

**Health Resources and Services
Administration's HIV/AIDS Bureau (HRSA HAB)
Division of State HIV/AIDS Programs (DSHAP)**

**Fiscal Management Approaches to Maintenance of
Effort (MOE) Requirements, Minority AIDS Initiative
(MAI) Budgeting, and Reporting and Tracking of
Pharmaceutical Rebates**

PRESENTER:

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Presenter's Credentials

- 30-plus years of Administrative and Fiscal Experience in Community Health Centers and HIV Treatment Settings
- Reimbursement systems development experience in HIV Fee For Service (FFS) and Capitated Systems
- Ryan White Technical Assistance consultant since 1994: Part B Fiscal Consultant for 10 years

Subrecipient Fiscal Monitoring Training Session Format

- Expect this session to last about 60 minutes
- Approximately 45 minutes for presentation and 15 minutes for questions
- Q&A will be accommodated at the conclusion of the presentation

Fiscal Management Training Session Objectives

- ❖ Enhance participants ability to differentiate those expenditures that qualify toward meeting the MOE requirements.
- ❖ Allow participants to better interpret the uses of MAI funding and enhance their budgeting and reporting of those funds.
- ❖ Facilitate participants' abilities to construct effective methods of tracking rebate income and formulate accurate reporting of that income on the Federal Financial Report (FFR) and ADAP Data Report (ADR) each year.

Ryan White HIV/AIDS Program Part B Fiscal Training Session

Why are we conducting this session?

Frequent Findings in RWHAP Comprehensive Site Visits

- ❖ Documentation used to support the recipient's MOE does not justify the amount reported to HRSA HAB.
- ❖ Drug Rebates/340B income are not accurately recorded on the FFR.
- ❖ Part B grant funds are expended prior to exhausting rebates/program income .

Maintenance of Effort (MOE)

- ❖ Section 2617(b)(7)(E) of the PHS Act specifies that a recipient must maintain nonfederal funding for HIV-related activities at a level that is not less than expenditures for such activities during the fiscal year prior to receiving the Federal award.
- ❖ Part B Recipients are to attest their compliance with this requirement by signing Agreements and Compliance Assurances in either the RWHAP Part B application or Non-Competing Continuation (NCC) Progress Report.
- ❖ Waivers were granted if requested during the COVID -19 public health emergency (FYs 2020, 2021 and 2022)

Maintenance of Effort

Eligible Funds

- ❖ A state/territory is able to use a range of expenditures to comply with the MOE requirements as long as they are an identifiable item in the state/territory's agencies' budgets and expenditures
- ❖ Eligible funds include:
 - ❖ Contributions to ADAP and/or other RWHAP recognized services
 - ❖ Pharmaceutical rebates
 - ❖ State/territory funding used for State Pharmacy Assistance Programs
 - ❖ State-/territory-funded salaries of RWHAP Part B staff
 - ❖ State/territory funds spent on health care insurance coverage
 - ❖ State-/territory-funded ADAP delivery fees

Maintenance of Effort Eligible Funds (cont.)

- ❖ Continuation of eligible funds:
 - ❖ State/territory funds used for care and treatment of inmates diagnosed with HIV infection in the state/territory Department of Corrections
 - ❖ State/territory share of Medicaid expenditures for people with HIV
 - ❖ State/territory contributions to HIV prevention and surveillance activities; and
 - ❖ State/territory contributions to HIV research
- ❖ **These sources of funds may be used for both the MOE requirement and the state match requirement**

Maintenance of Effort Documentation Expectations

- ❖ The recipient must maintain a system that allows it to consistently track and report HIV-related expenditures
- ❖ The system must:
 - ❖ Define the methodology in place
 - ❖ Be documented and auditable
 - ❖ Ensure that federal funds do not supplant recipient spending

Maintenance of Effort

Documentation Expectations (cont.)

- ❖ The recipient must submit the following documentation in its RWHAP Part B grant application or its NCC Progress Report:
 - ❖ Documentation that indicates the overall level of HIV-related expenses has been maintained year-to-year for the previous two complete Recipient fiscal years.
 - ❖ A narrative that details the reductions or changes in the data used to document the MOE.
 - ❖ An attestation signed by the Recipient's authorized representative indicating compliance with the MOE requirement.

Maintenance of Effort

Compliance and HRSA HAB Monitoring

- ❖ As stated previously, the recipient must maintain documentation of MOE and provide that documentation if requested
- ❖ During a Comprehensive Site Visit (CSV) or any time during a grant period of performance, HRSA HAB has the right to review the documents below:
 - ❖ Budget elements that document the contributions of the recipient
 - ❖ Description of the tracking/accounting system that supports the recipient's contribution to core medical services and support services;
 - ❖ Recipient budget for state or territory contributions; and
 - ❖ The actual tracking/accounting documentation of contributions

Maintenance Of Effort

What's Legit?

