

Policy Notice - 07-04

DATE: September 28, 2007

TO: All Ryan White HIV/AIDS Program Grantees

Attached is the HIV/AIDS Bureau (HAB) updated policy describing the use of Ryan White HIV/AIDS Program funds for transitional social support and primary care services for incarcerated persons. This policy was previously published as "Policy Notice 01-01." This updated policy reflects the changes in Title XXVI of the Public Health Service Act as amended by the Ryan White HIV/AIDS Treatment Modernization Act of 2006 (Ryan White HIV/AIDS Program) and establishes updated guidelines for the use of Ryan White HIV/AIDS Program funds for transitional social support and primary care services for incarcerated persons for Parts A through D of the Ryan White HIV/AIDS Program.

The attached policy supports the use of Ryan White HIV/AIDS Program funds for incarcerated persons as they prepare to exit the correctional system as part of effective discharge planning or when they are in the correctional system for a brief period, which would not include any discharge planning.

If you have any questions regarding the content of the HAB Policy Notice, please contact your project officer. Thank you for your attention to this important matter.

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Overview

The following policy establishes guidelines for allowable expenditures under the Ryan White HIV/AIDS Program for incarcerated persons when they: (a) prepare to exit the correctional system as part of effective discharge planning; or (b) are in the correctional system for a brief period, which would not include any type of discharge planning. 'Incarcerated person' refers to an individual involuntarily confined in association with an allegation or finding of behavior that is subject to criminal prosecution. Thus, the policy applies to individuals who are involuntarily living in the secure custody of law enforcement, judicial, or penal authorities. Furthermore, this includes individuals who reside in a community setting (which is not part of the institutional setting of the prison system such as a pre-release residential half-way house) if the individual is still involuntarily confined to those settings.

The intent of all Ryan White HIV/AIDS Program funds is to ensure that eligible HIV-infected persons gain or maintain access to HIV-related care and treatment. This policy recognizes that many incarcerated persons will ultimately be the responsibility of the Ryan White HIV/AIDS Program, so early detection, entry into care, and access to and continuity of care are important reasons to use Ryan White HIV/AIDS Program funds for incarcerated persons who meet the qualifications specified above.

The purpose of this policy is to provide grantees flexibility in providing necessary, and otherwise unavailable, transitional primary care and social support services to incarcerated persons in the custody of a local, State, or Federal correctional system who are either nearing release or whose incarceration is of short duration. Grantees who want to develop these linkages should become familiar with local prisons or jails and the State and Federal correctional facilities as well as the procedures established to prepare inmates for release into the community. These systems could vary greatly across localities and regions. Grantees should work with the appropriate corrections administrators to determine what health services are legally expected to be provided within the correctional system and how, and whether, the correctional system addresses the discharge planning needs, continuity of treatment, and community linkages for inmates infected with HIV/AIDS.

We envision grantees who establish transitional social services will link the inmate to HIV/AIDS care and treatment and transitional primary care services. These services could be provided in the correctional facility prior to release as part of discharge planning. In the case of a short term facility, like a local jail, which does not provide discharge planning, services would be outside of the facility. In either situation, these services are not covered by the correctional system. Transitional primary care services can also be provided on a short term basis in an outpatient setting. Working with the correctional system, grantees must determine 1) What the release date of the inmate is; 2) what health care services are provided by the correctional system; and 3) what services the Ryan White HIV/AIDS Program funds can provide.

There is an important statutory point of reference that defines under what circumstances the Ryan White HIV/AIDS Program-funds can be used by grantees to provide services for incarcerated persons. Specifically, the payer of last resort statutory provision found in Sections 2605(a)(6), 2617(b)(7)(F), and 2664(f) of Title XXVI of the Public Health Service Act requires that funds received under a Ryan White grant award not be utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made. With respect to such item or service covered under other programs, these include those covered under any State's compensation program, an insurance policy, or under Federal and State health benefit program (except for a program administered by or providing the services of the Indian Health Service). In 1996, the Office of the Inspector General's (OIG) audit of a

State's Ryan White HIV/AIDS Part B Program, found Ryan White HIV/AIDS Program funds were used to provide transitional services to inmates within 90 days of release, even though under that State's law inmates 'have a right to medical care and prison officials have a corresponding duty to provide such care.' The OIG did not disagree with the use of Ryan White HIV/AIDS Program funds to support transitional services for inmates, but rather in this audit, said that the State used Ryan White HIV/AIDS Program funds to support such services when the State was already paying for transitional services for other inmates. Under the context described above, the policy provides for the use of funds for transitional social services (e.g., medical case management and social support services) to help achieve immediate linkages to community-based care and treatment services upon release from custody, where no other services exist, or where these services are NOT the responsibility of the correctional system. The policy also provides for the use of funds for transitional primary care services prior to release or during a period of short-term incarceration where no other services exist, or where these services are NOT the responsibility of the correctional system.

