

MEMORANDUM

Agenda Item No. 4(0)

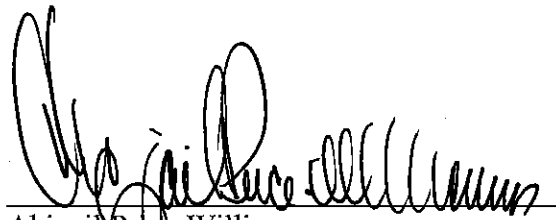
TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: January 20, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance amending Article LXXX, section 2-1102 of the Code concerning the Miami-Dade HIV/AIDS partnership; revising membership requirements for the representative seats for member representatives of affected communities by requiring thirteen representative seats for individuals living with HIV disease

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan.


Abigail Price-Williams
County Attorney

APW/cp



MEMORANDUM

(Revised)

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and Members, Board of County Commissioners

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Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 4(0)
1-20-16

ORDINANCE NO. _____

ORDINANCE AMENDING ARTICLE LXXX, SECTION 2-1102 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA CONCERNING THE MIAMI-DADE HIV/AIDS PARTNERSHIP; REVISING MEMBERSHIP REQUIREMENTS FOR THE REPRESENTATIVE SEATS FOR MEMBER REPRESENTATIVES OF AFFECTED COMMUNITIES BY REQUIRING THIRTEEN REPRESENTATIVE SEATS FOR INDIVIDUALS LIVING WITH HIV DISEASE; WAIVING QUALIFIED ELECTOR REQUIREMENT FOR THE THIRTEEN REPRESENTATIVE SEATS FOR INDIVIDUALS LIVING WITH HIV DISEASE; PROHIBITING CRIMINAL BACKGROUND SCREENING OF APPLICANTS FOR THE THIRTEEN REPRESENTATIVE SEATS FOR INDIVIDUALS LIVING WITH HIV DISEASE AND ONE REPRESENTATIVE SEAT FOR FORMER INMATE OF A LOCAL, STATE OR FEDERAL PRISON; EXCLUDING AD HOC COMMITTEES AND WORKGROUPS FROM THE REQUIREMENTS OF SECTION 2-1102(G) (1) AND (2) OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA RELATED TO DEMOGRAPHICS AND PARITY; DELETING REQUIREMENT THAT PARTNERSHIP MEMBERS' TERMS SHALL END CONCURRENTLY WITH THE LAST DAY OF THE COUNTY'S FISCAL YEAR; CORRECTING SCRIVENER'S ERRORS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, Part A of the Ryan White HIV/AIDS Treatment Extension Act of 2009 ("the Act" or "Ryan White Part A"), as amended, requires that to be eligible for federal assistance under the Act, each grantee shall establish or designate an HIV health services planning council ("Planning Council"); and

WHEREAS, the Act further requires that in fulfilling its roles and responsibilities, a planning council must include persons living with HIV/AIDS in all its activities; and

WHEREAS, the Act further requires that at least 33% of the planning council shall be consumers of Ryan White Part A services (“Consumer Representatives”) who are not officers, employees, or consultants to any entity that receives Ryan White Part A funds; and

WHEREAS, the Act also requires that the Consumer Representatives must, like the planning council as a whole, reflect the demographics of the population of individuals with HIV/AIDS in the eligible metropolitan area/transitional grant area (“Eligible Metropolitan Area”); and

WHEREAS, Miami-Dade County (“County”) is an Eligible Metropolitan Area and currently a Ryan White Part A grantee, which receives more than \$26 million from the United States Department of Health and Human Services, Health Resources and Services Administration, HIV/AIDS Bureau (“Federal Government”); and

WHEREAS, as required by the Act, this Board adopted Ordinance No. 98-127, as amended and codified in Article LXXX of the Code of Miami-Dade County (“Code”), creating the Miami-Dade HIV/AIDS Partnership (“Partnership”); and

WHEREAS, this Board created the Partnership to determine the HIV-related needs of the community, to establish service priorities, and to allocate funding to the areas of greatest need as defined by the Federal Government; and

WHEREAS, the Code solely authorizes the County Mayor to appoint members to the Partnership; and

WHEREAS, Section 2-11.38 of the Code requires that “[a]ll members of County boards shall be permanent residents and electors of Miami-Dade County unless the Board of County Commissioners, by a two-thirds vote of its membership, waives this requirement, and should have reputations for integrity and community service”; and

WHEREAS, the Partnership, through its Community Coalition Committee, conducts a pre-screening of all potential applicants to the Partnership, prior to recommending the applicants to the County Mayor; and

