

- ! Withholding a percentage of awards until the audit is completed satisfactorily;
 - ! Withholding or disallowing overhead cost; or
 - ! Suspending payment of federal awards until audits are completed.
2. Non-submission of Separate Management Letters - Some clarification is needed on the submission of separate management letters relating to nonmaterial internal control and compliance findings.

The OMB Circular A-133 requires that the auditor report to management a separate communication of nonmaterial findings relative to federal programs.

Although nonmaterial findings may be excluded from the internal control and compliance reports, the auditor should report them in writing to the not-for-profit organization and reference this separate communication in the applicable reports. The not-for-profit organization should forward all separate communication of nonmaterial findings to the federal agencies and prime recipients. Since auditor judgement is exercised in determining whether a finding is nonmaterial, forwarding the separate communication allows the federal agencies and prime recipients to review whether items reported as nonmaterial require additional follow-up action.

3. Discretionary Grant Awards - These are grant awards, other than the block grant, that have been awarded to either counties or their subrecipients. If the award is with a county and the county contracts for these services with a subrecipient, it is the county's responsibility to be aware of the requirements for these awards and to inform their subrecipients of these requirements.

However, if the original award is direct with a subrecipient with no county involvement, then it is the subrecipient's responsibility to be aware of the audit requirements contained in the contract. Also, a subrecipient should inform the Certified Public Accountant performing an audit to contact the Department of Alcohol and Drug Program's Single Audit Section should clarification be needed.

4. Subrecipients Receiving \$250,000 or More of Federal Funds (excluding Medi-Cal) - Due to the audit threshold increase to \$250,000 or more in federal funds for the 1994-95 fiscal year, this year's reminder letter includes a requirement for counties to send two copies of reports for subrecipients receiving \$250,000 or more of federal (non-Medi-Cal) funds subvended from the Department. Counties should make sure to request two copies of the applicable reports from providers. We are required to send the second copy to the U.S. Department of the Commerce, Bureau of Census, the designated federal clearinghouse for receipt of OMB Circular A-133 audit reports.

The \$250,000 audit threshold does not apply to the direct contracts. The state regulations and audit requirements in the direct contracts take precedence over the

federal regulations in these situations. Therefore, those direct contractors receiving over \$100,000 in federal funds will be required to submit two copies of reports.

5. Subrecipients Receiving Less Than \$250,000 of Federal Funds

Although the OMB has allowed the \$250,000 audit threshold for FY 1994-95, this does not waive the Department of Alcohol and Drug Program's monitoring responsibilities. Therefore, we require submission of a single copy of reports for audits completed.

Nothing in this letter or OMB Circular A-133 should be construed as limiting a county's authority to contractually require or perform an audit of a contractor.

General Overview of Funding Requirements and Restrictions

Enclosed are various funding requirements and restrictions for federal funding sources. Please be aware these requirements provide only a general overview of each federal funding source. We are in the process of developing a comprehensive audit guide, which will be forthcoming. **We ask that counties provide this letter and the enclosure to your nonprofit subrecipient contractors as soon as possible.**

Please note that receipt of Medi-Cal funds does not necessitate an OMB Circular A-133 audit. Non-profit organizations that are required to obtain the audit due to receipt of other federal funding referred to in the attachment, which also receive Medi-Cal funding, should make note of the Section III, "Supplemental Information Regarding Medi-Cal Funding", of the enclosure.

It is our commitment to work with the counties in a cooperative effort to achieve compliance with OMB Circular A-133.

Please send the audit reports and review processes to:

Department of Alcohol and Drug Programs
Audit Services Branch
1700 K Street, Fifth Floor
Sacramento, CA 95814-4037
Attention: David Mar

If you have any questions regarding the above matter, please contact David Mar, Audit Services Branch, at (916) 324-2193.

