



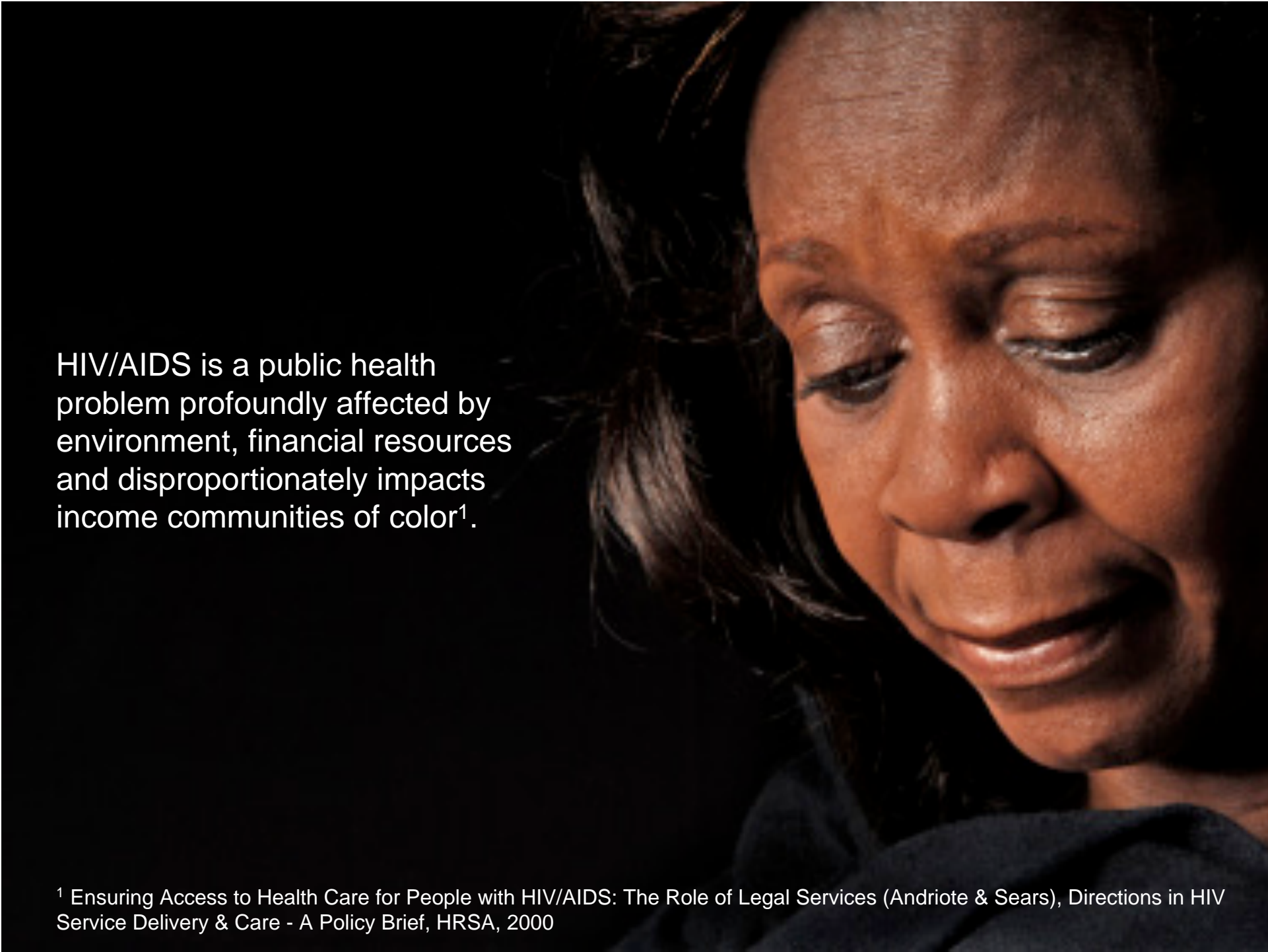
hiv law project

RWCA Funded Legal Services

**ABA HIV/AIDS Law & Practice Conference
February 3-4, 2010**

HIV Law Project
15 Maiden Lane
18th Floor
New York, NY 10038

January 25, 2010

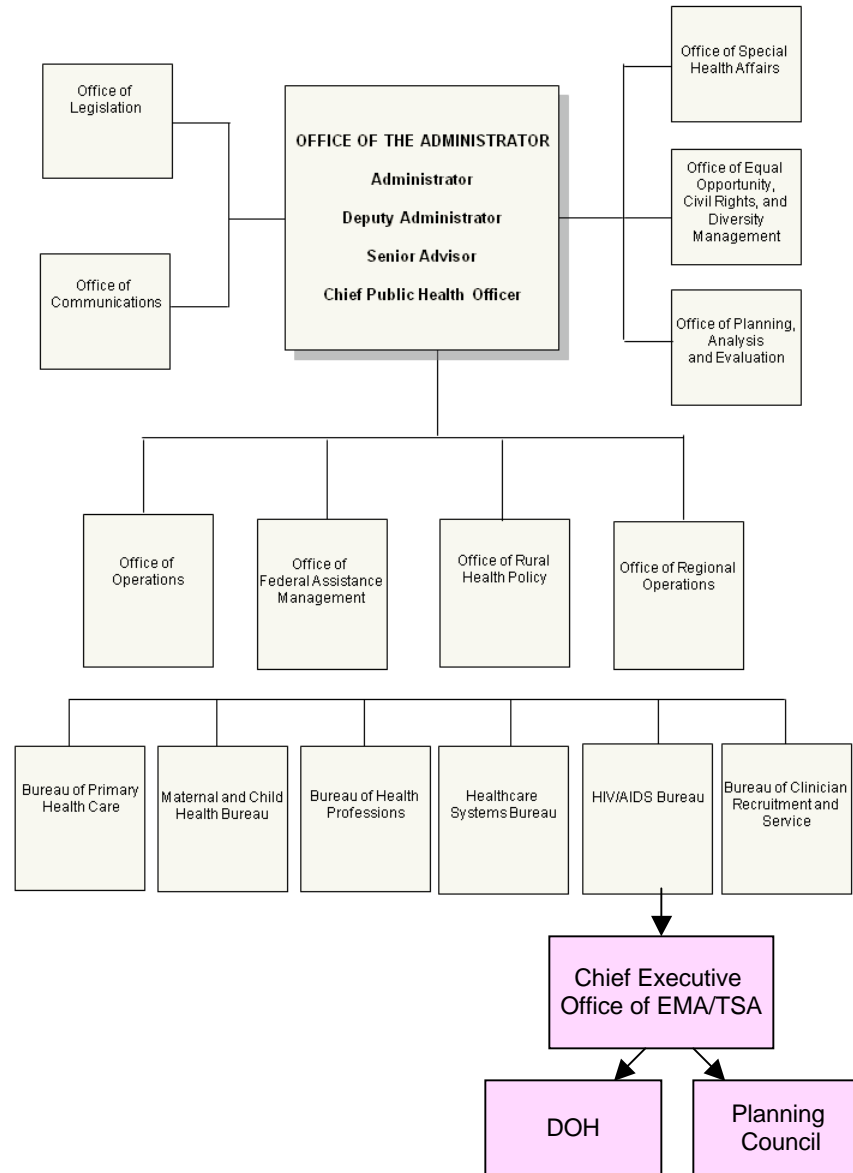


HIV/AIDS is a public health problem profoundly affected by environment, financial resources and disproportionately impacts income communities of color¹.

¹ Ensuring Access to Health Care for People with HIV/AIDS: The Role of Legal Services (Andriote & Sears), Directions in HIV Service Delivery & Care - A Policy Brief, HRSA, 2000

Allocation of RWCA Funding

Health Resources and Services Administration





HIV/AIDS Programs: Service Definitions for the Ryan White HIV/AIDS Program

- The Ryan White HIV/AIDS Treatment Modernization Act of 2006 states that grantee expenditures are limited to core medical services, support services and administrative expenses. Core medical services and support services are listed in the legislation as follows: Part A (2604(c), Part B (2612(b), and Part C (2651(c))
- Legal services are the provision of services to individuals with respect to powers of attorney, do not- resuscitate orders and interventions necessary to ensure access to eligible benefits, including discrimination or breach of confidentiality litigation as it relates to services eligible for funding under the Ryan White HIV/AIDS Program. It does not include any legal services that arrange for guardianship or adoption of children after the death of their normal caregiver^{2,3}

² HIV/AIDS Bureau, Division of Science and Policy, *Instructions for Completing the 2008 Ryan White HIV/AIDS Program Annual Data Report* (effective Feb. 11, 2009) available at <http://datasupport.hab.hrsa.gov/2008docs/2008RDRinstructions.pdf>.