WHEREAS, the County Mayor, as a matter of policy, uniformly conducts criminal background screenings on all applicants to County Boards who the County Mayor appoints, including those to the Partnership; and

WHEREAS, these criminal background screenings in the past have been used by the County Mayor to deny certain applicants, who desire to be appointed to the Partnership; and

WHEREAS, this Board finds that these criminal background screenings may have a disproportionate impact on persons living with HIV/AIDS who seek to apply for membership to the Partnership; and

WHEREAS, this Board finds that as a result of their past criminal history, persons living with HIV/AIDS have lost certain rights, such as the right to register to vote, which are difficult, costly, and timely to be restored; and

WHEREAS, this Board also finds that even if a potential Partnership applicant is able to rehabilitate themselves and become productive members of society, and have their voting right's restored, the use of criminal background screenings and the County's additional requirement that they be electors of Miami-Dade County may prevent them from serving on the Partnership; and

WHEREAS, according to the County's data, approximately 71,390 formerly incarcerated individuals ("Formerly Incarcerated Individuals") were living in the County in 2014; and

WHEREAS, the County's data also reveals that an estimated 3,570 Formerly Incarcerated Individuals have HIV; and

WHEREAS, the County's data also shows that of the 9,655 consumers living with HIV/AIDS served by the County's Ryan White Part A funded program in fiscal year 2014, 2,209 of these consumers have had a history of drug usage and in all likelihood some have had some dealings with the criminal justice system; and

WHEREAS, notwithstanding a person's criminal history, the Act does not prevent such person, who meets all Ryan White Part A eligibility requirements, from receiving services under the Ryan White Part A program or serving on the planning council; and

WHEREAS, in fact, in recognition of the need to have Formerly Incarcerated Individuals represented on each planning council, the Act and the Code require a Formerly Incarcerated Individual to be a member of the Partnership without regard to past criminal history; and

WHEREAS, this Board finds that the Code should be amended to ensure that all consumers of the Ryan White Program have equal representation on the Partnership,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 2-1102 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

**ARTICLE LXXX.
MIAMI-DADE COUNTY HIV/AIDS PARTNERSHIP**

Sec 2-1102. Membership requirements; appointment of members; terms; removal.

(a) All members of the Partnership shall be permanent residents and electors of Miami-Dade County, unless the Board of County

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

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Commissioners, by a two-thirds vote of its membership, waives this requirement and shall have reputations for integrity and community service. Notwithstanding the qualified elector requirement stated herein, applicants for or members of the Partnership who are appointed >>by the County Mayor<< to fill the ~~[[seat]]>>seats<< of >>the 13 individuals with HIV disease as described in Section 2-1102 (b)(1) or<< ~~[[a]]~~ >>one<< former inmate of a local, state, or federal prison as described in Section 2-1102 ~~[[23]]>>(b)(18)<< of this code shall be exempt from the qualified elector requirement set forth herein >>and the County Mayor or the County Mayor's designee shall not conduct a criminal background screening on such applicants, who the Partnership has determined to be otherwise eligible to serve on the Partnership.<<~~~~

(b) The Partnership shall be composed of ~~[[thirty-eight-(38)]]>>thirty-nine (39)<< voting members from the following categories of representatives:~~

- (1) Fifteen (15) member representatives of affected communities that include >>thirteen (13)<< individuals with HIV disease, who are not affiliated or employed by a Part A funded provider and are recipients of Part A services, and historically underserved groups and subpopulations that reflect the demographics of the population within the eligible metropolitan area~~[[, and constitute]]~~;
- (2) One (1) Health care provider, which must represent a Federally Qualified Health Center;
- (3) One (1) Community based AIDS service organization;
- (4) Two (2) Housing, Homeless or Social Service providers;
- (5) One (1) Mental health provider;
- (6) One (1) Substance abuse provider;
- (7) One (1) HIV prevention provider;
- (8) One (1) Hospital or health care planning agency;
- (9) One (1) representative from agencies receiving grants under Part C of the Ryan White Program;
- (10) One (1) representative from agencies receiving grants under Part D of the Ryan White Program, or from organizations with a history of providing services to children, youth, and families if funded locally;
- (11) Four (4) grantee representatives of Other Federal HIV programs including Ryan White Program Part F and HOPWA, if funded locally;

- (12) One (1) Ryan White Program Part A local grantee;
- (13) One (1) State government/Ryan White Program Part B grantee representative;
- (14) One (1) State government/Medicaid Agency representative;
- (15) One (1) Local public health agency representative from the Miami-Dade County Health Department;
- (16) One (1) Miami-Dade County Public Schools representative;
- (17) One (1) Non-elected community leader who does not provide HIV related health care services subject to funding under Partnership programs;
- (18) One (1) former inmate of a local, state, or federal prison released from the custody of the penal system during the preceding three (3) years and had HIV disease as of the date of his release, or a representative of HIV+ incarcerated persons;
- (19) One (1) State of Florida General Revenue grantee representative;
- (20) One (1) representative of a federally recognized Indian tribe as represented in the population from the affected community;
- (21) One (1) representative co-infected with hepatitis B or C from the affected community.

