

**BYLAWS
And
POLICIES**

OF THE

**NEWARK EMA HIV HEALTH SERVICES
PLANNING COUNCIL**

Approved by the Planning Council October 1999,

*Revised & Approved May 2003, August 2008, April 2012,
April 2014, April 2018 and October 2020, September 2021*

Table of Contents

Dedication

Article 1, Name

Article 2, Mission, Core Values, Vision and Collaboration

Article 3, Duties of the Planning Council

Article 4, Membership, Terms of Membership and Nomination Process

Article 5, Officers of the Planning Council

Article 6, Committees

Article 7, Meetings, Parliamentary Authority, Observers, Agendas, Minutes

Article 8, Budget

Article 9, Conflict of Interest

Article 10, Grievance Procedures

Article 11, Code of Ethics, Confidentiality

Article 12, Office and Planning Council Staff

Article 13, Validity of Acts

Article 14, Bylaws

Appendix A, Anti-Discrimination and Harassment Policy

Appendix B, Conflict of Interest Policy and Disclosure Statement

Appendix C, Code of Ethics and Standards of Conduct

Appendix D, Confidentiality Agreement

Appendix E, Grievance Procedure

Appendix E-1, Grievance Procedure Definitions

Appendix E-2, Grievance Form

Dedication

These Bylaws are dedicated to people who are living with and affected by HIV/AIDS living in the Newark Eligible Metropolitan Area (Essex, Morris, Union, Sussex, Union and Warren counties). This document represents the work of the members of the Newark EMA HIV Health Services Planning Council, a body of individuals, both HIV positive and negative, who are working together towards developing and improving care and treatment services for people with HIV/AIDS.

It is also dedicated to caregivers, formal and informal, of those living with and affected by HIV/AIDS who provide compassionate care, love and understanding. Caregivers also enable people living with HIV/AIDS to take advantage of advancing technology that makes it possible to not only survive but to thrive and work towards a better future.

It is for these people that we, as members of the Newark EMA HIV Health Services Planning Council, are empowered and motivated to work. The partnership of the visionary government of the City of Newark and the Planning Council are committed to work together to turn our plans into reality.

Hon. Ras Barka
Mayor, City of Newark

Robert L. Johnson, M.D., Chair
Newark EMA HIV Health Services Council

Article 1 Name

1.1 Name. The name of this organization shall be the Newark EMA HIV Health Services Planning Council, hereinafter referred to as the Planning Council. The Ryan White HIV/AIDS Treatment Extension Act of 2009 (formerly known as Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990 as amended in 1996, 2000, 2006, and 2009), requires the establishment of an HIV health services planning council by the chief elected official¹ of the eligible area involved. The Mayor of Newark established the Newark EMA HIV Health Services Planning Council to conform with 42 U.S.C.A. §300ff-12(b)(1).

Article 2 Mission, Core Values, Vision and Collaboration

2.1 Mission. The mission statement of the Newark EMA HIV Health Services Planning Council is “To plan for the development, implementation, and continual improvement of the health care and treatment services for People Living with and affected by HIV/AIDS who reside in the five New Jersey counties of Essex, Morris, Union, Sussex, and Warren”.

2.1.1 Community Involvement Activities (CIAs). The Planning Council believes that the voice of the community is paramount. The purpose of the CIAs is to help bridge the gap between the community and service providers by creating opportunities to involve community members in the planning process.

2.2 Core Values. Leadership, Integrity, Diversity, Collaboration, Compassion, Creativity and Responsiveness.

2.3 Vision. To develop an effective and efficient integrated delivery system, from prevention to care services to research, that adequately meets the needs of all at-risk Newark EMA residents, especially those Living with or affected by HIV/AIDS.

2.4 Collaboration with the City of Newark. The activities and deliberations of the Planning Council are structured to accomplish its mission in collaboration with the City of Newark. By working together, both the Council and the City of Newark as the Recipient will strive to provide quality services for people with HIV/AIDS in the Newark EMA. The City of Newark is represented on both the Planning Council and the Executive Committee of the Planning Council.

