

PUBLIC HEALTH SERVICE ACT

[As Amended Through P.L. 112–240, Enacted January 2, 2013]

[Currency: This publication is a compilation of the text of title XXIV of Chapter 373 of the 78th Congress. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>]

[Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).]

[References in brackets **[]** are to title 42, United States Code]

TITLE XXIV—HEALTH SERVICES WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME ¹

PART A—FORMULA GRANTS TO STATES FOR HOME AND COMMUNITY- BASED HEALTH SERVICES

SEC. 2401. [300dd] ESTABLISHMENT OF PROGRAM.

(a) ALLOTMENTS FOR STATES.—For the purpose described in subsection (b), the Secretary shall for each of the fiscal years 1989 and 1990 make an allotment for each State in an amount determined in accordance with section 2408. The Secretary shall make payments each such fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 2407.

(b) PURPOSE OF GRANTS.—The Secretary may not make payments under subsection (a) for a fiscal year unless the State involved agrees to expend the payments only for the purpose of providing services in accordance with section 2402.

(c) ELIGIBLE INDIVIDUAL DEFINED.—For purposes of this part:

(1) The term “eligible individual” means an individual infected with the etiologic agent for acquired immune deficiency syndrome who either is medically dependent or chronically dependent.

(2) The term “medically dependent” means, with respect to an individual, that the individual has been certified by a physician as—

(A) requiring the routine use of appropriate medical services (which may include home intravenous drug therapy) to prevent or compensate for the individual’s serious deterioration, arising from infection with the etiologic

¹ See footnote at beginning of title XXIII.

agent for acquired immune deficiency syndrome, of physical health or cognitive function, and

(B) being able to avoid long-term or repeated care as an inpatient or resident in a hospital, nursing facility, or other institution if home and community-based health services are provided to the individual.

(3) The term “chronically dependent” means, with respect to an individual, that the individual has been certified by a physician as—

(A) being unable to perform, because of physical or cognitive impairment (without substantial assistance from another individual) arising from infection with the etiologic agent for acquired immune deficiency syndrome, at least 2 of the following activities of daily living: bathing, dressing, toileting, transferring, and eating, or

(B) having a similar level of disability due to cognitive impairment (as defined by the Secretary).

(d) HOME AND COMMUNITY-BASED HEALTH SERVICES DEFINED.—For purposes of this part, the term “home and community-based health services”—

(1) means, with respect to an eligible individual, skilled health services furnished to the individual in the individual’s home pursuant to a written plan of care established by a health care professional for the provision of such services and items and services described in paragraph (2);

(2) includes—

(A) durable medical equipment,

(B) homemaker/home health aide services and personal care services furnished in the individual’s home,

(C) day treatment or other partial hospitalization services,

(D) home intravenous drug therapy (including prescription drugs administered intravenously as part of such therapy), and

(E) routine diagnostic tests administered in the individual’s home,

furnished pursuant to such plan of care; but

(3) does not include, except as specifically provided in paragraph (2)—

(A) diagnostic tests,

(B) inpatient hospital services,

(C) nursing facility services, and

(D) prescription drugs.

SEC. 2402. [300dd-1] PROVISIONS WITH RESPECT TO CARRYING OUT PURPOSE OF GRANTS.

(a) REQUIRED USES OF FUNDS.—The Secretary may not make payments under section 2401(a) unless the State involved agrees that the State will—

(1) provide for home and community-based health services for eligible individuals pursuant to written plans of care established by health care professionals for providing such services to such individuals;

(2) provide for the identification, location, and provision of outreach to eligible individuals;

(3) provide for coordinating the provision of services under this part with the provision of similar or related services by public and private entities; and

(4) give priority to the provision of outreach and home and community-based services to eligible individuals with low incomes.

(b) **AUTHORITY FOR GRANTS AND CONTRACTS.**—A State may make payment for services under subsection (a) through grants to public and nonprofit private entities and through contracts with public and private entities. In providing such financial assistance, a State shall give priority to public and nonprofit private entities that have demonstrated experience in delivering home and community-based health services to individuals infected with the etiologic agent for acquired immune deficiency syndrome.

SEC. 2403. [300dd-2] REQUIREMENT OF SUBMISSION OF DESCRIPTION OF INTENDED USES OF GRANT.

