§ 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.

§ 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) 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.
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 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:

(i) Documentation to support paragraph (d)(1) of this section, such as local needs assessments, waiting lists, survey data and other related information;

(ii) A brief description of the project to be funded, including the type(s) of services to be provided and the projected number of residential and/or outpatient clients to be served;

(iii) The specific amount of Block Grant funds to be used for this project;

(iv) The number of outpatient treatment slots planned or the number of residential beds planned, if applicable;

(v) The estimate of the total cost of the construction or rehabilitation (and a description of how these estimates were determined), based on an independent estimate of said cost, using standardized measures as determined by an appropriate State construction certifying authority;

(vi) An assurance by the State that all applicable National (e.g., National Fire Protection Association, Building Officials and Codes Administrators International), Federal (National Environmental Policy Act), State, and local standards for construction or rehabilitation of health care facilities will be complied with;

(vii) Documentation of the State's commitment to obligate these funds by the end of the first year in which the funds are available, and that such funds must be expended by the end of the second year (section 1914(a)(2) of the PHS Act);

(viii) A certification that there is public support for a waiver, as well as a description of the procedure used (and the results therein) to ensure adequate comment from the general public and the appropriate State and local...
health planning organizations, local
governmental entities and public and
private-sector service providers that
may be impacted by the waiver re-
quest;
(ix) Evidence that a State is com-
mitted to using the proposed new or re-
habilitated substance abuse facility for
the purposes stated in the request for
at least 20 years for new construction
and at least 10 years for rehabilitated
facilities;
(x) An assurance that, if the facility
ceases to be used for such services, or if
the facility is sold or transferred for a
purpose inconsistent with the State’s
waiver request, monies will be returned
to the Federal Government in an
amount proportionate to the Federal
assistance provided, as it relates to the
value of the facility at the time serv-
ices cease or the facility sold or trans-
ferred;
(xi) A description of the methods
used to minimize the costs of the con-
struction or rehabilitation, including
documentation of the costs of the resi-
dential facilities in the local area or
other appropriate equivalent sites in
the State;
(xii) An assurance that the State
shall comply with the matching re-
quirements of paragraph (d)(3) of this
section; and
(xiii) Any other information the Sec-
retary may determine to be appro-
priate.

§ 96.136 Independent peer review.

(a) The State shall for the fiscal year
for which the grant is provided, provide
for independent peer review to assess
the quality, appropriateness, and effi-
cacy of treatment services provided in
the State to individuals under the pro-
gram involved, and ensure that at least
5 percent of the entities providing serv-
ces in the State under such program
are reviewed. The programs reviewed
shall be representative of the total pop-
ulation of such entities.
(b) The purpose of independent peer
review is to review the quality and ap-
propriateness of treatment services.
The review will focus on treatment
programs and the substance abuse serv-
ance system rather than on the indi-
vidual practitioners. The intent of the
independent peer review process is to
continuously improve the treatment
services to alcohol and drug abusers
within the State system. “Quality,” for
purposes of this section, is the pro-
vision of treatment services which,
within the constraints of technology,
resources, and patient/client cir-
cumstances, will meet accepted stand-
ards and practices which will improve
patient/client health and safety status
in the context of recovery. “Appro-
priateness,” for purposes of this sec-
tion, means the provision of treatment
services consistent with the individ-
ual’s identified clinical needs and level
of functioning.
(c) The independent peer reviewers
shall be individuals with expertise in
the field of alcohol and drug abuse
treatment. Because treatment services
may be provided by multiple dis-
ciplines, States will make every effort
to ensure that individual peer review-
ers are representative of the various
disciplines utilized by the program
under review. Individual peer reviewers
must also be knowledgeable about the
modality being reviewed and its under-
lying theoretical approach to addic-
tions treatment, and must be sensitive
to the cultural and environmental
issues that may influence the quality
of the services provided.
(d) As part of the independent peer
review, the reviewers shall review a
representative sample of patient/client
records to determine quality and ap-
propriateness of treatment services,
while adhering to all Federal and State
confidentiality requirements, including
42 CFR Part 2. The reviewers shall ex-
amine the following:
(1) Admission criteria/intake process;
(2) Assessments;
(3) Treatment planning, including ap-
propriate referral, e.g., prenatal care
and tuberculosis and HIV services;
(4) Documentation of implementa-
tion of treatment services;
(5) Discharge and continuing care
planning; and
(6) Indications of treatment out-
comes.
(e) The State shall ensure that the
independent peer review will not in-
volve practitioners/providers reviewing
their own programs, or programs in
which they have administrative over-
sight, and that there be a separation of