Sincerely,

Desirée Wilson, Deputy Director
Division of Administration

Enclosure

FEDERAL FUNDING RESTRICTIONS AND REQUIREMENTS FOR ALCOHOL AND DRUG PROGRAMS

I. GENERAL REQUIREMENTS FOR ALL FEDERAL FUNDING SOURCES

Political Activity

Federal funds cannot be used for partisan political activity of any kind by any person or organization involved in the administration of federally-assisted programs. [Hatch Act (5U.S.C. 1501-1508) and Intergovernmental Personnel Act of 1970 as amended by Title VI of Civil Service Reform Act (P.L. 95-454 Section 4728), Byrd Anti-Lobbying Amendment (31 U.S.C 1352, P.L. 101-121, Section 1352)]

Davis-Bacon Act

When required by the federal grant program legislation, all laborers and mechanics employed by contractors or subcontractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor. [40 Stat 1494, Mar. 3, 1921, Chap. 411, 40 U.S.C. 276A-276A-5]

Civil Rights

No person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or in part, by federal funds. Discrimination on the basis of sex or religion is also prohibited in some federal programs. (Age--42 U.S.C. 6101 et seq.; Race--42 U.S.C. 2000d; Handicap--29 U.S.C. 794)

Equal Employment Opportunity

[Executive Order 11246/11375 41 CFR Part 60,"Office of Federal Contracts Compliance Programs, Equal Employment Opportunity, Department of Labor] [County Contract Article IV (24)]. [Title IX of the Education Amendments of 1972; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000-d); the Age Discrimination Act of 1975 (42 U.S.C. 6101); Article 9.5, Chapter 1, Part 1, Division 2, Title 2, (Section 11135, et seq.) of the California Government Code; and Title 9, Chapter 4, Subchapter 6, (Section 10800, et seq.) of the CCR], D/MC County Contract Article IV (D)(1)]

Copeland "Anti-Kickback" Act

Contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he otherwise entitled. [Copeland "Anti-Kickback" Act]

Contract Work Hours and Safety Act

All contracts awarded in excess of \$2,000 for construction contracts and \$2,500 for other contracts that involve the employment of mechanics or laborers comply with the Contract Work

Hours and Safety Act which requires each Contractor to compute the wages of every mechanic or laborer on the basis of a standard work week of 40 hours. For time more than 40 hours then the employee must be paid 1 1/2 times their basic rate of pay.

Clean Air Act

Contract or subgrant in excess of \$100,000 shall comply Clean Air Act. [42 U.S.C 7401 et seq. and Federal Water Pollution Control Act(33 U.S.C. 1251 et seq)]

Debarment and Suspensions

Certain contracts shall not be made to parties listed on the nonprocurement portion of the General Services Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs". [Executive Order 12549 and 12689]

Drug-free Workplace Act

All recipients receiving grants, including cooperative agreements, from any federal agency must certify that they will provide a drug-free workplace, or, in the case of a grantee who is an individual, certify to the agency that his or her conduct of grant activity will be drug-free. [County NNA-Article IV (26)] [Drug-free Work Place Act of 1990, D/MC County Contract Article IV (E)(1)]

Nondiscrimination Policy

Providers must comply with nondiscrimination policies. [NNA County Contract Article IV (25) D/MC County Contract Article IV (D)]

Confidential Policies

Provider must be in compliance with confidential laws regarding client rights and records. [County NNA-Article IV. (23), 42 CFR Part 2, and HSC Section 11977 [D/MC County Contract Article V (A)]

Substance Abuse

Provider must have policies regarding unlawful use or unlawful use messages regarding alcohol or drug program. [County NNA-Article IV (27), D/MC County Contract Article IV (F)(1)]

Americans with Disabilities Act

Provider must have policies which prohibit discrimination against persons with physical or mental disabilities, including discrimination due to physical barriers. [Section 504, Rehabilitation Act of 1973 and with Title 9, Section 10800 et seq. of the California Code of Regulations (CCR)]

Salary Limitation

Provider cannot pay an employee a salary at a rate that exceeds \$125,000 per year. [P.L 101-166]

II. REQUIREMENTS/RESTRICTIONS FOR SPECIFIC FEDERAL FUNDS PROVIDED FOR ALCOHOL AND DRUG PREVENTION AND TREATMENT

A. SAPT FEDERAL BLOCK GRANT FUNDING (CFDA #93.959)

1. General Requirements

Substance Abuse Prevention and Treatment (SAPT) Block Grant Funds requirements are stipulated in 45 CFR part 96. Some of those requirements are as follows:

(a) Counties and providers may not use SAPT Block Grant funds for the following:

! To provide inpatient hospital services.

! To make cash payments to intended recipients of health services.

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

SABG funds may be used for construction if a waiver is obtained under Section 1931(c) of the Public Health Services Act.

! To satisfy any matching requirement for the expenditure of nonfederal funds as a condition for the receipt of federal funds.

! To provide financial assistance to any entity other than a public or nonprofit private agency.

! To pay individual salaries at a rate that exceeds \$125,000.

