

**HIV Health Services Planning Council
Sacramento EMA**

Policy and Procedure Manual

Subject: Grievance Policy

No: GOV 05

Date Approved: 5/97

Date Revised: 1/26/05

BACKGROUND

The operations of the Planning Council are governed through bylaws. Additionally, there is a Policy and Procedure Manual that addresses Council operation in more detail. These exist in order for the Council to effectively carry out its mission and adhere to the Ryan White CARE Act. Because work of the Council is carried out in committee, the grievant is welcome to first take any disputed issue to the appropriate committee or committee chair. If no resolution can be reached, the grievant is encouraged to contact Council staff, who will ensure that the issue is addressed by the Executive Committee. If the dispute cannot be resolved, a request for third-party mediation is appropriate. Should mediation fail, the process of binding arbitration is initiated.

POLICY:

The Ryan White CARE Act requires that every Planning Council have a grievance procedure in place to resolve disputes related to processes such as priority-setting, funding allocations, and membership representation. The following procedure describes the Council's philosophy regarding conflict resolution and provides step-by-step instructions for non-binding and binding action.

WHO MAY BRING A GRIEVANCE

Individuals or entities directly affected by the outcome of a Planning Council decision related to funding or Council operations are eligible to file a formal grievance with the Planning Council. Directly affected parties are defined as

- 1) Providers eligible to receive Ryan White funds;
- 2) Consumer groups/people living with HIV (PLWH), coalitions and caucuses within the Sacramento EMA; and
- 3) Any individual eligible to receive Ryan White Services

Service agencies may not bring forth a contractual agreement grievance under this procedure and are referred to the Fiscal Administrative Agent.

BASIS FOR GRIEVANCES

Parties meeting the above criteria are eligible to grieve deviations from the Council's bylaws and established written policies in the following areas:

- Council's priority setting process
- Standards for meeting established priorities
- Funding allocations according to priorities
- Process for changing priorities or allocations
- Membership representation/appointment process

Disputes involving conflict of interest are addressed in GOV 06. In addition, procedural irregularity pertaining to general business or Committee meeting conduct is governed by Parliamentary principles and not through the grievance policy.

LENGTH OF TIME TO BRING A GRIEVANCE RELATED TO PLANNING AND SERVICES

In order to insure continuity of the Council's process and prevent delays in the provision of services, a grievance may be considered up to 30-calendar days after the Council at large has made a service decision. A grievance beyond the 30-day stipulation will not be heard.

PROCEDURE:

The grievance procedure has been organized into three phases:

1. Informal non-binding dispute resolution
2. Formal non-binding dispute resolution (mediation)
3. Binding arbitration

A grievance will only progress to the next phase if the parties involved are unable to adequately resolve the grievance through the earlier, less formal phase.

Time lines for all procedures are noted in Table I

NON-BINDING PROCEDURES FOR RESOLVING CONFLICTS

1. Informal Non-binding Dispute Resolution

- Any one with an issue or dispute that needs to be resolved is encouraged to contact Council staff at the Council office:

HIV Health Services Planning Council
909 12th Street, Suite 200
Sacramento, CA 95814

- Staff will explain the grievance procedure and provide a copy of the Council's Grievance

Procedures.

- Council staff will refer the issue to the Executive Committee.
- When a formal grievance is presented, the Council Program Manager, Chair of the Governance Committee, community representative (non-member) and a facilitator (non-member) are responsible for reviewing the grievance to determine whether it is consistent with the type of grievance defined in the Basis for Grievance and shall also determine that the person grieving is eligible to file a grievance.
- Staff shall provide notice by mail to any person whose interests may be impaired by the disposition of the grievance that a grievance has been filed.
- The review may include an investigation and or a hearing, and will be scheduled within 30 working days of the date on which the grievance is filed.
- Until a grievance review panel determines the complaint is grievable, the person(s) and or party(s) named in the grievance shall not see the grievance.
- The filing party shall be notified in writing of the response to the grievance.

2. Formal Non-binding Dispute Resolution (Mediation)

The Council's rules for formal non-binding dispute resolution include the following:

INITIATING MEDIATION

If resolution of the disputed issue is not achieved by informal non-binding dispute resolution (as described above):

- The grievant must complete a Request for Mediation Form (Attachment A).
- The form should be returned to the Council staff at:

HIV Health Services Planning Council
909 12th Street, Suite 200
Sacramento, CA 95814

- Council staff will make arrangements for third-party mediation of the issue and a time and place that is acceptable to all parties.

APPOINTMENT OF THE MEDIATOR

Following review of a grievance, the EMA Program Manager shall contact the American Arbitration Association (AAA) and request that a qualified mediator be appointed. Normally a single mediator will be appointed unless the parties agree otherwise or the

AAA determines otherwise. The mediator or mediation service shall be selected concurrently with the notice of response to the grievance.

