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# 42 U.S. Code § 300ff-28

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## Distribution of funds

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### **(a) Amount of grant to State**

#### **(1) Minimum allotment**

Subject to the extent of amounts made available under section 300ff-31b of this title, the amount of a grant to be made under section 300ff-21 of this title for—

(A) each of the 50 States, the District of Columbia, Guam, and the Virgin Islands (referred to in this paragraph as a “covered State”) for a fiscal year shall be the greater of—

(i)

(I) with respect to a covered State that has less than 90 living cases of AIDS, as determined under paragraph (2)(D), \$200,000; or

(II) with respect to a covered State that has 90 or more living cases of AIDS, as determined under paragraph (2)(D), \$500,000; and

(ii) an amount determined under paragraph (2) and then, as applicable, increased under paragraph (2)(H); and

(B) each territory other than Guam and the Virgin Islands shall be the greater of \$50,000 or an amount determined under paragraph (2).

#### **(2) Determination**

##### **(A) Formula**

For purposes of paragraph (1), the amount referred to in this paragraph for a State (including a territory) for a fiscal year is, subject to subparagraphs (E) and (F)—

(i) an amount equal to the amount made available under section 300ff-31b of this title for the fiscal year involved for grants pursuant to paragraph (1), subject to subparagraph (F); and

(ii) the percentage constituted by the sum of—

(I) the product of 0.75 and the ratio of the State distribution factor for the State or territory (as determined under subsection (B)) to the sum of the respective State distribution factors for all States or territories;

(II) the product of .20 and the ratio of the non-EMA distribution factor for the State or territory (as determined under subparagraph (C)) to the sum of the respective non-EMA distribution factors for all States or territories; and

(III) if the State does not for such fiscal year contain any area that is an eligible area under subpart I of part A or any area that is a transitional area under section 300ff-19 of this title (referred to in this subclause as a “no-EMA State”), the product of 0.05 and the ratio of the number of cases that applies for the State under subparagraph (D) to the sum of the respective numbers of cases that so apply for all no-EMA States.

## **(B) State distribution factor**

For purposes of subparagraph (A)(ii)(I), the term “State distribution factor” means an amount equal to the number of living cases of HIV/AIDS in the State involved, as determined under subparagraph (D).

## **(C) Non-EMA distribution factor**

For purposes of subparagraph (A)(ii)(II), the term “non-ema <sup>[1]</sup> distribution factor” means an amount equal to the sum of—

(i) the number of living cases of HIV/AIDS in the State involved, as determined under subparagraph (D); less

(ii) a number equal to the sum of—

(I) the total number of living cases of HIV/AIDS that are within areas in such State that are eligible areas under subpart I of part A for the fiscal year involved, which individual number for an area is the number that applies under section 300ff-11 of this title for the area for such fiscal year; and

(II) the total number of such cases that are within areas in such State that are transitional areas under section 300ff-19 of this title for such fiscal year, which individual number for an area is the number that applies under such section for the fiscal year.

## **(D) Living cases of HIV/AIDS**

### **(i) Requirement of names-based reporting**

Except as provided in clause (ii), the number determined under this subparagraph for a State for a fiscal year for purposes of subparagraph (B) is the number of living names-based cases of HIV/AIDS in the State that, as of December 31 of the most recent calendar year for which such data is available, have been reported to and confirmed by the Director of the Centers for Disease Control and Prevention.

### **(ii) Transition period; exemption regarding non-AIDS cases**

For each of the fiscal years 2007 through 2012, a State is, subject to clauses (iii) through (v), exempt from the requirement under clause (i) that living non-AIDS names-based cases of HIV be reported unless—

(I) a system was in operation as of December 31, 2005, that provides sufficiently accurate and reliable names-based reporting of such cases throughout the State, subject to clause (vii); or

(II) no later than the beginning of fiscal year 2008 or a subsequent fiscal year through fiscal year 2012, the Secretary, after consultation with the chief executive of the State, determines that a system has become operational in the State that provides sufficiently accurate and reliable names-based reporting of such cases throughout the State.

### **(iii) Requirements for exemption for fiscal year 2007**

For fiscal year 2007, an exemption under clause (ii) for a State applies only if, by October 1, 2006—

(I)

(aa) the State had submitted to the Secretary a plan for making the transition to sufficiently accurate and reliable names-based reporting of living non-AIDS cases of HIV; or

(bb) all statutory changes necessary to provide for sufficiently accurate and reliable reporting of such cases had been made; and

(II) the State had agreed that, by April 1, 2008, the State will begin accurate and reliable names-based reporting of such cases, except that such agreement is not required to provide that, as of such date, the system for such reporting be fully sufficient with respect to accuracy and reliability throughout the area.

