

Federal AIDS Policy Partnership Ryan White Working Group

Technical Fixes to the Ryan White HIV/AIDS Treatment Modernization Act (Public Law 109-415)

ADAP Rebate Dollars

Rebate model ADAPs (those that purchase via a pharmacy network and then request rebates from pharmaceutical companies to obtain the 340B program drug prices), over half of the states, are being told by HRSA that they must spend rebate dollars first (considered “program income”) before using their federal ADAP grant award. This contradicts the Ryan White HIV/AIDS Treatment Modernization Act and with new carryover rules will result in states losing ADAP funding should they have more than two percent of their federal ADAP grant unobligated. While Ryan White requires rebates to be put back into the Part B Program with preference given to ADAP, rebate income should not be considered program income and could therefore accrue after a grant year has ended.

Proposed Language: “In keeping with Congressional intent and Section 2622 (d) of Public Law 109-415, rebate funds associated with Section 2616 of Public Health Service Act (42 U.S.C. 300ff-26) are exempt from 45CFR92.21. HRSA will consult with state grantees to develop a process that certifies and describes that such funds are in compliance with Section 2616 (g) of Public Law 109-415.”

Unobligated Funds

The current legislation contains a provision that penalizes states and cities if they have more than 2 percent of their award unobligated at the end of a grant year by making Part A and B grantees ineligible for the supplemental components of their awards. This provision presents an undue burden on grantees who must comply with basic grants management such as working with subgrantees, but also deal with state budget factors such as hiring freezes, spending caps, etc. that make obligating grant dollars down to a very small amount difficult. Due to these uncertain economic times, it is not appropriate to penalize HIV/AIDS programs for circumstances beyond their programmatic control. We ask that the penalties for having more than 2 percent of grants unobligated be suspended.

Proposed Language: For Parts A and B strike or suspend “Corresponding Reduction in Future Grant” section under Section 104 and Section. 207 – “Timeframe for Obligation and Expenditure of Grant Funds.”

Part D Medical Expenses

For FY2007 and FY2008 budgets, Part D (Title IV) grantees have been instructed by HRSA to include medical expenses in their program budget. Unlike other parts of the Ryan White Program, Part D is not required to allocate a proportion of funds to medical expenses, as Part D grantees are able to access Medicaid, SCHIP and other public programs to pay for most primary medical care for their clients. In fact, Part D was exempted from the core medical services set aside in the 2006 reauthorization legislation. Part D must, however, provide access to these services either directly or through contract. This has been a requirement of Part D since its

inception, and HRSA has historically allowed Part D grantees to enter into memorandums of understanding (MOUs) with medical providers to ensure access to primary care, even when financial reimbursement was not involved. The Ryan White Program is required to be the payer of last resort, and asking Part D dollars to go toward medical expenses that can be paid for through other sources is in direct conflict with this requirement.

Proposed Language: Section 2671 (h) definitions (3) Services add the following "(C) Nothing in this part shall be construed as requiring funds to be used for primary medical care when other payers are available for such care."

Add (4) Contracts.-The term "contracts" includes memoranda of understanding when outpatient or ambulatory care is provided outside of this part.

Severity of Need Index and Client Level Data

The current legislation allowed for the development of both Client Level Data (CLD) and a Severity of Need Index (SONI), but intentionally did not include provisions for implementing the CLD or the SONI as components of the funding allocation process. CLD will commence on January 1, 2009 with a portion of grantees and will run parallel with the current HRSA data systems for one to two years. SONI has been developed, but not tested. Since according to the CDC HIV data will not be mature for all states until 2012, we believe that Part A and Part B resources should continue to be distributed by existing formula and supplemental mechanisms through 2012. Additionally, HRSA issued a competitive grant notice to Part A and B for funds to assist in the development of their CLD system. The grant announcement was issued so early in the process that many states and cities did not apply for the funds but are now realizing they need them. SPNS funds should be made available on a continuing basis to cities and states that need them to support activities to develop, maintain, and train on use of CLD system.

Proposed Language: "It is the intent of Congress that Part A and Part B resources continue to be distributed by existing formula and supplemental mechanisms." Amend Section 2691 Special Projects of National Significance, Subparagraph (b) by inserting after "The Secretary shall award grants under subsection (a) to entities eligible for funding under parts A, B, C, and D" the following "to support them in implementing the new client level data system and make funds available to each Part in the same percentage as each Part's contribution to the SPNS budget."