NEW YORK CITY BAR

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January 5, 2007

Governor Eliot Spitzer
Executive Chamber
State Capitol
Albany, NY 12224

Dear Governor Spitzer:

The Committee on AIDS of the Association of the Bar of the City of New York seeks to call your attention to areas of State and City policy that are of major concern to New Yorkers living with HIV/AIDS. The Committee hopes that these points will be of use to you as you set your administration's incoming agenda.

BACKGROUND

Despite public impression to the contrary, HIV/AIDS is an ever-growing epidemic, and New York continues to be one of the worst affected states in the country.

An estimated one million people in the United States are living with HIV/AIDS, of whom a considerable number -- more than 80,000 people -- are New Yorkers.[1] The actual number of New Yorkers living with HIV/AIDS in New York is likely significantly higher, however, because New York's statistics reflect only confirmed cases and do not include the many individuals who are infected but do not yet know that they are HIV-positive.

In the face of this ongoing epidemic, and the high instance of HIV infection in New York, we urge your administration to pay attention to the specific needs of people living with HIV/AIDS, in particular with respect to the issues highlighted below.

ELIMINATING RENT INCREASES FOR PEOPLE LIVING WITH HIV/AIDS

The Committee is concerned with the policy announced by the Office of Temporary and Disability Assistance (OTDA) earlier this year that would significantly increase rents for HIV/AIDS Service Administration (HASA) recipients who live in subsidized housing funded through the federal Housing Opportunities for People with AIDS (HOPWA) program. OTDA has ordered HASA to require approximately 2,200 affected individuals and families residing in HOPWA housing throughout the city to pay more than 30% of their income towards rent. OTDA's policy appears to conflict directly with federal housing laws and regulations that specifically state that HOPWA residents cannot be charged more than 30% of their income for rent. This matter is currently being litigated in the U.S. District Court for the Eastern District of New York, and the Court has recently issued a preliminary injunction staying implementation of the rental increase until further resolution of the case. The Committee is especially

[1] See U.S. Centers for Disease Control and Prevention, "A Glance at the HIV/AIDS Epidemic," http://www.cdc.gov/hiv/resources/factsheets/At-A-Glance.htm (accessed December 26, 2006); New York State Department of Health, *New York State HIV/AIDS Surveillance Semiannual Report for Cases Diagnosed Through December 2004* (April 2006) at 10, http://www.health.state.ny.us/diseases/aids/statistics/semiannual/index.htm (accessed December 26, 2006).

concerned about this issue since OTDA's policy would worsen the financial hardship faced by some of the city's most vulnerable residents.

> *Recommendation*: The Committee urges the Governor to direct OTDA to repeal its policy of rental increases for HASA recipients living in federally-funded supportive housing, and to comply with existing federal laws and regulations that prohibit these residents from being charged more than 30% of their income for rent. We urge the State to act expeditiously in eliminating the new policy to ensure access to stable housing for people living with HIV/AIDS.

ENSURING ACCESS TO HASA FOR ALL HIV-POSITIVE INDIVIDUALS

In 1997, the city enacted Local Law 49 in recognition of the fact that social services play an especially crucial role for New Yorkers living with HIV/AIDS, who have specific needs beyond those that public assistance benefits normally cover. Local Law 49 mandated that every person with AIDS or symptomatic HIV who so requests be provided with access to benefits and services through what is now called the HIV/AIDS Service Administration (HASA). HASA services and benefits include allowances for food, nutrition and transportation, as well as enhanced rental assistance to ensure that recipients are able to secure medically appropriate housing.

While Local Law 49 was a great step forward in meeting the needs of New Yorkers living with HIV/AIDS, it unnecessarily limits eligibility to those whose health has already deteriorated to the point where they have become symptomatic HIV or developed AIDS. Numerous studies have shown that stable housing, reliable health care coverage and adequate nutrition are critical to improving the health outcomes for *all* people living with HIV/AIDS, including those who are asymptomatic.[2] HASA's current eligibility criteria in effect require HIV-positive persons to wait until their health deteriorates before they are able to access the very services and assistance that were put in place to improve the health and lives of New Yorkers living with HIV/AIDS. Not only does this policy make little sense, it also has devastating effects on the lives of countless New Yorkers.