### **(iv) Requirement for exemption as of fiscal year 2008**

For each of the fiscal years 2008 through 2012, an exemption under clause (ii) for a State applies only if, as of April 1, 2008, the State is substantially in compliance with the agreement under clause (iii)(II).

**(v) Progress toward names-based reporting**

For fiscal year 2009 or a subsequent fiscal year, the Secretary may terminate an exemption under clause (ii) for a State if the State submitted a plan under clause (iii)(I)(aa) and the Secretary determines that the State is not substantially following the plan.

**(vi) Counting of cases in areas with exemptions**

**(I) In general**

With respect to a State that is under a reporting system for living non-AIDS cases of HIV that is not names-based (referred to in this subparagraph as “code-based reporting”), the Secretary shall, for purposes of this subparagraph, modify the number of such cases reported for the State in order to adjust for duplicative reporting in and among systems that use code-based reporting.

**(II) Adjustment rate**

The adjustment rate under subclause (I) for a State shall be a reduction of 5 percent for fiscal years before fiscal year 2012 (and 6 percent for fiscal year 2012) in the number of living non-AIDS cases of HIV reported for the State.

**(III) Increased adjustment for certain States previously using code-based reporting**

For purposes of this subparagraph for each of fiscal years 2010 through 2012, the Secretary shall deem the applicable number of living cases of HIV/AIDS in a State that were reported to and confirmed by the Centers for Disease Control and Prevention to be 3 percent higher than the actual number if—

(aa) there is an area in such State that satisfies all of the conditions described in items (aa) through (cc) of section 300ff-13(a)(3)(C)(vi)(III) of this title; or

(bb)

(AA) fiscal year 2007 was the first year in which the count of living non-AIDS cases of HIV in such area, for purposes of this part, was based on a names-based reporting system; and

(BB) the amount of funding that such State received under this part for fiscal year 2007 was less than 70 percent of the amount of funding that such State received under such part for fiscal year 2006.

**(vii) List of States meeting standard regarding December 31, 2005**

**(I) In general**

If a State is specified in subclause (II), the State shall be considered to meet the standard described in clause (ii)(I). No other State may be considered to meet such standard.

**(II) Relevant States**

For purposes of subclause (I), the States specified in this subclause are the following: Alaska, Alabama, Arkansas, Arizona, Colorado, Florida, Indiana, Iowa, Idaho, Kansas, Louisiana, Michigan, Minnesota, Missouri, Mississippi, North Carolina, North Dakota, Nebraska, New Jersey, New Mexico, New York, Nevada, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin, West Virginia, Wyoming, Guam, and the Virgin Islands.

**(viii) Rules of construction regarding acceptance of reports**

**(I) Cases of AIDS**

With respect to a State that is subject to the requirement under clause (i) and is not in compliance with the requirement for names-based reporting of living non-AIDS cases of HIV, the Secretary

shall, notwithstanding such noncompliance, accept reports of living cases of AIDS that are in accordance with such clause.

## **(II) Applicability of exemption requirements**

The provisions of clauses (ii) through (vii) may not be construed as having any legal effect for fiscal year 2013 or any subsequent fiscal year, and accordingly, the status of a State for purposes of such clauses may not be considered after fiscal year 2012.

### **(ix) Program for detecting inaccurate or fraudulent counting**

The Secretary shall carry out a program to monitor the reporting of names-based cases for purposes of this subparagraph and to detect instances of inaccurate reporting, including fraudulent reporting.

### **(x) Future fiscal years**

For fiscal years beginning with fiscal year 2013, determinations under this paragraph shall be based only on living names-based cases of HIV/AIDS with respect to the State involved.

## **(E) Code-based States; limitation on increase in grant**

### **(i) In general**

For each of the fiscal years 2007 through 2012, if code-based reporting (within the meaning of subparagraph (D)(vi)) applies in a State as of the beginning of the fiscal year involved, then notwithstanding any other provision of this paragraph, the amount of the grant pursuant to paragraph (1) for the State may not for the fiscal year involved exceed by more than 5 percent the amount of the grant pursuant to this paragraph for the State for the preceding fiscal year, except that the limitation under this clause may not result in a grant pursuant to paragraph (1) for a fiscal year that is less than the minimum amount that applies to the State under such paragraph for such fiscal year.

### **(ii) Use of amounts involved**

For each of the fiscal years 2007 through 2012, amounts available as a result of the limitation under clause (i) shall be made available by the Secretary as additional amounts for grants pursuant to section 300ff-29a of this title, subject to subparagraph (H).

