



LOS ANGELES COUNTY COMMISSION ON HIV

ADAP
BRIEF #1
December 1, 2009
World AIDS Day

California's AIDS Drug Assistance Program (ADAP) Faces Funding Crisis

This will be the first in a series of briefs providing information about California's AIDS Drug Assistance Program (ADAP) and the specific threats it faces in the State's next budget year (July 2010 – June 2011). Not only is ADAP unsustainable next year at current funding levels, but it faces the potential of more budget cuts on top of the already devastating HIV/AIDS service cuts resulting from the Governor's "blue pencil" veto in August.

ADAP must be kept whole and sustainable, and the HIV community will not stand for any attempts to undermine its reach, access or effectiveness. **Any effort to reduce ADAP service funding or levels below current need and delivery will result in the death and disabling of people with HIV/AIDS in California.**

Simply to preserve current ADAP service levels, it is estimated that ADAP will need up to an additional \$100 million in FY 2010-2011. There are no easy budget solutions in the next fiscal year. However, the Governor's budget cuts to HIV/AIDS this year have decimated HIV/AIDS services throughout the State, and the HIV safety net is quickly shredding. Neither HIV/AIDS services nor the State's core HIV/AIDS program response—ADAP—should or can accommodate additional budget reductions.

Background

California's ADAP is known throughout the country as one of the most responsive programs providing pharmaceutical prescriptions to People Living With HIV/AIDS (PLWH/A). ADAP provides life-sustaining medications to Californians living with HIV/AIDS who have limited incomes, are uninsured, or lack sufficient prescription drug coverage. California's ADAP formulary comprises approximately 200 drugs and comprehensively addresses the effects and ramifications of the disease and its co-occurring conditions. Currently more than 35,000 people throughout the State are covered wholly or partially by ADAP, and approximately 42% of them live in LA County. The program is humane, yields superior health outcomes, and prevents health care and prescriptive costs from being shifted to already over-burdened local governments/health systems.

California's ADAP has grown considerably since it was first established in 1987. Program funding has not kept pace with increased program needs, causing structural budget deficits in the program. This trend has been consistent nationwide, resulting in several states facing ADAP budget crises similar to California's.

Although ADAP did not reduce services or eligibility in FY 2009-2010, the program fell victim to devastating HIV/AIDS cuts made by Governor Schwarzenegger this past August 2009. The Governor eliminated \$25.5 million in State General Fund support from ADAP (and replaced it with funding from the ADAP Special Fund). **Now, with the reserves from the Special Fund almost exhausted and a lower State General Fund contribution, even the current funding levels cannot sustain ADAP at current service levels into the next fiscal year (2010-2011).**

Definitions

- **ADAP:** The AIDS Drug Assistance Program (ADAP) was established by federal Ryan White legislation in each state to provide medications to PLWH/A with limited resources.
- **ARVs:** Anti-Retroviral (ARV) drugs are used to combat HIV directly. By far, the largest investment in pharmaceuticals on the ADAP formulary is for ARVs.
- **Community Viral Load:** A measure of the community's overall HIV-related health. More PLWH/A who are more severely ill with HIV/AIDS will increase the "community viral load."
- **FPL:** The Federal Poverty Level (FPL) is a measurement of household income that is used to determine income eligibility for most federal service programs. It varies annually by the number of people in the household and several other factors. It is usually expressed in percentages

of FPL, such as, for example, 100% FPL (the threshold income level for a household) or 200% FPL (twice the threshold).

- **Formulary:** The official list of medications that are paid for by ADAP. California's ADAP formulary has close to 200 drugs.
- **HAART:** Highly Active Anti-Retroviral Therapy (HAART) is the ARV-based treatment regimen, often involving multiple drugs, prescribed by a provider to maximize patient response to HIV.
- **PBM:** The State Office of AIDS chooses a Pharmacy Benefits Manager (PBM) to manage and administer California's ADAP. California's current PBM is Ramsell Public Health Rx.
- **PLWH/A:** People Living With HIV/AIDS (PLWH/A).
- **Rebate(s):** Pre-set payments made by pharmaceutical companies when their medications are purchased through ADAP.
- **Special Fund:** For ADAP, the fund where rebate revenues are held. The State's "special funds" have not traditionally been transferable to other programs.

Program Description

ADAP is administered by the California's Office of AIDS, Department of Public Health. Daily operations are administered through a Pharmacy Benefits Manager (PBM) contract currently with Ramsell Public Health Rx. People living

at or below 400% Federal Poverty Level (FPL)—\$43,320 for a single person in 2009—are eligible for California’s ADAP. People with incomes between 400% and \$50,000 are eligible for ADAP, but with co-payments.

There are approximately 200 Federal Drug Administration (FDA)-approved medications on the California ADAP formulary used for treatment of HIV/AIDS and related co-morbidities, symptoms and side effects.

ADAP Eligibility Criteria:

- 400% FPL
- 400% (\$43,320) - \$50,000 with co-payment
- HIV/AIDS diagnosis
- 18 years of age or older
- Have a valid prescription from a California-licensed physician
- Are uninsured or under-insured

ADAP Funding Resources:

ADAP relies on three primary funding sources of support:

- Federal Ryan White Part B funds (approximately \$94 million),
- State General Funds (approximately \$70 million), and
- Rebate funds paid to ADAP by pharmaceutical companies for drugs that have been purchased by the program (approximately \$180 million). Rebates generated by the program are kept in the ADAP “Special Fund”.

ADAP’s Future Funding Crisis

Although specific details about the Governor’s budget plans for ADAP in FY 2010-2011 will not be released until January 10, 2010, early reports from

Sacramento indicate that California’s ADAP is headed for a crisis. It is clear that by next year there will be a significant gap between ADAP service need and current funding levels.

Even at current funding levels, ADAP cannot be sustained to meet current service demand in FY 2010-2011. In past years, California’s ADAP has found budget relief by backfilling program demand with dollars from the program’s Special Fund. Due to increased spending from the Special Fund, its ability to provide additional operational funding has been almost exhausted. In large part, ADAP’s increased dependence on the Special Fund resources has been caused by federal and state support that is inadequate to meet the need. The combination of depleted Special Funds and lowered State General Fund contributions (due to the Governor’s budget cuts last year) has substantially reduced the amount of funding currently available for ADAP services.

It is estimated that ADAP will need up to an additional \$100 million in FY 2010-2011 simply to meet current service demand. Add to that equation an increasing number of clients who must depend on ADAP—expected to rise at faster rates due to economic conditions—and accelerating pharmaceutical and drug costs, and the ADAP gap widens substantially. It is estimated that ADAP may need to serve more than 40,000 clients by 2011.

Governor’s Budget Cuts

Based on the dire budget messages emanating from Sacramento, ADAP advocates anticipate that the Governor’s

FY 2010-2011 budget proposal may initially include additional, significant cuts to the ADAP program. The State has the authority to further reduce its financial commitment to ADAP (now, currently \$70 million, after a \$25 million cut this past August), and there are concerns that, in an effort to balance next year's State budget, the Governor will offer additional proposals to reduce, in whole or in part, the \$70 million State General Fund contribution to ADAP.

There are no easy budget solutions for the Governor and the State Legislature in the next year. With a budget deficit already projected between \$15 - 21 billion and expected to continue growing, and many types of budget reform that are constitutionally prohibited, there are fewer and fewer places where the State can look for further cuts. However, **the State budget should not be balanced on the backs of vulnerable, disenfranchised and needy California residents.**

Strategies to Mitigate the Crisis

Recognizing how seriously ADAP is in jeopardy, HIV advocates and stakeholders around California are considering ways to mitigate or prevent an ADAP financial crisis. Those strategies generally fall into three categories:

- Cost Containment
- Revenue Enhancement
- Program Reform

Groups of HIV advocates and stakeholders are currently reviewing all potential strategies to preserve California's pioneering ADAP system. It is certain that no single solution can bring an end to the ADAP crisis in the next year,

and that any solution will include multiple strategies. Potential strategies that do not harm existing ADAP clients and that identify additional ADAP savings will be forwarded for public consideration and advocacy.

Cost Containment Strategies

A number of strategies to contain ADAP costs have been floated publicly and privately in recent years by the Legislative Analyst's Office (LAO) and others, including proposals to remove drugs from the ADAP formulary, limit ADAP eligibility, establish cost-sharing measures, and/or eliminate access to ADAP by certain populations. Proposals could include all or some of the following tactics: removing individuals from the program by reducing the income eligibility threshold to 200% FPL; removing non-antiretroviral medications from the ADAP formulary (over 100 drugs); requiring ADAP enrollees to make co-payments; eliminating ADAP support to the county jail systems; and/or establishing a wait list.

Cost containment strategies that reduce service levels and/or access, or that shift a measurable burden to the consumer, are not acceptable to the HIV/AIDS community. They reduce program capacity to meet consumer need, cripple the program's ability to provide effective service delivery, undermine ADAP's central mission, and reflect unwise fiscal decision making. Generally, most cost containment strategies exact substantial reductions in service delivery for only modest savings.

Reducing Access:

Limiting access to ADAP services shifts the financial burden to other municipal and/or government agencies . . . or worse yet . . . the patients who need the drugs to prevent the onset of illness or to minimize its symptoms. More recent proposals have included reducing eligibility for California's ADAP to 200% FPL—approximately \$21,660 a year (2009) for a single household; eliminating ADAP support in jails; and creating an ADAP wait list.

PLWH/A who cannot afford drugs for their HIV treatment will be forced to turn to other care systems—either by seeking medications from other sources or relying on emergency, trauma and/or hospital in-patient care when the illness has become acute. Moreover, an unplanned interruption in a patient's HAART will prove disastrous: building resistance to the treatment that was interrupted, creating new drug-resistant strains of HIV, eliminating the potential long-term effectiveness of the drug(s), and limiting patient's future options to combat the disease. HAART is usually a combination of drugs that address the patient's HIV condition: even eliminating one of those drugs can collapse the effectiveness of the entire care. **Without access to the life-saving medications that ADAP provides, patients' HIV conditions worsen, the community viral load increases, and mortality rises: patients will die earlier and faster without access to their life-sustaining drugs, and the community is put at increased risk for the spread of HIV.**

In California, the counties are ultimately responsible for ensuring the health of their communities. As the ultimate safety net, county health systems in California must provide health care to people who are left untreated by ADAP or other federally or State funded programs. In these tough economic conditions, the State's shift of this financial burden to local governments can be devastating.

Study after study has shown that by the time PLWH/A turn to county-funded care, their health conditions have deteriorated to a point that is more costly to respond, requires more care, and any response is less effective. Counties and other, local health systems are not only left carrying the cost burden, but—due to delayed treatment—their increased financial investment only achieves limited success.

Eliminating ADAP support in local jail systems, for example, would shift the costs of HIV pharmacy programs in the jails to over 35 systems across the State. While that proposal is estimated to yield a net savings of less than \$10 million in California, the impact on incarcerated PLWH/A and the long-term ramifications on the community would be much more costly and severe. Given the temporary nature of incarceration in local jails, many of the jail systems would not be able to manage inmates' medication needs during the short transitions between jail entry and release—leading to interrupted and/or no care for inmates with HIV/AIDS, and releasing them into the community with worsened and more drug-resistant conditions.

As the largest jail system in the country, and carrying the largest share of California's inmate population, LA County's jails would be disproportionately impacted by the negative consequences of this cost containment measure.

Cost-Sharing:

Currently, ADAP enrollees at 400% FPL must make co-payments. Various proposals have surfaced in recent years suggesting that an additional segment of the ADAP population should have to share the costs through co- or supplemental payments, premiums or other cost-sharing arrangements. In tandem with the anticipated proposal to limit eligibility to people below 200% FPL, also being considered is a plan for those below 200% FPL to participate in cost-sharing arrangements.

It is clear, however, that someone earning less than \$21,660 (200% FPL) a year has little discretionary income or capacity to absorb additional medical costs—especially for a disease that requires a pharmaceutical response regularly exceeding \$11,000 a year. Like suggestions to reduce the formulary, new cost-sharing requirements would have to be substantial for an appreciable ADAP savings to the State. Additional cost burdens at the level needed to generate real savings would be cost-prohibitive and unsustainable for those least able to make additional financial contributions, would lead to spotty individual medication access, would reduced effectiveness, and would simply represent another strategy for further limiting access to the HIV/AIDS drugs by those who need them most.