³See *id.*



Ryan White Care Act Funded Legal Services Include:

- Anti-eviction
- Housing repairs (mold, sewage, vermin, lack of heat)
- Access to Medicaid, Medicare, ADAP
- Access to public benefits, SSD/SSI
- Assistance to immigrants to access medical benefits
- Long term/short term disability
- HIV discrimination
- Family law
- Domestic violence
- Debtor-creditor
- Wills/future care





Social health and personal health are
inextricably intertwined For PLWHAs ⁴

⁴ J. Hayford, Fighting HIV Stigma Protects Public Health, The Legal Pad, Jan. 8, 2010,
<http://www.alcclegalpad.blogspot.com>

Social Factors Impacting PLWHAS

- Disenfranchised populations have poorer access to HIV medical care⁵
- PLWHAS go without or postpone medical care because of competing subsistence needs (food, adequate shelter, clothing etc.)⁶



⁵ Shapiro MF et al., Variations in the Care of HIV-Infected Adults in the United States: results from the HIV Cost and Services Utilization Study Journal of the American Medical Association, 1999;281(24) 2305-2315

⁶ Cunningham WE, et al., The Impact of Competing Subsistence Needs and Barriers on Access to Medical Care for Persons with Human Immunodeficiency Virus Receiving Care in the United States Medical Care, 1999;37:1270-1281

HIV Legal Services as Part of the Continuum of Care

- Residents in stable housing are more than 16 times likely to adhere to antiretroviral therapy⁷
- The experience of physical abuse has significant impact upon an HIV-positive woman's physical health and quality of life⁸. Abuse itself can be a risk factor for HIV⁹



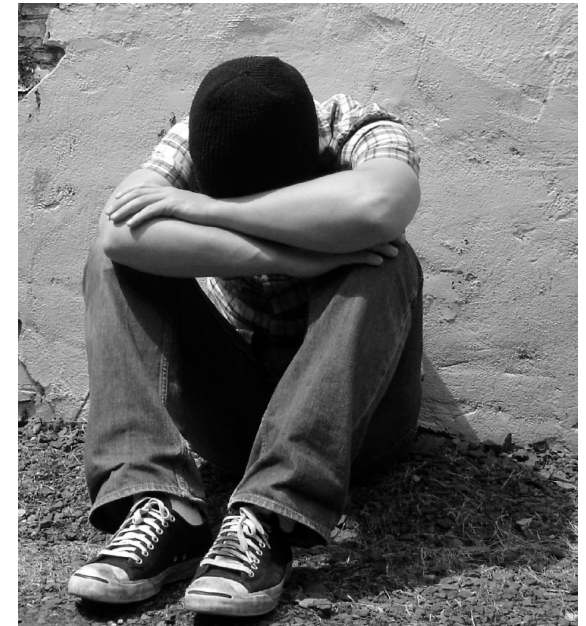
⁷ Chad A. Leaver et al., The Effects of Housing Status on Health Related Outcomes in People Living with HIV: A Systematic Review of the Literature, *AIDS & Behav.* (Supp. 2) 85, 85-100 (2007).

⁸ Karen A. McDonnell et al., Abuse HIV Status, and Health –Related Quality of Life Among a Sample of HIV Positive and HIV Negative Low Income Women, *14 Quality Life Res.*, 945, 945-957 (2005).

⁹ Ibid

HIV Legal Services as Part of the Continuum of Care

- Health care is a lower priority than basic survival for undocumented immigrants with a very limited range of benefits and services¹⁰
- Individuals who experience high levels of HIV stigma have over four times the odds of reporting poor access to care¹¹
- Data shows there is a significant relationship between homelessness/unstable housing and remaining outside or marginal to health care¹²



¹⁰ Suzanne L. Wenzel et al., *Sexual Risk Among Impoverished Women: Understanding the Role of Housing Status*, 11 *AIDS & Behav.*, (Supp. 2), 9, 9-20 (2007).

