- Environmental Protection Agency
- Commodity Futures Trading Commission
- US International Trade Commission
- Dept. of Commerce
- NASA
- Nuclear Regulatory Commission
- Veterans Administration
- USIA
- US Merit Systems Protection Board
- Department of Justice
- Department of Education
- Federal Emergency Management Agency
- Department of the Treasury
- National Science Foundation
- Department of Defense

- DoJ/Legal Counsel
- OPM

U.S. Department of Justice

Office of Legal Counsel

OCT - 6 1988

Office of the
Assistant Attorney General

Washington, D.C. 20530

In response to the AIDS Commission, the White House Counsel requested an opinion from the Department of Justice, Office of Legal Counsel on the scope of the existing anti-discrimination provisions in the federal Rehabilitation Act. We have prepared the opinion and delivered it to the White House Counsel. In light of the controversial nature and complexity of legal issues raised by the AIDS virus, the White House Counsel has directed us to release this opinion and to be responsive to questions you may have about it.

I should also note at the outset that our legal opinion is consistent with the President's policy statement of last August, namely that federal employers should treat HIV-infected individuals on a case by case basis so they do not pose health and safety dangers or performance problems. Otherwise, they should be treated like any other employee. In particular, our opinion focuses on two issues: (1) whether persons with AIDS are protected by the Rehabilitation Act as an "individual with handicaps," even though AIDS is a contagious disease, and (2) whether so-called "asymptomatic" HIV-infected persons are also "individuals with handicaps" for purposes of the Act.

We answer both questions in the affirmative. We believe the first question was largely answered by the Supreme Court's decision in School Board of Nassau County, Fla. v. Arline (1987). While Arline concerned tuberculosis rather than AIDS, it clearly held that "[a]llowing discrimination based on the contagious effects of a physical impairment would be inconsistent with the basic purpose of [the Rehabilitation Act]."

As to asymptomatic HIV-infected individuals, our legal conclusions have been largely guided by recent medical clarification from the Surgeon General that even these individuals are, from a medical standpoint, physically impaired. The Surgeon General advises us that the impairment of HIV infection cannot be meaningfully separated from clinical AIDS, and that it is medically "inappropriate to think of this disease as composed of discrete conditions." Given this medical information that HIV infection is a physical impairment, the only legal issue remaining to us was to determine whether a court could in a given case determine that such a person is substantially limited in a major life activity. Because HIV infection may limit the likelihood of bearing a healthy child and may adversely affect intimate sexual relations, we believe that an individual proving these facts to a court could fairly be found to be an individual with handicaps for purposes of the Act.

The Supreme Court has also indicated in Arline that if a person is perceived by others as having a handicapping condition that substantially limits a major life activity -- that in itself could bring the person within the terms of the Act. We believe that, as a factual matter, many HIV-infected individuals would likely be included within the Act on this basis as well.

As both our opinion and the Supreme Court's opinion indicate, however, saying that it is possible for HIV-infected individuals to be found within the terms of the Act does not mean that federal employers or federally-conducted or financed programs and activities cannot in individual circumstances exclude an HIV-infected individual from the workplace or such program. If that individual poses a threat to the health or safety of others or is unable to perform the job or satisfy the requirements of the program, that individual can be excluded if there is no reasonable way to accommodate these health and safety and performance concerns.

In short, so long as HIV-infected individuals do not on a case-by-case basis pose these health and safety dangers or performance problems, they should be treated in the federal workforce and in federally-conducted or financed programs and activities like everyone else. By the terms of the Act, and our construction of it, we believe that similar anti-discrimination protections extend to federally-conducted or financed programs and activities.

I will be happy to try to answer any questions you may have.

Douglas W. Kmiec

Department of Justice

FOR IMMEDIATE RELEASE
THURSDAY, OCTOBER 6, 1988

AG
202-633-2007
(TDD) 202-786-5731

Attorney General Dick Thornburgh today issued the following statement:

I have reviewed the opinion prepared by the Office of Legal Counsel on the application of federal anti-discrimination laws to victims of the AIDS virus. The opinion concludes that the necessary result of the Supreme Court's decision in School Board of Nassau County v. Arline, recent legislative action, and the medical views of the Surgeon General, is to extend the protection of federal anti-discrimination laws to individuals when they become infected with the virus. It also concludes that if the infection is a direct threat to the health or safety of others or renders the individual unable to perform the duties of the job, the employer is not required to retain or hire that person. It is by no means clear that much of the existing law designed to protect handicapped members of our society was ever intended specifically to protect AIDS victims. For example, Section 504, with which this opinion deals, was adopted in 1973, well before the advent of AIDS. There are, I believe, legitimate questions as to whether existing law can adequately and appropriately serve these most unfortunate victims. Those concerns will be discussed with other members of the Administration and Congress who are considering this question.

# # # #

88-398

SD. You might discuss w/ Lorraine how to handle... Ron

THE WHITE HOUSE

WASHINGTON

August 29, 1988

Dear Mr. Vernon:

On behalf of the President, thank you for your encouraging letter regarding the Report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic.

I have taken the liberty of passing your letter on to Dr. Ian MacDonald, Special Assistant to the President and Director of the Office of Drug Abuse Policy for his review and benefit.

Again, thank you for writing and for your kind words of support.

Sincerely,

Judy A. Black

Judy A. Black
Special Assistant to the President
for Intergovernmental Affairs

Mr. Thomas M. Vernon, M.D.
President
Association of State and Territorial Health Officials
McLean, Virginia 22101

ASSOCIATION OF STATE AND TERRITORIAL HEALTH OFFICIALS
6728 Old McLean Village Drive, McLean, Virginia 22101
Phone (703) 556-9222

J. Black

August 23, 1988

President Ronald Reagan
The White House
Washington, DC 20500

Dear Mr. President:

The Association of State and Territorial Health Officials (ASTHO), representing the official state health agencies throughout the nation, has carefully reviewed the Report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic. As the Commission recognized, state public health departments play a major role in meeting the challenge to prevent the further spread of the epidemic, and bear a large share of the burden of developing and providing services to those already afflicted. The Commission's Report has crystalized the complex and difficult issues that we confront on a daily basis, and is an excellent guide for policy development at all levels of state and federal government. ASTHO wholeheartedly and enthusiastically supports the recommendations set forth in the Commission's Report, with few exceptions.