Formulary Reductions:

Removing drugs from the formulary only places them out-of-reach for thousands of low-income Californians, rendering the core HAART ineffective and the money spent on it wasted. Scenarios have been studied by multiple organizations over the past several years (e.g., Legislative Analyst's Office) showing that to realize substantial savings by taking non-Anti-Retroviral (ARV) pharmaceuticals off of the formulary, significant numbers and classes (e.g., psychotropics) of drugs—would have to be removed.

In one of the more recent proposals, more than two-thirds of the drugs would be removed but half of the savings would be lost due to reductions in rebate revenues. More importantly, however, limiting access to drugs that improve patients' health both undermines the success of ARVs and makes the financial investment in ADAP less cost efficient.

Revenue Enhancement Strategies

Recognizing that cost containment and reform strategies cannot solve the ADAP crisis alone, HIV advocates have begun looking for revenue enhancement strategies to help solve the crisis. Washington has firmly resisted increased federal involvement or appropriations in the crisis, and Sacramento has been reluctant to confront its federal partners. Sacramento, similarly, has not been willing to approve additional revenue strategies to help solve its own crises. The time has come for an honest dialogue at all levels to determine what revenue levers might be pulled to help preserve California's ADAP.

Federal Involvement:

Although California's ADAP is one of the most comprehensive drug responses for PLWH/A, the crisis California's ADAP is facing is not unique. As of October 2009, eight states have reported that they have waiting lists and another nine states have revealed that they will need to implement cost containment strategies within the next six months. Many states' ADAPs, including California's, have been placed on a national watch list that indicates the precarious nature of their future funding. Federal efforts to preserve California's ADAP must help mitigate the crises of other state ADAPs as well—to the degree the situations are analogous.

There is no single federal intervention strategy, but there are multiple options to consider: appropriating additional ADAP funding, developing direct federal appropriations or loans for ADAP, and/or incorporating ADAP provisions into possible second stimulus and/or jobs legislation.

Potential health care reform legislation also presents some possibilities for more innovative federal involvement. Presuming passage of some type of legislation and implementation over the course of the next three to five years, current ADAP clients may be able to receive their medications from other sources in the future—indicating that the current crisis in California's ADAP could be temporary. Bridge funding or temporary loans could help address the gap in intervening years, or provisions in the health care reform legislation itself that require certain state ADAP support could help address the challenges.

State Revenues:

Although the Governor has steadfastly maintained that he will not consider any new revenue proposals resulting from increased taxes, the community must begin challenging that premise. The health and robustness of California's ADAP is in peril; as strategies to limit ADAP service delivery are implemented, fewer prescriptions are used and rebates (representing half of ADAP's income) decline commensurately. As rebate income continues decreasing, there are increasingly fewer revenues available for program services, and ADAP speeds to almost total collapse.

It is clear that cost-cutting and reform measures alone will not mitigate the ADAP crisis, and state government must face its constitutional responsibilities by considering all available alternatives—including additional temporary tax increases that can prop this and other life-saving programs up during the State's economic downturn.

Stakeholder Contributions:

There are other stakeholders in the ADAP system whose revenue systems should be further explored for possible revenue enhancement strategies. Although ADAP's pricing, rebate and adjustment structures are nationally negotiated with pharmaceutical companies, the industry should be engaged in discussions about further actions that they can take to help mitigate California's ADAP crisis. Additional revenues could be considered through restructuring reimbursement to the PBM and pharmacies, and local jurisdictions may have to review what contributions they can make to support the program.

Program Reforms

Reforming or restructuring California's ADAP represent strategies that may help close the ADAP gap in the long-term, but will require careful and thoughtful review, consideration, analyses and modeling to ensure that program reforms would yield desired results and not lead to unintended consequences that harm ADAP clients. Currently, there are some proposals that are being assessed and studied by HIV stakeholders around the State in preparation for what is expected to be a lengthy community discussion when the Governor releases his budget.

Call To Action

In his August blue pencil message, the Governor noted he had preserved what he considered the most important HIV/AIDS service program in the State: ADAP. Nothing has changed since. The message is clear: further weakening ADAP is tantamount to removing any State responsibility or involvement in HIV/AIDS care for the thousands of California PLWH/A.

