

DEPARTMENT OF HEALTH AND HUMAN SERVICES**CFDA 93.914 HIV EMERGENCY RELIEF PROJECT GRANTS****I. PROGRAM OBJECTIVES**

The objective of this program is to improve access to a comprehensive continuum of high-quality community-based primary medical care and support services in metropolitan areas that are disproportionately affected by the incidence of Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS). The statute refers to both persons infected with HIV and those who have clinically defined AIDS. These terms are used interchangeably in this compliance supplement but refer to this total universe of eligible individuals.

Emergency financial assistance, in the form of formula-based funding and supplemental project-based funding, is provided to eligible metropolitan areas (EMAs) and, with the enactment of Pub. L. No. 109-415, transitional grant areas (TGAs) to develop, organize, and operate health and support services programs for infected individuals and their care givers. The supplemental grants are discretionary awards and are awarded, following competition, to EMAs and TGAs that demonstrate need beyond that met through the formula award. They must also demonstrate the ability to use the supplemental amounts quickly and cost-effectively. Other criteria, contained in annual application guidance documents, may also apply. All EMAs and TGAs that are receiving formula assistance are also receiving supplemental assistance.

II. PROGRAM PROCEDURES**Administration**

The Health Resources and Services Administration (HRSA), a component of the Department of Health and Human Services, administers the HIV emergency relief programs. HRSA uses data reported to and confirmed by the Centers for Disease Control and Prevention (CDC) to determine eligibility (i.e., any metropolitan area for which there has been reported to and confirmed by the Director of CDC a cumulative total of more than 2,000 cases of AIDS for the most recent 5 calendar-year period for which data are available) and to establish the formula for allocation of funds. A metropolitan area is not eligible if it does not have an overall population of 50,000 or more. With respect to an EMA that received funding in fiscal year (FY) 2006, the boundaries for determining eligibility are those that were in effect for the area in FY 1994. For areas becoming eligible for funding after FY 2006, the boundaries are those in effect at the time the area first receives funding under this program.

Beginning with FY 2007 awards, at least two-thirds (66 2/3 %) of the appropriated amount is made available for the EMAs' and TGA's formula allocation and the remainder is retained by HRSA for award as discretionary supplemental project assistance on the basis of demonstrated need and other factors. EMAs and TGAs are funded for the formula allocation and project assistance on the basis of a single application and a combined award.

Funds are made available to the chief elected official of the EMA or TGA that administers the public health agency that provides outpatient and ambulatory services to the greatest number of individuals with AIDS in the jurisdiction in accordance with statutory requirements and program guidelines. Day-to-day responsibility for the grant is ordinarily delegated to the jurisdiction's public health department, and some administrative functions may be outsourced to a private entity. The chief elected official of the jurisdiction is also required to establish or designate an HIV health services planning council, which carries out a planning process, coordinating with other State, local and private planning and service organizations, and establishes the priorities for allocating funds. Newly eligible areas designated as TGAs in FY 2007 and beyond may be exempt from the requirement to establish and use an HIV health services planning council.

Consistent with funding and service priorities established through the public planning process, the receiving jurisdiction uses the funds to provide direct assistance to public entities or private non-profit or for-profit entities to deliver or enhance HIV/AIDS-related core and support services; and, within established limits, for associated administrative activities. These administrative activities include EMA or TGA oversight of service provider performance and adherence to their subgrant or contractual obligations. Most of these service providers are non-profit organizations. An EMA that received funding in FY 2006 or a TGA that was considered an EMA in FY 2006 must continue to provide the same services it provided in FY 2006.

Source of Governing Requirements

This program is authorized under Title I of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, , as amended, which is codified at 42 USC 300ff-11 through 300ff-17. The latest amendments to the CARE Act are contained in Pub. L. No. 109-415, enacted December 19, 2006, and have not yet been codified. The compliance requirements in Section III are differentiated as follows: (1) for requirements unchanged by Pub. L. No. 109-415, the Pub. L. No. 109-415 citation has been added; (2) requirements changed by Pub. L. No. 109-415 are shown as "Prior to FY 2007 awards" and "Effective with FY 2007 awards;" and (3) new requirements as a result of Pub. L. No. 109-415 are shown as "Effective with 2007 awards."

