



NEW YORK STATE SENATOR

Thomas K. Duane

## Letter to Kathleen Sebelius, Secretary of the U.S. Department of Health and Human Services on the Lifting of the Entry Ban for HIV-Positive Foreign Nationals

THOMAS K. DUANE August 16, 2009

*January 4, 2010 marked the official end of the United States' ban on HIV-positive foreign nationals' entry, stay and residence in our country, bringing to a close 22 years of shameful and misguided policy. President Obama deserves the highest praise for initiating and completing the long-overdue repeal of this meritless regulation. I am proud that our country's policy is now in line with current science and international standards of public health and human rights practice, and has taken this step toward eroding, and no longer perpetuating, prejudice and stigma around HIV. Please see the comments in support of this policy change that I submitted last August to U.S. Department of Health and Human Services Secretary Kathleen Sebelius below.*

### **August 17, 2009**

Kathleen Sebelius

Secretary

The U.S. Department of Health and Human Services

200 Independence Avenue, S.W.

Washington, D.C. 20201

RE: Docket No. CDC-2008-0001

Dear Secretary Sebelius:

I write to voice my strong support of the Centers for Disease Control and Prevention (CDC) and the U.S. Department of Health and Human Services' (HHS) proposed changes to Title 42 Code of Federal Regulations Part 34 (42 CFR Part 34), which would remove HIV from the list of communicable diseases of public health significance and eliminate HIV testing from the U.S. immigration medical screening process. I encourage you to act swiftly to adopt these changes and bring an end to the unjust and unnecessary ban on HIV-positive foreign nationals' entry, stay and residence in our country.

As the chair of the New York State Senate Health Committee, the only openly HIV-positive member of the New York State Legislature, and the representative of a district with one of the highest rates of HIV infection in the country, I have found our country's meritless policy of excluding HIV-positive visitors and immigrants particularly distressing. It runs counter to our nation's commitment to human rights and betrays a scientific ignorance that undermines our leadership in the fight against HIV/AIDS worldwide.

CDC and HHS made the correct decision to pursue the regulatory approach that not only removes HIV infection from the list of communicable diseases of public health significance but also eliminates all references to serologic testing for HIV infection in Section 34.3 of 42 CFR Part 34 (Scope of Examinations). If HIV is no longer an excludable condition for entry into the country there will be no rationale to screen foreign nationals for the virus when they seek entry. As noted in the NPRM, the Scope of Examinations "does not provide specific testing requirements for other health-related conditions which are not included in the current definition of communicable disease of public health significance." The NPRM also rightly notes as a reason to eliminate this unjustifiable screening the potential for disclosure of prospective immigrants' HIV status within their home countries and to the U.S. Department of Homeland Security.

While on principle individuals should not be denied entry into our country on a financial basis, I wish to take issue with the NPRM's "tentative conclusion" that "the rule may be economically significant." While I do not dispute the treatment costs estimated by Schackman et al., which underlie the NPRM's HIVEcon model, it is important to underscore that these costs will not all be borne by government. Indeed, some HIV-positive immigrants will have private insurance, some will be able to pay for care out-of-pocket and, sadly, still others will forgo treatment rather than seek public assistance. Further, as the NPRM notes, "It is not clear that, over the course of a lifetime, on net an HIV infected immigrant would consume more health care resources than other immigrants," who may have other diseases for which they are not screened.

Moreover, there are many offsetting economic benefits of admitting HIV-positive foreign nationals which are not thoroughly examined in the NPRM. These include the tangible benefits of increased income and sales taxes and tourism and conference revenues, as well as the intangible benefits of the diversity, skills and intellectual capital foreign nationals with HIV/AIDS will bring to our country, and the increased productivity of those foreign nationals with HIV/AIDS who are already in this country but live in fear of detection. Finally, it is hard to imagine the U.S. will not achieve savings by eliminating the need for screening and enforcement activities associated with the current ban.

As an HIV-positive legislator who has travelled to many countries as a representative of my state and my nation, it causes me great shame that the U.S. has banned entry, stay or residence by HIV-positive foreign nationals. I urge you to adopt the proposed changes to 42 CFR Part 34 and bring U.S. policy into alignment with current medical knowledge and international public health and human rights principles.

Sincerely,

Thomas K. Duane

New York State Senate

29th District