! To lobby congress or any federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan.

(b) Except where otherwise required by federal law or regulation, State shall obligate and expend block grant funds in accordance with the laws and

procedures applicable to the obligations and expenditure of its own funds.
[45 CFR 96.30]

- (c) State procedures are contained in the Health and Safety Code, Title 9, California Code of Regulations (CCR), and the NNA and Drug/Medi-Cal contracts. Below are some of these requirements:

Health and Safety Code:

! 11818(a)/11xxx.xx - Expenditures

! 11977(a) - Confidentiality

! 11841, 11991.5 - Client Fees

California Code of Regulations, Title 9:

! 9424(b) - Expenditures

! 9426, 9444 - Maintenance of records

! 9434 - Client fees

! 9440 - Equipment

! 9442 - Remodeling

(Refer to Department of Alcohol and Drug Programs ADA Circular 94-04 for additional remodeling criteria)

2. Requirements of Specific Programs funded with SAPT Block Grant Funds (CFDA #93.959)

- (a) Drug-Free Work Place Recognition Project

The providers will comply with the requirements of the Drug Free Workplace Act of 1990 (Gov. Code #8350 et seq.) and will provide a drug free workplace.

- (b) Perinatal Programs

Funds must be used to initiate or expand California's capacity to provide

direct alcohol and drug abuse treatment and recovery services to substance abusing pregnant women and women parenting children twelve years and under, each year. The types of expanded services include residential, day care habilitative, outpatient drug-free, and methadone maintenance treatment. All services except methadone maintenance will treat the full spectrum of chemical dependency. Some of the limitations and restrictions are as follow:

- ! Provide referrals to a substance-using pregnant woman who is not admitted to the program, must receive interim services within 48 hours and placed at top of waiting list. [45 CFR 96.131]
- ! Provide gender-specific substance abuse treatment and other therapeutic intervention services [45 CFR 96.124, HSC Section 11757.59 (b)(2)(h)]
- ! Provide sufficient case management to ensure that women and children have adequate services. [45 CFR 96.124/ HSC Section 11757.59 (b)(2)(a)]
- ! Provide transportation services [45 CFR 96.124/ HSC Section 11757.59 (b)(2)(i)]
- ! Provide child care services [45 CFR 96.124/ HSC Section 11757.59 (b)(2)(f)]
- ! Provide education/vocational training, TB and HIV education and counseling, alcohol and drug education, and parenting skills [HSC 11757.59]
- ! Provide primary medical care and pediatric care [45 CFR 96.124/ HSC 11757.59 (b)(1)]
- ! Pregnant women are given priority in admission to program [45 CFR 96.131]
- ! Start up costs are limited to 15% of first year budget can be incurred 90 days before first client is admitted. Costs incurred 91 or more days prior to the admission of the first client must be capitalized as deferred charges and amortized over a number of years. [DDP letter #89-27 dated 4/17/89.]
- ! SAPT funds will be the "payment of last resort"

(c) Homeless Youth Project (Only Los Angeles and San Francisco)

SAPT Block Grant funds allocated to Los Angeles and San Francisco Counties for the Homeless Youth Projects shall be utilized to establish a two and one-half year program with the Office of Criminal Justice Planning Homeless Youth project within each county commencing on January 1, 1995, and ending on June 30, 1997.

These projects are to operate an outreach program targeted at treating substance abuse problems of substance-dependent homeless youth, including juvenile prostitutes.

The scope of the program shall include, but not be limited to, outreach to all shelter and drop-in facilities operated by the Homeless Youth project. Services to be provided include intervention, assessment, counseling, treatment and referral to detoxification and rehabilitation programs.

B. DRUG-FREE SCHOOLS & COMMUNITIES ACT (DFSC) FUNDS (CFDA #84.186)

1. General Requirements

(a) Alcohol and drug programs may use DFSC funds for local broadly-based programs for 1) drug and alcohol abuse prevention, early intervention, rehabilitation referral, and education for all age groups, training programs, 2) the development and distribution of educational and information materials, technical assistance, activities to encourage the coordination of drug abuse education and prevention programs, intrastate drug and alcohol abuse education and prevention centers for providing outreach, consultation, training, and referral services to schools, organizations, and members of the community, 3) to promote, establish, and maintain drug-free school zones for schools within the State. [DFSC Act Section 5122(a)]

(b) DFSC funds for drug prevention and intervention activities are limited to services for "high risk youth" as defined by federal statute. [DFSC Act Sections 5122 and 5123, as amended by P.L. 100-690, P.L. 101-226, and P.L. 101-647] [DFSC Act Section 5122(b)]

Not more than 10 percent of participants in high risk youth programs may be individuals who are not high risk youth. [DFSC Act Section 5122(b)(3), and Section 5127(a)(3)]

- (c) DFSC funds must be accounted for separately.
- (d) DFSC funds shall be used to supplement and increase the level of local funds that would, in the absence of such federal funds, be made available for the programs and activities for which funds are provided. DFSC funds cannot be used to supplant local funds.

