



**Comments to the
New York City Administration for Children's Services**

On Policy # 2012/XX – “Promoting a Safe and Respectful Environment for Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth and their Families Involved in the Child Welfare, Detention and Juvenile Justice System”

Submitted by: Adrian Guzman
Teen SENSE Initiative
The Center for HIV Law and Policy

September 26, 2012

My name is Adrian Guzman and I am with The Center for HIV Law and Policy (CHLP). I am pleased to offer these comments on behalf of my organization and on behalf of Dr. Jeffrey M. Birnbaum, Director of the HEAT Program of SUNY Downstate Medical Center in Brooklyn, New York.

CHLP is the only national legal and policy resource and strategy center for people with HIV and their advocates. CHLP works to reduce the impact of HIV on vulnerable and marginalized communities and to secure the human rights of people most affected by HIV. Our Teen SENSE program is a multidisciplinary initiative working with and on behalf of youth in out-of-home care. Teen SENSE includes health care providers, educators, young people, child welfare and juvenile justice professionals, and others working together to advance the rights of youth in state custody and improve access to comprehensive, LGBTQ-inclusive health services. Teen SENSE has benefitted greatly from the participation and support of child welfare organizations from around the country, including NYC Administration for Children's Services (ACS).

The HEAT Program is the only comprehensive care program of its kind in Brooklyn that provides age and developmentally appropriate, culturally competent HIV testing, treatment, medical care, and supportive services for heterosexual, lesbian, gay, bisexual, and transgender youth, ages 13 to 24 years who are living with or at very high risk for HIV/AIDS. The HEAT Program is directed by Dr. Jeffrey M. Birnbaum, Associate Professor of Pediatrics and Public Health at SUNY Downstate Medical Center. Dr. Birnbaum has been treating HIV-positive and high-risk youth for the past 20 years.

CHLP and the HEAT Program commend ACS for a comprehensive, detailed policy regarding LGBTQ youth involved in the agency's child protective and preventive services,

alternative-to-detention programs, foster care, congregate care, juvenile justice placements, and detention facilities. *Promoting a Safe and Respectful Environment for Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth and their Families Involved in the Child Welfare, Detention and Juvenile Justice System* (the LGBTQ Policy) affirms ACS’s commitment to the safety and well-being of LGBTQ youth in its care. We focus our comments on the LGBTQ Policy’s provisions related to medical and mental health services, sexual health education and services, and staff training. Throughout our comments, we refer to the following Teen SENSE Model Policies and Standards, attached:

- *Model Policy: Sexual Health Care for Youth in State Custody* (Appendix A);
- *Model Sexual Health Care Standards for Youth in State Custody* (Appendix B);
- *Model Policy: Sexual Health Education for Youth in State Custody* (Appendix C);
- *Model Sexual Health Education Standards for Youth in State Custody* (Appendix D);
- *Model Policy: Training for Youth Facility Staff: Ensuring Competence that Includes the Rights and Needs of LGBTQ Youth* (Appendix E); and
- *Model Staff Training Standards: Focusing on the Needs of LGBTQ Youth* (Appendix F).

I. Medical and Mental Health Services

Initial Health Assessment and Examination

Section II, subsection O of the LGBTQ Policy, “Medical and Mental Health Assessments and Services,” lists a number of requirements and guidelines clinicians must follow when conducting initial medical assessments of LGBTQ youth. In addition, it states in footnote 10 “[p]er applicable regulations, all youth in foster care, detention, and juvenile justice placement must receive a comprehensive medical and mental health screening upon entry” but does not specify to which regulations it refers. Upon request, ACS provided CHLP with *Foster Care Quality Assurance Standards*¹ which states “[t]he Provider shall ensure that the examination meets guidelines in content and in periodicity as established by the Early Periodic Screening,

¹ NYC ADMINISTRATION FOR CHILDREN’S SERVICES, FOSTER CARE QUALITY ASSURANCE STANDARDS (Apr. 2011).

Diagnosis, and Treatment (EPTD) Program, the New York State Child-Teen Health Plan, and the American Academy of Pediatrics and *Title 18 NYCRR, Parts 441.22 and 507.2* or any successor or amended regulations as adopted by Children’s Services.”² By the terms of this provision, providers are directed to adhere to an indeterminable number of agency, city, and state regulations and guidelines when treating a young person upon entry to ACS care. It is unclear which regulations and guidelines govern which mandated services. The failure to delineate minimum care and service requirements in a single policy statement of policy and a single set of standards is confusing and counterproductive, leaving providers and their charges with no clear sense of what level of services are required and can be expected.