## **(F) Appropriations for treatment drug program**

### **(i) Formula grants**

With respect to the fiscal year involved, if under section 300ff-31b of this title an appropriations Act provides an amount exclusively for carrying out section 300ff-26 of this title, the portion of such amount allocated to a State shall be the product of—

(I) 100 percent of such amount, less the percentage reserved under clause (ii)(V); and

(II) the percentage constituted by the ratio of the State distribution factor for the State (as determined under subparagraph (B)) to the sum of the State distribution factors for all States;

which product shall then, as applicable, be increased under subparagraph (H).

### **(ii) Supplemental treatment drug grants**

#### **(I) In general**

From amounts made available under subclause (V), the Secretary shall award supplemental grants to States described in subclause (II) to enable such States to purchase and distribute to eligible individuals under section 300ff-26(b) of this title pharmaceutical therapeutics described under subsections (c)(2) and (e) of such section.

#### **(II) Eligible States**

For purposes of subclause (I), a State shall be an eligible State if the State did not have unobligated funds subject to reallocation under subsection (d) in the previous fiscal year and, in accordance with criteria established by the Secretary, demonstrates a severe need for a grant under this clause. For purposes of determining severe need, the Secretary shall consider eligibility standards, formulary composition, the number of eligible individuals to whom a State is unable to provide therapeutics described in section 300ff–26(a) of this title, and an unanticipated increase of eligible individuals with HIV/AIDS.

### **(III) State requirements**

The Secretary may not make a grant to a State under this clause unless the State agrees that the State will make available (directly or through donations of public or private entities) non-Federal contributions toward the activities to be carried out under the grant in an amount equal to \$1 for each \$4 of Federal funds provided in the grant, except that the Secretary may waive this subclause if the State has otherwise fully complied with section 300ff–27(d) of this title with respect to the grant year involved. The provisions of this subclause shall apply to States that are not required to comply with such section 300ff–27(d) of this title.

### **(IV) Use and coordination**

Amounts made available under a grant under this clause shall only be used by the State to provide HIV/AIDS-related medications. The State shall coordinate the use of such amounts with the amounts otherwise provided under section 300ff–26(a) of this title in order to maximize drug coverage.

### **(V) Funding**

For the purpose of making grants under this clause, the Secretary shall each fiscal year reserve 5 percent of the amount referred to in clause (i) with respect to section 300ff–26 of this title.

### **(iii) Code-based States; limitation on increase in formula grant**

The limitation under subparagraph (E)(i) applies to grants pursuant to clause (i) of this subparagraph to the same extent and in the same manner as such limitation applies to grants pursuant to paragraph (1), except that the reference to minimum grants does not apply for purposes of this clause. Amounts available as a result of the limitation under the preceding sentence shall be made available by the Secretary as additional amounts for grants under clause (ii) of this subparagraph.

**(G) Repealed. Pub. L. 109–415, title II, § 203(b)(2), Dec. 19, 2006, 120 Stat. 2792**

### **(H) Increase in formula grants**

#### **(i) Assurance of amount**

##### **(I) General rule**

For fiscal year 2010, the Secretary shall ensure, subject to clauses (ii) through (iv), that the total for a State of the grant pursuant to paragraph (1) and the grant pursuant to subparagraph (F) is not less than 95 percent of such total for the State for fiscal year 2009.

##### **(II) Rule of construction**

With respect to the application of subclause (I), the 95 percent requirement under such subclause shall apply with respect to each grant awarded under paragraph (1) and with respect to each grant awarded under subparagraph (F).

#### **(ii) Fiscal years 2011 and 2012**

For each of the fiscal years 2011 and 2012, the Secretary shall ensure that the total for a State of the grant pursuant to paragraph (1) and the grant pursuant to subparagraph (F) is not less than 100 percent

of such total for the State for fiscal year 2010.

**(iii) Fiscal year 2013**

For fiscal year 2013, the Secretary shall ensure that the total for a State of the grant pursuant to paragraph (1) and the grant pursuant to subparagraph (F) is not less than 92.5 percent of such total for the State for fiscal year 2012.

**(iv) Source of funds for increase**

**(I) In general**

From the amount reserved under section 300ff–31b(b)(2) of this title for a fiscal year, and from amounts available for such section pursuant to subsection (d) of this section, the Secretary shall make available such amounts as may be necessary to comply with clause (i).

**(II) Pro rata reduction**

If the amounts referred to in subclause (I) for a fiscal year are insufficient to fully comply with clause (i) for the year, the Secretary, in order to provide the additional funds necessary for such compliance, shall reduce on a pro rata basis the amount of each grant pursuant to paragraph (1) for the fiscal year, other than grants for States for which increases under clause (i) apply and other than States described in paragraph (1)(A)(i)(I). A reduction under the preceding sentence may not be made in an amount that would result in the State involved becoming eligible for such an increase.

**(v) Applicability**

This paragraph may not be construed as having any applicability after fiscal year 2013.

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