Article 3 Duties of the Planning Council

3.1 Duties. Pursuant to 42 USC §300ff-12(b)(4), the duties of the Planning Council shall be to:

(A) determine the size and demographics of the population of individuals with HIV/AIDS;

(B) determine the needs of such population, with particular attention to:

(i) Individuals with HIV/AIDS who know their HIV status and are not receiving HIV-related services; and

(ii) disparities in access and services among affected subpopulations and historically underserved communities;

(C) establish priorities for the allocation of funds within the eligible area, including how best to meet each such priority and additional factors that the Recipient should consider in allocating funds under a grant based on the following:

(i) size and demographics of the population of individuals with HIV/AIDS (as determined under subparagraph (A) and the needs of such population (as determined under subparagraph (B)

(ii) demonstrated (or probable) cost effectiveness and outcome effectiveness of proposed strategies and interventions, to the extent that data are reasonably available;

(iii) priorities of the communities with HIV/AIDS for whom the services are intended;

¹ As defined in the Ryan White HIV/AIDS Treatment Extension Act of 2009 the “Chief Elected Officer” or (CEO) refers to the highest elected official of the city or urban county that administers the public health agency that provides outpatient and ambulatory services to the greatest number of individuals with AIDS. For the Newark EMA, the CEO is the Mayor of Newark. The CEO, i.e. the Mayor, is the official recipient of Newark EMA’s Part A Modernization Act funds and ensures that all legal requirements are met. The Mayor of Newark delegates his authority to administer Part A Treatment Act funds to the City of Newark Department of Child and Family Well Being/Ryan White Unit.

- (iv) coordination in the provision of services to such individuals and agencies with programs for HIV prevention and for the prevention and treatment of substance abuse, including programs that provide comprehensive treatment for such abuse;
 - (v) availability of other governmental and non-governmental resources, including the State Medicaid plan under title XIX of the Social Security Act [42 U.S.C.A. § 1396 et seq.] and the State Children's Health Insurance Program under title XXI of such Act [42 U.S.C.A. § 1397aa et seq.] to cover health care costs of eligible individuals and families with HIV/AIDS; and
 - (vi) capacity development needs resulting from disparities in the availability of HIV-related services in historically underserved communities;
- (D) develop a comprehensive plan for the organization and delivery of health and support services described in section 300ff-14 of this title that--
- (i) includes a strategy for identifying individuals who know their HIV status and are not receiving such services and for informing these individuals of and enabling them to utilize the services, giving particular attention to eliminating disparities in access and services among affected subpopulations and historically underserved communities, and including discrete goals, a timetable, and an appropriate allocation of funds;
 - (ii) includes a strategy to coordinate the provision of such services with programs for HIV prevention (including outreach and early intervention) and for the prevention and treatment of substance abuse (including programs that provide comprehensive treatment services for such abuse); and
 - (iii) is compatible with any State or local plan for the provision of services to individuals with HIV/AIDS;
- (E) assess the efficiency of the administrative mechanism in rapidly allocating funds to the areas of greatest need within the eligible area, and at the discretion of the Planning Council, assess the effectiveness, either directly or through contractual arrangements, of the services offered in meeting the identified needs;
- (F) participate in the development of the Statewide Coordinated Statement of Need initiated by the State public health agency responsible for administering grants under Part B of this subchapter;
- (G) establish methods for obtaining input on community needs and priorities which may include public meetings, conducting focus groups, and convening ad-hoc panels; and
- (H) coordinate with Federal Recipients that provide HIV-related services within the eligible area.

Article 4

Membership, Terms of Membership and Nomination Process

- 4.1 Membership. The Planning Council shall include a minimum of eighteen (18) and a maximum of thirty-four (34) members. All appointments to the Planning Council shall be approved by the Chief Elected Official. Pursuant to 42 USC §300ff-12(b)(2) the Council shall include in its membership, at least one (1) member from each of the following categories:
- (A) health care providers, including federally qualified health centers;
 - (B) community-based organizations serving affected populations and AIDS service organizations;
 - (C) social service providers, including providers of housing and homeless services;
 - (D) mental health and substance abuse providers
 - (E) local public health agencies;
 - (F) hospital planning agencies or health care planning agencies;
 - (G) affected communities, including people with HIV/AIDS, members of a Federally recognized Indian tribe as represented in the population, individuals co-infected with hepatitis B or C and historically underserved groups and subpopulations;

- (H) non-elected community leaders;
- (I) State government (including the State medicaid agency and the agency administering the program under part B)
- (J) Grantees under subpart II of part C
- (K) Grantees under section 2671, Part D, or, if none are operating in the area, representatives of organizations with a history of serving children, youth, women, and families living with HIV and operating in the area;
- (L) Grantees under other Federal HIV programs, including but not limited to providers of HIV prevention services;
- (M) Representatives of individuals who formerly were Federal, State, or local prisoners; were released from the custody of the penal system during the preceding 3 years, and had HIV/AIDS as of the date on which the individuals were so released.

4.2 Reflectiveness. The Planning Council shall strive to ensure that its membership is reflective in its composition to the demographics of the people living with HIV in the Newark EMA.