We have enclosed a detailed, point-by-point response to those recommendations of the Commission which directly address state health department functions. While we strongly support the recommendations that call for adequate services for HIV infected persons (including home and community based services, psychosocial support and case management), we must point out that the resources required to implement them are not currently available from federal sources, and state resources are rapidly being exhausted. Similarly, the expansion of counseling, testing and contact notification programs called for in the Report will require significant new funding. As the Commission notes, appropriate demonstration models or pilot phases of many such programs already exist. Expansion of these programs to serve the more than 30,000 persons with AIDS currently living, the far larger number of persons affected with early stages of HIV-related symptoms or diseases, and the estimated 1.5 million persons infected with HIV will have fiscal impacts which have not yet been adequately addressed in budget planning at the federal level.

By far the most urgent and critically needed recommendations made by the Commission are those which call for federal legislation to insure the confidentiality of diagnoses of HIV infection and AIDS, for federal legislation to protect such persons against discrimination, and for the expansion of drug treatment services to prevent the rapid spread of HIV infection through the intravenous drug using community and to their sexual partners and children. We strongly urge you to implement these recommendations as extensively and rapidly as possible.

We look forward to working with the Public Health Service and other federal agencies in the implementation of the Commission's recommendations. The Commission's Report will be of great assistance to us in our work at the state level. It should be adopted as the basis for federal policy as well. The Executive Committee of ASTHO would be pleased to meet with your representatives to further discuss the Commission's recommendations and related federal policy on HIV infection and disease.

Sincerely yours,

Thomas Vernon

Thomas M. Vernon, M.D.
President

TMV/slv

Enclosure

Comments from ASTHO on the President's Commission Report

I. Chapter One: Incidence & Prevalence

Recommendation 1-9

"State public health departments should be fully supported in their role of coordinating the various federal programs and resources that are targeted for HIV, AIDS, and AIDS-related issues within their states."

We strongly agree with the commission's recommendation regarding the importance of the state health department's role of coordination. In addition, we particularly encourage notification of state agencies of all federal awards of monies or other support provided to agencies and institutions within their geographic jurisdiction.

Recommendation 1-13

"Where the data produced are needed for surveillance, programs of HIV testing sponsored by a state or local public health agency should be coordinated with the Centers for Disease Control and the methodology made consistent with the national effort."

We concur, and encourage the establishment of a standard format for HIV reporting, in conjunction with the Centers for Disease Control.

The required reporting of positive HIV antibody test results to state health departments remains controversial. Although there is an increase in the number of states which require reporting, the definition of testing differs among states. Most state health agencies in states with high prevalence rates do not recommend reporting of all positive HIV antibody tests.

II. Chapter Two: Patient Care

Recommendation 2-5

"The federal government, through the Department of Health and Human Services, and the states should provide funds for home health care services for under-insured persons with HIV infection. Each state's federal allocation for home health care would be based on the ratio of the number of persons with HIV infection in the state to the total number of persons with HIV infection in the United States. States should have the option to utilize this allocation for grants to home health care agencies for the provision of care to eligible individuals, for compensation for the planners and providers of care, and for education and training of home health care providers."

As the HIV epidemic continues, the need for the services described in this recommendation will be essential. We support the Commission's efforts in this area and we would encourage the expansion of the waiver program to ensure cost-effective, appropriate care for all patients.

Recommendation 2-6

"Facilities which currently care for persons infected with HIV should be encouraged to make available psychosocial care as needed, within the limitations of each facility's resources. Care may be provided by psychiatrists, psychologists, psychiatric nurses, social workers, marriage counselors, sex counselors and therapists, family counselors, or religious counselors, as appropriate. All providers of psychosocial services should be enlisted in efforts to prevent HIV transmission."

Although we support the availability of the full spectrum of care for patients, we feel the inclusion of psychosocial care may be unrealistic without a corresponding increase in funding for such services.

Dental care is an essential service for patients and though not specifically addressed in this chapter, should be included in planning for patient care.

III. Chapter Three: Health Care Providers

Recommendation 3-33

"The state regulatory agencies that issue licenses for health care providers should strongly urge completion of comprehensive continuing education programs about HIV, with particular attention to prevention, diagnosis, treatment, and infection control. Those states that require continuing education of health care providers for licensure should include HIV infection. Professional societies should assume the responsibility for seeing that every health professional is educated concerning HIV infection."

We support this recommendation and highlight the need for standardized training, including training on confidentiality.

V. Chapter Five: The Public Health System

Recommendation 5-12

"The budgeting process needs to be streamlined to ensure that valuable staff time is used in the actual delivery of prevention programs. Funds should be made available to states for prevention services, such as counseling and testing, partner notification, education, and other services as a block grant administered by the Centers for Disease Control and delivered on a formula basis. That formula should be based on the following principles:"

- Thirty-five percent of the funds should be distributed to the states providing:

  - a base amount to each state for the establishment of basic programmatic efforts as core support.

  - the balance of the amount to be distributed on a per capita basis and utilized by the state in accordance with a plan which incorporates the funding needs of local health departments, community health centers, community-based organizations, and other appropriate institutions.

- Fifty percent of the funds should be distributed among states on the basis of a formula reflecting the reported and the estimated HIV prevalence. Funding for FY 1991 should be awarded on the basis of reported prevalence only.

- Fifteen percent of the funds should be retained by the Centers for Disease Control for use in capacity building among states, technical assistance to states, federal demonstration and special projects, and research and training, including support for data collection.

This recommendation addresses the need for the prioritization of federal funds, and the utilization of a formula to streamline the budget process. We feel this is essential to ensure maximum efficiency in the distribution of funds and services.

Recommendation 5-14

"If not already in place, state and local departments of health should form an advisory committee that consists of health care professionals, community-based service organizations, community leaders, and others to advise on the most appropriate strategy to control the HIV epidemic, including methods to initiate and/or expand and maintain a counseling, testing, and partner notification program within the state. An official from the state department of health should be the designated chair of such a committee and should convene meetings at regular intervals."

The establishment of advisory committees is extremely helpful and should be encouraged in all states.

Recommendation 5-15

"State departments of health should coordinate the prevention and education activities of local health departments and community-based service organizations to ensure that there is neither the needless duplication of services nor an absence of needed services within a state. In so doing, state departments of health should assign one individual or office to meet regularly and work directly with local

health departments, community-based service organizations, and professional medical and health care associations on HIV prevention and education activities."

ASTHO recognizes there are some cases in which federal funds have not been rapidly and effectively transferred by state agencies to local health departments and community based organizations. Where these problems have resulted in Federal decisions to directly fund these organizations, we particularly emphasize the need to ensure notification of state health agencies of all federal awards of monies or other support provided to agencies within their geographic jurisdiction.

Recommendation 5-20

"All state and local health authorities should have systems for channeling HIV-infected applicants into appropriate counseling programs and partner notification and available medical services."

We agree with the linkage of counseling and testing to partner notification and medical services, and refer to the policy document on partner notification jointly prepared by ASTHO, NACHO and USCLHO: "Guide to Public Health Practice: HIV Partner Notification Strategies". Such services are labor intensive, however, and will require much greater funding for implementation.

VI. Chapter Six: Prevention

Recommendation 6-1

"States should adopt statutes that ensure confidentiality in testing and in reporting to public health authorities."

We strongly support the Commission's recommendation that the Federal government enact confidentiality legislation. While ASTHO recognizes the need for confidentiality legislation at the state level in the absence of adequate federal laws, this will be far less effective and slower than a Federal approach.

Recommendations 6-4, 5, 7

6-4 "Each state, through the local public health system, should increase the number and availability of anonymous and/or confidential testing and counseling sites."

6-5 "State departments of health should make new funds available that will ensure that HIV testing and counseling services are a part of the services offered by sexually transmitted disease clinics, family planning centers, drug treatment clinics, and community health centers."

6-7 "State and local departments of health should aggressively advocate the use of HIV testing and counseling services through public health education campaigns. These should highlight the assurance of confidentiality in order to induce more individuals to use the public health system. Special efforts should be focused on those geographic areas or members of groups in which there is evidence of high seroprevalence."

We support the need for expanded counseling and testing sites but would like to underscore the need for trained counselors. We would recommend that CDC work with ASTHO to develop a standardized training course.

Recommendation 6-11

"Any HIV-related confidentiality laws should provide for confidentiality reporting identity-linked test results to public health authorities."

Opinion among and within the states remains divided about the advantages and disadvantages of reporting identity-linked test results to public health authorities.

Recommendation 6-13

"All state and local health agencies should initiate and be funded adequately to develop HIV partner notification programs without diverting resources from other sexually transmitted disease partner notification programs. These programs should include counseling, testing, and supportive follow-up for those individuals who are notified of their possible exposure."

Partner notification programs are essential in combating the spread of the HIV epidemic. We strongly support adequate funding of these programs.

Recommendation 6-14

"To assure maximum use of resources, partner notification programs should be prioritized. Partner notification should begin with the partners of the following persons:

- hemophiliacs.
- persons who have received contaminated blood or blood products identified through "look-back" notification programs and other means.
- rejected military applicants.
- bisexual males.
- intravenous drug abusers.
- persons with multiple sex partners.
- persons with anonymous sex partners.
- infected prison inmates."

We agree with the Commission's recommendation that prioritization is essential to assure maximum use of resources in partner notification programs. However, criteria for setting notification priorities may differ from those of the Commission. For example, some states place high priority on notification of partners of HIV positive persons who have a recent-onset sexually transmitted disease. Such recent partners are clearly at high risk and are relatively easy to identify. Persons with full-blown AIDS are often overlooked as index cases in partner notification programs; we would therefore encourage the inclusion of "persons with AIDS" as a separate, and high priority, category.

Recommendations 6- 18, 19, 20

6-18 "Quarantine or isolation of HIV-infected individuals based only on HIV status without consideration of an individual's behavior is not appropriate and should not be adopted."

6-19 "Less restrictive measures under public health laws should be exhausted before more restrictive measures, such as limited isolation, are taken."

6-20 "In exercising powers of isolation under public health laws, there should be a heavy burden on the public health official to determine that these are necessary and appropriate and that a factual basis exists for making a determination to isolate."

We fully agree that less restrictive measures under public health laws should be exhausted before more restrictive measures are utilized. In many states, current legislation is adequate to achieve these purposes.

Recommendation 6-21

"As soon as is practically possible, but no later than July 1, 1989, agencies which license and certify health care facilities should make a condition for licensure, a program to notify all recipients of blood or blood products since 1977 of their possible exposure to HIV. Such "look-back" notification should include a statement about the benefits of receiving counseling and testing services and provide information about where such services are delivered. This may be done in conjunction with local or regional blood banks or the state or local health department. Notification of partners of these persons is the responsibility of public health agencies. If licensing agencies do not take such immediate steps, Congress should then enact a law that requires it."

Current look-back programs are restricted to recipients of blood products from individuals who have subsequently been found to be HIV positive. The greatly expanded look-back program recommended here would require a major infusion of public dollars, with minimal public health benefits.

Recommendations 6-33, 34, 38

6-33 "The Health Care Financing Administration, the Centers for Disease Control, the Food and Drug Administration, the National Governors Association, and the Association of State and Territorial Health Officials should develop a model state laboratory licensing law that addresses: types and levels of tests performed; personnel standards; use of proficiency tests; on-site inspections; and participation in education programs."

6-34 "The Public Health Service should provide funds that will enable states to implement the above model law."

6-38 "Performance of the Western Blot Assay or other confirmatory tests should be restricted immediately to laboratories which currently meet high quality standards, and priority should be given to assessing labs currently doing such tests for possible certification to continue their practice."

We support the need for a model state laboratory licensing law and the appropriation of funds for implementation. We recommend that this model law be developed by CDC in consultation with ASTHO.

VII. Chapter Seven: Education

Recommendations 7-21, 22, 23, 29

7-21 "State and local departments of health should recognize the disproportionate way in which the HIV epidemic has affected minority populations. They should, at a minimum, allocate a percentage of their HIV prevention and education budgets directly proportional to the minority populations within their jurisdiction for the delivery of prevention and education programs to those minority populations. State and local departments of health should ensure that all educational programming produced is linguistically relevant to the targeted audience."

7-22 "State and local departments of health should ensure that easily accessible HIV-related services, including public health education programs, peer counseling, and other risk reduction interventions, are being offered within their jurisdiction."

7-23 "The Centers for Disease Control, states, and localities should increase funds to state and local health departments to initiate and/or increase HIV prevention and education activities. These activities should include public health education campaigns, peer counseling, outreach education, and other risk reduction interventions."

7-29 "The Centers for Disease Control should make evaluation grants to state departments of health to conduct special studies to determine what programmatic interventions are most effective in reducing transmission of the virus in various communities. Detailed information about those programs, including program content and implementation strategies, should be provided to other state and local departments of health, as well as national and community-based AIDS Service organizations, so that those programs can be replicated in other parts of the nation."

We support budgeting predicated on targeting of all high risk populations identified epidemiologically. The formula base for such funding must be periodically reviewed and adjusted, and should reflect the proportionate burden of risk and need for information. It is important that state health agencies work with community groups within their jurisdiction to jointly establish programs, and particularly to address communities that may frequently receive less attention, such as minority groups.

Recommendations 7-36, 37

7-36 "State and local health departments should conduct conferences to provide current technical information about the HIV epidemic to state and local school boards, principals, and teachers. Such conferences should be held regularly, based on the amount of new information available or requests for updated information."

7-37 "State and local health departments, in conjunction with state and local school boards, should conduct conferences to provide current and accurate information about the HIV epidemic and school-based education initiatives, including the description of model programs, for parents of school-age children. Such conferences should be made available free of charge to all parents of school-age children, and should be held regularly, based on the amount of new information available, turnover in the student population, or requests for updated information."

Conferences on current information regarding the HIV epidemic and school-based education initiatives should be encouraged and promoted on a regular basis in each state.

The commission has recommended the use of explicit and appropriate educational materials. We fully support this recommendation, but note that it may prove difficult to implement because of the Helms amendment, which ASTHO opposed.

VIII. Chapter Eight: Societal Issues

Recommendation 8-1, 4, 5, 8, 9, 10, 11

8-1 "In the near term, the National Institute on Drug Abuse, in conjunction with state agencies, local drug abuse officials, and representatives of drug treatment providers, should develop a plan

for increasing the capacity of the drug treatment system so that the goal of treatment-on-demand can be met. The plan should designate an implementing office with the staff and technical capacity to guide implementation of the plan. The plan should provide for matching funding on a 50 percent federal and 50 percent state-and-local basis. It should have elements for a phased, targeted increase in programs insuring the quality of care and mechanisms to evaluate progress and make appropriate adjustments."

8-4 "Federal constraints on funds for constructing, expanding, and renovating facilities for intravenous drug treatment should be made more flexible in response to increased treatment needs. In addition, a wide range of federal and local financing arrangements for community-based treatment programs should be considered."

8-5 "Since an estimated 1.2 million intravenous drug abusers are concentrated in 24 cities in the United States, treatment should be quickly expanded in those cities by having state, city, local, and community officials identify facilities which could be used for treatment centers. These should include hospitals, clinics, and other health-related sites. Approximately 2,500 new facilities may need to be developed this way."

8-8 "More emphasis needs to be placed on matching treatment with the specific needs of clients. Drug addiction is a disease of the whole person involving multiple areas of function. To be effective, any treatment approaches must ultimately address many dimensions of the client. Those who fund and administer treatment programs should become more flexible, focusing not only on drug abuse behaviors, but also on other dimensions of the client's life (e.g., educational and vocational deficiencies and family problems) that may contribute to drug abuse. Services should not be limited to those that can be provided within a program's own facilities or by its own staff. There should be more extensive use of services available in local communities which can help to rehabilitate the drug abuser. This will require a focus on continuity of care, whether services are provided in one facility or in a number of community facilities. Community care facilities which receive public funds should be required to coordinate services with drug treatment programs and should be monitored by appropriate authorities."

8-9 "Treatment programs should try different strategies to encourage patients to participate. These should include: extended hours of operation, operation during unusual hours, mobile treatment units, 24-hour satellite clinics in medical facilities, and storefronts in communities. Results of these efforts should be carefully evaluated."

8-10 "Effective drug treatment, especially in this HIV epidemic, includes dealing not only with the health care needs of patients but also of their families. Treatment should include on-site primary services or referrals to community health centers, mental health centers, and other accessible community-based resources."

8-11 "Comprehensive programs should be made available for women who are intravenous drug abusers and are of child-bearing age, pregnant, or mothers. These programs should provide treatment as well as prenatal and postnatal care, day care facilities, family planning, HIV testing, counseling, and child welfare services. It is essential that these services be provided during extended hours."

We applaud the commission's work in this area. We concur that expansion of and flexibility in the use of federal dollars for drug treatment is essential in combating this epidemic.

The establishment and expansion of case management is critical in providing services. Currently funding for these services is inadequate and even where the Medicaid waivers have been granted, further support is often required. The need for comprehensive family-centered services for women and children affected by the epidemic has only recently been fully described, and ASTHO urges the Public Health Service to promote the development and funding of programs to address this need.

IX. Chapter Nine: Legal & Ethical Issues

Recommendation 9-9

"If not now the case, states should amend their disability laws to prohibit discrimination against persons with disabilities, including persons with HIV infection who are asymptomatic or symptomatic, and persons with AIDS, in public and private settings including employment, housing, public accommodations, and governmental services."

