

September 29, 2011

To: Daniel R. Levinson
Inspector General
Office of Inspector General
Department of Health & Human Services
ATTN: HOTLINE
PO Box 23489
Washington, DC 20026

Ryan White—Federal Complaint

This is to request an official investigation of the serious violations of both the intent of Ryan White legislation and specific provisions of the law which have dominated New York City's contracting "process" since 2006, when the city started reallocating its longstanding Ryan White contracts and services.

The intent of Ryan White AIDS funding, of which New York City receives some \$110 million a year from the federal government, is to provide improved support, medical and service access for "underserved populations", including minorities, the low-income and those with co-morbidities in addition to HIV/AIDS. In New York City, almost half of the city's overall residents with HIV/AIDS and 67% of its poor residents with AIDS live in the Bronx or Brooklyn, the two poorest and most minority boroughs. Since the federal government allocates these special funds to New York largely based on the city's caseload and "need", more than half of the funding its gives to New York City is for improved care for Bronx and Brooklyn cases. Yet, the main thrust of the New York City's continuing "reallocations", over a period of five years, has been to massively defund AIDS programs in the Bronx and Brooklyn, the two boroughs with the most underserved HIV/AIDS cases as defined by federal legislation, while shifting millions in Ryan White monies and programs to Manhattan organizations.

The result not only been a demonstrable interruption of services in the poorest areas, with massive dropouts of the sickest people, but an actual disproportionately shift in AIDS deaths in New York City to the Bronx and Brooklyn. In particular, in the two years (2003-05) before the Bloomberg Administration launched this ongoing defunding of Bronx and Brooklyn organizations in favor of Manhattan organizations, deaths of people with AIDS in the Bronx, Brooklyn and Manhattan, thanks to improved treatment and the availability of neighborhood support services throughout the city, which are critical to stabilize patients in ongoing AIDS care, were decreasing at the same rate.

Since 2005, however, we have seen a steady shift of the overall portion of AIDS deaths to the Bronx and Brooklyn; the Bronx, in particular, has faced a startling increase

in its percentage of city AIDS deaths; in 2005, with 21.9% of overall city HIV/AIDS cases, the Bronx had 23.9% of city deaths of New York City residents with HIV/AIDS; by 2009, the last full years for which data is available, the Bronx, still with 21.4% of overall cases, had 28.3% of deaths, more than a 25% increase in its “share” of city AIDS deaths since 2005.

During that time, more than 50 AIDS support, counseling, harm reduction, clinical, mental health, self-care education and other local AIDS programs were shut down in the Bronx and Brooklyn and a large portion of the millions of federal dollars which been supporting these programs were shifted to Manhattan. For “reallocated” AIDS services and contracts announced at the end of 2005 and contracted in March 2006, for example, an analysis by the City Comptroller’s office showed that Manhattan organizations received 55% of the \$10,300,000 in funding while the Bronx organizations only received 12.5% and Brooklyn organizations 17.6%; for services “reallocated” through contracts that started in March 2007, Manhattan organizations received 59% of the \$28,283,729 in funding, Bronx organizations received 17% and Brooklyn organizations 12%! Yet Manhattan had just 31% of overall HIV/AIDS cases—and only 21% of the underserved cases for whom these funds are intended—while the Bronx and Brooklyn, with 45% of overall city HIV/AIDS cases and 67% of HIV/AIDS cases among poor populations intended to benefit from Ryan White, were left with less than 30% of the funding.

Please note virtually all these contracts are still ongoing so that this bias in distribution of the city’s annual federal Ryan White allocation has continued without interruption for years! **Finally, by 2010, this bias reached a point where the city felt it didn’t have to allocate any of the available Ryan White funding to the Bronx!** For service categories of “reallocated” in 2010, the city, after again focusing most of the money in Manhattan, at first refused to give one penny of the \$ 8,507,000 in available federal AID funds to a Bronx agency! Finally, after complaints, it provided a few pennies to the Bronx; particularly disturbing is that of the \$5,890,000 of these funds assigned to food pantry and nutrition services for people with AIDS, only some \$255,000, just 4% of the total was finally given to the Bronx, the borough with 33% of the city’s poor people with HIV/AIDS!

Unfortunately, no local action or investigation, including the 2006 Comptroller’s investigation which underscored “the alarming disparities” in the city’s distribution of federal AIDS funds, has been able to stop this ongoing allocation to Manhattan of millions in federal funding which is generated by AIDS cases in the Bronx and Brooklyn. .

Again, we urge you to undertake a thorough and speedy investigation. The city’s withholding of available Ryan White Nutrition and Food Pantry funding from Bronx AIDS patients is especially alarming. The now standard treatment for AIDS, ARVs (antiretrovirals) have to be taken with food; skipping daily medication for any reason, including a lack of food, not only interferes with treatment, but increases the risks of viral resistance that ultimately can be lethal. **Yet, the city has withheld emergency food for AIDS patients, which the federal government is willing to pay for, from the very borough with the highest concentration of poor men and women who have**

HIV/AIDS and are most likely to require this help to maintain the regular food intake necessary for their medical treatment.

We would like to point out multiple violations of the intent and provisions of the Ryan White Act, which require your attention.

- (1) Because of striking contracting irregularities, the city cannot properly focus services to the greatest extent on the underserved.

