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April 24, 2012

Mary K. Wakefield
Administrator
Health Resources and Services Administration
5600 Fishers Lane
Rockville, Maryland 20857

Dear Administrator Wakefield:

On behalf of the Communities Advocating Emergency AIDS Relief (CAEAR) Coalition, I am writing to express deepening concern regarding the implementation of the HIV/AIDS Bureau's "Ryan White HIV/AIDS National Monitoring Standards" for Part A and Part B grantees, specifically the requirement that rent and utilities costs dedicated to the delivery of a specific service are to be considered overhead expenses charged to the 10% administrative cap. This significant shift in HRSA policy is having a detrimental impact in the field and threatens to diminish both the availability of services and the diversity of providers in some Part A jurisdictions.

HRSA's decision to consider these direct service-related expenses as administrative expenses falls outside the mandates in the Ryan White HIV/AIDS Program legislation and the OMB Circular guidance that HRSA has directed grantees to consult for principles and standards for determining costs applicable to grants, contracts, and other agreements. We urge HRSA to reconsider its position on this matter and allow organizations providing direct services to charge rent and utilities linked to a specific service as a direct service expense.

The *Ryan White HIV/AIDS Program Part A Manual* currently posted on the HAB website specifically allows for just such expense categorizations, noting:

"Because of the diverse characteristics and accounting practices of governmental units and nonprofit organizations, it is not possible to specify all the types of costs that may be classified as administrative or service-related in all situations. *A case management organization, for example, may include some telephone expenses as a service cost, since such calls are directly related to service delivery. A food distribution program may assign some or all rental expenses as a service cost because storing the food is directly related to delivering the service.* [Emphasis added.]

[<http://hab.hrsa.gov/tools2/PartA/parta/ptAsec2chap2.htm>]

HRSA outlines its new position in the document *Monitoring Standards: Frequently Asked Questions (FAQs) For Ryan White HIV/AIDS Program Part A and B Grantees* and has noted to grantees that these policies supersede previous guidance:

Are subcontractor expenses for "rent, utilities etc." an allowable direct service expense?

No. Subcontractor/subgrantee expenses for rent and utilities are allowable direct and/or indirect **administrative expenses** within the 10% aggregate limitation on administrative costs. Rent is considered an overhead expense, and under Ryan White HIV/AIDS Program guidance, subcontractor overhead expenses are considered to be administrative costs. ****These costs may not be shown as direct service expenses.***

Previous correspondence from Barbara Aranda-Naranjo to CAEAR Coalition (September 1, 2011) provides an explanation for this new policy, stating, “The categorization of rent and utility costs as overhead administrative costs was codified in the 2006 and 2009 Ryan White legislation.” In fact, the legislation makes no mention of rent or utilities in the language about administrative activities and states:

“(4) SUBCONTRACTOR ADMINISTRATIVE ACTIVITIES.—For the purposes of this subsection, subcontractor administrative activities include—
“(A) usual and recognized overhead activities, including established indirect rates for agencies;
“(B) management oversight of specific programs funded under this title; and
“(C) other types of program support such as quality assurance, quality control, and related activities.

In reviewing HRSA’s published definition of “overhead” in the *Ryan White HIV/AIDS Program Part A Manual*, rent and utilities dedicated to a specific identifiable program should not be considered as overhead expenses:

Overhead and Indirect Costs: The terms "overhead" and "indirect costs" are often used interchangeably. ***They usually refer to costs that have been incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, program, or activity but are nevertheless necessary to the operations of the organization.*** For example, the costs of operating and maintaining facilities, depreciation, and administrative salaries are generally treated as indirect costs. [***Emphasis*** added.]
[<http://hab.hrsa.gov/tools2/PartA/partA/ptAsec2chap2.htm#SecIIChap2b>]

Further, HRSA refers grantees to *OMB Circular A-122–Cost Principles for Nonprofit Organizations* as a source for guidance. The circular does not indicate that direct rent and utilities costs for a specific service should be classified as overhead. Its discussion of administrative costs all relate to indirect costs, providing this definition of “administration:”

3. Indirect costs shall be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation and use allowances on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. ***"Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel, library expenses and all other types of expenditures not listed specifically under***

one of the subcategories of "Facilities" (including cross allocations from other pools, where applicable). See indirect cost rate reporting requirements in subparagraphs D.2.e and D.3.g. [***Emphasis*** added.]