We strongly support the need for Federal legislation to prohibit discrimination against persons with HIV infection.

Recommendation 9-26

"State and local governments and health care providers should develop long-range plans now to anticipate the need for community-based health care facilities, and should develop a strategy to educate community members to accept facilities and prevent discriminatory responses."

Long-range plans should include and be based upon projections of epidemiologic patterns, community education, and community based health care services. They should also include the expansion of health care facilities and community based services. Effective development of such planning will require sufficient federal support, particularly in technical assistance.

Recommendation 9-73

"All correctional systems should regularly offer and strongly urge voluntary HIV testing and counseling for HIV infection at intake, at medical check-ups, during incarceration, and before release to all inmates. Counseling and testing should also be regularly offered to staff."

We recognize and support the need for optimal public health management of incarcerated individuals. HIV testing should be included in routine prison health services, available on a voluntary, informed consent basis rather than a mandatory basis. Peer education training programs are particularly effective and should be encouraged, although providing such services will require expanded funding. Confidentiality must be carefully maintained and enforced with appropriate regulations.

X. Chapter Ten: Financing Health Care

Recommendation 10-2

"The Health Care Financing Administration (HCFA) should change the Medicaid waiver review process, streamlining and eliminating aspects of the application process which delay approval, expanding the availability and size of the waiver program, and providing more flexibility for testing innovative treatment alternatives. To this end, HCFA should convene a meeting of state officials or spokesmen, including state Medicaid directors, in order to discuss specific changes in the waiver review process as well as a minimum package of benefits that should be reimbursed for care of symptomatic HIV patients."

Expansion and flexibility within the Medicaid waiver process will enhance the availability, quality and cost effectiveness of health care for persons with HIV infection. Utilization of demonstration projects will allow for creative solutions to this epidemic.

ID# 587406

FG446

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: AUGUST 24, 1988

NAME OF CORRESPONDENT: THE HONORABLE THOMAS M. VERNON

SUBJECT: REQUESTS A MEETING WITH THE EXECUTIVE COMMITTEE OF THE ASSOCIATION OF STATE AND TERRITORIAL HEALTH OFFICIALS TO DISCUSS THE PRESIDENTIAL COMMISSION ON THE HUMAN *

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION ACT CODE	DATE YY/MM/DD	DISPOSITION TYPE RESP	C D	COMPLETED YY/MM/DD
JUDY BLACK	ORG	88/08/24	JB	A	88/08/29
REFERRAL NOTE:					
Stripling PD MACO	A	88/08/30			~~88/08/29~~
REFERRAL NOTE:					
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COMMENTS: * IMMUNODEFICIENCY VIRUS EPIDEMIC'S REPORT AND RECOMMENDATIONS
WRITER IS ALSO DIRECTOR OF THE COLORADO DEPARTMENT OF HEALTH

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: 2130 ____ ____

IA MAIL USER CODES: (A)_____ (B)_____ (C)_____

*ACTION CODES:	*DISPOSITION	*OUTGOING CORRESPONDENCE:
*A-APPROPRIATE ACTION	*A-ANSWERED	*TYPE RESP=INITIALS OF SIGNER
*C-COMMENT/RECOM	*B-NON-SPEC-REFERRAL	* CODE = A
*D-DRAFT RESPONSE	*C-COMPLETED	*COMPLETED = DATE OF OUTGOING
*F-FURNISH FACT SHEET	*S-SUSPENDED	
*I-INFO COPY/NO ACT NEC		
*R-DIRECT REPLY W/COPY		
*S-FOR-SIGNATURE		
*X-INTERIM REPLY		

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE (ROOM 75,OEOB) EXT-2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.

Comments from ASTHO on the President's Commission Report

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We support this recommendation and highlight the need for standardized training, including training on confidentiality.

V. Chapter Five: The Public Health System

Recommendation 5-12

"The budgeting process needs to be streamlined to ensure that valuable staff time is used in the actual delivery of prevention programs. Funds should be made available to states for prevention services, such as counseling and testing, partner notification, education, and other services as a block grant administered by the Centers for Disease Control and delivered on a formula basis. That formula should be based on the following principles:"

- Thirty-five percent of the funds should be distributed to the states providing:
  - a base amount to each state for the establishment of basic programmatic efforts as core support.
  - the balance of the amount to be distributed on a per capita basis and utilized by the state in accordance with a plan which incorporates the funding needs of local health departments, community health centers, community-based organizations, and other appropriate institutions.
- Fifty percent of the funds should be distributed among states on the basis of a formula reflecting the reported and the estimated HIV prevalence. Funding for FY 1991 should be awarded on the basis of reported prevalence only.
- Fifteen percent of the funds should be retained by the Centers for Disease Control for use in capacity building among states, technical assistance to states, federal demonstration and special projects, and research and training, including support for data collection.

This recommendation addresses the need for the prioritization of federal funds, and the utilization of a formula to streamline the budget process. We feel this is essential to ensure maximum efficiency in the distribution of funds and services.

Recommendation 5-14

"If not already in place, state and local departments of health should form an advisory committee that consists of health care professionals, community-based service organizations, community leaders, and others to advise on the most appropriate strategy to control the HIV epidemic, including methods to initiate and/or expand and maintain a counseling, testing, and partner notification program within the state. An official from the state department of health should be the designated chair of such a committee and should convene meetings at regular intervals."

The establishment of advisory committees is extremely helpful and should be encouraged in all states.

Recommendation 5-15

"State departments of health should coordinate the prevention and education activities of local health departments and community-based service organizations to ensure that there is neither the needless duplication of services nor an absence of needed services within a state. In so doing, state departments of health should assign one individual or office to meet regularly and work directly with local

health departments, community-based service organizations, and professional medical and health care associations on HIV prevention and education activities."

ASTHO recognizes there are some cases in which federal funds have not been rapidly and effectively transferred by state agencies to local health departments and community based organizations. Where these problems have resulted in Federal decisions to directly fund these organizations, we particularly emphasize the need to ensure notification of state health agencies of all federal awards of monies or other support provided to agencies within their geographic jurisdiction.