> *Recommendation*: The Committee urges the new administration to consider creating a statewide HASA program, and extending HASA eligibility to all HIV-positive individuals. This would enable people living with HIV to protect their fundamental rights to health, and ultimately, to life, by supporting their capacity to remain healthy as long as possible and access needed benefits and services without being forced to wait until their health declines.

INCOME SUPPORT FOR LOW-INCOME PEOPLE WITH DISABILITIES

New York Social Services Law Section 131-c requires that Supplemental Security Income (SSI) benefits be deemed "invisible" in the determination of eligibility for, or calculation of the amount of public assistance benefits. It also sets out standards of need for recipients of public assistance and State supplement benefits to SSI. This law ensures that SSI benefits, which are specially apportioned to meet the needs of individuals with disabilities, be safeguarded to meet their particular needs, and they are therefore not to be considered as household income to reduce a family's public assistance grant. The Appellate Division issued two recent decisions (*Doe v. Doar,* 26 A.D.3d 787, 807 N.Y.S.2d 909, 2006 N.Y. Slip Op. 00802 and *Matter of Melendez v. Wing,* 21 A.D.3d 129, 797 N.Y.S.2d 54, 2005 N.Y. Slip Op. 05200*)* declaring that state regulations requiring inclusion of SSI benefits in determining eligibility for public assistance benefits were in conflict with this law, and therefore invalid. These decisions have been appealed by the State, and both cases are awaiting decision on cert from the Court of Appeals.

> *Recommendation*: The Committee urges the new administration to support repeal of New York State regulations declared in conflict with New York Social Services Law in *Doe v. Doar* and *Matter of Melendez v. Wing* and to suspend the application of these regulations pending the cert

[2] See Aidala A, Jackson T, Fuentes-Mayorga N, Burman R. Housing, Health and Wellness Study New York: Bailey House, Inc. 2000. Available at: http://www.aidshousing.org/usr_doc/Bailey%20House%20Study.pdf.

decision in these cases. The Committee notes that because the decision in *Doe v. Doar* is awaiting cert, the members of the plaintiff class, which consists of 27,100 households across the State of New York, are still having their budgets determined contrary to law and have not received the retroactive benefits to which they are entitled pursuant to the Supreme Court's July 2005 order. The Committee urges the new administration to direct OTDA to comply with the current law and return to its prior policy of allowing people receiving SSI to be deemed "invisible" for public assistance budgeting purposes.

MAINTAINING CORE MEDICAL AND SUPPORTIVE SERVICES FOR PEOPLE LIVING WITH HIV/AIDS

The Ryan White HIV/AIDS Treatment Modernization Act of 2006 mandates that 75 percent of federal Ryan White Title I funds be allocated to core medical services, unless a State seeks and obtains a waiver from this requirement. Imposition of this funding allocation in New York would mean a drastic cut in supportive services, including legal services that are essential to affording HIV-positive individuals access to and maintenance of medical care. Waiver of the requirement is conditioned on a showing that the State has no waiting list for the AIDS Drug Assistance Program (ADAP), and that core medical services are available to all people living with HIV/AIDS. New York needs to maintain its Medicaid funding for core medical services to people living with HIV/AIDS in order to make use of the federal waiver to continue to fund these critical supportive services.

> <u>*Recommendation*</u>: The Committee urges the new administration to maintain the continuum of care available to people living with HIV/AIDS in New York State through Medicaid and Ryan White funded services. New York should seek a waiver of the requirement that 75 percent of Ryan White Title I funds be allocated to core medical services so that these funds can continue to be used for supportive services, such as legal services, that help people living with HIV/AIDS obtain and maintain medical care.