The Secretary may not make payments under section 2401(a) to a State for a fiscal year unless—

(1) the State submits to the Secretary a description of the purposes for which the State intends to expend such payments for the fiscal year;

(2) such description provides information relating to the services and activities to be provided, including a description of the manner in which such services and activities will be coordinated with any similar services and activities of public and private entities; and

(3) such description includes information relating to (A) the process for determining which eligible individuals are medically dependent or chronically dependent and (B) the process for establishing written plans of care for the provision of home and community-based health services under this part.

SEC. 2404. [300dd-3] RESTRICTIONS ON USE OF GRANT.

(a) **IN GENERAL.**—The Secretary may not make payments under section 2401(a) for a fiscal year to a State unless the State agrees that the payments will not be expended—

(1) to provide for items or services described in section 2401(d)(3);

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

(3) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment; or

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

(b) **LIMITATION ON ADMINISTRATIVE EXPENSES.**—The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees that the State will not expend more than 5 percent of the payments made to the State under such section for administrative expenses with respect to carrying out the purpose of this part.

(c) **LIMITATION ON TOTAL PAYMENTS.**—

(1) Before March 1, 1989, for fiscal year 1989 and before September 1, 1989, for fiscal year 1990, the Secretary shall de-

termine and publish the national average monthly payments, for extended care services under part A of title XVIII of the Social Security Act, for each resident of a skilled nursing facility the Secretary estimates will be paid in the fiscal year.

(2) The Secretary may not make payments under section 2401(a) for a fiscal year to a State to the extent that the average monthly payments for eligible individuals provided home and community-based health services under this part in the State exceeds 65 percent of the national average monthly payments determined and published for the fiscal year under paragraph (1).

SEC. 2405. [300dd-4] REQUIREMENT OF REPORTS AND AUDITS BY STATES.

(a) **REPORTS.—**

(1) The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees to prepare and submit to the Secretary, by not later than January 1 following the fiscal year, an annual report in such form and containing such information as the Secretary determines (after consultation with the States and the Comptroller General of the United States) to be necessary for—

(A) securing a record and a description of the purposes for which payments received by the State pursuant to section 2401(a) were expended and of the recipients of such payments;

(B) determining whether the payments were expended in accordance with the purpose of this part; and

(C) determining the percentage of payments received pursuant to section 2401(a) that were expended by the State for administrative expenses during the fiscal year involved.

(2) Each report by a State under paragraph (1) for a fiscal year also shall include—

(A) information on the number and type of eligible individuals provided home and community-based health services by the State under this part for the fiscal year;

(B) information on the types of home and community-based health services so provided;

(C) information on the average monthly costs of such services and a comparison of such costs with costs of providing services in hospitals, nursing facilities, and similar institutions; and

(D) such other information as the Secretary may require to provide for an evaluation of the program under this part and its cost-effectiveness.

(b) **AUDITS.—**

(1) The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees to establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement of, and accounting for, amounts received by the State under such section.

(2) The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees that—

(A) the State will provide for—

(i) a financial and compliance audit of such payments; or

(ii) a single financial and compliance audit of each entity administering such payments;

(B) the audit will be performed biennially and will cover expenditures in each fiscal year; and

(C) the audit will be conducted in accordance with standards established by the Comptroller General of the United States for the audit of governmental organizations, programs, activities, and functions.

(3) The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees that, not later than 30 days after the completion of an audit under paragraph (2), the State will provide a copy of the audit report to the State legislature.

(4) For purposes of paragraph (2), the term “financial and compliance audit” means an audit to determine whether the financial statements of an audited entity present fairly the financial position, and the results of financial operations, of the entity in accordance with generally accepted accounting principles, and whether the entity has complied with laws and regulations that may have a material effect upon the financial statements.

(c) **AVAILABILITY TO PUBLIC.**—The Secretary may not make payments under section 2401(a) unless the State involved agrees to make copies of the reports and audits described in this section available for public inspection.

(d) **EVALUATIONS BY COMPTROLLER GENERAL.**—The Comptroller General of the United States shall, from time to time, evaluate the expenditures by the States of payments under section 2401(a) in order to assure that expenditures are consistent with the provisions of this part.

SEC. 2406. [300dd-5] ADDITIONAL REQUIRED AGREEMENTS.