There are no program regulations specific to this program.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Activities Allowed prior to FY 2007 awards

1. Funds may be used to provide medical treatment and support services for individuals with HIV/AIDS (42 USC 300ff-14).

2. Consistent with planning council priorities, funds may be used to deliver or enhance the following HIV/AIDS-related services: (a) outpatient and ambulatory health and support services, including case management, substance abuse treatment and mental health treatment; (b) comprehensive treatment services, including treatment education, and prophylactic treatment for opportunistic infections, for individuals and families with HIV disease; (c) inpatient case management services that prevent unnecessary hospitalization or expedite discharge, as medically appropriate, from inpatient facilities; and (d) outreach activities that are intended to identify individuals with HIV disease who know their status and are not receiving HIV-related services (42 USC 300ff-14(b)(1)).
3. Funds may be used for the operation of an HIV health services planning council established by the grantee, including: staff support to the council; costs incurred by members of the council as a result of participation in meetings and other activities, including out-of pocket expenses (e.g., transportation and meals); costs associated with conducting needs assessment, plan development and publicizing council activities; and implementation of grievance procedures (42 USC 300ff-12(b)).
4. The EMA may use funds for routine grant administration and monitoring activities, including, but not limited to, the development of applications under this program, the receipt and disbursement of program funds, the establishment of accounting systems, the preparation of required programmatic and financial reports, and for all activities associated with the grantee's selection, award, and administration of contracts under the grant (42 USC 300ff-14(f)(2)).
5. Funds may be used for service provider (also referred to as first-line entities, including first-tier contractors) administrative activities, including normal overhead, management and oversight of specific projects, and other program support, such as quality control and quality assurance (42 USC 300ff-14(f)(3)).
6. The EMA may use funds to support program activities that are not service-oriented or administrative in nature, e.g., capacity building, technical assistance, program evaluation, and assessment of service delivery patterns, if they are established as priorities by the planning council and meet the requirements of 42 USC 300ff-12(b)(4) (A) and (E).
7. Funds may be used for outreach programs that have as their principal purpose identifying people with HIV disease so they become aware of and may be enrolled in care and treatment services, and informing low-income individuals with HIV disease of the availability of services. Funds may not be used for programs whose primary purpose is to target the general public to increase broad public awareness about HIV services, or programs that exclusively promote HIV counseling and testing and/or prevention education (42 USC 300ff-15(a)(7)(C)).

Activities Allowed effective with FY 2007 awards

Funds may be used only for core medical services, support services, and administrative expenses (Pub. L. No. 109-415, section 2604(a)(2)).

1. Core medical services with respect to an individual with HIV/AIDS (including co-occurring conditions, i.e., one or more adverse health conditions of an individual with HIV/AIDS, without regard to whether the individual has AIDS or whether the conditions arise from HIV) means (1) outpatient and ambulatory health services; (2) AIDS Drug Assistance Program treatments; (3) AIDS pharmaceutical assistance; (4) oral health care; (5) early intervention services meeting the requirements of Pub. L. No. 109-415, section 2604(e); (6) health insurance premium and cost sharing assistance for low-income individuals; (7) home health care; (8) medical nutrition therapy; (9) hospice services; (10) home and community-based health services; (11) mental health services; (12) substance abuse outpatient care; and (13) medical case management, including treatment adherence services (Pub. L. No. 109-415, section 2604(c)(3)).
2. Support services means services that are needed for individuals with HIV/AIDS to achieve their medical outcomes (those outcomes affecting the HIV-related clinical status of an individual with HIV/AIDS) (for example, respite care for persons caring for individuals with HIV/AIDS, outreach services, medical transportation, linguistic services, referrals for health care and support services, and such other services specified by HRSA) ((Pub. L. No. 109-415, section 2604(d)).
3. Administrative expenses at the grantee level include activities related to (1) routine grant administration and monitoring (for example, development of applications, receipt and disbursement of program funds, development and establishment of reimbursement and accounting systems, development of a clinical quality management program, preparation of routine programmatic and financial reports, and compliance with grant conditions and audit requirements); (2) contract development, solicitation review, award, monitoring, and reporting; and (3) activities carried out by the HIV health services planning council (Pub. L. No. 109-415, section 2604(h)(3)).
4. Subcontractor administrative expenses include usual and recognized overhead activities, management oversight of funded activities, and other types of program support such as quality assurance, quality control, and related activities (Pub.L. No. 109-415, section 2604(h)(4)).