The Teen SENSE³ model policies and standards are an ideal solution to this confusion. *Model Policy: Sexual Health Care for Youth in State Custody*⁴ (Appendix A) outlines the minimum requirements for LGBT-inclusive sexual health services for young people in state custody. Implementation of the policy is guided through the *Model Sexual Health Care Standards for Youth in State Custody*⁵ (Appendix B), which sets forth in more detail the specific health services essential to an adequate care program, with information on specific services that ensure care is LGBTQ-inclusive. These standards describe in detail the immediate health screening youth should receive within 24 hours of admission to ACS care, including inquiry

² *Id.* at 79.

³ Teen SENSE is a national multidisciplinary initiative committed to advancing the sexual health and sexual rights of youth in state custody by ensuring access to comprehensive, LGBTQ-inclusive sexual health care and sexual health education. Teen SENSE works to ensure that all staff of foster care, detention, and other government-operated and -regulated youth facilities are equipped to understand and protect the health and well-being of all youth, regardless of sexual orientation or gender identity. Teen SENSE is a collaborative effort. Experts in adolescent medicine, public health, sexual health education, child welfare, and juvenile justice engage with community organizers and youth advocates to develop a complete advocacy model and coordinate its implementation. Above all, Teen SENSE is by and for youth; young people play a significant, increasingly formalized advisory role in all Teen SENSE activities. CHLP, Teen SENSE’s founding organization, provides ongoing support for the initiative and coordinates activities among all partnering individuals and organizations.

⁴ TEEN SENSE, MODEL POLICY: SEXUAL HEALTH CARE FOR YOUTH IN STATE CUSTODY (Apr. 2012), <http://hivlawandpolicy.org/resources/view/730>.

⁵ TEEN SENSE, MODEL SEXUAL HEALTH CARE STANDARDS FOR YOUTH IN STATE CUSTODY (Jan. 2012), <http://hivlawandpolicy.org/resources/view/693>.

and/or observation of:

- Current and past illnesses, health conditions, or special needs
- Past serious infections disease
- Signs of physical abuse, including sexual abuse
- Recent communicable illness symptoms
- Past or current mental illness, including hospitalizations
- History of or current suicidal ideation
- Legal and illegal drug use and drug withdrawal symptoms
- Current or recent pregnancy
- Other health problems as designated by the responsible physician.

Identifying and adopting a single set of standards to which providers must adhere when conducting initial health assessments and examinations will simplify practice for providers and ensure that LGBTQ youth receive quality care.

Ongoing Care

“Medical and Mental Health Assessments and Services” in the LGBTQ Policy also governs the provision of medical and/or mental health services to LGBTQ youth for the duration of their involvement with ACS. As in the discussion of initial health assessments and examinations, it is unclear which regulations and guidelines govern the health care services youth receive during their time with ACS.

Model Sexual Health Care Standards for Youth in State Custody sets forth specific standards for ongoing care. A youth’s treatment plan must be tailored to her or his individual needs, and include long- and short-term goals and the methods by which they will be met. The standards describe in detail the following sexual health care services that youth in custody should receive, as necessary:

- Health care services for youth with special needs, including youth with physical disabilities, pregnant youth, youth with serious communicable diseases, and youth with serious mental health needs;
- Emergency care;
- Annual physical exams;

- HIV care;
- Care for transgender youth;
- Care related to sexual assault; and
- Mental health care.

The standards also emphasize the importance of prompt access to these services, proposing that youth be scheduled for requested services within 24 hours of a request and that the appointments should take place within two weeks of the request.

Discharge Planning

A youth's health needs must be met during the transition to a community health care provider. *Model Sexual Health Care Standards for Youth in State Custody* proposes the following requirements to ensure appropriate discharge planning:

- Discharge planning that begins on admission and develops throughout the youth's stay;
- Use of a standardized form;
- Protection of youth's confidentiality rights when working with legal guardians and community providers, as appropriate;
- Ensuring continuity of medication during transition to community providers; and
- Communication to youth of her/his discharge plan and contact information for community providers.

Consent for Hormone Therapy When Parent/ Legal Guardian is Unavailable

In Section III, Subsection F, "Hormone Therapy," the LGBTQ Policy states that for all youth under 18 years of age who request hormone therapy, the youth's parent or legal guardian must be first sought and obtained. There is no provision for circumstances in which the parent or legal guardian is unavailable. The LGBTQ Policy references in footnote 26 *ACS Procedure 102/Bulletin No. 99-1 (amended), Guidelines for Providing Medical Consents for Children in Foster Care*, but CHLP was unable to locate this policy on ACS's website or elsewhere on the internet.

Though the LGBTQ Policy does not cite to it, *Juvenile Justice Non-Secure Placement*

Quality Assurance Standards briefly mentions this circumstance in its section on recordkeeping procedures for medical consent forms: “Informed consent for non-routine medical treatment shall be sought from the child/youth’s birth parent/caretaker, unless their rights have been terminated or surrendered per Children’s Services’ Bulletin 99-1 (10/18/99) ‘Guidelines for Providing Medical Consents for Children in Foster Care.’ Providers can consent for medical treatment when the parent is unavailable.”⁶ It is unclear whether this provision applies to youth in the care of ACS who are not in non-secure placement.

OVERALL RECOMMENDATION:

CHLP recommends that ACS adopt the Teen SENSE *Model Policy: Sexual Health Care for Youth in State Custody* and *Model Sexual Health Care Standards for Youth in State Custody* to update and streamline existing sexual health care policies.

CHLP recommends that ACS clarify the protocol for youth seeking hormone therapy and whose parent or legal guardian is unavailable to provide consent. This clarification should appear in the LGBTQ Policy itself.

II. Sexual Health Education and Services

The LGBTQ Policy does not specifically mention the provision of sexual health education to youth in the care of ACS. *Foster Care Quality Assurance Standards* does briefly, but only to reference another ACS policy: “The Provider shall reference the *Children’s Services’ “Policy Guidelines for Family Planning and Pregnancy Related Information and Service”* dated 11/8/07, and any subsequently released policies, that describes activities foster care providers

⁶ NYC ADMINISTRATION FOR CHILDREN’S SERVICES, JUVENILE JUSTICE NON-SECURE PLACEMENTS QUALITY ASSURANCE STANDARDS (2012), http://www.nyc.gov/html/acs/downloads/pdf/close_to_home/Appendix_F_NSP_Quality_Assuranc_%20Standards.pdf.

must take to ensure that children in their care receive timely and comprehensive sexual health information.”⁷ *Policy Guidelines for Family Planning and Pregnancy Related Information and Service* mandates that youth in foster care be provided with family planning services and information, and that pregnant girls in care be provided with pregnancy-related information and services. The policy references in footnote 3 yet another policy – *Working Together: Health Services for Children in Foster Care* issued by the New York State Office of Children and Family Services (OCFS).⁸ ACS cites to a 2004 version of this policy, though OCFS’s website features one updated in 2008-2009.⁹ The numerous regulations and guidelines that govern sexual health education services complicate matters for both LGBTQ youth and their providers and guardians. Without a clear set of mandates, ACS is less likely to provide LGBTQ youth with the comprehensive sexual health knowledge they need to improve and maintain their safety and well-being.

Again, Teen SENSE can help. *Model Policy: Sexual Health Education for Youth in State Custody*¹⁰ (Appendix C) outlines the minimum requirements to ensure that youth receive comprehensive, LGBTQ-inclusive sexual health education. It serves as a companion for *Model Sexual Health Education Standards for Youth in State Custody*¹¹ (Appendix D) which sets forth in more detail the essential elements of a sexual health education that is inclusive of all youth regardless of sexual orientation or gender identity, including information and resources related to

⁷ NYC ADMINISTRATION FOR CHILDREN’S SERVICES, FOSTER CARE QUALITY ASSURANCE STANDARDS (Apr. 2011) at 84.

⁸ NYC ADMINISTRATION FOR CHILDREN’S SERVICES, POLICY GUIDELINES FOR FAMILY PLANNING AND PREGNANCY RELATED INFORMATION AND SERVICE (Nov. 8, 2007) at 2, <http://www.nyc.gov/html/acs/downloads/pdf/lgbtq/Policy-Guidelines-for-Family-Planning-and-Pregnancy.pdf>.

⁹ NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES, WORKING TOGETHER: HEALTH SERVICES FOR CHILDREN IN FOSTER CARE (updated 2008-2009), http://www.ocfs.state.ny.us/main/sppd/health_services/manual.asp.

¹⁰ TEEN SENSE, MODEL POLICY: SEXUAL HEALTH EDUCATION FOR YOUTH IN STATE CUSTODY (Apr. 2012), <http://hivlawandpolicy.org/resources/view/731>.

