

services provided. The State shall submit information on treatment utilization to describe the type of care and the utilization according to primary diagnosis of alcohol or drug abuse, or a dual diagnosis of drug and alcohol abuse.

(3) The State may describe the need for technical assistance to carry out Block Grant activities, including activities relating to the collection of incidence and prevalence data identified in paragraph (a)(1) of this section.

(4) The State shall establish goals and objectives for improving substance abuse treatment and prevention activities and shall report activities taken in support of these goals and objectives in its application.

(5) The State shall submit a detailed description on the extent to which the availability of prevention and treatment activities is insufficient to meet the need for the activities, the interim services to be made available under sections 96.126 and 96.131, and the manner in which such services are to be so available. Special attention should be provided to the following groups:

- (i) Pregnant addicts;
- (ii) Women who are addicted and who have dependent children;
- (iii) Injecting drug addicts; and
- (iv) Substance abusers infected with HIV or who have tuberculosis.

(6) Documentation describing the results of the State's management information system pertaining to capacity and waiting lists shall also be submitted, as well as a summary of such information for admissions and, when available, discharges. As to prevention activities, the report shall include a description of the populations at risk of becoming substance abusers.

**§ 96.134 Maintenance of effort regarding State expenditures.**

(a) With respect to the principal agency of a State for carrying out authorized activities, the agency shall for each fiscal year maintain aggregate State expenditures by the principal agency for authorized activities at a level that is not less than the average level of such expenditures maintained by the State for the two year period preceding the fiscal year for which the State is applying for the grant. The

Block Grant shall not be used to supplant State funding of alcohol and other drug prevention and treatment programs.

(b) Upon the request of a State, the Secretary may waive all or part of the requirement established in paragraph (a) of this section if the Secretary determines that extraordinary economic conditions in the State justify the waiver. The State involved must submit information sufficient for the Secretary to make the determination, including the nature of the extraordinary economic circumstances, documented evidence and appropriate data to support the claim, and documentation on the year for which the State seeks the waiver. The Secretary will approve or deny a request for a waiver not later than 120 days after the date on which the request is made. Any waiver provided by the Secretary shall be applicable only to the fiscal year involved. "Extraordinary economic conditions" mean a financial crisis in which the total tax revenue declines at least one and one-half percent, and either unemployment increases by at least one percentage point, or employment declines by at least one and one-half percent.

(c) In making a Block Grant to a State for a fiscal year, the Secretary shall make a determination of whether, for the previous fiscal year or years, the State maintained material compliance with any agreement made under paragraph (a) of this section. If the Secretary determines that a State has failed to maintain such compliance, the Secretary shall reduce the amount of the allotment for the State for the fiscal year for which the grant is being made by an amount equal to the amount constituting such failure for the previous fiscal year.

(d) The Secretary may make a Block Grant for a fiscal year only if the State involved submits to the Secretary information sufficient for the Secretary to make the determination required in paragraph (a) of this section, which includes the dollar amount reflecting the aggregate State expenditures by the principal agency for authorized activities for the two State fiscal years preceding the fiscal year for which the State is applying for the grant. The

## § 96.135

base shall be calculated using Generally Accepted Accounting Principles and the composition of the base shall be applied consistently from year to year.

### § 96.135 Restrictions on expenditure of grant.

(a) The State shall not expend the Block Grant on the following activities:

(1) To provide inpatient hospital services, except as provided in paragraph (c) of this section;

(2) To make cash payments to intended recipients of health services;

(3) To purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

(4) To satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds;

(5) To provide financial assistance to any entity other than a public or non-profit private entity; or

(6) To provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs, unless the Surgeon General of the Public Health Service determines that a demonstration needle exchange program would be effective in reducing drug abuse and the risk that the public will become infected with the etiologic agent for AIDS.

(b) The State shall limit expenditures on the following:

(1) The State involved will not expend more than 5 percent of the grant to pay the costs of administering the grant; and

(2) The State will not, in expending the grant for the purpose of providing treatment services in penal or correctional institutions of the State, expend more than an amount prescribed by section 1931(a)(3) of the PHS Act.

(c) Exception regarding inpatient hospital services.

(1) With respect to compliance with the agreement made under paragraph (a) of this section, a State (acting through the Director of the principal agency) may expend a grant for inpatient hospital-based substance abuse programs subject to the limitations of

## 45 CFR Subtitle A (10–1–22 Edition)

paragraph (c)(2) of this section only when it has been determined by a physician that:

(i) The primary diagnosis of the individual is substance abuse, and the physician certifies this fact;

(ii) The individual cannot be safely treated in a community-based, nonhospital, residential treatment program;

(iii) The Service can reasonably be expected to improve an individual's condition or level of functioning;

(iv) The hospital-based substance abuse program follows national standards of substance abuse professional practice; and

(2) In the case of an individual for whom a grant is expended to provide inpatient hospital services described above, the allowable expenditure shall conform to the following:

(i) The daily rate of payment provided to the hospital for providing the services to the individual will not exceed the comparable daily rate provided for community-based, nonhospital, residential programs of treatment for substance abuse; and

(ii) The grant may be expended for such services only to the extent that it is medically necessary, i.e., only for those days that the patient cannot be safely treated in a residential, community-based program.

(d) The Secretary may approve a waiver for construction under paragraph (a)(3) of this section within 120 days after the date of a request only if:

(1) The State demonstrates to the Secretary that adequate treatment cannot be provided through the use of existing facilities and that alternative facilities in existing suitable buildings are not available;

(2) The State has carefully designed a plan that minimizes the costs of renovation or construction;

(3) The State agrees, with respect to the costs to be incurred by the State in carrying out the purpose of the waiver, to make available non-Federal contributions in cash toward such costs in an amount equal to not less than \$1 for each \$1 of Federal funds provided under the Block Grant; and

(4) The State submits the following to support paragraphs (b)(1), (2) and (3), of this section: