



Office of Audit Services
1100 Commerce, Room 632
Dallas, Texas 75242

June 14, 2004

Report Number: A-06-03-00010

Eduardo J. Sanchez, M.D.
Commissioner of Health
Texas Department of Health
1100 West 49th Street
Austin, TX 78756-3199

Dear Dr. Sanchez:

Enclosed are two copies of the Department of Health and Human Services (HHS), Office of Inspector General (OIG) report entitled "Review of Title II of the Ryan White Comprehensive AIDS Resources Emergency Act at the Texas Department of Health." A copy of this report will be forwarded to the action official noted below for his review and any action deemed necessary.

Final determination as to actions taken on all matters reported will be made by the HHS action official named below. We request that you respond to the HHS action official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), OIG reports issued to the department's grantees and contractors are made available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act which the department chooses to exercise. (See 45 CFR Part 5.)

If you have any questions or comments about this report, please do not hesitate to call me at 214-767-8414 or through email at gordon.sato@oig.hhs.gov. To facilitate identification, please refer to Report Number A-06-03-00010 in all correspondence.

Sincerely yours,

Gordon L. Sato
Regional Inspector General
for Audit Services

Enclosures – as stated

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Direct Reply to HHS Action Official:

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Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF TITLE II
OF THE RYAN WHITE
COMPREHENSIVE AIDS RESOURCES
EMERGENCY ACT AT THE
TEXAS DEPARTMENT OF HEALTH**



**JUNE 2004
A-06-03-00010**

Notices

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OAS FINDINGS AND OPINIONS

The designation of financial or management practices as questionable or a recommendation for the disallowance of costs incurred or claimed, as well as other conclusions and recommendations in this report, represent the findings and opinions of the HHS/OIG/OAS. Authorized officials of the HHS divisions will make final determination on these matters.



EXECUTIVE SUMMARY

BACKGROUND

Under the Ryan White Comprehensive AIDS Resources Emergency Act, Title II (CARE Act Title II), the Health Resources and Services Administration (HRSA) makes grants to all U.S. States and Territories for Human Immunodeficiency Virus (HIV) programs to fund:

- Comprehensive treatment services including outpatient care, home and hospice care, and case management; and
- Drug therapies under the AIDS Drug Assistance Program (ADAP).

Aimed at people living with HIV or Acquired Immune Deficiency Syndrome (AIDS) who have no other source of healthcare or have limited coverage, CARE Act Title II funded programs are the “payor of last resort” and are to fill gaps that are not covered by other resources.

The Texas Department of Health administered the nation’s fourth largest CARE Act Title II program for the grant year April 1, 2001 through March 31, 2002, the period of our review, with Federal funding totaling \$67,857,493.

OBJECTIVES

Stemming from a request from the Senate Committee on Finance to review CARE Act program activities and use of funds, we audited the Texas Department of Health’s (Health Department) implementation of CARE Act Title II for the grant year April 1, 2001-March 31, 2002, to determine if the Health Department:

1. Met key service delivery performance goals and complied with program requirements;
2. Purchased prescription drugs at the lowest price available for ADAP; and
3. Followed applicable cost requirements in the expenditure of CARE Act Title II funds?

SUMMARY OF FINDINGS

The Health Department:

1. Exceeded its service delivery performance goals in terms of the number of clients served and prescriptions provided, and complied with program requirements regarding non-Federal matching funds, previous year’s expenditures, spending caps, and public involvement;

2. Purchased prescription drugs at the lowest price available for its ADAP; and
3. Substantially complied with cost requirements in the expenditure of CARE Act Title II funds, although there were some areas where the Health Department could improve in terms of oversight and monitoring of sub-recipients.

We are recommending that the Health Department improve its oversight and monitoring of sub-recipients and emphasize compliance with all financial and reporting requirements of the CARE Act Title II program.

In a written response to our draft report, the Health Department stated that they have made strides in addressing the issues identified in its monitoring of sub-recipients' financial operations. Efforts to improve monitoring include (1) increasing travel for existing audit staff and filling vacancies, (2) increasing desk audits and (3) tripling the number of on-site audits.

The Health Department also stated that they emphasize compliance with all financial and reporting requirements to its sub-recipients. Emphasis of compliance includes written guidelines in the Request for Proposal, the contract, the procedures manual and a web site. (For complete text, see Appendix A.)

Although we agree that written guidelines are a good way to emphasize compliance, we would encourage more aggressive actions such as direct communication with the sub-recipients, on-site visits and additional training.