State funding from HIV/AIDS care, treatment and prevention services was nearly eliminated in the current fiscal year. The Governor's actions have significantly compromised the carefully constructed HIV safety net on which Californians depend. It is clear that the Governor and the Legislature must find ways to preserve ADAP and the infinite amount of good it brings to people who are suffering from HIV/AIDS in our State.

These are literally "life-and-death" choices, and the HIV community is challenging the Governor and the Legislature to find real solutions that favor living with the disease rather than dying from it. Real solutions promise beneficial results. Those solutions include refraining from making additional HIV cuts to ADAP, restoring lost HIV funds to ADAP, and allocating additional funds to properly sustain the program as it attempts to address the needs of a growing client base. HIV consumers, providers and other stakeholders throughout the State and the nation are calling on California's elected officials to show the rest of the world that, in spite of declining economic conditions, California will do what is necessary to save countless lives of Californians with HIV/AIDS and demonstrate the innovative leadership for which it is known.

What Can You Do?

As Californians impacted by HIV/AIDS and on the front lines of HIV/AIDS service delivery, your voices are the most important to be heard as the future of ADAP is debated. Decision-makers need to hear from you and be held accountable by you. It is the Commission's role to provide you with the best information and to mobilize you to register your thoughts and concerns with our leaders. Following are several ways that you can do so:

- ① Make sure that your organization adds their name as a signer to the community letter (attached) addressed to Governor Schwarzenegger calling for his preservation of ADAP. To add your organization's name to the letter's signatories,

contact Dawn McClendon at the Commission by calling 213.738.2816 or emailing dmcclendon@lachiv.org.

- ② As an individual sign the petition calling for the Governor's preservation of ADAP and add your personal story at www.saveadapnow.com. Save ADAP Now's website will continue to evolve and add more information about mobilization, actions and other activities to ensure that California fully preserves its critical ADAP services, so make sure you continue checking back on the website to keep yourself informed.
- ③ Contact the Governor (e-mail, call, fax and/or write) and insist that he preserve and sustain ADAP to fully respond to next year's and subsequent years' needs, and to tell him that additional cuts to ADAP will not be tolerated (contact the Governor at: State Capitol Building, Sacramento, CA 95814; TEL 916.445.2841; FAX 916.558.3160, or by submitting email comments through the following link: www.gov.ca/interact).
- ④ Contact (e-mail, call, fax and/or write) your State (Assembly and Senate) representatives to remind them of the value of ADAP to PLWH/A (look them up at: <http://www.legislature.ca.gov/portzipsearch.html>) and urge them to take whatever measures necessary to prevent further ADAP cuts and restore ADAP funding to sustainable levels in the FY 2010-2011 budget.
- ⑤ Contact (e-mail, call, fax and/or write) Dr. Mark Horton, Director, California's Department of Public Health at www.cdph.ca.gov/services/contact/Pages/default.aspx or 916.558.1700 to let him know that contingency plans and cost containment measures that restrict access and/or eligibility to ADAP are both unwise and unacceptable.
- ⑥ Call, write and visit your Congressional representatives (in particular, the Speaker of the House, Nancy Pelosi; Congressman Henry Waxman; Senators Boxer and Feinstein; and your personal House representative) to engage in the dialogue how to preserve California's ADAP, including various federal intervention options (e.g., appropriations, loans, health care reform provisions bail-outs).
- ⑦ As other activities fighting to preserve ADAP continue to unfold around the State, the Commission and other HIV advocates will notify the public where their help and participation is needed. Stay involved, stay connected and stay committed. The fight for ADAP is literally the fight for our lives!

Remember, your voice is the most powerful and compelling tool that we have to inform sound decision making. Don't be afraid to use it. Share your personal experiences and stories, and let our leaders know how their decisions will significantly impact your lives.

November 17, 2009

The Honorable Arnold Schwarzenegger
Governor
State Capitol Building
Sacramento, California 95814

RE: Full Funding for the AIDS Drug Assistance Program

Dear Governor Schwarzenegger:

We are writing to demand full funding for California's AIDS Drug Assistance Program (ADAP) in FY 2010-2011.

