Testimony Submitted by

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As the Executive Director of the National Alliance of State and Territorial AIDS Directors (NASTAD), I respectfully submit testimony for the record regarding the upcoming extension of the Ryan White Program. State AIDS directors appreciate the longstanding support of the House of Representatives for the Ryan White Program and domestic HIV/AIDS prevention programs that are of the utmost importance to Americans living with and at risk for HIV/AIDS. I also commend the Committee for drafting legislation and holding this hearing on the future of the Ryan White Program. This is an important step in ensuring the continuation of lifesaving services after September 30th for over 500,000 individuals touched by the Ryan White Program each year.

Since 1990, Ryan White has been the safety net health care program for people living with HIV/AIDS in our nation. State AIDS directors in all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and six U.S. territories administer over $1.2 billion in Ryan White Part B funds each year to provide comprehensive care and treatment programs for individuals living in their jurisdictions. As part of Part B, AIDS Drug Assistance Programs (ADAPs) have been key in ensuring that thousands of under and uninsured individuals receive highly active antiretroviral therapy (HAART), allowing them to live long fulfilled lives, reducing hospitalization costs, and reducing the likelihood of new infections as individuals on HAART have a lower viral load.

Each time in the past when Congress has reauthorized the Ryan White Program, major changes were made. The last reauthorization changed the distribution formulas from estimated living AIDS cases to actual living HIV and AIDS cases, added a requirement that 75 percent of grant funds be spent on a list of core medical services and ensured that unobligated funds were returned to the program – thereby maximizing the reach of the appropriated dollars. The impact of the changes resulting from the 2006 reauthorization has not yet been sufficiently realized or analyzed as some are ongoing and sufficient data are not yet available.

NASTAD, along with AIDS Action, co-chairs the Ryan White Work Group, an affiliated work group of the Federal AIDS Policy Partnership. The Ryan White Work Group is a coalition of national, local and community-based service providers and HIV/AIDS organizations that represent HIV medical providers, public health, advocates and people living with HIV/AIDS committed to ensuring that the Ryan White Program continues to ensure appropriate primary care and treatment and support services to uninsured and underinsured individuals living with HIV/AIDS.

Through the Work Group, the HIV/AIDS community has come together over the past year to examine the possibilities for the future of the Ryan White Program. During a series of meetings and teleconferences, a broad range of participating organizations considered a number of factors including available data, information on how changes from the last reauthorization have affected services provided to Ryan White clients and the effects of these changes on their lives and health status/access to services. The Work Group developed the *Community Consensus* document which currently has over 300 signatures from 47 states, the District of Columbia and Puerto Rico. There is an exceptional level of cohesiveness in the community around the path for extending the Ryan White Program.

The HIV/AIDS community is also involved in a variety of additional policy discussions that potentially impact the Ryan White Program such as the development of the National HIV/AIDS Strategy, as well as broader health reform. NASTAD and the HIV/AIDS community applaud the efforts of this Committee to expand the public health safety net for individuals living with HIV/AIDS in health reform legislation. In order to maintain health stability for persons living with HIV/AIDS, it is essential to secure an extension of the Ryan White Program as soon as possible while the larger issues of our nation's health system and a national strategic plan for HIV prevention, care and treatment are developed, implemented and assessed.

The current Ryan White legislation sunsets on September 30, 2009. While the House and Senate work to pass a stand-alone bill that extends the Program for at least three years, NASTAD and the community support Congressional efforts to include language in an alternative vehicle, such as a Continuing Resolution, to ensure that the program continues as is and that HRSA maintains its implementing authority after September 30th.

The community is extremely pleased to see that the draft legislation presented for discussion at this hearing closely follows the recommendations contained in the *Community Consensus* document. NASTAD would like to highlight a few of the provisions in the discussion draft.

Authorization Period and Levels

NASTAD believes that the Ryan White Program must be extended for a period of at least three years. An extension is the most prudent course of action given the many concurrent factors impacting the legislative future of the Program. Additionally, the HIV/AIDS community is committed to reexamining the Ryan White Program in a comprehensive manner after the implementation of much-anticipated health reform proposals and/or a national HIV/AIDS strategy.

NASTAD concurs that "such sums" language is more appropriate for the Ryan White Program than specific funding levels based upon an annual percent increase. The current legislation includes authorization levels for each of the three fiscal years that are inadequate to address program need. Included in the current legislation is a 3.7 percent increase for the majority of the Parts, an increase which is significantly less than what is seen in other health authorization legislation such as the Community Health Centers. The Ryan White Program has been seriously underfunded for many years and many grantees are struggling to provide the necessary services to all those that are in need.