HRSA's move to categorize direct-service rent and utilities as "overhead" within the administrative cap is inconsistent with a plain reading of the text of the Ryan White HIV/AIDS Treatment Modernization Act. The relevant section of the law, Section 2604(h), is meant to impose a cap on grant spending for "administrative activities." Section 2604(h)(4)(A) defines "administrative activities" with an illustrative list that includes "usual and recognized overhead activities." It is clear that Section 2604(h)'s coverage is limited to "administrative activities," which means that it is inapplicable to non-"administrative activities." Thus, under Section 2604(h), rent and utilities that relate to "administrative activities" – e.g., rent and utilities for a grantee's manager's office space – are covered by the cap. But rent and utilities used to provide direct services – e.g., rent and utilities used to store food at a food storage bank – are not covered by the cap.

HRSA's categorization of direct-service rent and utilities as overhead is also inconsistent with common definitions of overhead. For example, Webster's Dictionary defines overhead as "those general charges or expenses in a business which cannot be charged up as belonging exclusively to any particular part of the work or product (as rent, taxes, insurance, lighting . . .)." Rent and utilities for a specific, Ryan White-funded service such as storage for a food bank or an office for a medical case manager can "be charged up as belonging exclusively to [a] particular part of the work," namely the provision of food or case management services. Importantly, HRSA's categorization is also inconsistent with its own definition of overhead. As outlined above, HRSA defines overhead as "costs that have incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, program, or activity . . ." Rent and utilities for a specific, Ryan White-funded service do not serve a "common or joint objective." Rather, they are direct service expenses incurred only to provide that specific service.

CAEAR Coalition recently surveyed Ryan White Part A grantees and the CAEAR Coalition membership to determine the impact of the policy change on ground. The findings highlight the serious problems resulting from this shift. CAEAR Coalition received feedback from 21 Part A jurisdictions, including responses from the Part A grantee in 19 of those jurisdictions. Out of the 21 jurisdictions, 15 report that the change in policy has been a burden for Part A subgrantees and/or negatively impacted service delivery in the jurisdiction; two report that it has not been a problem; four are not sure, saying it is too early to tell. Many respondents noted the particular impact on community-based organizations (CBOs), as opposed to larger institutions like hospitals, and the harm to service availability. (See the attachment for full survey results.) Examples of the responses received highlight the severity of the problems caused by this change:

- "One of our subrecipients cancelled their contract to provide food box services due to the change that required rent to be charged as administrative vs. direct costs."

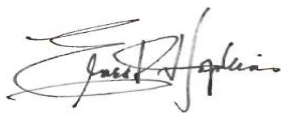
- “We have to use other unrestricted funds to cover Ryan White Part A's portion of the rent. We were using these funds to provide additional services. Therefore, we have had to reduce the number of clients we can see to ensure the rent and utilities are covered.”
- “There was difficulty in finding other sources of funding - particularly for smaller CBOs that do not have unrestricted funds. The stress on smaller CBOs may lead to some closing. This policy is likely to force closure for some smaller CBOs which are a critical and vital part of our continuum of care.”
- “It has not been catastrophic, but it is going to impact the potential mix of providers we have, especially those that we need to retain to be culturally diverse and accessible. Those providers that are large hospital based groups or health departments will have no issues moving forward, small CBO's will continue to struggle and we may continue to lose them unless some concessions can be made regarding these expenses and how they are budgeted.”

With this new policy, the agency has acted in a manner that is reducing the availability of services and harming CBOs. CBOs have been at the core of the HIV/AIDS response in hard-hit communities from the beginning of the epidemic and they continue to be central to the continuum of care in communities across the country. In some communities they are especially critical to serving racial and ethnic minorities and addressing disparities in care.

We urge HRSA to act swiftly to reverse this policy and allow appropriate rent and utility expenses be charged as direct service expenses.

CAEAR Coalition looks forward to working with HRSA to resolve this issue. Please contact me if you have questions or would like additional information.

Sincerely,



Ernest Hopkins
Chair, Board of Directors

Attachment

cc: Ron Valdiserri, Deputy Assistant Secretary for Health, Infectious Diseases, HHS
Deborah Parham Hopson, Associate Administrator for HIV/AIDS, HRSA
Steve Young, Director Division of Metropolitan HIV/AIDS Programs, HRSA/HAB