Activities Unallowed

1. Funds may not be used to make payment for any item or service if payment has already been made or can reasonably be expected to be made under any State compensation program, under an insurance policy or any Federal or State health benefits program, or by an entity that provides health services on a pre-paid basis

(42 USC 300ff-15(a)(6); Pub. L. No. 109-415, section 2605(a)(6) makes an exception for programs administered by or providing the services of the Indian Health Service).

2. Funds may not be used to purchase or improve land or to purchase, construct or make permanent improvement to any building. Minor remodeling is allowed (42 USC 300ff-14(g); Pub. L. No. 109-415, section 2604(i)).
3. Funds may not be used to make cash payments to recipients of services (42 USC 300ff-14(g); Pub. L. No. 109-415, section 2604(i)).
4. Funds may not be used to provide individuals with hypodermic needles or syringes (42 USC 300ff-1).
5. Funds may not be used for AIDS programs, or to develop materials, designed to promote or encourage, directly, intravenous drug use or sexual activity, whether homosexual or heterosexual (42 USC 300ff-84).

E. Eligibility

1. Eligibility for Individuals

Eligible beneficiaries are individuals or families of individuals with HIV/AIDS. To the maximum extent practicable, services are to be provided to eligible individuals regardless of their ability to pay for the services and their current or past health condition. (42 USC 300ff-14(b) and 15(a)(7)(A); Pub. L. No. 109-415, sections 2604(c) and (d) and 2605(a)(7)(A)).

2. **Eligibility for Group of Individuals or Area of Service Delivery - Not Applicable**
3. **Eligibility of Subrecipients**

The EMA or TGA may make funds available to public or private non-profit entities or to private for-profit entities if they are the only available providers of quality HIV care in the area. (42 USC 300ff-14(b)(2); Pub. L. No. 109-415, section 2604(b)(2)).

G. Matching, Level of Effort, Earmarking

1. **Matching - Not Applicable**
- 2.1 **Level of Effort - *Maintenance of Effort***

Each political subdivision within the metropolitan area is required to maintain its level of expenditures for HIV-related services to individuals with HIV disease (or, effective with FY 2007 awards, core and support services) at a level equal to its level of such expenditures for the preceding fiscal year. Political subdivisions

within the EMA or TGA may not use funds received under the HIV grants to maintain the required level of HIV-related services (42 USC 300ff-15(a)(1)(B) and (C); Pub. L. No. 109-415, sections 2605(a)(1)(B) and (C)).

2.2 Level of Effort - *Supplement Not Supplant* - Not Applicable

3. Earmarking

Prior to FY 2007 awards

- a. Not more than five percent of the amounts awarded to the EMA may be used for administration at that level. Program support and planning council support are not considered administration for purposes of this limitation. If the EMA contracts with a third party for the performance of any part of its administrative activities, the five percent limitation applies to the combined total of administrative expenditures by the EMA and the contractor(s) (42 USC 300ff-14(f)).

For FY 2007 and prior awards

- a. Unless waived by the Secretary, HHS (or designee), for the purpose of providing health and support services to women, youth, infants, and children with HIV disease, including treatment measures to prevent the perinatal transmission of HIV, an EMA or TGA shall use for services to each of these populations an amount not less than the percentage of grant funds made available in a fiscal year constituted by the ratio of the population involved (women, youth, infants, or children) in such area with HIV/AIDS, to the metropolitan area's overall population with HIV/AIDS (42 USC 300ff-14(b)(4); Pub. L. No. 109-415, section 2604(f)).
- b. Not more than 10 percent, in the aggregate, of amounts allocated by the EMA or TGA to first-line entities may be used for administrative expenses (42 USC 300ff-14(f); Pub. L. No. 109-415, section 2604(h)(2)).
- c. An EMA or TGA shall establish a clinical quality management program to determine whether the services are consistent with the most recent Public Health Service guidelines for the treatment of HIV/AIDS and related opportunistic infection and, as applicable, to develop strategies for ensuring that such services are consistent with the guidelines for improvement in the access to and quality of HIV health services. Expenditures for this purpose may not exceed the lesser of 5 percent of the amount received under the grant, or \$3,000,000 and are not considered administrative expenses for purposes of the limitation on administrative expenses (42 USC 300ff-14(c)(2); (Pub. L. No. 109-415, section 2604(h)(5)).