Extension of Hold Harmless Provisions

NASTAD is pleased to see that the Committee's discussion draft includes the continuation of current hold harmless provisions. There is great agreement in the community that the hold harmless provisions must remain in the legislation through this next authorization period. Even the eight organizations that called for more of a shift in funding in the *Consensus* document agree that the provisions are important for the continuation and stability of services. The hold harmless provisions allow Ryan White Part A and Part B programs to plan for upcoming fiscal years and allow them to make investments in infrastructure and build comprehensive programs. Large shifts, particularly cuts in funding, can be destabilizing and lead to gaps in the provision of

primary care and support services. During the last reauthorization, money shifted due to the changes in distribution formulas. The formulas for Parts A and B continue to be in a period of transition due to several factors, including the switch in formulas to living HIV/AIDS cases from estimated living AIDS cases and the fact that some states' new name-based HIV reporting systems have not yet matured. The CDC has estimated that the earliest a nationwide mature HIV system would be available is 2012. Further, the number of living HIV and AIDS cases continues to fluctuate and additional cases from maturing name-based HIV reporting systems will be added to overall case counts. Due to a convergence of all these factors, eliminating hold harmless provisions in this transitional period would likely result in a loss of funding in some jurisdictions that would lead to destabilized HIV/AIDS care and support services. In addition, we support moving the base year of the Part A hold harmless from FY2006 to FY2009 and requiring that the stop loss resources currently applied to jurisdictions in FY 2009 be built into the base formula funding of each jurisdiction and that the hold harmless provision for FY2010 and beyond be applied to these adjusted formula funding levels.

We also concur with the language included in the discussion draft which would extend the hold harmless provisions to the Transitional Grant Areas (TGAs). It is vitally important for jurisdictions to be able to conduct advance planning and the lack of some consistency makes this very difficult.

Unobligated Funds

NASTAD is extremely pleased to see that the discussion draft addresses an issue that has caused undue burden on state grantees. The current law contains a provision that penalizes Part A and B grantees if they have more than two percent of their award unobligated at the end of a grant year by making them ineligible for the supplemental components of their awards and reducing their grant awards in the subsequent year. This provision presents administrative difficulties for grantees, who must work with subgrantees, deal with state budget factors such as hiring freezes, spending caps, and other restrictions, as well as manage a variety of funding sources with varying grant periods. All of these factors make obligating grant dollars down to a very small amount extremely difficult. Additionally, many states had unobligated balances in the first year of the current authorization period due to the requirement that ADAP rebate dollars be spent before the federal grant award. The two percent level is unnecessarily strict and not in keeping with general administrative principles. The presence of unobligated funds does not necessarily signal a lack of need for these funds, instead it often reflects the presence of factors that are extremely difficult to manage.

Due to these uncertain economic times, it is not appropriate to penalize HIV/AIDS programs for circumstances beyond their programmatic control. By increasing the unobligated threshold from two to five percent, grantees will be better able to plan for uncertain economic times and comply with this important provision. By eliminating the penalty that decreases a state's subsequent year's grant award by the entire amount of their unobligated balance, states will be able to retain the funds necessary to provide services to their clients. NASTAD believes that the penalty which makes grantees ineligible for supplemental funding should also be eliminated in order to ensure that jurisdictions have all possible funding available to them in order to meet the needs of their clients.

AIDS Drug Assistance Programs (ADAPs) Rebate Dollars

Tied in with the unobligated balances provisions is a provision governing the use of rebate dollars accrued through ADAPs. These dollars, which in most states are accrued through a mix of federal grant and state general revenue funds, are vital to the ongoing health of many ADAPs. After the last reauthorization, HRSA instructed states that they must spend their rebate dollars before the federal grant award. While NASTAD understands that this is a policy consistent with other HHS programs, it created a problem with the new stringent rules regarding unobligated balances. Due to the previously discussed unobligated balances provisions, this led to some states losing future ADAP funding since they had more than the allowable amount of their federal ADAP grant unobligated. Regardless of how rebate income is classified, the Ryan White Program requires rebates to be put back into the Part B program with preference given to ADAP services. Rebate income should not result in a reduction of expenditures and therefore should be allowed to accrue after a grant year has ended and spent after federal funds are expended. This discussion draft goes far in clarifying this technical issue and NASTAD appreciates the Committee's attention to the issue. We believe that the language must go further to ensure maximum administrative flexibility for states. We ask that the language be changed to allow states to spend rebate funds after program funds in all cases not just if doing so would avoid triggering a penalty. ADAPs are administratively complex programs and states need the utmost flexibility to ensure the dollars stretch as far as possible, particularly in these fiscally challenging times.

