DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Resources and Services Administration

HIV/AIDS Bureau

Rockville MD 20857

Policy Notice 10-02
Eligible Individuals and Allowable Uses of Funds for Discretely Defined Categories of Services

APR 8 2010

Dear Ryan White HIV/AIDS Program Grantees:

Attached is the HIV/AIDS Bureau's (HAB) updated Policy Notice 10-02 describing the allowable uses of Ryan White HIV/AIDS Program funds for defined categories of services for eligible individuals. If you have any questions regarding the content of this HAB Policy Notice, please contact your project officer.

Sincerely,

Deborah Parham Hopson

Deborah Parham-Hopson, PhD, RN, FAAN
Assistant Surgeon General
Associate Administrator

HAB Policy Notice 10-02: Eligible Individuals and Allowable Uses of Funds for Discretely Defined Categories of Services

History: Issued February 1, 1997 as Policy No. 97-01 and 97-02; reissued on June 1, 2000 and April 8, 2010.

Federal Policy on Allowable Uses of Funds

The Office of Management and Budget (OMB) has developed cost principles and uniform administrative requirements for all organization types (State and local governments, non-profit and educational institutions, and hospitals) in all Federally-funded programs. These are known as OMB Circulars, and are management directives to Federal Agencies which they must in turn apply to all recipients. The OMB Circulars are now codified in 2 CFR Parts 200-299. Fiscal officers for all grantees should be thoroughly familiar with all relevant regulations. The grantee may be more strict in the administration of grant funds, but may not be more lenient. Grantees must further apply the requirements to sub-recipients, as noted, in each OMB regulation.

The cost principles permit an organization to establish and use its own accounting system to determine costs, provided it is based on generally accepted accounting principles, consistently applied to all organization activities regardless of the source of funds supporting those activities. Recipients of Federal grant funds are expected to exercise the same degree of prudence in the expenditure of Federal funds as they use in expending their own funds.

The HIV/AIDS Bureau (HAB) has developed program guidance policies which incorporate both OMB regulations and program specific requirements. Grantees, planning groups, and others are advised that independent auditors and auditors from the Department of Health and Human Services' Office of the Inspector General may assess and publicly report the extent to which a grant is being administered in a manner consistent with program policies such as these. Grantees can expect oversight through HAB monitoring and review of budgets and contractors. HAB is able to provide technical assistance to grantees, planning councils, and consortia, where assistance with policy compliance is needed.

Grantees are reminded that it is their responsibility to be fully cognizant of limitations on uses of funds as outlined in the Public Health Service (PHS) Grants Policy Statement, copies of which have been previously provided to every grantee. (It is also available online at: http://www.hrsa.gov/grants/default.htm; simply click on "HHS Grants Policy Statement" in the right-hand menu box.) In the case of services being supported in violation of an existing Federal policy, (e.g., payment of home mortgages), the use of Ryan White HIV/AIDS Program funds must be terminated immediately and grantees may be required to return already-spent funds to the Federal Government.

Further Guidance on Eligible Individuals and Allowable Uses of Ryan White Program Funds

The Ryan White HIV/AIDS Program stipulates that *"funds received...will 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..."* by sources other than Ryan White funds. At the individual client level, this means Grantees must assure that funded providers make reasonable efforts to secure non-Ryan White HIV/AIDS Program funds whenever possible for services to individual clients. In support of this intent, it is an appropriate use of Ryan White HIV/AIDS Program funds to provide case management (medical or non-medical) or other services that have as a central function ensuring that eligibility for other funding sources is aggressively and consistently pursued, (e.g., Medicaid, CHIP, Medicare, other local or State-funded HIV/AIDS programs, and/or private sector funding including private insurance).

In every instance, HAB expects that services supported with Ryan White HIV/AIDS Program funds will (1) fall within the legislatively-defined range of services, (2) as appropriate, within Part A, have been identified as a local priority by the HIV Health Services Planning Council, and (3) in the case of allocation decisions made by a Part B State or by a local or regional consortium, meet documented needs and contribute to the establishment of a continuum of care.