2. The Friday Night Live (FNL) and Club Live (C/L) Programs

- (a) Friday Night Live is a peer program tailored by each county to meet local needs, receiving minimal financial support from state and federal funds. Club Live is a new program for junior or middle school youth with components similar to the Friday Night Live Program.
- (b) ADP funds subvended for Friday Night Live and Club Live may be used only for items directly related to the operation of the FNL/CL Program.

- (c) Office of Traffic Safety (OTS) CFDA #20.600

These funds may not be used for administrative overhead.

C. CENTER FOR SUBSTANCE ABUSE AND TREATMENT GRANT AWARDS

Center for Substance Abuse and Treatment (CSAT) awards Critical Populations, Criminal Justice Non-Incarcerated, Adolescents/Juvenile Justice, HIV/Aids Outreach, Pregnant and Postpartum Women, Women and Their Children, Criminal Justice Incarcerated, and Target Cities grants to providers. Some of terms and conditions stipulated in the grant awards are as follows:

1. General Requirements

- (a) Grant funds cannot be used to supplant current funding for existing activities, either at the grantee or provider levels.
- (b) Grant funds must only be used to support the particular projects for which funding is provided by CSAT.
- (c) All expenditures charged to this grant must be allowable, allocable, reasonable, and necessary for carrying out the proposed project.
- (d) Cost principles will be identified in Office of Management and Budget (OMB) Circular A-122.
- (e) Grants must be administered in accordance with the PHS Grants Policy

Statement (Rev. April 1, 1994) and federal regulations in Title 45 CFR Part 74. Some of the most significant sections of these regulations are as follows:

- ! 45 CFR Part 74-Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, other Nonprofit Organization, and Commercial Organizations; and certain grants and agreements with States, Local Governments and Indian tribal Governments establishes uniform requirements of the administration of HHS grants and principles for determining costs applicable to activities assisted by HHS grants.
- ! 74.21 (b)(2) states that a recipient's financial management systems must provide for records that identify adequately the source and application of funds for HHS-sponsored activities.
- ! 74.23 (a) all cost sharing or matching contributions, including cash and third party in-kind, shall meet all of the following criteria:
 - (1) Are verifiable from the recipient's records;
 - (2) Are not included as contributions for any other federally-assisted project or program;
 - (3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives;
 - (4) Are allowable under the applicable cost principles;
 - (5) Are not paid by the Federal Government under another award, except where authorized by federal statute to be used for cost sharing or matching;
 - (6) Are provided for in the approved budget; and
 - (7) Conform to other provisions of this part, as applicable
- ! 74.24(b) "... Program income earned during the project period shall be retained by the recipient and, in accordance with... the terms and conditions of the award, must be used in one or more of the following ways:
 - (1) Added to funds committed to the project or program, and used

to further eligible project or program objectives;

- (2) Used to finance the non-federal share of the project or program; or
- (3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based."

! 74.26(a) " Recipients and subrecipients that are institutions of higher education, hospitals affiliated with institutions of higher education, other nonprofit organizations, and commercial organizations shall be subject to the audit requirements contained in OMB Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions."

! 74.27(a) " For each kind of recipient, there is a particular set of federal principles that applies in determining allowable costs. The allowability of costs are determined in accordance with the cost principles applicable to the entity incurring the costs." Costs incurred by nonprofit organizations (except for those listed in Attachment C of Circular A-122) are determined in accordance with the provisions of OMB Circular A-122, "Cost Principles for Nonprofit Organizations". The federal cost principles are designed to provide that federal programs bear their fair share of recognized costs as determined by applicable cost principles.