ADAP is the cornerstone of California's public health effort to fight HIV/AIDS. Failure to fully fund the program will leave thousands of Californians at risk for more severe illness and even death. Underfunding could also cause a public health disaster and significantly limit the state's ability to prevent new HIV infections. Reductions in ADAP will cost the state millions more in future health care dollars than any savings realized in the near term. Cuts in ADAP will also increase burdens on our already-taxed emergency rooms and other "safety net" providers who are not equipped to deal effectively with HIV and AIDS.

More than 34,000 low-income uninsured and underinsured Californians depend on ADAP for life-saving medications. Reduction in ADAP services will lead to advanced HIV disease, increased co-morbidities and even premature death for Californians living with HIV.

Medications provided by ADAP can help prevent transmission of HIV. People on effective treatment regimens can reduce their viral load (the amount of HIV detected in the blood) to undetectable levels which makes them less likely to transmit the virus to others. For every new HIV infection we prevent, the state saves an estimated \$600,000 in lifetime treatment costs.

California cut essential life-saving state HIV/AIDS programs by some \$85 million last year. The cuts vastly reduced the state's capacity to prevent, treat and serve the estimated 160,000 Californians living with HIV/AIDS. Any cuts to ADAP will leave many living with HIV no access to life-saving drugs and Californians at risk vulnerable to a renewed spread of the virus.

We urge you to show leadership in your FY 2010 -2011 budget proposal by fully funding ADAP. People with HIV and people at risk for HIV must not be asked to pay for state budget cuts with their health and their lives.

Sincerely,

Supporting Organizations as of November 30, 2009:

Aid For AIDS

AIDS Community Research Consortium

AIDS Coordinator's Office, City of Los Angeles

AIDS Emergency Fund

AIDS Legal Referral Panel

AIDS Project Los Angeles

AIDS Service Center

AIDS/HIV Health Alternatives

AltaMed Health Services Corporation

American Academy of HIV Medicine, California Chapter

Asian and Pacific Islander Wellness Center

Asian Pacific AIDS Intervention Team

Behavioral Health Services, Inc.

Being Alive San Diego HIV/AIDS Services

Bienestar Human Services

Black Coalition on AIDS

California Conference of Local AIDS Directors

California Positive Women's Network

Center for AIDS Research, Education and Services of Sacramento

Central City Health Care

Charles Drew University of Medicine and Science--HIV/AIDS Education and
Outreach Projects

City of Long Beach, Department of Health and Human Services

City of Pasadena Public Health Department

City of West Hollywood

Common Ground -- The Westside HIV Community Center

Desert AIDS Project

DICOA, Inc.

Face to Face/Sonoma County AIDS Network

Foothill AIDS Project

FOUND

The Friends of AIDS Foundation

HIV ACCESS -- Alameda County

HIV Health Services Planning Council, San Francisco

HIV Health Services Planning Council, Sacramento

Immune Enhancement Project

Javi's House, A Safe Place for HIV+ People

JWCH Institute

Los Angeles County HIV Drug & Alcohol Task Force

Los Angeles County HIV Mental Health Task Force

Los Angeles County Commission on HIV

Leland House, Catholic Charities CYO

Los Angeles Gay and Lesbian Center

Lutheran Social Services of Northern California

Martin Luther King/Multi-Service Ambulatory Care Center - OASIS Clinic
Mental Health America of San Diego County
Metropolitan Community Church, Los Angeles
Metropolitan Community Churches, Global Justice Ministry
Minority AIDS Project
Names Project San Diego
North County Health Services, Inc.
Northeast Valley Health Corporation
Office of AIDS Programs and Policy, Department of Public Health, County of
Los Angeles
Positive Resource Center
Project Inform
Sadler Healthcare
San Francisco AIDS Foundation
San Francisco Community Clinic Consortium
SD Volunteer Lawyer Program, Inc.
The Serra Project
Sonoma County Commission on AIDS
Sonoma County People with AIDS Advocacy Committee/Reconnect Action
Committee
St. Mary Medical Center CARE Program and Clinics
STOP AIDS
Strong Consulting
Tarzana Treatment Centers
Van Ness Recovery Houses
Western Pacific Med-Corp
Whittier Rio Hondo AIDS Project
Women Organized to Respond to Life-Threatening Disease