INTRODUCTION

BACKGROUND

Ryan White CARE Act Title II

Within the U.S. Department of Health and Human Services (HHS), HRSA administers the CARE Act, enacted in 1990 and reauthorized in 1996 and 2000. The objective of CARE Act Title II, the focus of this report, is to improve access to a comprehensive continuum of high-quality community-based primary medical care and support services. Aimed at people living with HIV/AIDS who have no other source of healthcare or have limited coverage, CARE Act Title II funded programs are the "payor of last resort" and are to fill gaps that are not covered by other resources, such as Medicaid and private insurance.

HRSA awards CARE Act Title II grants to all U.S. States and Territories. States are allowed program flexibility to ensure a basic standard of care across their diverse service areas. The majority of CARE Act Title II program funds, however, are earmarked for

medications to treat HIV through States' ADAPs. In Texas, for example, ADAP expenditures for the grant year ended March 31, 2002 accounted for about 70 percent of CARE Act Title II expenditures.

As a cost saving measure, State ADAPs can purchase discounted drugs through a provision in Section 340B of the Public Health Service Act. This law requires drug manufacturers to provide discounts to covered entities for covered drugs. Under the 340B program, manufacturers may not charge covered entities more than the 340B ceiling price, which is based on the Medicaid drug rebate amount.

Texas—Fourth Largest Funded Program

For the grant year April 1, 2001-March 31, 2002, HRSA awarded the Health Department \$67,857,493 in CARE Act Title II funding, making Texas the fourth largest State or Territory in the CARE Act Title II program. The Health Department contracted with 30 organizations to serve as administrative agencies and/or service delivery contractors. The administrative agencies served solely as monitoring agencies, while the service delivery contractors provided HIV-related services directly to eligible HIV clients or contracted with service providers to provide these services. For this report, we refer to the administrative agencies, service delivery contractors, and service providers as sub-recipients since they all receive CARE Act Title II funding from the Health Department.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

Stemming from the Senate Finance Committee's request, we audited the Texas Department of Health's implementation of CARE Act Title II for the grant year April 1, 2001-March 31, 2002, to determine if the Health Department:

1. Met key service delivery performance goals and complied with program requirements;
2. Purchased prescription drugs at the lowest price available for ADAP; and
3. Followed applicable cost requirements in the expenditure of CARE Act Title II funds?

Scope and Methodology

To accomplish our objectives, we:

- Reviewed and verified program performance reports and supporting documentation provided by the Health Department;

- Tested a judgmental sample of ADAP drug prices at the Health Department. The sample totaled approximately \$1.4 million out of total ADAP prescription drug expenditures of approximately \$45 million; and
- Conducted on-site reviews at seven sub-recipients. These reviews consisted of interviewing cognizant officials, reviewing policies and procedures, and testing selected transactions charged to the CARE Act Title II program for compliance with Federal cost requirements.

Our fieldwork was performed at the Health Department, each sub-recipient location selected, and our Oklahoma City, Oklahoma field office from February through July 2003. Our review was performed in accordance with generally accepted government auditing standards.

RESULTS OF REVIEW

The Health Department:

1. Exceeded its service delivery performance goals in terms of the number of clients served and prescriptions provided, and complied with program requirements regarding non-Federal matching funds, previous year's expenditures, spending caps, and public involvement;
2. Purchased prescription drugs at the lowest price available for its ADAP; and
3. Substantially complied with cost requirements in the expenditure of CARE Act Title II funds, although there were some areas where the Health Department could improve in terms of oversight and monitoring of sub-recipients.

TEXAS EXCEEDED ITS PERFORMANCE GOALS AND MET PROGRAM REQUIREMENTS

The Health Department exceeded its service delivery performance goals and met program requirements regarding non-Federal matching funds, previous year's expenditures, spending caps, and public involvement.

Criteria: CARE Act Title II Grantees Required to Establish Program Performance Goals and Meet Program Requirements

CARE Act Title II grantees are required to establish program performance goals and meet program requirements, as follows:

- **Performance Goals:** Section 2617 of the CARE Act requires that a grantee's application for CARE Act Title II grant funds contain performance goals concerning the number of eligible HIV clients to be served with CARE Act Title

II funds. These goals are based on historical and actuarial data. For Texas, the 2001 goals were to serve 26,200 clients and dispense 179,230 prescriptions.

- **Program Requirements:** Sections 2617 and 2618 of the CARE Act require States to comply with certain program requirements. Specifically, States are to: provide non-Federal matching funds, exceed its previous year’s program expenditures, spend within the cap established for administrative, planning, and evaluation activities, and adequately include the public in the planning process. HRSA incorporates each State’s requirements into the Notice of Grant Award each year.

