October 30, 2009

Charlene M. Frizzera
Acting Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, SW
Room 314-G
Washington, D.C. 20201

Dear Ms. Frizzera:

We the undersigned organizations are writing to ask for your support for allowing expenditures from state-operated AIDS Drug Assistance Programs (ADAPs) to count towards True-out-of-pocket costs (TrOOP) under the Medicare Part D benefit. We are national, local, and regional HIV/AIDS organizations representing people living with HIV/AIDS, medical providers, advocates, community-based organization and program administrators, as well as members of the diagnostics and pharmaceutical industry.

We appreciate the consideration that the Centers for Medicare and Medicaid Services (CMS) has given to people living with HIV/AIDS throughout the implementation and operation of Medicare Part D. The strong formulary protections that require Part D plans to cover all drugs in the antiretroviral drug class, in addition to five other drug classes, have been critical to ensuring timely access to HIV medications for Medicare beneficiaries.

However, since the beginning of the Part D program, cost sharing has remained a significant barrier for Medicare beneficiaries that were not eligible for the low income subsidy program. We are pleased that the health care reform proposals under consideration in the Congress would help to address this by allowing ADAP contributions to count toward TrOOP. We urge the Obama Administration to strongly support this provision and communicate your support with Congressional leaders as they formulate health care legislation.

As you are aware, ADAPs are an integral component of the safety net for people living with HIV/AIDS in this country and have a long history of filling coverage gaps left by other Federal programs, including Medicaid and Medicare. To better ensure that all Medicare beneficiaries with HIV have access to medically necessary medications in 2010, we urge you also to reconsider the current CMS ruling and include ADAPs in the list of programs whose expenditures count towards TrOOP.

Congress appropriates federal funds for ADAP programs on a discretionary basis. Notwithstanding the decision by a state to use ADAP funds to subsidize Part D cost-sharing, federal costs do not increase. ADAPs have always been a successful state–federal partnership, with 34 states contributing $329 million to ADAP programs in FY2008.
A recent survey conducted by NASTAD, showed that in FY2009, HIV/AIDS programs lost over $167 million in state general revenue funds. These cuts have translated in loss of revenue for 48 percent of ADAPs in state FY2009 and additional cuts are expected in FY2010. ADAPs nationwide are experiencing increased utilization due to job loss and cuts in other safety net services coupled with increasing drug cuts. Over 160 individuals in eight states are currently on ADAP waiting lists to access critical medications and other programs are facing restrictions and limitations in ADAP formularies and eligibility.

The Part D benefit has provided access to a more comprehensive drug benefit for people living with HIV eligible for the low income subsidy who previously relied on ADAP for their prescription drugs and allowed ADAPs to expand access to people with HIV who previously had no drug coverage. Data collected from ADAPs over the past several years has shown that approximately 15 percent of ADAP clients are also eligible for Medicare Part D. Of those clients, approximately 30 percent do not qualify for LIS. Many of these clients live on incomes just above the income limit for the LIS – around $16,000/year in 2009 – and are unable to pay out-of-pocket for their HIV medications – which cost hundreds of dollars per prescription. If ADAPs are unable to step in – many of these individuals go without their medications.

ADAPs have struggled to provide wrap-around coverage to Medicare beneficiaries. Coordinating with Part D prescription drug plans (PDPs) has been arduous and complicated. Coordination with plans involves working with both clients, PDPs and pharmacies to ensure that clients are receiving all the appropriate HIV/AIDS-related medication and being assessed correct co-pays, expenditures are being flagged as not counting towards TrOOP, and wrap-around expenditures are being calculated correctly. These coordination issues put ADAP clients at risk of falling through the cracks and not having seamless access to critical medications. Due to financial restraints some ADAPs have not been able to provide wrap-around services to clients who are also eligible for Medicare.

Allowing ADAP expenditures to count towards TrOOP continues CMS’ acknowledgment of the unique situation of Medicare beneficiaries living with HIV/AIDS. The treatment of HIV disease is extremely complex and specific to the infected individual. Specific drug combinations and adherence to the prescribed medications is essential to the successful treatment of HIV. To assist with the coordination of benefits for Medicare beneficiaries a few states have adapted existing State Pharmaceutical Assistance Programs’ (SPAPs) or implemented new programs explicitly to serve individuals living with HIV/AIDS dollars. However, this process is not an option in all states and therefore creates disparity between states with HIV-specific SPAPS and those without. We believe Congressional intent was to afford ADAPs the same rules as SPAPs under Medicare Part D as is evidenced by the attached letter from former Congressman Mike Ferguson. States should have the flexibility to provide prescription drugs to a variety of populations, including people living with
HIV/AIDS, with the state dollars appropriated. It is inexcusable to exempt people living with HIV/AIDS from receiving this type of help from their state, while allowing people with other medical conditions to benefit from their state dollars.

The undersigned organizations agree that all dollars, both state and federal, expended by ADAPs should count towards TrOOP. States should be encouraged, not discouraged, from helping people participate more fully in the Medicare drug benefit. The change in policy would provide Medicare Part D beneficiaries currently being assisted by ADAP with access to the comprehensive benefit that their health depends on. It would also allow ADAPs to serve additional clients who have no other means to receive HIV-related medications. Especially during these tough budget times, ADAPs need to leverage all available funding.

We thank you for your attention to this matter. We greatly appreciate the attention CMS has paid to people living with HIV/AIDS during the implementation and ongoing operation of Medicare Part D. If you have any questions please contact Ann Lefert, Associate Director of Government Relations at the National Alliance of State and Territorial AIDS Directors at (202) 434-8090.

Sincerely,

ADAP Advocacy Association (aaa+)
AIDS Action Baltimore
AIDS Foundation of Chicago
The AIDS Institute, Washington, DC
AIDS Partnership Michigan, Detroit, MI
AIDS Treatment Data Network, New York, NY
The American Academy of HIV Medicine, Washington, DC
Bronx AIDS Services, Bronx, NY
Broward House, Ft. Lauderdale, FL
Common Ground - the Westside HIV Community Center, Santa Monica, CA
Community AIDS National Network, Washington, DC
Community HIV/Hepatitis Advocates of Iowa Network (CHAIN), Iowa
Dab the AIDS Bear Project, Jacksonville, FL
HIV/AIDS Alliance of Michigan
HIV Dental Alliance, Atlanta, GA
HIV Health Services Planning Council - San Francisco EMA
HIV Medicine Association, Arlington, VA
Hyacinth AIDS Foundation, NJ
Interfaith Residence d/b/a Doorways, St. Louis, MO
Log Cabin Republicans, Washington, DC
Michigan AIDS Coalition, Ferndale, MI
Michigan Positive Action Coalition (MI-POZ)
Missouri AIDS Taskforce
National Alliance of State and Territorial AIDS Directors, Washington, DC
Positive Connections Center for Women, Atlanta, GA
Positive East Tennessean's, Knoxville, TN
SisterLove, Atlanta, GA
Southwest CARE Center, Santa Fe, NM
Strong Consulting, Crescent City, CA
Treatment Access Expansion Project
Women Together for Change, Kingshill, Virgin Islands