¹¹ TEEN SENSE, MODEL SEXUAL HEALTH EDUCATION STANDARDS FOR YOUTH IN STATE CUSTODY (Jan. 2012), <http://hivlawandpolicy.org/resources/view/692>.

HIV and other STIs, pregnancy, LGBTQI discrimination, drug use/harm reduction skills, and sexual harassment and abuse. The standards describe in detail the minimum goals that a sexual health education program should be designed to achieve, and breaks down the goals by the amount of time that a youth is in custody. For example, content goals for a youth in custody eight to 30 days include education and training on:

- Sexually transmitted infections;
- HIV/AIDS;
- Pregnancy;
- Prevention skills;
- Sexual orientation;
- Gender roles and gender identity; and
- Sexual violence, abuse, and harassment.

The standards also mandate that instructors provide youth with community resources and contact information for additional information on all issues discussed. They discuss in detail the minimum requirements for classroom environments and instructors' content knowledge, attitude, and ability to implement the standards. Centralizing the governing regulations and guidelines for the provision of sexual health education to youth will simplify practice for ACS staff and providers and ensure that the sexual health knowledge needs of LGBTQ youth are met.

OVERALL RECOMMENDATION:

CHLP recommends that ACS adopt the Teen SENSE *Model Policy: Sexual Health Education for Youth in State Custody* and *Model Sexual Health Education Standards for Youth in State Custody* to update and streamline existing sexual health education policies.

III. Staff Training

Section II, Subsection P of the LGBTQ Policy, "Training," states "All Children's Services and provider agency staff and foster parents having direct contact with children and

families are required to be trained on the goals and expectations of this policy.” It is unclear whether these goals and expectations include those of the separate policies referenced throughout the LGBTQ Policy. These include other ACS regulations and guidelines, an OCFS foster care manual, a set of health care mandates issued by the New York State Department of Health, American Academy of Pediatrics, and a number of provisions in the New York Codes, Rules, and Regulations (NYCRR). Further, the LGBTQ Policy sets forth six elements that staff curricula must include, one of which is implementing the LGBTQ Policy itself and “related policies,” which are listed in footnote 17 as including ACS policies on non-discrimination and non-Medicaid reimbursements. Per the LGBTQ Policy, staff trainers are responsible for incorporating over 10 separate sets of regulations and guidelines into trainings on LGBTQ competence.

Teen SENSE can help streamline this. *Model Policy: Training for Youth Facility Staff: Ensuring Competence That Includes the Rights and Needs of LGBTQ Youth*¹² (Appendix E) outlines the basic requirements for ensuring staff competence, including on the rights and needs of LGBTQ youth. It serves as a companion to *Model Staff Training Standards: Focusing on the Needs of LGBTQ Youth*¹³ (Appendix F), which describes in detail core components of comprehensive staff training programs, content areas, and educational objectives. The standards help guide the selection of curricula that, upon completion, will allow staff to:

- Identify the effects of stigma or discrimination on the health of LGBTQ or HIV-positive youth;
- Understand their responsibilities to provide comprehensive physical and mental health services to all youth in a respectful manner;
- Maintain confidentiality and an atmosphere of safety and acceptance;
- Ensure access to services and social events consistent with LGBTQ youths’ interests

¹² TEEN SENSE, MODEL POLICY: TRAINING FOR YOUTH FACILITY STAFF: ENSURING COMPETENCE THAT INCLUDES THE RIGHTS AND NEEDS OF LGBTQ YOUTH (Apr. 2012), <http://hivlawandpolicy.org/resources/view/732>.

¹³ TEEN SENSE, MODEL STAFF TRAINING STANDARDS: FOCUSING ON THE NEEDS OF LGBTQ YOUTH (Jan. 2012), <http://hivlawandpolicy.org/resources/view/694>.

- and communities with which they identify;
- Abide by relevant laws and agency policies established to support all youth; and
- Explain procedures for reporting responding to youth and staff complaints about conduct that is in conflict with these policies.

By consolidating its policies on staff training into a single set of standards, ACS will more efficiently and effectively select curricula and trainers that are mindful of the rights and needs of LGBTQ youth. Quality training will ensure that staff are equipped to understand and protect the health and well-being of all youth in its care, regardless of the youths' gender identity or sexual orientation.

OVERALL RECOMMENDATION:

CHLP recommends that ACS adopt the Teen SENSE *Model Policy: Training for Youth Facility Staff: Ensuring Competence That Includes the Rights and Needs of LGBTQ Youth* and *Model Staff Training Standards: Focusing on the Needs of LGBTQ Youth* to update and streamline existing policies related to staff training.