Ryan White HIV/AIDS Program funds are intended to support only the HIV-related needs of eligible individuals. Grantees and funded contractors must be able to make an explicit connection between any service supported with Ryan White HIV/AIDS Program funds and the intended recipient's HIV status, or care-giving relationship to a person with HIV/AIDS.

Eligible Individuals: The principal intent of the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Ryan White HIV/AIDS Program) is to provide services to persons infected with the Human Immunodeficiency Virus (HIV), including those whose illness has progressed to the point of clinically defined Acquired Immune Deficiency Syndrome (AIDS). When setting and implementing priorities for the allocation of funds, Grantees, Part A Planning Councils, community planning bodies, and Part B funded consortia may optionally define eligibility for certain services more precisely, but they may NOT broaden the definition of who is eligible for services. Ryan White HIV/AIDS Program Grantees are expected to establish and monitor procedures to ensure that all funded sub-grantees and providers verify and document client eligibility.

Non-infected individuals may be appropriate candidates for Ryan White HIV/AIDS Program services in limited situations, but these services for non-infected individuals must always benefit a person with HIV infection. Funds awarded under the Ryan White HIV/AIDS Program may be used for services to individuals not infected with HIV <u>only</u> in the circumstances described below.

a. The service has as its primary purpose enabling the non-infected individual to participate in the care of someone with HIV disease or AIDS. Examples include caregiver training for in-home medical or support service; psychosocial support services, such as caregiver

support groups; and/or respite care services that assist non-infected individuals with the stresses of providing daily care for someone who is living with HIV disease.

b. The service directly enables an infected individual to receive needed medical or support services by removing an identified barrier to care. Examples include payment of premiums for a family health insurance policy to ensure continuity of insurance coverage for a low-income HIV- positive family member, or child care for children, while an infected parent secures medical care or support services.

c. The service promotes family stability for coping with the unique challenges posed by HIV/AIDS. Examples include mental health services that focus on equipping uninfected family members, and caregivers to manage the stress and loss associated with HIV/AIDS, and short-term post death bereavement counseling.

d. Services to non-infected clients that meet these criteria may not continue subsequent to the death of the HIV-infected family member, beyond the period of short-term bereavement counseling.

In no case may Ryan White HIV/AIDS Program funds be used to make direct payments of cash to recipients of services. Where direct provision of the service is not possible or effective, vouchers, coupons, or tickets that can be exchanged for a specific service or commodity (e.g., food or transportation) must be used. Grantees are advised to administer voucher programs in a manner which assures that vouchers cannot be used for anything other than the allowable service, and that systems are in place to account for disbursed vouchers.

The following service categories represent allowable uses of Ryan White HIV/AIDS Program funds. The Ryan White HIV/AIDS Program Grantee, along with respective planning bodies, will make the final decision regarding the specific services to be funded under their Grant.

1. Acupuncture Therapy

Funds awarded under the Ryan White HIV/AIDS Program may only be used to support limited acupuncture services for HIV-positive clients as part of Ryan White HIV/AIDS Program funded *Substance Abuse Treatment Services* (outpatient or residential), provided the client has received a written referral from his/her primary health care provider. All acupuncture therapy must be provided by certified or licensed practitioners and/or programs, wherever State certification or licensure exists.

2. Benefits and Entitlement Counseling

Funds awarded under the Ryan White HIV/AIDS Program may be used to refer or assist eligible clients to obtain access to other public and private programs for which they may be eligible, e.g. Medicaid, Medicare Part D, State Pharmacy Assistance Programs, Pharmaceutical Manufacturer's Patient Assistance Programs, and other State or local health care and supportive services.

Such benefits/entitlement counseling and referral activities may be provided as a component of three allowable Ryan White HIV/AIDS Program support service categories: "*Medical Case Management,*" "*Case Management (Non Medical)*" and/or "*Referral for Health Care/Supportive Services*."