Effective with FY 2007 awards

- a. Unless waived by the Secretary, HHS (or designee), not less than 75 percent of the amount remaining after reserving amounts for EMA or TGA administration and a clinical quality management program shall be used to provide core medical services to eligible individuals in the eligible area (including services regarding the co-occurring conditions of those individuals) (Pub. L. No. 109-415, section 2604(c)(1)).
- b. Not more than 10 percent of the amounts awarded to the EMA or TGA may be used for administration at that level (Pub. L. No. 109-415, section 2604(h)(1)).

H. Period of Availability of Federal Funds

Prior to FY 2007 awards

Funds are available for the budget period designated on the Notice of Grant Award. Funds carried forward from prior years may not be used for administration (42 USC 300ff-13(a)(3)(E)).

Effective with FY 2007 awards

Funds made available under a grant award for a fiscal year are available for obligation through the end of the one-year period beginning on the date in the fiscal year on which funds first became available, i.e., the beginning date of the budget period shown on the Notice of Grant Award. Funds made available under the formula portion of the award that remain unobligated at the end of this period will be cancelled unless a waiver allowing for carryover of the funds is approved by the Secretary, HHS or designee. If carryover is approved, the funds remain available for a one-year period beginning on the ending date of the budget period under which the funds were awarded. Funds awarded for supplemental grants that remain unobligated at the end of the budget period for which awarded may not be carried over (Pub. L. No. 109-415, section 2603(c)).

J. Program Income

Providers may impose charges for the provision of services only as follows (42 USC 300ff-15(e)(1) and (2); Pub. L. No. 109-415, sections 2605(e)(1) and (2)):

INDIVIDUAL'S INCOME LEVEL	PERMISSIBLE AGGREGATE CHARGES
Less than or equal to 100 percent of official poverty line	No charges may be imposed
Greater than 100 percent of the official poverty line	Charges must be imposed according to a publicly available sliding scale fee schedule, BUT

INDIVIDUAL'S INCOME LEVEL	PERMISSIBLE AGGREGATE CHARGES
Greater than 100 percent of the official poverty line and not exceeding 200 percent of that poverty line	A provider may not, for any calendar year, impose aggregate charges in an amount exceeding 5 percent of the annual gross income of the individual involved.
Greater than 200 percent of the official poverty line and not exceeding 300 percent of that poverty line	A provider may not, for any calendar year, impose aggregate charges in an amount exceeding 7 percent of the annual gross income of the individual involved.
Greater than 300 percent of the official poverty line	A provider may not, for any calendar year, impose aggregate charges in an amount exceeding 10 percent of the annual gross income of the individual involved.

The poverty guidelines are available on the Internet at <http://aspe.hhs.gov/poverty/> and are also published each year in the *Federal Register*.

The term "aggregate" applies to the annual charges imposed for all without regard to whether they are characterized as enrollment fees, premiums, deductibles, cost sharing, co-payments, coinsurance, or other charges for services (42 USC 300ff-15(e)(3); Pub. L. No. 109-415, section 2605(e)).

L. Reporting

1. Financial Reporting

- a. SF-269, *Financial Status Report* - Applicable
- b. SF-270, *Request for Advance or Reimbursement* - Not Applicable
- c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* - Not Applicable
- d. SF-272, *Federal Cash Transactions Report* - Payments under this program are made by the Department of Health and Human Services, Payment Management System. Reporting equivalent to the SF-272 is accomplished through the Payment Management System and is evidenced by the PSC-272-E, *Major Program Statement*.

2. Performance Reporting - Not Applicable

3. Special Reporting – Not Applicable