Continued Protection for States with Maturing HIV Case Data

The draft legislation continues the protection for states that are transitioning to a names-based HIV data system. All states are currently collecting name-based HIV data. However, some states have only recently made this transition and do not yet have mature named-based HIV surveillance systems. CDC has estimated that the earliest all states may have mature HIV systems is in FY2012. In FY2009, nine states submitted their data directly to HRSA. As the new authorization period proceeds, fewer states will submit their data directly to HRSA and have CDC report their cases to HRSA. We concur with the language in the draft legislation that would allow states to continue to report directly to HRSA while keeping the five percent penalty and gain cap.

Extension of TGA Eligibility

The HIV/AIDS community wants to ensure that Ryan White clients do not experience service disruptions during this next authorization period. The last reauthorization created two separate tiers of Part A jurisdictions – Eligible Metropolitan Areas (EMAs) and Transitional Grant Areas (TGAs). HRSA has notified six current TGAs that they are in jeopardy of losing their eligibility in FY2011. The community believes it is premature to discontinue funding to these (and any other jurisdictions) before client level data is fully realized and an analysis of the services provided to individuals can be conducted. In addition, because HIV data is not currently mature, eligibility is based only on AIDS cases. Once HIV case data becomes fully available, it is assumed that in the next authorization EMA and TGA eligibility will be updated to include HIV and AIDS cases. Continuity of care is vitally important for persons receiving Ryan White-funded services. Additionally, there is no transition plan in place that would allow TGAs who lose their eligibility under Part A to have their dedicated funding move with them to the state

portion of funding under Part B. States are financially strapped and would be unable to make up for the loss of funding to these areas that are serving ever increasing numbers of clients.

Other Issues

NASTAD is pleased to see that the discussion draft also clarifies the use of Part D medical expenses. Part D programs which provide services to women, children and youth were exempted from the core medical service requirement in the 2006 reauthorization due to the unique nature of their programs. The clarification of this is necessary to ensure that Part D programs remain the payer of last resort.

We are also pleased to see that the draft language reasserts that Part A and B awards continue to be distributed using the current formulas and not adjusted to reflect client level data or a severity of need index.

In developing the *Community Consensus* document the issue of food and transportation as allowable core services was raised multiple times. HRSA has recently clarified that the provision of food pursuant to medical nutrition therapy is an allowable expense under core medical services. NASTAD has heard from many states that transportation continues to be difficult for clients, especially those living in rural areas. We ask that the Committee continue to work with HRSA to ensure that grantees and clients can use the easiest, lowest-cost options to ensure that no disincentives are created for clients accessing medical and support services. Additionally, we ask that the Committee signal support for HRSA's recent guidance on food and nutrition to ensure the continuation of this important guidance.

NASTAD is supportive of the removal of the Early Diagnosis and Partner Notification grant programs in the discussion draft. The Early Diagnosis Grant Program requires CDC to set-aside $30 million of existing HIV prevention funds. Of the $30 million, $20 million is for grants to states that have voluntary opt-out testing of pregnant women and universal testing of newborns and $10 million is for grants to states that have voluntary opt-out testing of clients at STD clinics and voluntary opt-out testing of clients at substance abuse treatment centers. The program redirects scarce prevention resources when states are already changing their laws and regulations without financial incentive to remove barriers to HIV testing. Congressional Appropriators have recognized that CDC funds are better spent supporting existing HIV prevention programs by redirecting unawarded funds back to state and local health departments The Partner Notification program was included in the 2000 authorization of Ryan White, but has never been funded. The grants are not necessary. As a condition of receiving CDC prevention cooperative agreements, states must ensure that partner notification services are available. If Congress wants to support additional partner notification services or additional programs to prevent mother-to-child transmission, effort would be better spent on increasing funding for these already existing activities.

The National Alliance of State and Territorial AIDS Directors thanks the Chairman, Ranking Member and members of the Subcommittee for their thoughtful consideration of NASTAD's and the community's recommendations during the development and further discussion of legislation to extend the Ryan White Program. We ask that you continue to prioritize the passage of this important legislation and appreciate your ongoing attention to the September 30th deadline.

NASTAD and the Ryan White Work Group will continue to do all we can to support your efforts and ensure timely passage.