[[~~(b)~~]]>>(c)<<Ex officio members shall be appointed in the same manner by which voting members are appointed, and at a minimum shall include ex officio members from the following categories of representatives:

- (1) One (1) representative from the Office of the Mayor;
- (2) One (1) representative from the Board of County Commissioners.

[[~~(e)~~]]>>(d)<<Three (3) representatives of the affected community who are not affiliated or employed by a Part A funded provider, and are recipients of Part A services shall also be appointed as alternates. Alternate members may be assigned as voting members of committees, but are non-voting members of the full Partnership except when the voting member appointed to that category of representatives is unable to serve, at which time an alternate member of the same category of representatives designated by the chairperson shall serve as voting member for the full Partnership.

[[~~(d)~~]]>>(e)<<The Partnership shall maintain at all times a fair and open nominations process as written in its By-Laws which shall result in a recommended slate of candidates, including alternates, which is forwarded to the >>County<< Mayor for his consideration. Members and alternates shall be appointed by the >>County<< Mayor, who shall designate which category listed in subsections (a) and (b) above each member shall represent. Members shall be appointed in accordance with Sections >>2-1102(a),<< 2-11.38 and 2-11.38.1 of the Code of Miami-Dade County.

[[~~(e)~~]]>>(f)<< Vacancies on the Partnership shall be filled in the same manner as above, except for affected community positions, which may be filled by an affected community alternate member appointed by the Partnership.

[[~~(f)~~]]>>(g)<< Appointment shall comply with the following requirements:

- (1) Composition of the Partnership shall reflect in its composition the demographics of the epidemic in Miami-Dade County with particular consideration given to disproportionately affected and historically underserved groups, subpopulations, and geographic areas in Miami-Dade County
- (2) Composition of the Partnership, including committee membership shall strive to assure the following:
 - (A) Parity, with each member having equal opportunity for input and participation as well as equal voice in voting and other decision making activities;
 - (B) Inclusiveness, that all affected communities are represented and involved in a meaningful manner in the community planning process;
 - (C) Representation, that members who represent a specific community truly reflect that community's values, norms and behaviors.

>>Notwithstanding the foregoing requirements set forth in section (g) (1) and (2) above, such requirements shall not apply to ad hoc committees and workgroups established by the Partnership from time to time.<<

- (3) No more than fifteen (15) individuals shall be appointed >>to the Partnership<< who personally

provide, who represent entities that provide, or who otherwise possess a financial relationship with entities that provide HIV related services funded by Partnership programs.

- (4) No funded provider shall have more than one (1) representative or employee as a member, except as mandated by the legal requirements of Partnership programs.

[[g]]>>(h)<<The term of office of members shall be in accordance with Section 2-11.38.2 of the Code of Miami-Dade County. Members shall be appointed to three (3) year terms ~~[[, which shall end concurrent with the last day of the county's fiscal year]]~~, except that initially twelve (12) members shall be appointed to a one (1) year term and twelve (12) members appointed to a two (2) year term.

[[h]]>>(i)<< No member shall be permitted to serve more than two (2) consecutive and complete terms of three (3) years except as required by law. Notwithstanding the term limit requirements set forth herein, members appointed to fill government or grantee seats are excepted from these requirements and shall serve as members of the Partnership for as long as they are designated by their respective agencies to serve in this capacity.

[[i]]>>(j)<< Attendance requirements for members shall be in accordance with Section 2-11.39, except that five (5) absences, excused or unexcused, in any fiscal year shall also constitute grounds for removal and except absences that are due to Partnership business related travel are not counted against the total of five (5) absences. If a member appointed to represent a category listed in subsection (a) or (b) above loses such representative status, fails to maintain the qualifications for membership set forth in Section 2-11.38, fails to maintain attendance requirements, voluntarily resigns, or for other good cause is removed, the member shall forfeit membership on the Partnership.

[[j]]>>(k)<< Members shall serve without compensation but shall be entitled to reimbursement for necessary authorized expenses incurred in the discharge of their duties pursuant to policies and procedures published by the County.

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

ADW

Prepared by:

TAS

Terrence A. Smith

Prime Sponsor: Commissioner Barbara J. Jordan