Your fiscal director has revised a schedule of MOE expenditures that they believe will accurately update the various activities and expenditures that are documented to calculate the MOE for your state's HIV program. They list the following activities and expenditures:

- State General Fund expenses for supporting HIV testing expenses in STI clinics in all local health departments
- Your state's expenses for ADAP medications not covered by your Part B award
- Pharmaceutical rebates spent on a state-funded dental service for HIV-infected residents without Medicaid or dental insurance
- In-kind value of providing free use of the state-owned convention center to allow a local ASO to host an HIV prevention conference there for three days
- Paying expenses to a local communications firm to produce publicity messages for the HIV prevention conference being held in its convention center

Which items are legitimate based upon our previous discussion?

Maintenance Of Effort

What's Legit? (cont.)

Answer: The only item not allowed is the use of the convention center as in-kind contribution to the event

MAI Funding & Programming

- ❖ Approximately \$10 million awarded to 31 Part B recipients in FY 2022.
- ❖ The goal of the MAI funding overall is to enhance access to HIV care and health outcomes for racial and minority populations that are disproportionately impacted by HIV.
- ❖ Part B MAI formula funds must be used for outreach and education services with the objective of increasing minority access to programs providing HIV/AIDS medications.

MAI Funding & Programming

- ❖ Recipients must provide clear directives to subrecipients/contractors in their service contracts that will assure the recipient can comply with the RWHAP Part B guidance around MAI funding.
- ❖ Tracking and reporting systems used by subrecipients/contractors must facilitate the ability to capture and report:
 - ❖ Amount of funds expended
 - ❖ Volume of clients served
 - ❖ Units of service delivered by race and ethnicity and articulate the number of service units provided to women, infants, children and youth (WICY)
 - ❖ Outcomes achieved at the client level
 - ❖ Timely data submission to allow the recipient to submit an annual report on time

MAI Funding & Programming

- ❖ Follows a different set of expectations than the usual RWHAP Part B programming
- ❖ Annual program plan submitted within 60 days after a budget start date, or receipt of a Notice of Award (NoA), rather than a plan being part of an annual NCC submission
- ❖ Annual report required at the conclusion of the MAI fiscal year that articulates the following details:
 - ❖ Expenditures
 - ❖ Number of clients served and demographic detail of those clients served
 - ❖ Outcomes from the services provided

MAI Funding & Programming (cont.)

Common Challenges Among Recipients Using MAI Funding

- ❖ Workplan and annual reporting are off cycle from most other RWHAP Part B activities
- ❖ Often the most qualified and effective organizations contracted to do this work are those that have the least developed infrastructure to meet the data capture and reporting expectations
- ❖ Outcomes identification and Clinical Quality Management (CQM) activities to support that task tend to lag compared to metrics tracked and reported for other Part B services

Managing Rebates and Program Income (1)

Section 2616(g) of the PHS Act states:

“A state shall ensure that any pharmaceutical rebates received on drugs purchased from funds provided pursuant to this section [i.e., ADAP] are applied to activities supported under this subpart [i.e., RWHAP Part B], with priority given to activities described under this section [i.e., ADAP].”

Managing Rebates and Program Income (2)

- ❖ All rebates that are generated by the use of federal dollars are subject to HRSA HAB's rebate policies and the related rule for spending that income.
- ❖ Rebates generated using ADAP funding must be used on RWHAP Part B activities with priority spending on ADAP services.
- ❖ **PCN # 15-04 clarifies how a recipient should manage pharmaceutical rebates**

Managing Rebates and Program Income (3)

- ❖ Recipients should develop projections each year to budget anticipated rebate income and factor that into an overall program budget that accounts for all program funds (rebates, 340B revenue, federal grant revenue, and program income, if it applies)
- ❖ Per regulatory requirements, rebates must be expended, as well as 340B proceeds (if applicable) before drawing down any federal dollars from the PMS (45 CFR 75.305(b)(5))

Managing Rebates and Program Income (4)

- ❖ Accounting methods matter!
 - ❖ Accrual basis – revenue and expenses are recorded when incurred
 - ❖ Cash basis – revenue and expenses are recorded when cash is received or disbursed
 - ❖ Most recipients use an accrual method of accounting

Managing Rebates and Program Income (5)

- ❖ **Recipients using an accrual method** of accounting would recognize rebate expenditures when they execute a contract with a contractor or subrecipient at the beginning of a budget period. This allows the expenditure to be recognized at that time, meaning you have spent the rebate income you have previously accounted for. When you pay the contractor/subrecipient is not the determining factor of realizing the expense.
- ❖ **Recipients using a cash method** of accounting, the expenditure of rebates is realized when the actual cash payment is made to a subrecipient/contractor/vendor.