STRENGTHENING HARM REDUCTION PROGRAMS FOR INJECTION DRUG USERS

More than twenty-five years into the HIV/AIDS epidemic, injection drug use remains a major factor in HIV transmission in New York. Nearly 40 percent of all confirmed AIDS cases in New York State are among injection drug users, and the number of new HIV cases among injection drug users remains high.[3]

Targeted interventions for injection drug users, such as the provision of sterile injecting equipment and opiate substitution therapy, have proven highly effective in preventing HIV and other adverse health consequences of drug use. Often referred to as "harm reduction," these approaches have been endorsed by domestic and international health bodies, including the World Health Organization, UNAIDS, and the U.S. Department of Health and Human Services.[4] New York State's AIDS Advisory Council has likewise acknowledged the critical role of syringe exchange programs and other measures to encourage the use of sterile injection equipment in preventing HIV among injection drug users.[5]

New York has taken important steps to improve access to harm reduction services, including through syringe exchange programs and the Expanded Syringe Access Demonstration Program (ESAP). But

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[3] New York State Department of Health, Bureau of HIV/AIDS Epidemiology, *New York State HIV/AIDS Surveillance Semiannual Report For Cases Diagnosed through December 2004*, April 2006, p. 11.

[4] See "WHO, Evidence for Action for HIV Prevention, Treatment, and Care among Injection Drug Users," *International Journal of Drug Policy*, vol. 16, S1 (December 2005), pp. 1-26; World Health Organization, United Nations Office on Drugs and Crime and Joint United Nations Programme on HIV/AIDS, *WHO/UNODC/UNAIDS position paper: Substitution maintenance therapy in the management of opioid dependence and HIV/AIDS prevention* (2004); U.S. Department of Health and Human Services, "Evidence-based Findings on the Efficacy of Syringe Exchange Programs: An Analysis for the Assistant Secretary for Health and Surgeon General of the Scientific Research Completed Since 1998," March 2000. See also U.S. Centers for Disease Control and Prevention, "Drug-Associated HIV Transmission Continues in the United States," May 2002; U.S. Public Health Service, "HIV Prevention Bulletin: Medical Advice for Persons Who Inject Illicit Drugs," May 9, 1997.

[5] See, e.g., New York State AIDS Advisory Council, *Report on Syringe Access in New York State*, January 2005.

these important measures have been hampered by state and federal laws that impede the capacity of these lifesaving interventions to reach all those who need them; state failure to ensure adequate funding for harm reduction services; and policing practices that drive people at risk away from harm reduction services.

> *Recommendation*: The State should follow the recommendations of the New York State AIDS Advisory Council to ensure that syringe access programs and related harm reduction measures be supported, expanded, and fully integrated into existing and developing health care systems, including by:
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> Amending the Public Health Law, the Penal Code, and Department of Health regulations to eliminate restrictions on purchase and possession of syringes;
> Directing the Department of Health to support and enhance proven effective harm reduction methods, including peer distribution of sterile syringes, and to ensure the provision of the full range of health care services for drug users, including viral hepatitis testing and treatment; opiate substitution therapy, including with buprenorphine; and appropriate overdose response education and support;
> Increasing funding for sterile syringe exchange access programs by a minimum of $3,250,000 to expand and strengthen harm reduction program capacity statewide;
> Working with law enforcement to ensure drug users' access to harm reduction services without fear of arrest or punishment. To this end, we urge the state to follow the examples of New York City and Los Angeles, which have taken measures to protect drug users' rights to health by instituting structural changes in policing practices to encourage drug users' access to HIV prevention and other health services;[6]
> Lobbying the federal government to remove restrictions on the use of federal funds for syringe exchange activities.

HIV/AIDS PREVENTION, CARE, AND TREATMENT FOR NEW YORK INMATES

HIV prevalence among New York State prisoners has been, and continues to be, one of the highest in the nation – about 5 percent of male inmates, and 11 percent of female inmates, are HIV-positive. Harm reduction measures essential to prevent HIV and to reduce the risk of HIV and other blood borne infections, such as the provision of condoms, sterile syringes, and opiate substitution therapy, are the standard of care in prisons and jails in many jurisdictions throughout the world, including in Canada, many countries in the European Union, and Australia. But harm reduction services are unavailable to New York State's prisoners, and are provided on only a limited basis to inmates at Rikers Island.

