or bonding
 - noncompetitive contracts to consultants that are on retainer
 - organizational conflicts of interest
 - specifying only "brand name" products instead of allowing an "equal" product to be offered

Changes in Procurement

- **Micro-purchase**
 - < \$3000
 - no quotations
 - equitable distribution
- **Sealed bids –**
 - > \$150k
 - construction projects
 - price is a major factor
- **Sole source**
 - Unique
 - public emergency
 - authorized by agency
 - no competition
- **Small procurement**
 - Up to \$150k
 - Rate quotations
 - No cost or price analysis
- **Competitive proposals**
 - > \$150k
 - fixed price or cost reimbursement
 - RFP with evaluation method

Changes in Procurement

Type

1. Micro-purchase
2. Small procurement
3. Sealed bids
4. Competitive proposals
5. Sole source

General Standards

- A. Documented policies
- B. Necessary
- C. Full and Open Competition
- D. Conflict of Interest
- E. Documentation
 - Cost and Price analysis
 - Vendor selection

Subpart F: Section 75.301 Single Audit

Threshold raised to \$750,000

Threshold for questioned costs raised to \$25,000

Changes to the Compliance Guidance issued by the US Comptroller General require that the audit test:

- ✓ Effectiveness and efficiency of operation
- ✓ Compliance with federal laws and requirements (time and effort reporting)
- ✓ Reliability of reporting for internal/external use

Takeaways





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