(a)² **IN GENERAL.**—The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees that—

(1) the legislature of the State will conduct public hearings on the proposed use and distribution of the payments to be received from the allotments for each such fiscal year;

(2)(A) the State will, to the maximum extent practicable, ensure that services provided to an individual pursuant to the program involved will be provided without regard to the ability of the individual to pay for such services and without regard to the current or past health condition of the individual;

(B) if any charges are imposed for the provision of home and community-based health services for which assistance is provided under this part, such charges (i) will be pursuant to a public schedule of charges, (ii) will not be imposed on any eligible individual with an income that does not exceed 100 percent of the official poverty line, and (iii) for an eligible individual with an income that exceeds 100 percent of the official

² So in law. This section does not contain a subsection (b).

poverty line, will be adjusted to reflect the income of the individual;

(3) the State will provide for periodic independent peer review to assess the quality and appropriateness of home and community-based health services provided by entities that receive funds from the State pursuant to section 2401(a);

(4) the State will permit and cooperate with Federal investigations undertaken under section 2409(e);

(5) the State will maintain State expenditures for home and community-based health services for individuals infected with the etiologic agent for acquired immune deficiency syndrome at a level equal to not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying to receive payments; and

(6) the State will not make payments from allotments made under section 2401(a) for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (i) under any State compensation program, under an insurance policy, under any Federal or State health benefits program, or (ii) by an entity that provides health services on a prepaid basis.

SEC. 2407. [300dd-6] REQUIREMENT OF SUBMISSION OF APPLICATION CONTAINING CERTAIN AGREEMENTS AND ASSURANCES.

The Secretary may not make payments under section 2401(a) to a State for a fiscal year unless—

(1) the State submits to the Secretary an application for the payments containing agreements in accordance with sections 2401 through 2406;

(2) the agreements are made through certification from the chief executive officer of the State;

(3) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary;

(4) the application contains the description of intended expenditures required in section 2403; and

(5) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

SEC. 2408. [300dd-7] DETERMINATION OF AMOUNT OF ALLOTMENTS FOR STATES.

(a) **MINIMUM ALLOTMENT.**—Subject to the extent of amounts made available in appropriations Acts, the amount of an allotment under section 2401(a) for—

(1) each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, for a fiscal year shall be the greater of—

(A) \$100,000, and

(B) an amount determined under subsection (b); and

(2) each territory of the United States (as defined in section 2413(5)) shall be \$25,000.

(b) **DETERMINATION UNDER FORMULA.**—

(1) The amount referred to in subsection (a)(1)(B) for a State is the product of—

(A) an amount equal to the amount appropriated pursuant to section 2414(a) for the fiscal year involved; and

(B) the ratio of the distribution factor for the State to the sum of the distribution factors for all the States.

(2) In paragraph (1)(B), the term “distribution factor” means, for a State, the product of—

(A) the number in the State of additional cases of acquired immune deficiency syndrome, as indicated by the number of such cases reported to and confirmed by the Secretary for the most recent fiscal year for which such data are available, and

(B) the ratio (based on the most recent available data) of (i) the average per capita income of individuals in the United States to (ii) the average per capita income of individuals in the State;

except that the distribution factors for all the States and territories shall be proportionally reduced to the extent necessary to assure that the total of the allotments under subsection (a) for all the States and territories for each fiscal year does not exceed the amount appropriated pursuant to section 2414(a) for the fiscal year.

(c) INDIAN TRIBES.—

(1) Upon the request of the governing body of an Indian tribe or tribal organization within a State to the Secretary, the Secretary shall—

(A) reserve from the amount that otherwise would be allotted for the fiscal year to the State under subsection (a) an amount determined in accordance with paragraph (2); and

(B) grant the amount reserved under subparagraph (A) to the Indian tribe or tribal organization serving eligible individuals who are members of the Indian tribe or tribal organization.

(2) The amount reserved under paragraph (1)(A) shall be an amount equal to the product of—

(A) the amount that otherwise would be allotted to the State under subsection (a) for the fiscal year; and

(B) the Secretary’s estimate of the proportion of the number of additional cases described in subsection (b)(2)(A) that are attributable to members of the Indian tribe or tribal organization.

(3) The Secretary may not make a grant under paragraph (1)(B) to an Indian tribe or tribal organization unless the Indian tribe or tribal organization submits to the Secretary an application meeting the requirements of such an application under section 2407.

(d) DISPOSITION OF CERTAIN FUNDS APPROPRIATED FOR ALLOTMENTS.—

(1) Amounts described in paragraph (2) shall, in accordance with paragraph (3), be allotted by the Secretary to States receiving payments under section 2401(a) for the fiscal year (other than any State referred to in paragraph (2)(B)).