To be allowable, the costs must be:

- " Reasonable for the performance of the award and be allocable thereto under these principles.
- " Conform to any limitations or exclusions set forth in these principles or in the award as to types or amount of cost items.
- " Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the organization.
- " Be accorded consistent treatment

- “ Be determined in accordance with generally accepted accounting principles.
 - “ Not be included as costs or used to meet cost sharing or matching requirements of any other federally financed program in either the current or a prior period.
 - “ Be adequate documented
- ! 74.28 "where a funding period is specified, a recipient may charge to the award only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the HHS awarding agency pursuant to 74.25(d)(1).
 - ! 74.53(b) "Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be obtained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or

annually, from the date of the submission of the quarterly or annual financial report. The only exceptions are the following:

- (1) If any litigation, claim, financial management review, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.
- ! 74.73 "(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government."
 - ! The primary organization responsible for each treatment improvement project must agree to participate in the national evaluation for this grant program.
 - ! No project is allowed to budget more than 15% of the Federal Award for evaluation.
 - ! Prior written approval is required for the expenditure of any equipment

funds.

- ! Grant funds must only be used to support the particular projects for which funding is provided by CSAT.
- ! All expenditures charged to this grant must be allowable, allocable, reasonable, and necessary for carrying out the proposed project.
- ! Grant funds cannot be used to supplant current funding for existing activities, either at the grantee or provider levels.

2. Specific Requirements of CSAT Grant Awards

There are various types of grants which may be awarded to a county subrecipient. Examples are as follows: Waiting Period Reduction Grant Program, Criminal Justice Non-Incarcerated Grant Program, Critical Populations Grant Program, Adolescents/Juvenile Justice Grant, HIV/Aids Outreach, Pregnant and Postpartum Women, Women and Their Children, Criminal Justice Incarcerated, and Target Cities Programs.

Each grant award and state or county contract contain requirements specific to the grant program.

III. SUPPLEMENTAL INFORMATION REGARDING MEDI-CAL FUNDING

- A. Federal Medicaid participation in ADP's program is commonly referred to as Drug/Medi-Cal (D/MC). The receipt of these funds does not, in itself, subject a nonprofit subrecipient to the audit requirements of OMB Circular A-133. Accordingly, these funds should not be included in determination of the \$250,000 audit threshold or schedules reflecting federal funds. If other federal funds exceed the threshold, thus necessitating an audit, and D/MC funds are also received, the information below is relevant.
- B. As a general rule, when two or more sources of funding are available to a contractor, and different or conflicting cost principles apply, the most restrictive set of cost principles should be utilized. Therefore, nonprofit providers that receive a combination of D/MC funding and other federal funding for the same service element and location should be reimbursed for

actual costs as limited by the principles of federal medicaid regulations and the Provider Reimbursement Manual, HIM-15 (HCFA-15). However, the non-D/MC federal and state reimbursements should not be limited by the D/MC maximum rate or customary charge to private paying clients. This is not to be construed as allowing the other federal and state funds to pay for costs attributable to D/MC which exceed these limits, but rather, to allow for provision of enhanced or increased services to non-D/MC clients outside the scope of D/MC services.

This policy has been codified in the Health and Safety Code for fiscal years beginning with Fiscal Year 1995-96.

C. General rules for the determination of D/MC costs:

1. D/MC costs are determined by using total aggregate costs and total units of service to compute a cost per unit of service. The computed cost per unit is used to determine D/MC costs.
2. D/MC reimbursement of costs is limited to a maximum rate established in regulation. Costs that exceed the maximum rate cannot be funded by any other federal funds.
3. D/MC reimbursement of costs is limited to the customary charge to private pay clients.

D. When adjustments are recommended in the audit report, please refer to ADP to determine the final D/MC settlement.

E. Provider Reimbursement Manual (HCFA-15) Cost Principles:

This manual is quite detailed and generally follows other Federal cost principles. Examples of differences are as follows:

1. Equipment is limited to \$500 with no exceptions or waivers. All equipment over \$500 must be capitalized and depreciated. IRS guidelines cannot be used to determine the useful life of assets.
2. Related-party transactions are limited to cost of ownership.

3. Interest is an allowable expense and must be incurred. Imputed interest is not allowable.
4. Depreciation generally is computed using the straight-line method, although some accelerated depreciation is allowed.
5. All costs must be related to the provision of services to beneficiaries. Administrative and other general expenses must be allocated to all cost centers.

The manual also addresses the determination of the customary charge to private pay clients and the alternative sliding scale fee structure.

If you wish to purchase a Provider Reimbursement Manual, you can write to:

Superintendent of Documents
P.O. Box 371954
Pittsburgh, PA 15250