Managing Rebates and Program Income (6)

Using the Rebate Income-Rules of the Road

- ❖ Recipients are expected to expend rebate income received at the end of a budget period prior to expending new RWHAP Part B grant funds awarded for the subsequent budget period.
- ❖ Recipients in receipt of ADAP rebates from medications that are unable to expend all of that rebate income by budget period end will not be subjected to Unobligated Balance (UOB) penalties if the underspending on their grant award is a result of having spent rebate funds prior to drawing down grant funds.

Managing Rebates and Program Income (7)

Using the Rebate Income-Rules of the Road

- ❖ Rebate spending is not subject to the usual limitations on RWHAP Part B spending – i.e. caps on administration, planning and evaluation and CQM
- ❖ Not subjected to the 75/25 Core Medical services requirement
- ❖ The salary cap does still apply when using rebate income
- ❖ Rebate income must be used for those costs that are allowable under the enabling RWHAP legislation
- ❖ Items usually requiring prior approval from your project officer/grants management specialist if using grant funds do not require approval if using rebate income

Managing Rebates and Program Income (8)

Using the Rebate Income-Rules of the Road

- ❖ RWHAP Part B recipients are not permitted to fund Ryan White Part A recipients, i.e. Eligible Metropolitan Areas (EMAs) or Transitional Grant Areas (TGAs) for unrestricted use with rebate income, but it may provide subawards to RWHAP Part A recipients to support eligible RWHAP clients receiving services that are in approved service categories.
- ❖ Recipients can use rebate income to cover health insurance costs but not just transfer money to a health plan to support administrative expenses.
- ❖ Recipients are not allowed to direct a drug manufacturer or PBM to submit portions of a rebate payments to another entity. Rebates must be paid to the deemed entity only.

Managing Rebates and Program Income (9)

Tracking and Reporting Rebate Income

- ❖ Recipients must track and account for all rebates from medications.
- ❖ Recipients must report the amount of rebate income available to them and the amount they expended during the budget period of their grant.
- ❖ Those amounts are to be reported annually in the final FFR using the Ryan White Rebated Funding section.
- ❖ Similarly, recipients must report in the ADR each year the amount of rebates reinvested into the RWHAP ADAP in the funding section of the Recipient Report and the amount of rebate spending done in the Expenditures section of the Recipient Report.

Managing Rebates and Program Income (10)

Tracking and Reporting Rebate Income

- ❖ Recipient must report the full amount realized in rebate payments
- ❖ Some recipients may have contractual arrangements with third parties who net their management fees from gross receipts received from manufacturers
- ❖ The reduction in rebate receipts from that method of paying a third-party vendor should be incorporated in the amounts reported in the FFR and ADR.
- ❖ That amount is an expense that is allowed to be paid to a third party but should be included in the tracking of services and administrative expenses supported with rebate income

Managing Rebates and Program Income (11)

- ❖ Exercise to test the material retained in the presentation.
- ❖ The State of Mind is on an accrual basis of accounting and finalizes its subrecipient agreements each year prior to April 1st. One of its major subrecipients, St. Somewhere Health System notifies them on July 15th that they are terminating their contract in 30 days due to a corporate merger that is changing their strategic priorities and their clinical services will now be part of a proprietary medical practice enterprise. The State of Mind is now left with an inability to replace the volume of services they anticipated would be provided leading to a reduction in units of service that will be generated.
- ❖ How does this impact the fact that they have already done a PMS draw from their Part B award on July 12th to replace expenditures paid out for a portion of St. Somewhere's incurred allowable expenses?
- ❖ What issues do we need to explore to assure that the State of Mind is compliant with RWHAP guidance?

Managing Rebates and Program Income (12)

- ❖ What services are being funded by rebates/program income for Mind's array of Part B funded service categories?
- ❖ What portion of those services did Mind budget to be supported by rebates?
- ❖ How long does it take Mind to identify other providers who can assume additional capacity to meet the lost service volume provided at St. Somewhere?

Program Income Permitted Uses

- Program income earned from 340B net income should be applied to Part B program services.
- Can only be used for Part B statutorily allowed purposes (core medical services, support services, CQM, administration).
- The services funded with 340B income are not subject to the ceilings imposed on various purposes(core med-75%/10% admin/etc.).
- Can be used to meet the Maintenance of Effort requirement.

Questions,
Anyone?

Presenter's Contact Information

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