Policy Notice 07-04: The Use of Ryan White HIV/AIDS Program Funds for Transitional Social Support and Primary Care Services for Incarcerated Persons

Federal funds received under the Ryan White HIV/AIDS Program, as established in Title XXVI of the Public Health Service Act, may be used for short-term, transitional social support, and primary care services for an incarcerated person as they prepare to exit the correctional system as part of effective discharge planning (or who are incarcerated for a brief period with no formal discharge planning) and are otherwise eligible for Ryan White HIV/AIDS Program services under the following conditions:

I. Incarcerated Person

'Incarcerated person' refers to an individual involuntarily confined in association with an allegation or finding of behavior that is subject to criminal prosecution. Thus, the policy applies to individuals who are involuntarily living in the secure custody of law enforcement, judicial, or penal authorities. Furthermore, this includes individuals who reside in a community setting (which is not part of the institutional setting of the prison system such as a pre-release residential half-way house) if the individual is still involuntarily confined to those settings.

II. Transitional Social Services

A. Funded transitional social support services are those services that are needed by incarcerated persons with HIV/AIDS to establish or re-establish linkages to HIV/AIDS care and treatment services in community-based systems of care in order to achieve their medical outcomes during the time period as indicated in this policy. A service, such as case

management, that links the individual with established primary care is an example of an appropriate transitional social service

B. Recognizing that the determination of non-covered services is unique to each local, State, and Federal facility, and the grantee is responsible for assessing the extent to which such services are or should be covered by the correctional institution, the grantee must delineate precisely what services will be provided by the grantee and ensure that they are not available from the correctional system.

C. The grantee must ensure that these support services are funded only from the portion of the grant remaining after reserving amounts for purposes of providing core medical services, quality management and covering administrative expenses specified in statute under Parts A, B, and C of the Ryan White HIV/AIDS Program. In addition, the grantee must ensure that such services supplement, but do not supplant, existing programs or responsibilities administered by the correctional system, or other local, State, or Federal agencies.

III. Transitional Primary Care Services

A. Transitional primary care services are services delivered on an outpatient basis or in an outpatient setting for a brief period of time until a more permanent health care provider can be arranged, which includes a comprehensive continuum of care, such as, primary medical care and prescription drugs. These services may also include medical case management, HIV counseling and testing, and referral services to obtain health care. Ryan White HIV/AIDS Program funds may only be used for these services when other sources of funds are not available.

B. This policy does NOT generally permit the use of Ryan White HIV/AIDS Program funds in State and Federal prison facilities, since the State and Federal prison systems are responsible for providing health care services to all individuals remanded to their facility. Such care is the responsibility of law enforcement, judicial, and penal authorities in whose secure custody the individual is held. This limitation, however, does not apply to State or Federal inmates about to be released to the community and who are receiving health-related services using community resources, when not actually living in the correctional facility, such as home detention and half-way house programs.

C. Grantees wishing to institute a program of transitional primary care services in a local, State, or Federal correctional setting must either deliver these services directly or through sub-contracts with qualified HIV/AIDS community-based providers to deliver primary care services directly to eligible incarcerated persons to ensure that Ryan White HIV/AIDS Program funds are properly expended and only for services not otherwise available to any incarcerated persons.

D. Grantees can use Ryan White HIV/AIDS Program funds to support HIV/AIDS services in local (e.g., county, city) jails if these institutions are not legally responsible for meeting the HIV/AIDS health care and treatment needs of persons in their custody.

E. Grantees can use Ryan White HIV/AIDS Program funds to support primary care services for incarcerated persons who reside in the community (e.g., an individual who is not part of the prison or jail system but resides in a pre-release facility) ONLY to the extent to which services are not available or should not be reasonably expected to be available to the incarcerated person involuntarily confined. Furthermore, funding is available only to support incarcerated persons who are expected to be eligible for and the responsibility of the Ryan White HIV/AIDS Program.

IV. Timeframe

The allowable timeframe for the provision of transitional services requires flexibility to ensure the effectiveness of our programs. The determination of the exact amount of time that is required should be determined by a collaborative effort between the Ryan White HIV/AIDS Program project staff who will be involved in care during and after release and the correctional institution's medical and case management staff who are providing the care while the inmate is in custody, and based on inmate needs. While recognizing that the timeframe must be flexible and determined collaboratively, it is recommended not to exceed 180 days. The time delineation must be done in collaboration with HAB's Ryan White HIV/AIDS Program project officers.

V. Non-Covered Services

Recognizing that the determination of non-covered support or primary care services is unique to each locality, the grantee is responsible for assessing the extent to which such services are or should be covered. The grantee must delineate precisely what services will be provided by the grantee and by the correctional system that are otherwise not available.

VI. Public Resources

The grantee must assess the availability of other public resources for social support and health-related services and benefits programs in order to ensure the Ryan White HIV/AIDS Program funds remain the payer of last resort.

VII. Coordination

HAB expects that grantees will coordinate the use of funds for prison health services among publicly funded HIV-related community-based organizations across the other local, State, Federal, and public programs, in order to assure an efficient, seamless, and comprehensive continuum of HIV/AIDS care for the transition of incarcerated.

VIII. Communication

Grantees must develop methods to ensure that communication between the correctional system, the grantee, and/or qualified provider preserve and protect patient privacy and confidentiality, including the patient's right not to disclose or to have disclosed her or his HIV/AIDS status. Grantees and/or qualified providers must ensure that only those incarcerated persons who wish to receive primary care and/or transitional services are referred for participation.

IX. Reporting

The grantee must have a mechanism to report to HAB on the use of funds to provide transitional services and social services in correctional systems, and to include the individuals served in the same reporting process as other Ryan White HIV/AIDS Program service recipients for primary care services.