(2) The amounts referred to in paragraph (1) are any amounts that are not paid to States or territories under section 2401(a) as a result of—

(A) the failure of any State or territory to submit an application under section 2407 within a reasonable time period established by the Secretary; or

(B) any State or territory informing the Secretary that the State or territory does not intend to expend the full amount of the allotment made to the State or territory.

(3) The amount of an allotment under paragraph (1) for a State for a fiscal year shall be an amount equal to the product of—

(A) an amount equal to the amount described in paragraph (2) for the fiscal year involved; and

(B) the ratio determined under subsection (b)(1)(B) for the State.

SEC. 2409. [300dd-8] FAILURE TO COMPLY WITH AGREEMENTS.

(a) REPAYMENT OF PAYMENTS.—

(1) The Secretary may, subject to subsection (c), require a State to repay any payments received by the State under section 2401(a) that the Secretary determines were not expended by the State in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 2407.

(2) If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid to the State under section 2401(a).

(b) WITHHOLDING OF PAYMENTS.—

(1) The Secretary may, subject to subsection (c), withhold payments due under section 2401(a) if the Secretary determines that the State involved is not expending amounts received under such section in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 2407.

(2) The Secretary shall cease withholding payments from a State under paragraph (1) if the Secretary determines that there are reasonable assurances that the State will expend amounts received under section 2401(a) in accordance with the agreements referred to in such paragraph.

(c) OPPORTUNITY FOR HEARING.—Before requiring repayment of payments under subsection (a)(1), or withholding payments under subsection (b)(1), the Secretary shall provide to the State an opportunity for a hearing conducted within the State.

(d) TECHNICAL VIOLATIONS.—The Secretary may not require repayment under subsection (a)(1), or withhold payments under subsection (b)(1), for a technical violation, as determined by the Secretary, of any agreement required to be contained in the application submitted by the State pursuant to section 2407.

(e) INVESTIGATIONS.—

(1) The Secretary shall conduct in several States in each fiscal year investigations of the expenditure of payments received by the States under section 2401(a) in order to evaluate

compliance with the agreements required to be contained in the applications submitted to the Secretary pursuant to section 2407.

(2) Each State, and each entity receiving funds from payments made to a State under section 2401(a), shall make appropriate books, documents, papers, and records available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

(3)(A) In conducting any investigation in a State, the Secretary and the Comptroller General of the United States may not make a request for any information not readily available to the State, or to an entity receiving funds from payments made to the State under section 2401(a), or make an unreasonable request for information to be compiled, collected, or transmitted in any form not readily available.

(B) Subparagraph (A) shall not apply to the collection, compilation, or transmittal of data in the course of a judicial proceeding.

SEC. 2410. [300dd-9] PROHIBITION AGAINST CERTAIN FALSE STATEMENTS.

(a) **IN GENERAL.**—A person may not knowingly make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which amounts may be paid by a State from payments received by the State under section 2401(a).

(b) **CRIMINAL PENALTY FOR VIOLATION OF PROHIBITION.**—Any person who violates a prohibition established in subsection (a) may for each violation be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

SEC. 2411. [300dd-10] TECHNICAL ASSISTANCE AND PROVISION BY SECRETARY OF SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.

(a) **TECHNICAL ASSISTANCE.**—Upon the request of a State receiving payments under section 2401(a), the Secretary may, without charge to the State, provide to the State (or to any public or private entity designated by the State) technical assistance with respect to the planning, development, and operation of any program or service carried out pursuant to this part. The Secretary may provide such technical assistance directly, through contract, or through grants.

(b) **PROVISION BY SECRETARY OF SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.**—

(1) Upon the request of a State receiving payments under section 2401(a), the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out this part and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(2) With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under section 2401(a) to the State by an amount equal to the costs of

detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

SEC. 2412. [300dd-11] REPORT BY SECRETARY.

Not later than March 1, 1990, the Secretary shall report to the Congress on the activities of the States under this part. Such report shall include a recommendation as to whether or not the program under this part should be extended beyond fiscal year 1990 and may include any recommendations of the Secretary for appropriate administrative and legislative initiatives.

SEC. 2413. [300dd-12] DEFINITIONS.

For purposes of this part:

(1) The terms “Indian tribe” and “tribal organization” have the same meaning given such terms in sections 4(b) and 4(c) of the Indian Self-Determination and Education Assistance Act.

(2) The term “infected with the etiologic agent for acquired immune deficiency syndrome” includes any condition arising from infection with such etiologic agent.