¹¹ Chad A. Leaver, *Community Health Advisory and Information Network (CHAIN Study)*, Columbia University School of Public Health Overview, 15, (2000).

¹² Jennifer Sayles et al., *The Association of Stigma with Self-Reported Access to Medical Care and Antiretroviral Therapy Adherence in Persons Living with HIV/AIDS*, 24 *J. Gen. Internal Med.*, 1101, 1101-1108 (2009).

Restrictions on Provision of RWCA Funded Legal Services

- Anti-eviction only in cases
- of HIV discrimination
- No housing repairs
- No assistance to immigrants to access benefits/status
- No debtor-creditor
- No domestic violence
- No permanency planning



Additional prohibitions include requirement that child be HIV-positive in child support cases, custody etc.



Legal Services Impermissible Case Type

CODE	CASE TYPE	Permissible
7	Advanced Directive	YES
38	Confidentiality	YES
59	Employee Benefits	YES
71	Food Stamps	YES
88	Health Care Proxy	YES
108	Job Discrimination	YES
113	Medicaid	YES
116	Medicare	YES
166	SSI/SSDI	YES
181	Subsidized Housing Rights	YES
201	Unemployment Insurance	YES
202	Welfare	YES
206	Wrongful Discharge	YES
1	Adoption	NO
15	Bankruptcy/Debtor Relief	NO
42	Custody/Visitation	NO
48	Debt Collection	NO
82	Guardianship/Conservatorship	NO
177	Standby Guardianship	NO
204	Will	NO
28	Child Protective Order	Only for HIV+ minor where case involves access to public benefits
58	Emancipation	Only for HIV+ minor where case involves access to public benefits
73	Foster Care	Only for HIV+ minor where case involves access to public benefits
185	Support	Only for HIV+ client where case involves access to public benefits.
159	Public Utilities	Only for HIV+ client where case involves access to public benefits.
137	Parental Rights Termination	Only for HIV+ child where case involves access to public benefits.
	Anti Eviction	NO
	Housing repairs	NO
	Immigrant Access to Benefits/Medical care	NO



HRSA & RESTRICTIONS

November 17, 2009

Mary Wakefield, Ph.D., R.N.
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Deborah Parham Hopson, PhD, RN, FAAN,
Director of HIV/AIDS Bureau
Associate Administrator
Health Resources and Services Administration
U.S. Department of Health and Human Services
5600 Fishers Lane
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RE: HRSA Program Services Definition for Legal Services

Dear Dr. Wakefield and Dr. Hopson:

We are writing at the suggestion of Jeff Crowley, Director of the Office of National AIDS Policy, as well as the offices of Representative Henry Waxman and Representative Tammy Baldwin. We have been in touch with Mr. Crowley, Rep. Waxman and Rep. Baldwin regarding the inconsistent application of the HRSA Ryan White Program Services definition for legal services in different areas of the country and we seek written clarification as to the scope of legal services permissible under Ryan White funding, as set forth below.

The undersigned are legal services providers and advocates representing people living with HIV/AIDS throughout the country. Legal service providers rely, in large part, upon Ryan White funding to provide these services, but local grantees' inconsistent application of the Program Services definition for legal services is crippling these services in several EMAs, including the largest, New York City.

Unnecessarily narrow definitions of the scope of legal services are depriving PLWHAs of crucial support services, including such fundamental assistance as eviction prevention, wills, and challenges to HIV-related discrimination.

Based on years of informal conversations with HRSA program officers, we had been led to believe that HRSA permits all legal services, other than criminal defense and class actions, as long as the grantee approves it. Local grantees however, claiming to be acting at HRSA's direction, have chosen to define many crucial services as unallowable.

Some of the disallowed services are absolutely critical support services for PLWHAs. For example, data shows that "there is a significant relationship between



homelessness/unstable housing and remaining outside of or marginal to HIV care.”¹ PLWHAs who receive meaningful housing assistance are “almost four times more likely to enter into medical care...and twice as likely to enter into and continue in care that meets current clinical standards for treatment of HIV/AIDS.”² Through eviction prevention and housing advocacy services, legal providers remove very real, concrete barriers to primary care (unstable housing/risk of homelessness) for an already at-risk population.