3. Child Care Services

Child Care Services are an allowable Ryan White HIV/AIDS Program support service for the children of HIV-positive clients, while the clients attend medical or other appointments or Ryan White HIV/AIDS Program-related meetings, groups or training. More specifically, funds may be used to provide *Child Care Services* in these instances:

a. To support a licensed or registered child care provider to deliver intermittent care that will enable an HIV-positive adult or child to secure needed medical or support services, or to participate in Ryan White HIV/AIDS Program-related activities described above;

b. To support informal child care provided by a neighbor, family member, or other person (with the understanding that existing Federal restrictions prohibit giving cash to individuals to pay for these services).

In those cases where funds are allocated for *Child Care Services,* as described under (b) above, such allocations should be limited and carefully monitored to assure compliance with the prohibition on direct payments to eligible individuals. Such arrangements may also raise liability issues for the funding source which should be carefully weighed in the decision-making process.

4. Clothing
Ryan White HIV/AIDS Program funds may NOT be used to purchase clothing.

5. Employment and Employment-Readiness Services
Ryan White HIV/AIDS Program funds may NOT be used to support employment, vocational, or employment-readiness services. However, funds may be used to pay for occupational therapy as a component of allowable *Rehabilitation Services*.

6. Developmental Services for HIV Positive Children
Ryan White HIV/AIDS Program funds may be used to provide clinician prescribed developmental support services for HIV-positive infants/children when such services are not otherwise covered by specific State and Federal legislation that mandates health care coverage for all children with developmental disabilities.

7. Emergency Financial Assistance
Ryan White HIV/AIDS Program funds may be used to provide *Emergency Financial Assistance* (EFA) as an allowable support service.

- The decision-makers deliberately and clearly must set priorities and delineate and monitor what part of the overall allocation for emergency assistance is obligated for transportation, food, essential utilities, and/or prescription assistance. Careful monitoring of expenditures within a category of "emergency assistance" is necessary to assure that planned amounts for specific services are being implemented, and to indicate when reallocations may be necessary.
- In addition, Grantees and planning councils/consortia must develop standard limitations on the provision of Ryan White HIV/AIDS Program funded emergency assistance to eligible individuals/households and mandate their consistent application by all contractors. It is expected that all other sources of funding in the community for emergency assistance will be effectively utilized and that any allocation of Ryan White HIV/AIDS Program funds to these purposes will be the payer-of-last-resort, and for limited amounts, limited use and limited periods of time.

8. Funeral and Burial Expenses
Ryan White HIV/AIDS Program funds may NOT be used for funeral, burial, cremation, or related expenses.

9. Health Insurance Co-payments and Deductibles

Funds awarded under Parts A, B and C of the Ryan White HIV/AIDS Program may be used to support a *Health Insurance Premium and Cost-Sharing Assistance Program*, a core medical service, for eligible low-income HIV-positive clients.

- Under this service category, funds may be used as the payer-of-last-resort to cover the cost of public or private health insurance premiums, as well as the insurance deductible and co-payments.

- The exception is that Ryan White HIV/AIDS Program funds may NOT be used to cover a client's Medicare Part D "true out-of-pocket" (i.e. TrOOP or donut hole)" costs.
- Consistent with the Ryan White HIV/AIDS Program, "low income" is to be defined by the EMA/TGA, State or Part C Grantee.

Important: Grantees should refer to the HAB Policy Notice-07-05, "The Use of Ryan White HIV/AIDS Program Part B ADAP Funds to Purchase Health Insurance" http://hab.hrsa.gov/law.htm .

10. Hospice Care

Hospice Services are an allowable Ryan White HIV/AIDS Program core medical service. Funds may be used to pay for hospice care by providers licensed in the State in which services are delivered. Hospice services may be provided in a home or other residential setting, including a non-acute care section of a hospital that has been designated and staffed to provide hospice care to terminal patients. A physician must certify that a patient is terminal, defined under Medicaid hospice regulations as having a life expectancy of 6 months or less. Counseling services provided in the context of hospice care must be consistent with the definition of mental health counseling. Palliative therapies must be consistent with those covered under respective State Medicaid Programs.

11. Legal Services

Legal Services are an allowable support service under the Ryan White HIV/AIDS Program. Funds awarded under the Ryan White HIV/AIDS Program may NOT be used for any criminal defense, or for class-action suits unrelated to access to services eligible for funding under the Ryan White HIV/AIDS Program. Funds may be used for legal services directly necessitated by an individual's HIV/AIDS serostatus.

