

The Use of Ryan White HIV/AIDS Program Funds for Core Medical Services and Support Services for People Living with HIV Who Are Incarcerated and Justice Involved

Policy Clarification Notice #18-02

Replaces Policy Notice #07-04

Scope of Coverage

Health Resources and Services Administration (HRSA) HIV/AIDS Bureau (HAB) Ryan White HIV/AIDS Program (RWHAP) Parts A, B, C, and D and Part F, where funding supports direct care and treatment services.

Purpose of PCN

This Policy Clarification Notice (PCN) replaces HRSA HAB policy notice #07-04. The purpose of this PCN is to provide guidance to HRSA RWHAP recipients and subrecipients on the use of program funds to provide HRSA RWHAP core medical services and support services: 1) on a transitional basis to people living with HIV (PLWH) who are incarcerated in Federal and State prison systems; and 2) on a short-term and/or transitional basis to PLWH who are incarcerated in other correctional systems (e.g., local prisons and jails) or under community supervision (e.g., parole or home detention).

Background

State and federal prison systems are generally responsible for providing health care services to all individuals incarcerated in their facilities. Other correctional systems, such as local prisons and jails, may be responsible for providing health care services to all individuals incarcerated in their facilities, and those under community supervision may receive health care services by the program providing community supervision. The RWHAP statute, codified at title XXVI of the Public Health Service Act, stipulates that HRSA RWHAP funds may not be used “for any item or service to the extent that payment has been made, or can reasonably be expected to be made under . . . an insurance policy, or under any Federal or State health benefits program. . . .” and other specified payment sources.¹ Thus, local

¹ See Sections 2605(a)(6), 2617(b)(7)(F), 2664(f)(1), and 2671(i) of the Public Health Service Act. The Indian Health Service is statutorily exempted from the payor of last resort provision.

payers, such as local jails, are not subject to the payor of last resort provision, and HRSA RWHAP may be the primary payor. All short-term and transitional basis services must be coordinated with the HIV care and treatment services the correctional systems are required to provide – which can vary across correctional systems in a jurisdiction.

Definitions

“Incarceration” refers to the involuntary confinement of an individual in connection with an alleged crime. It includes involuntary confinement, either where a sentence has been determined or where the individual is detained pending adjudication of the case, as well as community supervision, such as parole or home detention.

“Transitional basis” refers to the time-limited provision of appropriate core medical and support services for the purpose of ensuring linkage to and continuity of care for incarcerated PLWH that will be eligible for HRSA RWHAP services upon release, when such release is imminent. HRSA HAB defers to recipients/subrecipients for a determination of the time limitation, generally 180 days or fewer.

“Short-term basis” refers to the time-limited provision of core medical and support services that are not prohibited by the statutory payor of last resort requirements. HRSA HAB defers to recipients/subrecipients for a determination of the time limitation. HRSA HAB recognizes that, in some instances, the time limitation will be commensurate with the duration of incarceration.

Guidance on Allowable Uses of Ryan White HIV/AIDS Program Funds

HRSA RWHAP recipients and subrecipients may provide HRSA RWHAP core medical services and support services to PLWH incarcerated in Federal and State prison systems on a transitional basis only. The nature of these services must be defined by HRSA RWHAP recipients and subrecipients in collaboration with the Federal or State prison system. Additionally, HRSA RWHAP recipients’ and subrecipients’ definitions of transitional services must be based on the HIV-related needs and anticipated release date of the incarcerated person.

HRSA RWHAP recipients and subrecipients may also provide HRSA RWHAP core medical services and support services to PLWH incarcerated in other correctional systems including those under community supervision on a short-term and/or transitional basis. The nature of these services must be defined by HRSA RWHAP recipients and subrecipients in collaboration with the correctional institution to ensure there is no duplication of services. If RWHAP core medical services and

support services are provided on a short-term basis, HRSA HAB recommends that recipients and subrecipients also provide services on a transitional basis.

HRSA RWHAP funds are intended to support only the HIV-related needs of eligible individuals. To be an HRSA RWHAP allowable cost, HRSA RWHAP recipients and subrecipients must be able to make an explicit connection between any service supported with HRSA RWHAP funds and the HIV care and treatment of the incarcerated person and must adhere to established HIV clinical practice standards consistent with U.S. Department of Health and Human Services' Clinical Guidelines for the Treatment of HIV.² See [HRSA HAB PCN #16-02, Ryan White HIV/AIDS Services: Eligible Individuals and Allowable Use of Funds](#).

HRSA RWHAP funding may only be used to support PLWH who are incarcerated and expected to be eligible for HRSA RWHAP services upon their release.

Unallowable uses

The HRSA RWHAP generally cannot pay for services for which payment has been made or can reasonably be expected to be made by Federal or State sources. HRSA RWHAP recipients and subrecipients cannot use HRSA RWHAP funds to pay for HRSA RWHAP core medical services and support services provided to PLWH in Federal or State prison systems on a short-term basis, because such services are generally provided by the Federal and State prison systems. Similarly, if Federal and State prison systems provide services that are equivalent to HRSA RWHAP core medical services and support services to PLWH on a transitional basis, the HRSA RWHAP cannot pay for these services.

HRSA RWHAP recipients and subrecipients cannot use HRSA RWHAP funds to pay duplicatively for HRSA RWHAP core medical services and support services provided to PLWH in other correctional systems or subject to community supervision programs, if these services are provided by the other correctional system or community supervision program. HRSA RWHAP funds cannot pay for services for incarcerated persons who retain private, State or Federal health benefits during the period of their incarceration.

Additional Expectations

Familiarity with Federal and State Prison Systems, Other Correctional Systems, and Community Supervision Programs: HRSA RWHAP recipients and subrecipients should become familiar with Federal and State prison systems, other correctional systems, and community supervision programs and the established

² <https://aidsinfo.nih.gov/guidelines>

pre-release procedures applicable to these systems to the extent they wish to provide HRSA RWHAP core medical services and support services to PLWH, as described in this policy. HRSA RWHAP recipients and subrecipients should work with the appropriate corrections administrators and staff to determine:

1. What health services are legally expected to be provided within the correctional system;
2. How, and whether, the correctional system addresses the transitional needs of PLWH who are incarcerated, including: discharge planning, continuity of treatment, and community linkages, and;
3. What services will be provided with the HRSA RWHAP funds.

Communication: HRSA RWHAP recipients and subrecipients must ensure communication between the correctional system, the recipient or subrecipient, and/or qualified provider is in compliance with all applicable laws and regulations regarding privacy.

HRSA RWHAP recipients and subrecipients that provide RWHAP core medical services and support services to eligible incarcerated PLWH should establish clear expectations with the correctional system administrators and staff regarding communication of release dates to ensure continuity of care for newly released eligible PLWH. Specifically, recipients should know what services are provided in the correctional system and who is delivering them to ensure compliance with the RWHAP statutory payor of last resort requirements and to ensure there is no duplication of effort.

Effective Date

This PCN is effective for RWHAP Parts A, B, C, D awards issued on or after November 30, 2018. This includes competing continuations, new awards, and non-competing continuations.