(3)(A) An individual is considered to have low income if the individual’s income does not exceed 200 percent of the official poverty line.

(B) The term “official poverty line” refers, with respect to an individual, to the official poverty line defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981, applicable to a family of the size involved.

(4)(A) The term “State” means, except as provided in subparagraph (B), each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory of the United States.

(B) For purposes of subsections (b) and (d) of section 2408, the term “State” means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(5) The term “territory of the United States” means each of the following: the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

SEC. 2414. [300dd-13] FUNDING.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of making allotments under section 2401(a), there are authorized to be appropriated \$100,000,000 for each of the fiscal years 1989 and 1990.

(b) **AVAILABILITY TO STATES.**—Any amounts paid to a State or territory under section 2401(a) shall remain available to the State or territory until the expiration of the 1-year period beginning on the date on which the State or territory receives such amounts.

SEC. 2415. [300dd-14] SUNSET.

Effective with respect to appropriations made for any period after fiscal year 1990, this part is repealed.

PART B—SUBACUTE CARE

SEC. 2421. [300dd-21] DEMONSTRATION PROJECTS.

(a) As used in this section:

(1) The term “individuals infected with the etiologic agent for acquired immune deficiency syndrome” means individuals who have a disease, or are recovering from a disease, attributable to the infection of such individuals with such etiologic agent, and as a result of the effects of such disease, are in need of subacute-care services.

(2) The term “subacute care” means medical and health care services that are required for individuals recovering from acute care episodes that are less intensive than the level of care provided in acute-care hospitals, and includes skilled nursing care, hospice care, and other types of health services provided in other long-term-care facilities.

(b) The Secretary shall conduct three demonstration projects to determine the effectiveness and cost of providing the subacute-care services described in subsection (b) to individuals infected with the etiologic agent for acquired immune deficiency syndrome, and the impact of such services on the health status of such individuals.

(c)(1) The services provided under each demonstration project shall be designed to meet the specific needs of individuals infected with the etiologic agent for acquired immune deficiency syndrome, and shall include—

(A) the care and treatment of such individuals by providing—

(i) subacute care;

(ii) emergency medical care and specialized diagnostic and therapeutic services as needed and where appropriate, either directly or through affiliation with a hospital that has experience in treating individuals with acquired immune deficiency syndrome; and

(iii) case management services to ensure, through existing services and programs whenever possible, appropriate discharge planning for such individuals; and

(B) technical assistance, to other facilities in the region served by such facility, that is directed toward education and training of physicians, nurses, and other health-care professionals in the subacute care and treatment of individuals infected with the etiologic agent for acquired immune deficiency syndrome.

(2) Services provided under each demonstration project may also include—

(A) hospice services;

(B) outpatient care; and

(C) outreach activities in the surrounding community to hospitals and other health-care facilities that serve individuals infected with the etiologic agent for acquired immune deficiency syndrome.

(d) The demonstration projects shall be conducted—

- (1) during a 4-year period beginning not later than 9 months after the date of enactment of this section;³ and
- (2) at sites that—
- (A) are geographically diverse and located in areas that are appropriate for the provision of the required and authorized services; and
- (B) have the highest incidence of cases of acquired immune deficiency syndrome and the greatest need for subacute-care services.
- (e) The Secretary shall evaluate the operations of the demonstration projects and shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate—
- (1) not later than 18 months after the beginning of the first project, a preliminary report that contains—
- (A) a description of the sites at which the projects are being conducted and of the services being provided in each project; and
- (B) a preliminary evaluation of the experience of the projects in the first 12 months of operation; and
- (2) not later than 6 months after the completion of the last project, a final report that contains—
- (A) an assessment of the costs of subacute care for individuals infected with the etiologic agent for acquired immune deficiency syndrome, including a breakdown of all other sources of funding for the care provided to cover subacute care; and
- (B) recommendations for appropriate legislative changes.
- (f) Each demonstration project shall provide for other research to be carried out at the site of such demonstration project including—
- (1) clinical research on acquired immune deficiency syndrome, concentrating on research on the neurological manifestations resulting from infection with the etiologic agent for such syndrome; and
- (2) the study of the psychological and mental health issues related to such syndrome.
- (g)(1) To carry out this section, there are authorized to be appropriated \$10,000,000 for fiscal year 1989 and such sums as are necessary for each of the fiscal years 1990 through 1992.
- (2) Amounts appropriated pursuant to paragraph (1) shall remain available until September 10, 1992.
- (h) The Secretary shall enter into an agreement with the Administrator of the Veterans' Administration to ensure that appropriate provision will be made for the furnishing, through demonstration projects, of services to eligible veterans, under contract with the Veterans' Administration pursuant to section 620 of title 38, United States Code.