QUALIFICATIONS OF THE MEDIATOR

No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in result of the mediation. Prior to accepting an appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the parties. Upon receipt of such information the Program Manager shall either replace the mediator or immediately communicate the information to the parties for their comments. In the event that the parties disagree as to whether the mediator shall serve, the AAA shall appoint another mediator.

REPRESENTATION

The grievant and the Council may choose any representation appropriate to the nature of the grievance. The names and addresses of such persons shall be communicated in writing to all parties and the mediator.

DATE, TIME AND PLACE OF MEDIATION

The mediator shall fix the date and time of each mediation session. The mediation shall be held at a convenient location, within the Sacramento EMA, agreeable to the mediator and the parties, as the mediator shall determine. Parties shall be advised in writing of the date, time and location of the mediation session at least ten (10) days in advance unless agreed to otherwise by the parties.

IDENTIFICATION OF MATTERS IN DISPUTE

At least ten (10) days prior to the first scheduled mediation session, each party shall provide the mediator with a brief memorandum setting forth its position with regard to the issue(s) that need to be resolved. At the discretion of the mediator, the parties may mutually exchange such memorandum.

At the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issue(s) presented.

The mediator may request any party to supplement such information.

AUTHORITY OF THE MEDIATOR

The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning the technical aspects of the dispute, provided that all the

parties agree and assume the expense of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator per the parties, as the mediator shall determine.

The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties.

EXCLUSION OF LIABILITY

Neither the mediation service nor any mediator is a necessary party in judicial proceedings relating to the mediation.

Neither the mediation service nor any mediator shall be liable to any party for any act or omission in connection with any mediation conducted under these rules.

PRIVACY

Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and the consent of the mediator.

CONFIDENTIALITY

The mediator shall not divulge confidential information disclosed to a mediator by the parties or by the witnesses in the course of the mediation. All records, reports, or other documents received by the mediator while serving in that capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in arbitration, judicial, or other proceeding:

- A. Views expressed or suggested made by another party with respect to a possible settlement of the dispute;
- B. Admissions made by another party in the course of the mediation proceedings;
- C. Proposals made or views expressed by the mediator; or
- D. The fact that another party had or had not indicated a willingness to accept a proposal for settlement made by the mediator.

NO STENOGRAPHIC RECORD

With respect to confidentiality of the mediation process, there shall be no stenographic and/or audio recording of these proceedings.

CONCLUSION OF MEDIATION

The mediation shall be concluded:

- A. By the execution of a settlement agreement by the parties;
- B. By a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or
- C. By written declaration of a party or parties to the effect that the mediation proceedings are terminated.

EXPENSES

The party producing witnesses shall pay the expenses of their witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator or mediation service, and the expenses of any witness and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. Expenses shall be paid within thirty days (30) days of receipt of an invoice. Any cost incurred in the process will be shared by both parties. Cost may be amortized or adjusted by a sliding scale as determined by gross income for individuals earning between 200% and 300% of Federal Poverty Guidelines (FPG). The sliding scale shall be proportionate to the individual's earnings as a percentage of the FPG, less 200%. For example, an individual earning 210% of FPG will be charged 10% of their total share of cost, while a person earning 290% of FPL will be charged 90% of their total share of cost.

TIME PERIOD FOR CONDUCTING MEDIATION

Determination that grievances fall within scope of procedures, and notification of other party, and selection of mediator: 20 days. Meeting(s) with parties and resolution or decision by 3rd party not to Continue (impassé): 30 days.

AGREEMENT OF PARTIES

As a prerequisite to binding arbitration the parties shall endeavor to resolve the dispute by mediation.

ADMINISTRATION AND DELEGATION OF DUTIES

When parties agree to arbitrate under these rules they thereby authorize the arbitrator or arbitration service to administer the arbitration.

FILING A REQUEST FOR BINDING ARBITRATION

Within five (5) days of mediation being terminated under TERMINATION OF MEDIATION (b) or (c) above the grieving party may request binding arbitration by filing a request for arbitration with the Governance Committee in a timely manner.

FORM

The request for binding arbitration shall be in writing and shall be signed and verified by the requesting party before a notary public or other person authorized by law to administer oaths and take acknowledgments.

CONTENT

1. The full name of person adversely affected/party filing the grievance.
2. The full name and current mailing address of the party alleged to have committed the violation.
3. A short and plain statement of the grievance including the date that the questionable process took place, by what component of the Council and reason for filing grievance.
4. A statement of what results the grieving party is seeking.
5. If this request is a request for binding arbitration the filing party must attach a copy of the document terminating mediation (see attached form).