Recommendation 5-20

"All state and local health authorities should have systems for channeling HIV-infected applicants into appropriate counseling programs and partner notification and available medical services."

We agree with the linkage of counseling and testing to partner notification and medical services, and refer to the policy document on partner notification jointly prepared by ASTHO, NACHO and USCLHO: "Guide to Public Health Practice: HIV Partner Notification Strategies". Such services are labor intensive, however, and will require much greater funding for implementation.

VI. Chapter Six: Prevention

Recommendation 6-1

"States should adopt statutes that ensure confidentiality in testing and in reporting to public health authorities."

We strongly support the Commission's recommendation that the Federal government enact confidentiality legislation. While ASTHO recognizes the need for confidentiality legislation at the state level in the absence of adequate federal laws, this will be far less effective and slower than a Federal approach.

Recommendations 6-4, 5, 7

6-4 "Each state, through the local public health system, should increase the number and availability of anonymous and/or confidential testing and counseling sites."

6-5 "State departments of health should make new funds available that will ensure that HIV testing and counseling services are a part of the services offered by sexually transmitted disease clinics, family planning centers, drug treatment clinics, and community health centers."

6-7 "State and local departments of health should aggressively advocate the use of HIV testing and counseling services through public health education campaigns. These should highlight the assurance of confidentiality in order to induce more individuals to use the public health system. Special efforts should be focused on those geographic areas or members of groups in which there is evidence of high seroprevalence."

We support the need for expanded counseling and testing sites but would like to underscore the need for trained counselors. We would recommend that CDC work with ASTHO to develop a standardized training course.

Recommendation 6-11

"Any HIV-related confidentiality laws should provide for confidentiality reporting identity-linked test results to public health authorities."

Opinion among and within the states remains divided about the advantages and disadvantages of reporting identity-linked test results to public health authorities.

Recommendation 6-13

"All state and local health agencies should initiate and be funded adequately to develop HIV partner notification programs without diverting resources from other sexually transmitted disease partner notification programs. These programs should include counseling, testing, and supportive follow-up for those individuals who are notified of their possible exposure."

Partner notification programs are essential in combating the spread of the HIV epidemic. We strongly support adequate funding of these programs.

Recommendation 6-14

"To assure maximum use of resources, partner notification programs should be prioritized. Partner notification should begin with the partners of the following persons:

- hemophiliacs.
- persons who have received contaminated blood or blood products identified through "look-back" notification programs and other means.
- rejected military applicants.
- bisexual males.
- intravenous drug abusers.
- persons with multiple sex partners.
- persons with anonymous sex partners.
- infected prison inmates."

We agree with the Commission's recommendation that prioritization is essential to assure maximum use of resources in partner notification programs. However, criteria for setting notification priorities may differ from those of the Commission. For example, some states place high priority on notification of partners of HIV positive persons who have a recent-onset sexually transmitted disease. Such recent partners are clearly at high risk and are relatively easy to identify. Persons with full-blown AIDS are often overlooked as index cases in partner notification programs; we would therefore encourage the inclusion of "persons with AIDS" as a separate, and high priority, category.

Recommendations 6- 18, 19, 20

6-18 "Quarantine or isolation of HIV-infected individuals based only on HIV status without consideration of an individual's behavior is not appropriate and should not be adopted."

6-19 "Less restrictive measures under public health laws should be exhausted before more restrictive measures, such as limited isolation, are taken."

6-20 "In exercising powers of isolation under public health laws, there should be a heavy burden on the public health official to determine that these are necessary and appropriate and that a factual basis exists for making a determination to isolate."

We fully agree that less restrictive measures under public health laws should be exhausted before more restrictive measures are utilized. In many states, current legislation is adequate to achieve these purposes.

Recommendation 6-21

"As soon as is practically possible, but no later than July 1, 1989, agencies which license and certify health care facilities should make a condition for licensure, a program to notify all recipients of blood or blood products since 1977 of their possible exposure to HIV. Such "look-back" notification should include a statement about the benefits of receiving counseling and testing services and provide information about where such services are delivered. This may be done in conjunction with local or regional blood banks or the state or local health department. Notification of partners of these persons is the responsibility of public health agencies. If licensing agencies do not take such immediate steps, Congress should then enact a law that requires it."

Current look-back programs are restricted to recipients of blood products from individuals who have subsequently been found to be HIV positive. The greatly expanded look-back program recommended here would require a major infusion of public dollars, with minimal public health benefits.

Recommendations 6-33, 34, 38

6-33 "The Health Care Financing Administration, the Centers for Disease Control, the Food and Drug Administration, the National Governors Association, and the Association of State and Territorial Health Officials should develop a model state laboratory licensing law that addresses: types and levels of tests performed; personnel standards; use of proficiency tests; on-site inspections; and participation in education programs."

6-34 "The Public Health Service should provide funds that will enable states to implement the above model law."

6-38 "Performance of the Western Blot Assay or other confirmatory tests should be restricted immediately to laboratories which currently meet high quality standards, and priority should be given to assessing labs currently doing such tests for possible certification to continue their practice."

We support the need for a model state laboratory licensing law and the appropriation of funds for implementation. We recommend that this model law be developed by CDC in consultation with ASTHO.

VII. Chapter Seven: Education

Recommendations 7-21, 22, 23, 29

7-21 "State and local departments of health should recognize the disproportionate way in which the HIV epidemic has affected minority populations. They should, at a minimum, allocate a percentage of their HIV prevention and education budgets directly proportional to the minority populations within their jurisdiction for the delivery of prevention and education programs to those minority populations. State and local departments of health should ensure that all educational programming produced is linguistically relevant to the targeted audience."

7-22 "State and local departments of health should ensure that easily accessible HIV-related services, including public health education programs, peer counseling, and other risk reduction interventions, are being offered within their jurisdiction."

7-23 "The Centers for Disease Control, states, and localities should increase funds to state and local health departments to initiate and/or increase HIV prevention and education activities. These activities should include public health education campaigns, peer counseling, outreach education, and other risk reduction interventions."