More than 5,500 of New York State's 65,000 inmates are HIV-positive. Ensuring access to information about HIV/AIDS is necessary for ensuring the success of HIV prevention, treatment, and care. It is equally essential in protecting the human rights to health and to life of those incarcerated, as well as the public health of the communities to which they return. Many prisoners in New York, however, receive little or no education about HIV, nor are they provided with the tools that help prevent its spread within a prison setting. Many are reluctant to seek HIV/AIDS-related information or services, for fear that doing so would disclose their HIV-positive status, making them likely targets of abuse. Throughout the course of their time in prison, whether it be when they are initially incarcerated, during transfers between facilities or upon release to the community, many prisoners experience interruptions in their antiretroviral therapy that endanger their health and future treatment options.

The AIDS Committee is currently working with public health, human rights, and legal advocates to develop our position on advocacy to ensure prisoners' rights to health, in particular with respect to state

[6] See, e.g., Roe v. City of New York, 232 F. Supp. 2d 240 (U.S. DCt, SDNY, 2002) (barring police from arresting or punishing needle exchange participants for drug possession based on residue in used syringes); Los Angeles County Order from Chief of Police (directing police to refrain from targeting or conducting observation in syringe exchange locations to identify, detain, or arrest persons for narcotics-related offenses).

obligations to provide HIV/AIDS services to prisoners. We look forward to working with your administration on these issues.

HIV PREVENTION & TRANSMISSION EDUCATION FOR ALL STUDENTS IN NEW YORK

Under New York State regulations, all public school students must receive instruction on HIV/AIDS.[7] In many school districts around the state, however, this instruction is not being given. For example, a 2003 report released by New York Assembly member Scott Stringer revealed that despite the mandated curriculum, many students in New York City public schools were receiving inadequate instruction.[8] Although the New York City Department of Education has been working to better implement its HIV education curriculum, anecdotal reports suggest that similar efforts should be undertaken around the State.

> *Recommendation*: The AIDS Committee urges you to direct the State Department of Education to monitor and enforce the HIV education mandate, and to provide the necessary funding to enable individual school districts throughout the state to implement this essential education programming for all students in New York.

HIV TESTING AND COUNSELING /PUBLIC HEALTH LAW ARTICLE 27-F

The AIDS Committee has been discussing the proposed legislative changes to Public Health Law Article 27-F, which governs HIV testing and counseling requirements. In early 2006, New York City Health Commissioner Dr. Thomas R. Frieden proposed changes to the current law, including: 1) eliminating statutory pre-test counseling requirements; 2) substituting documented oral consent for written consent to HIV testing; 3) removing mandated post-test counseling for individuals who test negative for HIV; 4) requiring test providers, after obtaining an HIV-positive individual's consent, to link that individual to medical care; 5) allowing local health officers to access the health department's records of HIV-positive individuals and people living with HIV/AIDS, as well as health care providers' records, to contact individuals about their medical care; and 6) increasing the penalties for testing without satisfying the requirements of the informed consent law and for breaching the statutory confidentiality for HIV-related information.

In June 2006, two bills were introduced in the Assembly that embodied several of these changes. One bill, introduced by Assemblywomen Mayersohn and Clark, adopted Commissioner Freiden's proposals in large part. The other, introduced by Assemblyman Towns, adopted fewer of the proposals put forward by Commissioner Frieden.

The Committee is currently in the process of developing its position on these proposed changes, but we wish to express our general concern with proposals to eliminate written consent prior to testing for HIV and the relaxation of post-test counseling requirements for HIV-negative individuals. The Committee is further concerned that individuals' rights are adequately safeguarded, given that persons living with the virus continue to encounter widespread stigma and discrimination.

[7] Age-appropriate instruction on transmission and prevention of HIV/AIDS is required for students in grades K-12 under the State Education Commissioner's Regulations, although parents have the right to opt their child out of instruction on prevention (e.g., use of condoms). N.Y. Comp. Codes R. & Regs., tit. 8 § 135.3.

[8] See Scott Stringer, *Failing Grade: Health Education in NYC Schools*, June 2003.

CONCLUSION

We look forward to working with your administration on matters of common concern.

Thank you for your time and your consideration.

Sincerely,

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Co-Chair, Committee on AIDS
Association of the Bar of the City of New York