These services include but are not limited to:

a. Preparation of Powers of Attorney, Living Wills

b. 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, and

c. Permanency planning for an individual or family where the responsible adult is expected to pre-decease a dependent (usually a minor child) due to HIV/AIDS; includes the provision of social service counseling or legal counsel regarding (1) the drafting of wills or delegating powers of attorney, and (2) preparation for custody options for legal dependents including standby guardianship, joint custody or adoption.

12. Maintenance of Privately Owned Vehicles

Funds awarded under the Ryan White HIV/AIDS Program may NOT be used for direct maintenance expense (tires, repairs, etc.) of a privately owned vehicle or any other costs associated with a vehicle, such as lease or loan payments, insurance, or license and registration fees. This restriction does not apply to vehicles operated by organizations for program purposes.

13. Medical Transportation

Medical Transportation is an allowable support service under the Ryan White HIV/AIDS Program. Funds may be used to provide transportation services for an eligible individual to access HIV-related health services, including services needed to maintain the client in HIV/AIDS medical care. Transportation should be provided through:

a. A contract(s) with a provider(s) of such services;

b. Voucher or token systems;

c. Mileage reimbursement that enables individuals to travel to needed medical or other support services may be supported with Ryan White HIV/AIDS Program funds, but should not in any case exceed the established rates for Federal Programs. Federal Joint Travel Regulations provide further guidance on this subject.

d. Use of volunteer drivers (through programs with insurance and other liability issues specifically addressed); or

e. Purchase or lease of organizational vehicles for client transportation programs. [See also No. 12 above, *Maintenance of Privately Owned Vehicles,* for further information.] ***Note: Grantees must receive prior approval for the purchase of a vehicle.***

14. Pastoral Counseling

Funds awarded under the Ryan White HIV/AIDS Program may be used to provide "Psychosocial Support Services" that include pastoral care/counseling services, provided that the pastoral counseling is provided by an institutional pastoral care program (e.g., components of AIDS interfaith networks, separately incorporated pastoral care and counseling centers, or as a component of services provided by a licensed provider, such as a home care or hospice provider). Programs are to be licensed or accredited wherever such licensure or accreditation is either required or available. In addition, Ryan White HIV/AIDS Program funded pastoral counseling MUST be available to all individuals eligible to receive Ryan White HIV/AIDS Program services, regardless of their religious or denominational affiliation.

15. Property Taxes

Funds awarded under the Ryan White HIV/AIDS Program may NOT be used to pay local or State personal property taxes (for residential property, private automobiles, or any other personal property against which taxes may be levied).

16. Purchase of Non-Food Products

Funds awarded under the Ryan White HIV/AIDS Program may be used to purchase essential non-food household products as part of a Ryan White HIV/AIDS Program funded *Food Bank* support service. These include essential items such as:

- Personal hygiene products,
- Household cleaning supplies, and/or
- Water filtration/ purification devices (either portable filter/pitcher combinations or filters attached to a single water tap) in communities/areas where recurrent problems with water purity exist. Such devices (including their replacement filter cartridges) purchased with Ryan White HIV/AIDS Program funds must meet National Sanitation

Foundation standards for absolute cyst removal of particles less than one micron. This policy does not permit installation of permanent systems for filtration of all water entering a private residence.

Funds may NOT be used for household appliances, pet foods or other non-essential products.

17. Recreational and Social Activities

Funds awarded under the Ryan White HIV/AIDS Program may be used for recreational and social activities as part of a Child Care or Respite Care support service provided in a licensed or certified provider setting, including drop-in centers in primary care or satellite facilities. Funds should NOT be used for off-premise social/recreational activities or to pay for a client's gym membership.

18. Respite Care

Respite Care is an allowable support service under the Ryan White HIV/AIDS Program. Funds may be used for periodic respite care in community or home-based settings that includes non-medical assistance designed to provide care for an HIV infected client in order to relieve the primary caregiver who is responsible for the day-to-day care of an adult or minor living with HIV/AIDS.

