



Meeting of the
POLICY COMMITTEE
Sharen Duke, Chair

January 28, 2013
AIDS Service Center of NYC
41 East 11th Street. 5th Floor
3:00 pm – 5:00 pm

Members Present: Sharen Duke, Yves Gebhardt, Adrian Guzman, Graham Harriman, Lorna Littner, Esther Lok, Paul Meissner, Jan Carl Park

Members Absent: Kareem Clemons, Kristin Goodwin, Sandy Guillaume, Matt Lesieur, Gloria Searson, Kimberleigh Smith, Dorella Walters

NYC DOHMH Staff Present: David Klotz, Rafael Molina, Nina Rothschild, DrPH, Jacqueline Rurangirwa, Anna Thomas, Darryl Wong

Others Present: Felicia Carroll, Jennifer Celio, Jessica Reinhart

Material Distributed:

- Agenda
- Minutes from the December 2012 Policy Committee Meeting
- Positive Justice Project Consensus Statement on the Criminalization of HIV in the United States
- Positive Justice Project Summary of Consensus Statement on the Criminalization of HIV in the United States
- President's Advisory Council on HIV/AIDS Resolution on Implementation of the Affordable Care Act
- Presentation by Adrian Guzman on HIV Criminalization: Are You at Risk?
- Policy Committee List of Open and Closed Items

Welcome/Moment of Silence/Introductions/Review of the Meeting Packet/Review of the Minutes: Committee Chair Sharen Duke welcomed meeting participants. Jan Carl Park led the moment of silence and acknowledged the superb work of Ryan White Grant Administrator JoAnn

Hilger, who is in hospice. Participants introduced themselves. Nina Rothschild reviewed the contents of the meeting packet. The minutes from the December 2012 Policy Committee meeting were accepted for posting on the Planning Council website at nyhiv.org.

Criminalization of HIV Transmission: Adrian Guzman, Planning Council member and attorney at the Positive Justice Project, showed a film on the criminalization of HIV transmission. At the end of 2010, approximately 34 million adults were living with HIV around the world. Eventually, the number of women living with HIV will outnumber the number of men living with HIV.

Over thirty states have criminal laws regarding HIV transmission, and being infected may enhance the charge: an individual who is infected with HIV may receive intensified criminal penalties for actions such as spitting on a police officer, despite the lack of medical evidence that HIV can be transmitted via saliva. These penalties are based on fear. In many states, an individual living with HIV/AIDS can be incarcerated for years and even for decades for engaging in sex, even if the sex was consensual. We do not have a way to track arrests for this type of offense across the country. Young heterosexual men of color are particularly targeted in prosecutions of this nature. The charges are based on non-disclosure of HIV status.

In addition to spitting and biting offenses, which are usually specific to interactions with police and corrections officers, there are offenses based on sexual contact where nondisclosure is frequently an element. In most cases, HIV is not actually transmitted – the issue, rather, is exposure. Often juries and judges are more sympathetic to the “victim.” With criminal law, the accused often has to intend to do harm to the victim – but in the exposure cases, proof of intent to harm is almost never assumed by the court. Many courts assume that no one would knowingly have sex with someone infected with HIV. The media, of course, sensationalizes the situation. Most of these laws were passed in the early days of the epidemic and are premised on scientifically inaccurate information. Some states provide for much longer prison terms for exposing someone to HIV than for vehicular manslaughter.

In New York, PLWHA have been charged with reckless endangerment and aggravated assault. In the Nushawn Williams case, New York has a civil confinement law on its books stating that someone can be kept in civil confinement indefinitely. Research has also shown that individuals who are forced to disclose their health status have more negative health outcomes.

The Positive Justice Project (PJP) engages in state and federal advocacy and does a lot of community mobilization and community engagement. PJP staff want to work with prosecutors. More than fifty persons and organizations have signed onto the Positive Justice Project issues in brief. Paul Meissner

asked whether all of this is only state law or whether it is also federal law. Advocacy has to happen on a state-by-state basis. PACHA is doing work on HIV criminalization. In many cases, PLWHA are designated for mandatory sex registration for life. Currently, no cases are pending in New York City on this issue. All the cases are upstate and far away. In Iowa, a PLWHA can be sentenced to 25 years for a consensual encounter.

Jan Carl Park noted that although the Planning Council members cannot engage in advocacy or request appropriations, we may at least be able to sign on to the PJP consensus statement regarding criminalization. The Policy Committee can also ask the City what its position is on criminalization of HIV transmission.

Congresswoman Barbara Lee has proposed legislation asking states to review their HIV-specific statutes. The Positive Justice Project is working with CDC and PACHA on this topic. A PLWHA can make him or herself criminally liable for reckless endangerment. Concerns have been raised among PLWHAs who participate in the community planning process that the answers provided to questions about behavior for a CDC surveillance project might constitute evidence of a crime or of criminal intent.

Yves Gebhardt underscored the importance of educating lawmakers on this topic. Doctors have, in fact, written a book on the science of HIV for lawyers. AIDS activists have developed a curriculum about HIV transmission for police recruits. The Positive Justice Project is developing a toolkit for prosecutors. Committee Chair Sharen Duke and Governmental Co-Chair Jan Park noted that they can take this information back to the CAEAR Coalition. Policy Committee members agreed that at the next meeting, they would vote on signing onto the Positive Justice Project's statement about criminalization. One major public health concern is that people are not being tested because they could be liable if they learn that they are positive and subsequently have sex.

PACHA Resolution on the Implementation of the Affordable Care Act: The resolution of the President's Advisory Council on HIV/AIDS regarding implementation of health care reform specifically references Ryan White and is, therefore, a small victory for Ryan White as a service system.

Manatt Report: While New York has a good Medicaid program, we don't want that to be used against us when the ACA is fully implemented. Service trends, we know, can inform policy. Health homes for the Medicaid population are in implementation, although we haven't received much clarity from New York State regarding what the covered services are.

Sharen Duke asked whether Public Health Solutions and NYC DOHMH can provide a list of service categories and allowable services so that we can better understand what is and is not covered and where the opportunities for expansion lie. She also asked about ADAP's potential role if it pays for premiums. Good policy emerges from a good understanding of service trends. She also suggested that the Policy Committee might join with the Integration of Care Committee in its work shaping service categories. The Manatt report did not give us recommendations, and we as a committee can identify some areas where we may need more information. Graham Harriman's staff did some work over the summer on areas where we need additional information beyond what is provided in the Manatt report. Mr. Harriman noted that he would bring that work to the next meeting.

Technical Fixes to the Ryan White HIV/AIDS Treatment Extension Act:

National advocates have different positions on the Ryan White legislation – e.g., letting it expire, continuing to appropriate funding to it, etc. The term “technical fixes” refers to matters that can be adjusted quickly, as opposed to an overhaul of the legislation.

Public Comment: No members of the public commented.

Adjournment: The meeting was adjourned.

Items for Follow-Up:

- Policy Committee members will decide about voting to endorse the Positive Justice Project's Consensus Statement on the Criminalization of HIV Transmission
- Planning Council staff will draft a letter asking Mayor Bloomberg about the City's position on the criminalization of HIV transmission and the potential impact of criminalization on HIV testing
- Planning Council staff will ask Public Health Solutions and NYC DOHMH for a list of service categories and allowable services so that we can better understand what is and is not covered and where the opportunities for expansion of service provision lie.
- The grantee will bring to the next meeting an assessment of where we need additional information about Medicaid in New York State beyond what we have learned from the Manatt report.