³ Enacted on November 4, 1988.

PART C—OTHER HEALTH SERVICES

SEC. 2431. [300dd-31] GRANTS FOR ANONYMOUS TESTING.

The Secretary may make grants to the States for the purpose of providing opportunities for individuals—

(1) to undergo counseling and testing with respect to the etiologic agent for acquired immune deficiency syndrome without being required to provide any information relating to the identity of the individuals; and

(2) to undergo such counseling and testing through the use of a pseudonym.

SEC. 2432. [300dd-32] REQUIREMENT OF PROVISION OF CERTAIN COUNSELING SERVICES.

(a) **COUNSELING BEFORE TESTING.**—The Secretary may not make a grant under section 2431 to a State unless the State agrees that, before testing an individual pursuant to such section, the State will provide to the individual appropriate counseling with respect to acquired immune deficiency syndrome (based on the most recent scientific data relating to such syndrome), including—

(1) measures for the prevention of exposure to, and the transmission of, the etiologic agent for such syndrome;

(2) the accuracy and reliability of the results of such testing;

(3) the significance of the results of such testing, including the potential for developing acquired immune deficiency syndrome; and

(4) encouraging individuals, as appropriate, to undergo testing for such etiologic agent and providing information on the benefits of such testing.

(b) **COUNSELING OF INDIVIDUALS WITH NEGATIVE TEST RESULTS.**—The Secretary may not make a grant under section 2431 to a State unless the State agrees that, if the results of testing conducted pursuant to such section indicate that an individual is not infected with the etiologic agent for acquired immune deficiency syndrome, the State will review for the individual the information provided pursuant to subsection (a) with respect to such syndrome, including—

(1) the information described in paragraphs (1) through (3) of such subsection; and

(2) the appropriateness of further counseling, testing, and education of the individual with respect to acquired immune deficiency syndrome.

(c) **COUNSELING OF INDIVIDUALS WITH POSITIVE TEST RESULTS.**—The Secretary may not make a grant under section 2431 to a State unless the State agrees that, if the results of testing conducted pursuant to such section indicate that an individual is infected with the etiologic agent for acquired immune deficiency syndrome, the State will provide to the individual appropriate counseling with respect to such syndrome, including—

(1) reviewing the information described in paragraphs (1) through (3) of subsection (a);

(2) reviewing the appropriateness of further counseling, testing, and education of the individual with respect to acquired immune deficiency syndrome;

(3) the importance of not exposing others to the etiologic agent for acquired immune deficiency syndrome;

(4) the availability in the geographic area of any appropriate services with respect to health care, including mental health care and social and support services;

(5) the benefits of locating and counseling any individual by whom the infected individual may have been exposed to the etiologic agent for acquired immune deficiency syndrome and any individual whom the infected individual may have exposed to such etiologic agent; and

(6) the availability, if any, of the services of public health authorities with respect to locating and counseling any individual described in paragraph (5).

(d) **RULE OF CONSTRUCTION WITH RESPECT TO COUNSELING WITHOUT TESTING.**—Agreements entered into pursuant to subsections (a) through (c) may not be construed to prohibit any grantee under section 2431 from expending the grant for the purpose of providing counseling services described in such subsections to an individual who will not undergo testing described in such section as a result of the grantee or the individual determining that such testing of the individual is not appropriate.

(e) **USE OF FUNDS.**—

(1) The purpose of this subpart⁴ is to provide for counseling and testing services to prevent and reduce exposure to, and transmission of, the etiologic agent for acquired immune deficiency syndrome.

(2) All individuals receiving counseling pursuant to this subpart⁴ are to be counseled about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

(3) None of the fund appropriated to carry out this subpart⁴ may be used to provide counseling that is designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous drug abuse.

(4) Paragraph (3) may not be construed to prohibit a counselor who has already performed the counseling of an individual required by paragraph (2), to provide accurate information about means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene.

SEC. 2433. [300dd-33] FUNDING.

For the purpose of grants under section 2431, there are authorized to be appropriated \$100,000,000 for each of the fiscal years 1989 and 1990.

⁴Probably should be "part". See section 118(b)(1)(B) of Public Law 102-321 (106 Stat. 348).