7-29 "The Centers for Disease Control should make evaluation grants to state departments of health to conduct special studies to determine what programmatic interventions are most effective in reducing transmission of the virus in various communities. Detailed information about those programs, including program content and implementation strategies, should be provided to other state and local departments of health, as well as national and community-based AIDS Service organizations, so that those programs can be replicated in other parts of the nation."

We support budgeting predicated on targeting of all high risk populations identified epidemiologically. The formula base for such funding must be periodically reviewed and adjusted, and should reflect the proportionate burden of risk and need for information. It is important that state health agencies work with community groups within their jurisdiction to jointly establish programs, and particularly to address communities that may frequently receive less attention, such as minority groups.

Recommendations 7-36, 37

7-36 "State and local health departments should conduct conferences to provide current technical information about the HIV epidemic to state and local school boards, principals, and teachers. Such conferences should be held regularly, based on the amount of new information available or requests for updated information."

7-37 "State and local health departments, in conjunction with state and local school boards, should conduct conferences to provide current and accurate information about the HIV epidemic and school-based education initiatives, including the description of model programs, for parents of school-age children. Such conferences should be made available free of charge to all parents of school-age children, and should be held regularly, based on the amount of new information available, turnover in the student population, or requests for updated information."

Conferences on current information regarding the HIV epidemic and school-based education initiatives should be encouraged and promoted on a regular basis in each state.

The commission has recommended the use of explicit and appropriate educational materials. We fully support this recommendation, but note that it may prove difficult to implement because of the Helms amendment, which ASTHO opposed.

VIII. Chapter Eight: Societal Issues

Recommendation 8-1, 4, 5, 8, 9, 10, 11

8-1 "In the near term, the National Institute on Drug Abuse, in conjunction with state agencies, local drug abuse officials, and representatives of drug treatment providers, should develop a plan

for increasing the capacity of the drug treatment system so that the goal of treatment-on-demand can be met. The plan should designate an implementing office with the staff and technical capacity to guide implementation of the plan. The plan should provide for matching funding on a 50 percent federal and 50 percent state-and-local basis. It should have elements for a phased, targeted increase in programs insuring the quality of care and mechanisms to evaluate progress and make appropriate adjustments."

8-4 "Federal constraints on funds for constructing, expanding, and renovating facilities for intravenous drug treatment should be made more flexible in response to increased treatment needs. In addition, a wide range of federal and local financing arrangements for community-based treatment programs should be considered."

8-5 "Since an estimated 1.2 million intravenous drug abusers are concentrated in 24 cities in the United States, treatment should be quickly expanded in those cities by having state, city, local, and community officials identify facilities which could be used for treatment centers. These should include hospitals, clinics, and other health-related sites. Approximately 2,500 new facilities may need to be developed this way."

8-8 "More emphasis needs to be placed on matching treatment with the specific needs of clients. Drug addiction is a disease of the whole person involving multiple areas of function. To be effective, any treatment approaches must ultimately address many dimensions of the client. Those who fund and administer treatment programs should become more flexible, focusing not only on drug abuse behaviors, but also on other dimensions of the client's life (e.g., educational and vocational deficiencies and family problems) that may contribute to drug abuse. Services should not be limited to those that can be provided within a program's own facilities or by its own staff. There should be more extensive use of services available in local communities which can help to rehabilitate the drug abuser. This will require a focus on continuity of care, whether services are provided in one facility or in a number of community facilities. Community care facilities which receive public funds should be required to coordinate services with drug treatment programs and should be monitored by appropriate authorities."

8-9 "Treatment programs should try different strategies to encourage patients to participate. These should include: extended hours of operation, operation during unusual hours, mobile treatment units, 24-hour satellite clinics in medical facilities, and storefronts in communities. Results of these efforts should be carefully evaluated."

8-10 "Effective drug treatment, especially in this HIV epidemic, includes dealing not only with the health care needs of patients but also of their families. Treatment should include on-site primary services or referrals to community health centers, mental health centers, and other accessible community-based resources."

8-11 "Comprehensive programs should be made available for women who are intravenous drug abusers and are of child-bearing age, pregnant, or mothers. These programs should provide treatment as well as prenatal and postnatal care, day care facilities, family planning, HIV testing, counseling, and child welfare services. It is essential that these services be provided during extended hours."

We applaud the commission's work in this area. We concur that expansion of and flexibility in the use of federal dollars for drug treatment is essential in combating this epidemic.

The establishment and expansion of case management is critical in providing services. Currently funding for these services is inadequate and even where the Medicaid waivers have been granted, further support is often required. The need for comprehensive family-centered services for women and children affected by the epidemic has only recently been fully described, and ASTHO urges the Public Health Service to promote the development and funding of programs to address this need.

IX. Chapter Nine: Legal & Ethical Issues

Recommendation 9-9

"If not now the case, states should amend their disability laws to prohibit discrimination against persons with disabilities, including persons with HIV infection who are asymptomatic or symptomatic, and persons with AIDS, in public and private settings including employment, housing, public accommodations, and governmental services."

We strongly support the need for Federal legislation to prohibit discrimination against persons with HIV infection.

Recommendation 9-26

"State and local governments and health care providers should develop long-range plans now to anticipate the need for community-based health care facilities, and should develop a strategy to educate community members to accept facilities and prevent discriminatory responses."

Long-range plans should include and be based upon projections of epidemiologic patterns, community education, and community based health care services. They should also include the expansion of health care facilities and community based services. Effective development of such planning will require sufficient federal support, particularly in technical assistance.

Recommendation 9-73

"All correctional systems should regularly offer and strongly urge voluntary HIV testing and counseling for HIV infection at intake, at medical check-ups, during incarceration, and before release to all inmates. Counseling and testing should also be regularly offered to staff."

We recognize and support the need for optimal public health management of incarcerated individuals. HIV testing should be included in routine prison health services, available on a voluntary, informed consent basis rather than a mandatory basis. Peer education training programs are particularly effective and should be encouraged, although providing such services will require expanded funding. Confidentiality must be carefully maintained and enforced with appropriate regulations.