The city's RFP for Supportive Counseling/Family Stabilization, Treatment Adherence and Legal Services in its first "reallocation", and for Mental Health, Harm Reduction and Early Intervention Services in its second "reallocation" required potential service providers to select their target service areas from 4 categories (Neighborhood-based, Borough-Wide, Multi-Borough and Citywide); yet, in 2006 and 2007, when some 110 programs for these services were contracted, strangely, the city does not appear to have issued a single neighborhood-based contract. Materials obtained under Freedom of Information law show that, in instances where a preferred agency/provider had applied as a neighborhood-based provider, the city changed their category after the review process, itself designating these self-defined neighborhood-based organizations as Borough-wide or even Citywide in their contracts and then required the selected agency to accept the "new" service description. For the 2006 contracts alone, based on contradictions between the submitted proposals and the announced contracts it appears that, **after** the official process for review, scoring and selection of agencies to provide services, in the case of at least 7 out of some 33 service contracts, the contracted agencies' target geographic service areas were changed by the city/MHRA from neighborhood-based to another geographic service area. (These "material changes," appear to violate City Charter prohibitions against the city's making "material changes" to proposals after submission, and to render these two RFPs out rightly fraudulent; we are filing a separate complaint about this and other irregularities in the contracting process to the New York City Department of Investigation.)

In regard to federal provisions, however, it is hard to suggest how a city, which simply changed target service areas after the review, and selection process—which is supposed to provide an official basis for assuring that services reached the target populations—could coherently fulfill federal provisions to target these AIDS services to various underserved populations and to provide continuity and coordination of care. Moreover, since some target populations, particularly people with HIV/AIDS and co-morbidities like mental health and drug abuse, are highly concentrated in various neighborhoods, a city which absolutely refused to approve Neighbor-based services—even though agencies responding to the RFP were required to define their proposed services as neighborhood-based, multi-borough, borough-wide or citywide—could not most efficiently use its federal funding to assist these very high need people with HIV/AIDS.

- (2) Violations of Ryan White Care Act Provisions.

The city has now left the Bronx without one local Bronx-based agency to provide Family Stabilization Services for five years! Yet, the Care Act requires that, for families affected with HIV/AIDS, the city use these funds to provide family-Centered Care that specifically includes a “community-based continuum of care for children, women and families with HIV/AIDS.”

Services provided with the Minority AIDS Initiative portion of funding are also required to be community-based and the city is supposed to promote “best practices in community outreach and capacity-building of community-based organizations serving the community that is disproportionately affected by HIV/AIDS.”

Clearly, a city with blatant bias against neighborhood organizations and which concentrates AIDS funding in only one of its boroughs, does not care to follow “best practices” in building community organizations!

(3) The city has violated its federal contract for multiple years by refusing to make reports and data about its Ryan White services publicly available. The contract between MHRA (Medical Health and Research Association now known as Public Health Solutions), which administers Ryan White funds for the city and the New York City Department of Health and Mental Hygiene requires that MHRA (Public Health Solutions) “within 9 months after the close of each budget year, (submit) a report for public distribution, summarizing services actually provided in the budget year.” Federal funding pays for the preparation of these reports. Until 2005, MHRA posted this report of services, summarizing clients and service types, including services by borough, on its web site. Since then, the report has not been publicly available as required; indeed, it took us more than two years of Freedom of Information Law requests to obtain the 2006, 2007 and 2008 reports! Without the required reports, service reviews which the federal government requires cities receiving federal AIDS funds to undertake as part of their ongoing planning, could not happen. Moreover, starting in 2007, the annual report eliminated a very important chart—the one showing whether people were able to receive services in their own borough. Without this chart, it is impossible to tell if the city is providing accessible, community-based services when required by federal law.

(4) The city is in inherent, profound and ongoing violation of the federal Civil Rights Act of 1964.

The federal Civil Rights Act states that “no person in the United States will, on grounds of race, color or national origin, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any provision or activity receiving federal financial assistance...”

The city’s steering of these millions in federal dollars, generated by HIV/AIDS cases in the Bronx and Brooklyn, to Manhattan agencies has resulted in denying the benefits of this federal AIDS funding to the poorest, most minority New York boroughs in myriad ways. In addition to the shift in deaths, these boroughs were denied the benefit of maintaining their own infrastructure to

fight AIDS and building the local response key to fighting AIDS in highly impacted communities. Literal hundreds of minority people in the poorest areas, who had trained and educated themselves to become AIDS educators and counselors, lost their employment—or any equal opportunity for employment—because AIDS programs in their neighborhoods were disproportionately shut down. Patients were denied the local support services well proven to promote the routine, ongoing clinical care critical to successful AIDS treatment.

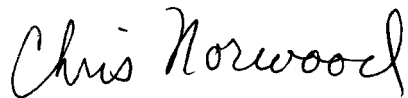
(5) The kind of contract steering, churning and biased distribution in which New York City has engaged has kept the city from achieving the care coordination and continuity of care required under the Ryan White Care Act. As just one example, when the Bronx was left without one Bronx-based Supportive Counseling and Family Stabilization program in 2006, 75% of Bronx women who had been in family counseling dropped out; virtually all these women were single mothers with AIDS who had been seeking support and counseling to help better raise their children through the difficulties they faced. At Health People which had been the only Bronx-based agency serving these mothers, we were told to transfer all our clients to a new Manhattan program—which never even opened!

AIDS has always been an epidemic where we have seen people's worst and best. The Ryan White program represents America's best—a sincere effort to see that poor and often neglected people in the middle of a still terrible epidemic receive good care; New York City's administration of Ryan White now represents the nation's worst—a cynical and ongoing determination to shift monies meant for the poorest, sickest populations in the Bronx and Brooklyn from neighborhood organizations which were serving them very well to large, centralized entities in Manhattan.

We sincerely request that you investigate these wrongs and right them by requiring New York City to re-issue its RFPs under fair rules that give all an equal chance to provide the AIDS services needed in their neighborhoods.

Please, feel free to call me at my direct number 718-585-1064 if you wish any more information.

Sincerely,



Chris Norwood
Executive Director