Condition: Goals and Requirements Met

For the 2001 grant year, the Health Department exceeded its service delivery performance goals in terms of the number of clients served and prescriptions provided. The table below shows the Health Department’s performance goals and actual results for HIV-related services and ADAP for the grant year April 1, 2001-March 31, 2002.

| <i>Comparison of the Health Department’s Goals to the Actual Results for HIV-Related Services and ADAP for the Grant Year April 1, 2001-March 31, 2002</i> | | |
|--|-------------|---------------|
| | Goal | Actual |
| Clients Served | 26,200 | 37,743 |
| Prescriptions Dispensed | 179,230 | 213,866 |

The Health Department also complied with program requirements. The Health Department:

- Matched Federal funds with non-Federal funds at a rate of 46.5 percent, as required by the final Notice of Grant Award;
- Exceeded the previous year’s program expenditures by approximately \$985,000;
- Limited combined administrative, planning, and evaluation costs to approximately \$7.6 million, or 11.2 percent of the award amount--well below the cap of 15 percent; and
- Included persons living with HIV and representatives of grantees, providers, and public agencies in the CARE Act Title II planning process.

TEXAS PURCHASED PRESCRIPTION DRUGS AT DISCOUNTED PRICES

The Health Department purchased prescription drugs at discounted prices, as required by HRSA policy. The Health Department’s \$45 million in drug purchases for its ADAP were actually discounted slightly below the 340B price. There were no additional charges for dispensing or storage charged to the program.

Criteria: HRSA Policy Required ADAPs to Adopt Cost-Saving Strategies

HRSA CARE Act Title II policy requires States to use cost-saving strategies in their drug purchasing programs. In policy guidance issued in June 2000, HRSA reinforced cost-saving expectations it had previously communicated in letters to CARE Act Title II grantees. The policy, *Division of Service Systems Program Policy Guidance No. 6*, emphasizes that both HHS and Congress expect States to use every means possible to secure the best price available for the products on their ADAP formularies in order to achieve maximum results with the funds. Specifically, the policy requires that States adopt cost-saving strategies equal to or greater than the cost savings realized by using the 340B drug discount program.

Condition: Texas ADAP Drugs Purchased at Discounted Prices

The Health Department purchased prescription drugs at the lowest prices available, as required. It purchased approximately \$45 million of prescription drugs below the 340B price by obtaining them directly from a wholesaler. Under a contract with the Health Department, the wholesaler was allowed to charge the Health Department up to one percent above the 340B price to cover dispensing costs, but actually offered 1-1.5 percent below the 340B price on a majority of drug purchases and did not charge additional amounts for dispensing or storage fees.

TEXAS COULD IMPROVE SUB-RECIPIENT COMPLIANCE WITH FINANCIAL AND REPORTING REQUIREMENTS

The Health Department substantially complied with Federal cost requirements in the expenditure of CARE Act Title II funds, although we found instances in which sub-recipient oversight and monitoring could be improved.

Criteria: States Must Follow Certain Federal Requirements In Charging Costs to the CARE Act Title II Program

The Public Health Services Grants Policy Statement requires that grantees, such as the Health Department, employ sound management practices to ensure that program objectives are met and that project funds are properly spent. As such, it is the Health Department's responsibility to ensure that financial and reporting requirements are in place and to monitor sub-recipient compliance.

The Health Department's sub-recipients, mostly county health departments and local non-profit entities, are required to follow applicable Federal cost requirements issued by the Office of Management and Budget. These requirements instruct recipients of Federal funds to establish financial management systems to provide for: (1) records that adequately identify the source and uses of funds for Federally sponsored activities; and (2) written procedures for determining the reasonableness, allocability, and allowability of costs.

Condition: Texas CARE Act Charges Substantially Complied With Federal Requirements, But Improvements Could be Made

Although the majority of the Health Department’s charges to the CARE Act Title II program were in compliance with Federal cost requirements, there were instances when the Health Department’s sub-recipients had not followed Federal costs requirements. Consequently, these costs were inappropriately charged to the CARE Act Title II program. The sub-recipients did not always fully comply with all financial and reporting requirements of the CARE Act Title II program. For example, there were instances where:

- A sub-recipient withheld unspent CARE Act Title II funds totaling approximately \$9,246 in a cash account even though the contract with the Health Department only provided for payment of allowable *incurred* costs.
- A sub-recipient could not support the amounts reported on its financial reports for the first and fourth quarter of the grant year under review with its accounting general ledger, although the procedure manual for sub-recipients required that the general ledger should support the financial reports.
- A sub-recipient received approximately \$6,300 from CARE Act Title II for salaries and fringe benefits for which they did not have support, although the contract required that accounting records should be supported by documentation.
- A sub-recipient transferred at year end approximately \$2,064 in charges for supplies to CARE Act Title II after the supplies had already been paid for with State funds, even though Section 2617, “the payor of last resort” provision of the CARE Act required State funds to be used before CARE Act Title II funds.
- A sub-recipient charged CARE Act Title II for services provided to two clients and then charged the program again for these same services the following month despite the requirement in Office of Management and Budget Circular A-122 that costs charged to grants be reasonable, and duplicate charges are not reasonable.