X. Chapter Ten: Financing Health Care

Recommendation 10-2

"The Health Care Financing Administration (HCFA) should change the Medicaid waiver review process, streamlining and eliminating aspects of the application process which delay approval, expanding the availability and size of the waiver program, and providing more flexibility for testing innovative treatment alternatives. To this end, HCFA should convene a meeting of state officials or spokesmen, including state Medicaid directors, in order to discuss specific changes in the waiver review process as well as a minimum package of benefits that should be reimbursed for care of symptomatic HIV patients."

Expansion and flexibility within the Medicaid waiver process will enhance the availability, quality and cost effectiveness of health care for persons with HIV infection. Utilization of demonstration projects will allow for creative solutions to this epidemic.

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ASSOCIATION OF STATE AND TERRITORIAL HEALTH OFFICIALS
6728 Old McLean Village Drive, McLean, Virginia 22101
Phone (703) 556-9222

J. Black

August 23, 1988

President Ronald Reagan
The White House
Washington, DC 20500

Dear Mr. President:

The Association of State and Territorial Health Officials (ASTHO), representing the official state health agencies throughout the nation, has carefully reviewed the Report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic. As the Commission recognized, state public health departments play a major role in meeting the challenge to prevent the further spread of the epidemic, and bear a large share of the burden of developing and providing services to those already afflicted. The Commission's Report has crystalized the complex and difficult issues that we confront on a daily basis, and is an excellent guide for policy development at all levels of state and federal government. ASTHO wholeheartedly and enthusiastically supports the recommendations set forth in the Commission's Report, with few exceptions.

We have enclosed a detailed, point-by-point response to those recommendations of the Commission which directly address state health department functions. While we strongly support the recommendations that call for adequate services for HIV infected persons (including home and community based services, psychosocial support and case management), we must point out that the resources required to implement them are not currently available from federal sources, and state resources are rapidly being exhausted. Similarly, the expansion of counseling, testing and contact notification programs called for in the Report will require significant new funding. As the Commission notes, appropriate demonstration models or pilot phases of many such programs already exist. Expansion of these programs to serve the more than 30,000 persons with AIDS currently living, the far larger number of persons affected with early stages of HIV-related symptoms or diseases, and the estimated 1.5 million persons infected with HIV will have fiscal impacts which have not yet been adequately addressed in budget planning at the federal level.

By far the most urgent and critically needed recommendations made by the Commission are those which call for federal legislation to insure the confidentiality of diagnoses of HIV infection and AIDS, for federal legislation to protect such persons against discrimination, and for the expansion of drug treatment services to prevent the rapid spread of HIV infection through the intravenous drug using community and to their sexual partners and children. We strongly urge you to implement these recommendations as extensively and rapidly as possible.

We look forward to working with the Public Health Service and other federal agencies in the implementation of the Commission's recommendations. The Commission's Report will be of great assistance to us in our work at the state level. It should be adopted as the basis for federal policy as well. The Executive Committee of ASTHO would be pleased to meet with your representatives to further discuss the Commission's recommendations and related federal policy on HIV infection and disease.

Sincerely yours,

Thomas Vernon

Thomas M. Vernon, M.D.
President

TMV/slv

Enclosure

THE WHITE HOUSE

WASHINGTON

August 29, 1988

Dear Mr. Vernon:

On behalf of the President, thank you for your encouraging letter regarding the Report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic.

I have taken the liberty of passing your letter on to Dr. Ian MacDonald, Special Assistant to the President and Director of the Office of Drug Abuse Policy for his review and benefit.

Again, thank you for writing and for your kind words of support.

Sincerely,

Judy A. Black

Judy A. Black
Special Assistant to the President
for Intergovernmental Affairs

Mr. Thomas M. Vernon, M.D.
President
Association of State and Territorial Health Officials
McLean, Virginia 22101

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Mr. Thomas M. Vernon, M.D.
President
Association of State and Territorial Health Officials
McLean, Virginia 22101

ID# 587406

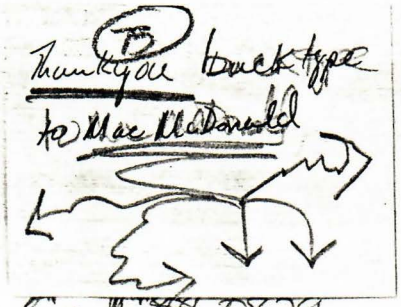
THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: AUGUST 24, 1988

NAME OF CORRESPONDENT: THE HONORABLE THOMAS M. VERNON

SUBJECT: REQUESTS A MEETING WITH THE EXECUTIVE COMMITTEE OF THE ASSOCIATION OF STATE AND TERRITORIAL HEALTH OFFICIALS TO DISCUSS THE PRESIDENTIAL COMMISSION ON THE HUMAN *



ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACTION CODE	DATE YY/MM/DD	
				C 880829
JUDY BLACK		ORG	88/08/24	C C 88108129
REFERRAL NOTE:				
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COMMENTS: * IMMUNODEFICIENCY VIRUS EPIDEMIC'S REPORT AND RECOMMENDATIONS
WRITER IS ALSO DIRECTOR OF THE COLORADO DEPARTMENT OF HEALTH

Copy for Mullen

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: 2130 ___ ___

IA MAIL USER CODES: (A)_____ (B)_____ (C)_____

*ACTION CODES:	*DISPOSITION	*OUTGOING CORRESPONDENCE:
*A-APPROPRIATE ACTION	*A-ANSWERED	*TYPE RESP=INITIALS OF SIGNER
*C-COMMENT/RECOM	*B-NON-SPEC-REFERRAL	*CODE = A
*D-DRAFT RESPONSE	*C-COMPLETED	*COMPLETED = DATE OF OUTGOING
*F-FURNISH FACT SHEET	*S-SUSPENDED	
*I-INFO COPY/NO ACT NEC		
*R-DIRECT REPLY W/COPY		
*S-FOR-SIGNATURE		
*X-INTERIM REPLY		

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE (ROOM 75,OEOB) EXT-2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.