February 17, 2009

Senator Richard Burr
217 Russell Senate Office Building
Washington, DC 20510

Dear Senator Burr:

On behalf of the HIV Health & Human Services Planning Council of New York, we write to express our support for several technical fixes to the HIV/AIDS Treatment Modernization Act to be agreed upon by a national consensus. With national health care reform a real possibility during the administration of President Elect Barack Obama, we believe that these technical fixes would be an appropriate way to resolve some problematic elements within the current HIV/AIDS Treatment Modernization Act without engaging in a protracted, full-fledged reauthorization debate.

The HIV Health & Human Services Planning Council of New York is a community planning body comprised of physicians, service providers, advocates, and people living with HIV/AIDS and is charged by the Health Resources and Services Administration with setting priorities and allocating resources for HIV/AIDS treatment and care in the New York Eligible Metropolitan Area (EMA). We strongly encourage you to consider the following technical fixes:

- Unobligated Funds: The current legislation contains a provision that penalizes states and cities if more than 2 percent of their award remains unobligated at the end of a grant year by making Part A and B grantees ineligible for the supplemental components of their awards. This provision presents an undue burden on grantees who must comply with basic grants management such as working with sub-grantees but also deal with state budget factors such as hiring freezes and spending caps that make obligating grant dollars down to a very small amount difficult. In these uncertain economic times, penalizing HIV/AIDS programs for circumstances beyond their programmatic control is not

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appropriate. We ask that jurisdictions be permitted to have 5%, rather than a mere 2%, of their grant unobligated. In addition, language in the legislation should be amended so that Part A and Part B jurisdictions are eligible to apply for supplemental funding regardless of the amount of unobligated expenditures an entity incurs. No jurisdiction or the persons living with HIV/AIDS in a jurisdiction should suffer the loss of supplemental funding merely because the grantee failed to meet an extremely low unobligated balance requirement.

- Part D Medical Expenses: For FY 2007 and FY 2008 budgets, Part D (Title IV) grantees have been instructed by HRSA to include medical expenses in their program budget. Unlike other parts of the Ryan White Program, Part D is not required to allocate a proportion of funds to medical expenses because Part D grantees are able to access Medicaid, SCHIP, and other public programs to pay for most primary medical care for their clients. In fact, Part D was exempted from the core medical services set aside in the 2006 reauthorization legislation. Part D must, however, provide access to these services either directly or through contract. This has been a requirement of Part D since its inception, and HRSA has historically allowed Part D grantees to enter into memoranda of understanding with medical providers to ensure access to primary care, even when financial reimbursement was not involved. The Ryan White Program is required to be the payer of last resort, and asking for Part D dollars to go toward medical expenses that can be paid for through other sources is in direct conflict with this requirement. We ask you to remind HRSA that Congress did not intend to medicalize Part D when it reauthorized HATMA.

- Severity of Need Index (SONI) and Client Level Data: The current legislation allowed for the development of a Severity of Need Index (SONI) but intentionally did not include provisions for implementing the SONI as a component of the funding allocation process. In addition, the legislation allowed for the development of data systems that will track client level data. However, at this stage jurisdictions vary significantly in their ability to adequately track client level data. While the New York EMA is fully prepared to report client level data, we recognize that many other jurisdictions are not prepared. We believe that Part A and Part B resources should continue to be distributed by existing formula and supplemental mechanisms through 2012 rather than by the SONI or through client level data.

- Usage of HIV Case Data: Historically, some jurisdictions used code-based HIV surveillance systems as an extra security measure to ensure HIV confidentiality. CDC, however, doesn't recognize code-based reporting because it offers too many opportunities for duplication of client numbers, and HRSA will no longer recognize code-based data when

HATMA expires in 2009. All 50 states now collect HIV surveillance information using names. However, many states will need time to go back and amend all their previous code data before they will have an accurate measure of living HIV and AIDS cases by name that is recognized by CDC. The proposed technical fix would permit states to continue to use code-based data until their data systems mature. Although this is not a big issue for the New York EMA because we have been using names-based HIV reporting since 2000, it is an issue for other states. We support permitting these other jurisdictions to continue to use code-based HIV data in the formula for Part A and B funds until their reporting systems have fully matured and they are able to adequately report all HIV data through names-based reporting.

- EMA/TGA Split: During the last reauthorization, Congress specified criteria for the number of AIDS cases constituting a transitional grant area (TGA) and an Eligible Metropolitan Area (EMA) and made clear that many TGAs will cease to receive funding in several years. We support changing the criteria by which a jurisdiction is eligible for Part A funding and is classified as either an EMA or a TGA from the current 5-year measure of the incidence of AIDS cases to the number of living HIV and AIDS cases. Such a measure of living (prevalent) HIV and AIDS cases should be equivalent to the current thresholds.

- Hold Harmless: The current hold harmless provisions (both Part A and Part B) in the legislation should be extended through the life of the Ryan White program.

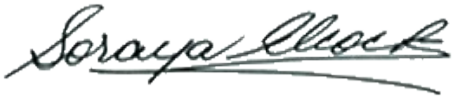
- Authorized Appropriations: We support changing the language from specific dollar amounts to “such sums as necessary”.

- We support a three-year authorization of the Ryan White legislation to September 30, 2012.

We deeply appreciate your continuing commitment to addressing the health needs of all people living with HIV/AIDS and hope that you will support these technical fixes at this time.

Thank you very much in advance for your time and consideration.

Sincerely yours,



Soraya Elcock
Community Co-Chair