Cause: Health Department Had Not Emphasized Sub-Recipient Compliance Throughout Its Oversight Process

These problems occurred because the Health Department did not:

- Emphasize the importance of complying with Federal requirements;
- Provide adequate instruction to the sub-recipients; or

- Have sufficient oversight and monitoring procedures in place to ensure the sub-recipients complied with all the financial and reporting requirements of the CARE Act Title II program.

Effect:

As a result, the Health Department was not fully assured that all financial and reporting requirements of the CARE Act Title II program were completely met.

Recommendation:

We recommend that the Health Department improve its oversight and monitoring of sub-recipients and emphasize compliance with all financial and reporting requirements of the CARE Act Title II program.

Auditee Comments:

In a written response to our draft report, the Health Department stated that they have made strides in addressing the issues identified in its monitoring of sub-recipients' financial operations. Efforts to improve monitoring include (1) increasing travel for existing audit staff and filling vacancies, (2) increasing desk audits and (3) tripling the number of on-site audits.

The Health Department also stated that they emphasize compliance with all financial and reporting requirements to its sub-recipients. Emphasis of compliance includes written guidelines in the Request for Proposal, the contract, the procedures manual and a web site. (For complete text, see Appendix A.)

OIG Response:

Although we agree that written guidelines are a good way to emphasize compliance, we would encourage more aggressive actions. For example, the staff at one sub-recipient did not understand that its general ledger should support its financial statements. Staff at another sub-recipient was not aware that they must have supporting documentation and an accounting system for Title II expenditures. Finally, staff at another sub-recipient was not aware that it was unallowable to charge Title II for items already paid for with State funds. We believe these problems could be eliminated or greatly reduced if the Health Department would contact sub-recipients on a regular basis and provide guidance and training in areas such as (1) financial statement requirements, (2) accounting system requirements and (3) restrictions on CARE Act Title II funds.

APPENDIX

Draft Response – HIV Federal OIG Audit/Ryan White CARE Act Title II
5/7/04

Cause:

Health Department Had Not Emphasized Sub-Recipient Compliance Throughout Its Oversight Process

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Recommendation:

We recommend that the Health Department improve its oversight and monitoring of sub-recipients and emphasize compliance with all financial and reporting requirements of the CARE Act Title II program.

Response:

The Department conveys the importance of complying with Federal requirements to sub-recipients in several different ways. This is first brought to the attention of potential grantees in the Department's Request for Proposal (RFP) which emphasizes that only costs that meet the requirements of applicable Office of Management and Budget (OMB) cost principles and administrative requirements are eligible for reimbursement. The contract terms are explicit in detailing the sub-recipients' obligation to comply with Federal requirements. Sub-recipients are provided with the Department's "Financial Administrative Procedures Manual for TDH Contractors" which provides guidance relating to financial administrative requirements and assists contractors in complying with the Federal and state requirements. The Department also maintains a web-site which provides information pertaining to Federal and state requirements under sub-recipient contracts and guidance on complying with the requirements. In addition, Department staff is always available by phone to provide assistance to all sub-recipients regarding compliance with Federal, state and contract terms.

The Department has made strides in addressing the issues identified in its monitoring of sub-recipients' financial operations. During the Spring of FY 2003, TDH took corrective action to improve and increase contract monitoring. This included increasing travel for existing audit staff and filling vacancies. Additionally, in developing the budget for FY 2004, focus was placed on increasing the contract monitoring staff and funding even while the agency was reducing other programs and administrative staff as a result of legislative requirements. During this same timeframe, TDH increased its desk audits to maximize resources and identify areas requiring more intensive site visits. At the end of the first quarter of FY 2004, TDH had tripled the number of on-site audits conducted for the same time period in the prior year.

ACKNOWLEDGMENTS

This report was prepared under the direction of Gordon L. Sato, Regional Inspector General for Audit Services. Other principal Office of Audit Services staff who contributed include:

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