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U.S. Department of Housing and Urban Development

OFFICE OF HIV/AIDS HOUSING

Memorandum for: HOPWA Grantees

From: David Vos, Director, Office of HIV/AIDS Housing HUD's Office of HIV/AIDS Housing

Subject: Guidance on the Restricted Use of HOPWA Funds for AIDS Drug Assistance and Other Healthcare Costs

Date: January 21, 1998

This memorandum provides guidance regarding the eligibility of AIDS drug assistance and other health-care costs under the Housing Opportunities for Persons With AIDS (HOPWA) Program. This guidance is provided to help ensure that activities under the HOPWA program are carried out in a manner that addresses the program's statutory purpose at 42 U.S.C. 12901 "to provide States and localities with the resources and incentives to devise long-term comprehensive strategies for meeting the housing needs of persons with acquired immunodeficiency syndrome and families of such persons."

To assure that communities address the critical housing needs of HOPWA beneficiaries, the Department is providing the following guidance on how grantees and their projects sponsors should use HOPWA resources in conjunction with other funding sources for AIDS drug assistance and health care, including payments for pharmaceuticals, such as the protease inhibitors or other prescription drugs. These health care products and services are provided to clients through federal funds for AIDS Drug Assistance Programs (ADAP) and under other Ryan White CARE Act components, as well as from other federal, state and local programs and private sources. A number of persons have expressed concerns that current regulations might be incorrectly interpreted to allow for the excessive use of HOPWA funds for these types of health payments and thereby reduce the amount of program funds that are used to address pressing housing needs.

In HUD's view, the planned commitment of HOPWA funds for ADAP and other health-care purposes would constitute the excessive use of this allowance and would be inconsistent with program regulations at 24 CFR part 574. This memorandum describes the limited circumstances under which such payments could be made, if approved and documented on an individual client basis. In addition, to better ensure consistency in administering Federal HIV-related programs, HUD is providing guidance that the availability of HOPWA supportive service activities should not be interpreted as authorizing health-care activities that would not be eligible under other federal HIV-related programs.

The Ryan White Comprehensive AIDS Resources Emergency (CARE) Act, including activities supported by AIDS Drug Assistance Programs, are administered by the Health Resources and Service Administration at HHS. The HHS website has a factsheet that further describes the AIDS Drug Assistance Programs and has links to additional resources. In addition, this HHS office and other administering agencies provide direction to ensure the appropriate use of these resources, for example, in connection with State authority to establish income and medical eligibility criteria and to determine how drugs will be purchased and distributed to clients. States also determine which drugs to include in their formularies and may implement cost-containment measures in managing these programs.

Except in the limited circumstances described in this guidance, HOPWA grantees are not authorized to designate HOPWA grant funds for ADAP-related or other health care payments as a proposed project under a consolidated plan submission or as a component of a competitive application. The submission of this type of proposed project would not be an eligible activity under



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the statute and regulations and would constitute a valid basis for HUD to disapprove the HOPWA elements of a proposed annual submission under the Consolidated Plan or reject or modify an application under the competitive component of the program.

Current HOPWA regulations allow for payments for health services under 24 CFR 574.310(a):

(2) Payments. The grantee shall ensure that grant funds will not be used to make payments for health services for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service: (1) Under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or (2) By an entity that provides health services on a prepaid basis.

Further, the AIDS Housing Opportunity Act provides for a prohibition on the substitution of funds, which is reflected at 24 CFR 574.400, of the program regulations. HOPWA funds can not be used to replace other funding for activities that can reasonably be expected to be supported from other public and private sources.

1. Further Guidance on Restricted Use

HUD hereby advises that payments for health care costs, including costs of therapies, services and pharmaceuticals, may only be made, if approved and documented, on an individual basis. A payment is not eligible under HOPWA if that payment has been made, or can reasonably be expected to be made, with respect to that item or service from any federal, state, local or private program for which those activities are reimbursable or for which funds are made available by the Department of Health and Human Services, the Department of Veterans Affairs, the Social Security Administration and under payments authorized under State Medicaid waivers as well as other public and private compensation programs.

In the event that a HOPWA grantee seeks approval of supportive service activities that include payments for health-care costs, that grantee must have a verifiable means of assuring that its administering agency and any project sponsor comply with the payment requirement at 24 CFR 574.310(a). Grantees must establish and have HUD approval for their process that would be used to ensure that no substitution of funds occurs. Grantees may receive approval, for example, for a certification process to accomplish this task, if that process provides for documentation in files of the individual circumstances that justify this payment and if these files are available for HUD inspection. Further, the activity and a description of the verifiable process must be specifically addressed in any supportive services component of their HUD-approved consolidated plan or competitively-selected application. In reviewing the annual consolidated plan submission, HUD area offices will review any request for this type of activity for its consistency with this guidance. If needed, HUD may require grantees to revise its submission to document how they determine individual eligibility, prior to approval of the HOPWA elements of their consolidated plan submission.

The Department also advises that health-care payments may only be made in the case that no ADAP or other dedicated funds or other likely means of compensation for these purposes remain available in a jurisdiction or to the client, since that client would otherwise be eligible for assistance from that source. Under the limited circumstances described herein, if HOPWA funds are used to make a payment for these health-care costs, as authorized, the grantee must document evidence that the client would not otherwise receive this form of assistance.



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2. Applicability of Related Federal and State Policies

This guidance is also provided to reduce the potential for using HOPWA funds for a health-care cost in a manner that might contradict the federal policy directives issued by HHS to administer the Ryan White CARE Act and ADAP activities. HUD guidance is provided that HOPWA health-care activities are limited to those activities that are eligible within the scope of these Federal HIV/AIDS- related programs. Under the limited circumstances discussed above, a HOPWA payment could only be made for those drugs and services that are eligible activities under ADAP and Ryan White CARE Act programs, such as the FDA-approved HIV treatments that have been included in the State's formulary. In connection with the HOPWA payment requirement, this guidance is intended to help ensure that these related Federal funds are used in a consistent manner.

The Department recognizes that HOPWA grantees and their project sponsors have played a leading role in making housing assistance a vital component of our national response to the HIV epidemic. In our view, this guidance will help recipient communities undertake activities under the statutory purpose of this program by using these public resources to address the pressing housing needs of persons living with HIV/AIDS and their families. This guidance is intended to strengthen our commitment to comprehensive approaches that benefit persons and families in need and to ensure that this federal housing program is administered in a manner that upholds the public trust.

Area CPD Offices should share this document with HOPWA grantees, project sponsors and other interested parties.

Questions about this guidance on the HOPWA program should directed to the Office of HIV/AIDS Housing, 451 Seventh Street SW, Room 7212, Washington, DC 20410 or (202) 708-1934, (202) 708-9313 fax.