At least two EMAs, New York City and San Jose, have recently received notice from their grantees that legal services relating to permanency planning, custodial and visitation rights for affected children, HIV discrimination cases except those against local organizations receiving Ryan White funds, will drafting and bankruptcy may no longer be offered. In addition to eviction prevention, domestic violence cases (regardless of whether there is documentation of abuse based on the victim’s HIV status), and immigration services (including any services to assist undocumented immigrants with obtaining legal status in order to access medical care) have also been prohibited.

Last spring, we conducted a small, informal survey of HIV/AIDS legal services providers nationally, which showed that the type of restrictions imposed upon legal services providers was based primarily on local interpretation of HRSA policy by the local grantee, rather than actual HRSA policy or enforcement.

At least one EMA imposes no restrictions on legal services providers, other than the general prohibition of the use of CARE Act funds for criminal defense or for class action suits unrelated to services eligible for funding under the CARE Act. Other local grantees forbid the provision of housing and immigration legal services.

Providers in several locations, while not restricted from providing housing and immigration services, may not offer guardianship and family law legal services, including custody, visitation, or adoption. The custody restrictions leave many parents, who are seeking current custody of their own children, with no place to turn for help. Another EMA restricts legal services providers from providing bankruptcy, debtor/creditor and immigration services.

We believe that PLWHAs throughout the country would be best served by a clear statement from HRSA. To that end, we request a written response to the following questions:

- 1) Which legal services are specifically excluded under Part A funding?

¹ Community Health Advisory and Information Network (CHAIN Study), Columbia University School of Public Health, Overview, p. 15, 2000.

² “Housing and Health Care Among Persons with HIV/AIDS,” Angela Aida, PhD, Natasha Davis, MSW, David Abramson, MPH, and Gunjeong Lee, MPhil, presented at the 130th meeting of the American Public Health Association, 2002 (Abstract #47702). Relying on data from the CHAIN for 1995-2000, these researchers also concluded that people with housing needs who receive “practical housing assistance are almost four times more likely to enter into medical care... and twice as likely to enter into and continue in care that meets current clinical standards for treatment of HIV/AIDS.”



2) May Ryan White funded legal services, include representation of PLWHAS to obtain and/or maintain:

- a) medically-appropriate housing via housing court proceedings;
- b) stable and intact family units via family court proceedings;
- c) safety from abuse, harassment and assault;
- d) protection of public benefits from creditors, and other debt relief;
- e) public benefits, including: income assistance, medical assistance and food stamps;
- f) Wills, trusts, living wills, future custody, etc; and
- g) challenges to HIV/AIDS discrimination and confidentiality breaches?

HIV-positive individuals need access to the full panoply of Ryan White funded legal services to ensure continued access and maintenance in medical care. We look forward to your guidance and assistance in providing these services.

Sincerely,

Cynthia B. Knox, Esq., Deputy Executive Director
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Philadelphia, PA

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David Ernesto Munar, Vice President
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(signatories continued on next page)



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Office of National AIDS Policy

Laura Cheever,
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Deputy Associate Administrator



HRSA RESPONSE



DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Resources and Services Administration

Rockville, MD 20857

SEP 8 1 2009

Cynthia B. Knox, Esquire
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Dear Ms. Knox:

Thank you for your letter requesting clarification of the type and scope of legal services permissible using funds awarded under the Ryan White HIV/AIDS Program, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009.

With the recent enactment of legislative changes, the Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau is in the process of conducting a thorough review of all Ryan White HIV/AIDS Program policies, including which services are allowable, to determine what policy revisions and/or new policies may be necessary. The goal of this review is to reissue or revise all policies within the next 6 months. HRSA will provide opportunities for grantees to comment on any proposed revisions of existing policies, as well as any new policies.

The points raised in your letter with respect to legal services are appreciated and will be taken under consideration during our review of policies pertaining to allowable services. Please be assured that HRSA is committed to continuing its efforts to assist grantees in meeting the current and growing demand for community-based, outpatient core medical and support services that are consistent with treatment guidelines and the requirements of the Ryan White HIV/AIDS Program. Identical letters have been sent to other signatories.

Sincerely,

Mary K. Wakefield, Ph.D., R.N.
Administrator



Ensuring RWCA Meets Legal Needs of PLWHAs

- Join with your colleagues at "The HIV/AIDS Law and Policy Discussion List" at hiv-legal@wnylc.net





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