In those cases where funds are allocated for home-based respite care, such allocations should be carefully monitored to assure compliance with the prohibition on direct payments to eligible individuals. Such arrangements may also raise liability issues for the funding source which should be carefully weighed in the decision-making process.

19. Substance Abuse Treatment

a. *Substance Abuse Treatment Services-Outpatient* is an allowable core medical service. Funds used for outpatient drug or alcohol substance abuse treatment, including expanded HIV-specific capacity of programs if timely access to treatment and counseling is not available, must be rendered by a physician or provided under the supervision of a physician or other qualified/licensed personnel. Such services should be limited to the following:

   - Pre-treatment/recovery readiness programs
   - Harm reduction
   - Mental health counseling to reduce depression, anxiety and other disorders associated with substance abuse
   - Outpatient drug-free treatment and counseling
   - Opiate Assisted Therapy
   - Neuro-psychiatric pharmaceuticals; and
   - Relapse prevention.

b. Syringe Exchange: Will be addressed in future policy issuances.

c. *Substance Abuse Treatment Services-Residential* is an allowable support service under the Ryan White HIV/AIDS Program. The following limitations apply to use of Ryan White HIV/AIDS Program funds for residential services:

- Because of the Ryan White HIV/AIDS Program limitations on inpatient hospital care (see sections 2604(c)(3)(L) and 2612(b)(3)(L) of the Public Health Service Act), Ryan White HIV/AIDS Program funds may not be used for inpatient detoxification in a hospital setting.
- However, if detoxification is offered in a separate licensed residential setting (including a separately-licensed detoxification facility within the walls of a hospital), Ryan White HIV/AIDS Program funds may be used for this activity.
- If the residential treatment service is in a facility that primarily provides inpatient medical or psychiatric care, the component providing the drug and/or alcohol treatment must be separately licensed for that purpose.

20. Vision Care

a. Ryan White HIV/AIDS Program funds may be used for *Outpatient/Ambulatory Medical Care* (health services), which is a core medical service, that includes specialty ophthalmic and optometric services rendered by licensed providers.

b. Funds also may be used for *Rehabilitation Services* that include low-vision training by licensed provided or authorized professionals.

c. Funds also may be used to purchase corrective prescription eye wear for conditions related to HIV infection, through either of these allowable services:

- To cover the co-pay for prescription eye wear for eligible clients under a Ryan White HIV/AIDS Program supported *Health Insurance Premium and Cost Sharing Assistance;* or
- To pay the cost of corrective prescription eye wear for eligible clients through a Ryan White HIV/AIDS Program supported *Emergency Financial Assistance* Program.

21. Medical Case Management Services

Medical case management services must be provided by trained professionals, including both medically credentialed and other health care staff who provide a range of client-centered services that result in a coordinated care plan which links clients to medical care, psychosocial, and other services. These services ensure timely and coordinated access to medically appropriate levels of health and support services and continuity of care, through an ongoing assessment/reassessment of the client and other key family members' needs and personal support systems. Medical case management may also include the provision of treatment adherence counseling to ensure readiness for, and adherence to, complex HIV/AIDS treatments. Key activities include: (1) initial assessment of service needs; (2) development of a comprehensive, individualized care plan; (3) coordination of services required to implement the care plan;

(4) continuous client monitoring to assess the efficacy of the care plan; and (5) periodic reevaluation and adaptation of the care plan, at least every 6 months, as necessary during the enrollment of the client.

22. Medical Nutrition Therapy Services

Medical Nutrition Therapy Services including nutritional supplements provided by a licensed registered dietitian outside of a primary care visit is an allowable core medical service under the Ryan White HIV/AIDS Program. The provision of food may be provided pursuant to a physician's recommendation and a nutritional plan developed by a licensed, registered dietician.

Nutritional services and nutritional supplements not provided by a licensed, registered dietician shall be considered a support service under the Ryan White HIV/AIDS Program. Food not provided pursuant to a physician's recommendation and a nutritional plan developed by a licensed, registered dietician also shall be considered a support service.