

February 9, 2007

VIA OVERNIGHT MAIL  
The Honorable Michael O. Leavitt  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Ave., S.W.  
Washington, D.C. 20201

**RE: Ryan White HIV/AIDS Treatment Modernization Act, Core Medical Services Waiver and EMA Status**

Dear Secretary Leavitt:

We write on behalf of the counties of Nassau and Suffolk, Long Island, New York ("Nassau-Suffolk") (1) to request a waiver pursuant to 42 U.S.C. § 300ff-14(c)(2) of certain restrictions on the expenditure of federal grant monies under the recently passed Ryan White HIV/AIDS Treatment Modernization Act of 2006 (the "2006 Act"); and (2) to confirm the Nassau-Suffolk region's continued status as an Eligible Metropolitan Area ("EMA") under the Ryan White legislation.

**1. Request for Waiver**

Under the 2006 Act, (42 U.S.C. § 300ff-14(c)), grant areas must now devote at least 75 percent of Ryan-White funding to core medical services for HIV/AIDS patients. We request that this provision be waived because it would dramatically – and unnecessarily – reduce the amount of funding available for crucial patient support services such as medical transportation, housing-related services, and other essential support services.

The pertinent language of the waiver provision reads as follows:

(A) In general. – The Secretary *shall waive* [the 75 percent requirement] ...if

**The Honorable Michael O. Leavitt**  
**Secretary**  
**U.S. Department of Health and Human Services**  
**200 Independence Ave., S.W.**  
**Washington, D.C. 20201**  
**Page 2**

the Secretary determines that, within the eligible area involved --

(i) there are no waiting lists for AIDS Drug Assistance Program Services under section 2616; and

(ii) core medical services are available to all individuals with HIV/AIDS identified and eligible under this title.

(42 U.S.C. § 300ff-14(c) (emphasis added.))

Nassau-Suffolk plainly meets both of these statutory requirements for a waiver, as the enclosed documentation confirms. With respect to drug assistance, the enclosed letter from Christine A. Rivera, Director of HIV Uninsured Care Programs for the New York State Department of Health, expressly states that there is no waiting list for the AIDS Drug Assistance Program in New York State, which of course includes the Nassau-Suffolk area.

Similarly, there is no doubt that core medical services are available to all individuals with HIV and AIDS within our region, as demonstrated by the enclosed letters from Dr. Joseph P. McGowan, Medical Director of the Center for AIDS Research & Treatment at North Shore University Hospital -- the largest HIV Designated AIDS Center of Excellence on Long Island; from Dr. Janice R. Verley, Director of HIV Services at the Nassau University Medical Center; and from Jack Fuhrer, Medical Director of the AIDS Treatment Center at Stony Brook University Health Sciences Center. All three institutions confirm that core medical services are readily available to their HIV/AIDS patients. These institutions are the only three Designated Aids Centers in Nassau-Suffolk and they service the vast majority of HIV/AIDS patients in the region.

In view of the foregoing, it is clear that HIV/AIDS patients in Nassau-Suffolk are receiving all the appropriate medical care contemplated by the Ryan-White legislation. It was Congress's unmistakable intent under these circumstances to permit a greater proportion of Ryan White funding be expended on the indispensable support services described above -- services which are often every bit as critical to maintaining the life, health and well-being of HIV/AIDS patients as medical care itself. Failure to grant such a statutorily mandated waiver will have a devastating impact on HIV/AIDS patients in the region.

## **2. EMA Status**

We also write to confirm that Nassau-Suffolk will continue to qualify for funding as an EMA, as it has under earlier versions of the Ryan White legislation. As we read it, the applicable statutory language leaves room for no other interpretation. The relevant provision reads as follows:

The Honorable Michael O. Leavitt  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Ave., S.W.  
Washington, D.C. 20201  
Page 3

(b) Continued Status as Eligible Area. – Notwithstanding any other provision of this section, a metropolitan area that is an eligible area for a fiscal year continues to be an eligible area until the metropolitan area *fails*, for three consecutive fiscal years –

- (1) to meet the requirements of subsection (a) [which requires more than 2000 new AIDS cases diagnosed within the past five years]; *and*
- (2) to have a cumulative total of 3,000 or more living cases of AIDS (reported to and confirmed by the Director of the Centers for Disease Control and Prevention) as of December 31 of the most recent calendar year for which such data is available. (See 42 U.S.C. § 300ff-11(b) (emphasis added).)

As the statute expressly provides, EMA status is not lost unless an area fails to meet *both* of these requirements. (It is well-established that, where the conjunctive term “and” is used in a statute, the legislative intended that all of the requirements of the statute must be fulfilled. (See generally Brown v. Louisiana, 383 U.S. 131 (1966); Carr v. Marietta Corp., 211 F.3d 724 (2d Cir. 2000); Natural Resources Defense Council v. EPA, 22 F.3d 1125 (D.C. Cir. 1994).))

While the Nassau-Suffolk EMA does not meet the requirements of subsection (a), it does satisfy subsection (b), inasmuch as it has a cumulative total of more than 3,000 living AIDS cases as of the most recent calendar year for which such data is available.

According to a 2006 CDC supplemental surveillance report, enclosed herewith, there were over 3,000 people living with AIDS in the Nassau-Suffolk EMA as of December 31, 2004. Furthermore, we understand that the latest CDC data likewise show that there were in excess of 3,000 AIDS patients in the Nassau-Suffolk EMA as of December 31, 2005. (We note that Nassau-Suffolk’s EMA status is unaffected by the “transitional area” category created at 42 U.S.C. § 300ff-19(b) because this provision only applies to areas “ineligible” under 42 U.S.C. § 300ff-11(b).)

In recent years, the Nassau-Suffolk EMA has worked diligently to set a nationwide standard for AIDS and HIV patient care – a standard that requires careful, long-term planning, and which has resulted in, among other things, a relatively low HIV-to-AIDS conversion rate. The issues raised in this letter directly affect our ability to maintain that standard of care, and are therefore matters of grave importance to our region. We urgently request a meeting to discuss these issues with you at your earliest convenience.

**The Honorable Michael O. Leavitt  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Ave., S.W.  
Washington, D.C. 20201  
Page 4**

**Sincerely,**

**Mary Curtis  
Deputy County Executive  
County of Nassau, New York**

**encl.**

**cc: Hon. Elizabeth M. Duke  
Deborah Parham, HRSA Associate Administrator  
Doug Morgan, HRSA Director, Division of Service Systems  
Elizabeth Saindon, Esq.**