EXPENSES

The steps involved in administering the grievance process may include fees for third party arbitrators. To balance the need for recovery of reasonable costs of administering the arbitration process, without discouraging the filing of legitimate grievances, the Planning Council has established the following policy:

Whenever possible, the Council will attempt to secure appropriate arbitration services at no cost. In the event that fees are charged by the arbitrator, the Council and grievant will share equally the cost.

All other expenses associated with the arbitration will be shared as described in Mediation section.

ARBITRATION

GOVERNING STANDARDS

Arbitration will be in accordance with standards set forth by the American Arbitration Association (AAA). An arbitrator shall be appointed by the AAA or in consultation with the McGeorge School of Law.

PLACE OF FILING

Requests for Arbitration shall be filed with the Council Program Manager. Please call (916) 477-7063 to assure someone will be in the office at your arrival.

DATE OF FILING & MANNER OF FILING

The request for arbitration shall be deemed filed as of the date of receipt of the grievance at the HIV Health Services Planning Council of Sacramento office.

Grievance can be filed in person at the:

HIV Health Services Planning Council
909 12th Street, Suite 200
Sacramento, CA 95814

Grievances can be filed by certified mail to:

HIV Health Services Planning Council
909 12th Street, Suite 200
Sacramento, CA 95814

The request for arbitration shall be in writing and shall be signed and verified by the grieving party before a notary public or other person authorized by law to administer oaths and take acknowledgments.

FILING FEE

There is a \$50.00 filing fee due at time of filing of request for arbitration

APPOINTMENT AND QUALIFICATION OF THE ARBITRATOR

No person shall serve as an arbitrator in any dispute in which that person has any financial or personal interest in result of the arbitration. Prior to accepting an appointment, the prospective arbitrator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the parties. Upon receipt of such information the Council Program Manager shall immediately communicate the information to the parties for their comments. In the event that the parties disagree as to whether the arbitrator shall serve the AAA shall appoint another arbitrator.

VACANCIES

If any arbitrator shall become unwilling or unable to serve, the AAA shall appoint another arbitrator, unless the parties agree otherwise

REPRESENTATION

The grievant and the Council may choose any representation appropriate to the nature of the grievance. The names and addresses of such persons shall be communicated in writing to all parties and the arbitrator.

DATE, TIME AND PLACE OF ARBITRATION

The arbitrator shall fix the date and time of each arbitration session. The arbitration shall be held at a convenient location, within the EMA, agreeable to the arbitrator and parties. Parties shall be advised in writing of the time, date and location of the arbitration session at least 10 days in advance of the hearing date, unless otherwise agreed by the parties.

TIME PERIOD FOR CONDUCTING BINDING ARBITRATION

1. Determination by the grievant to use binding arbitration: 5 days
2. Notification of the other parties and selection of arbitrator and agreement of the parties to arbitrate: 10 days.
3. Hearing (if necessary): 60 days
4. Decision by arbitrator: 30 days.

TIME OF DECISION

The decision shall be made promptly by the arbitrator and, unless otherwise agreed by the parties, no later than thirty (30) days from the date of the closing of the hearing.

FORM OF DECISION

The decision shall be in writing and shall be signed by the arbitrator. The decision shall be mailed to all parties involved in the dispute. No monetary damages shall be awarded.

FINAL DECISION

If a ruling of binding arbitration required that any process, policy & procedure be revised said revision(s) should be completed within the time specified in the arbitrator's order. All such revisions shall be applied prospectively.

TABLE I

ACTION	TIME LINE
<u>INFORMAL CONFLICT RESOLUTION</u>	
Program Manager will respond in writing to party filling grievance	2-5 working days
Review Panel determines that grievant and grievance fall within the scope of procedures with party notification	5-10 working days
Resolution of grievance	20 working days
<u>FORMAL DISPUTE RESOLUTION (NON-BINDING MEDIATION)</u>	
Program Manager will respond in writing to party filling Request for Mediation Form	2-5 working days
Appointment of the Mediator	10 working days
Meeting of parties with mediator	10-15 working days
Memorandum brief submitted to mediator	10 working days prior mediation session
Resolution of grievance or decision by mediator not to continue due to impasse. Inform parties how to pursue binding arbitration	15-20 working days
<u>BINDING ARBITRATION</u>	
Request for arbitration	5 days from mediation termination
Notification of parties and selection of arbitrator	10 working days
Hearing	30 working days
Decision by arbitrator	30 working days

EPILOGUE

Considering resolution of the issue, regardless of a binding or non-binding nature, each party is expected to operate in good faith to implement the conditions of the agreement.