4.3 Non-discrimination. It shall be the policy of the Planning Council to avoid, at all times, discrimination with respect to membership, or any terms or conditions of membership, based on race, creed, color, marital status, sexual orientation, religion, national origin, gender, pregnancy status, age, veteran's status, or political affiliation. [Appendix A, Anti-Discrimination and Harassment Policy]

4.4 PLWHA participation Pursuant to 42 USC §300ff-12(b)(5)(C) at least 33% of the members of the Planning Council, shall be individuals who are receiving HIV-related services meeting the following criteria ***(An individual is considered to be receiving Part A services if they are the parent of or caregiver for a minor child who is receiving such services):***

- A. In receipt of HIV-related services from Part A funded providers,
- B. Are **not** officers, employees, or consultants to any providers receiving Part A funds and do not represent any such entities, and
- C. Reflect the demographics of the population of individuals with HIV/AIDS in the EMA.

4.5 Representation. The total number of Planning Council members from Essex, Morris, Union Sussex, and Warren counties will be determined on a percentage basis. This basis shall be determined by the total number of people living with HIV and AIDS in those counties divided by the total number of people living with HIV and AIDS in the entire EMA. There will be at least one representative from each county.

4.6 Residence of members. All members who are either non-elected community leaders or people representing persons Living with and affected by HIV must reside in one of the five counties of the Newark EMA. Members representing the other categories must work in or have some responsibility for a jurisdiction that includes the Newark EMA.

4.7 Nominations. Nominations for Planning Council membership shall be made by the Executive Committee, in consultation with the Chair of the Planning Council, to the Chief Elected Official.

4.8 Terms. The membership of the Planning Council shall be appointed to a term of two years from their Official Swearing-In Ceremony. Individuals who have served the Planning Council for more than five years as of April 1, 2012 will automatically receive a four-year **term**. At the expiration of each term, the Council member(s) shall either be re-appointed, removed, or held in hold-over status until such time as a new appointment can be made by the Chief Elected Official. The Secretary will notify all Planning Council members and announce at the closest regularly scheduled meeting the expiration of the terms of each Council member as they accrue. Based on discussion with the member, the Secretary will advise the Chair of the Council on the renewal or expiration of each member's term. All Planning Council Members must serve on at least one Standing Committee.

4.9 Expired Terms. The expired term of a Planning Council member shall either be re-appointment, removed, or held in hold-over status until such time as a new/re-appointment can be made by the Chief Elected Official. If the expired term Planning Council member is held in hold-over status, they will retain their position and rights in hold-over status until such time as a re-appointment has been made.

4.10 Non-voting Members. In addition to members as defined and regulated above, from time to time, the Planning Council might wish to include within its membership certain person(s) who, because of their particular expertise or other relation(s) to the ongoing work of the Planning Council, might significantly benefit the Council in the exercise of its duties and mission. Such members may participate in discussions and/or deliberations, but they shall **not** vote; nor shall they be counted in the total number of Council members.

4.11 Replacement of Members.

Change in Position. At such time as a member of the Planning Council changes their professional responsibilities so that they no longer represent the constituency/category for which they were originally appointed, that member shall immediately resign from the Planning Council in a written notice to the Chief Elected Official, Council Chair and /or Council Secretary copied to the contracted agency's Project Manager

4.11.2 Re-location. At such time as a member, whose residency in the EMA was required (see paragraph 4.6, above), re-locates outside of the EMA, that member shall immediately resign from the Planning Council in a footer written notice to the Chief Elected Official, Council Chair and/or Council Secretary copied to the contracted agency's Project Manager.

4.11.3 Absences. Should any Planning Council member fail to attend either three (3) consecutive regularly scheduled meetings, or fifty percent (50%) of the regularly scheduled meetings in any six (6) month period, or fail to attend, for any reason, four (4) monthly meetings in any six-month period the Council or Executive Committee may recommend to the Chief Elected Official that the absentee Council Member be replaced on the Council. The process for removing this individual shall be that described in Article 4, paragraph 1 1 . 6

4.11.4 Leave of Absence. Any member of the Planning Council may request a leave of absence at any time by written notice to the Chief Elected Official, Council Chair or Council Secretary copied to the contracted agency's Project Manager. Any such leave shall take effect at the time specified in the notice, or in the absence of such specified time, immediately upon receipt of the said notice by the Council Chair.

4.11.5 Resignation. Any member of the Planning Council may resign at any time by written notice to the Chief Elected Official, Council Chair and Council Secretary copied to the contracted agency's Project Manager. Any such resignation shall take effect at the time specified in the notice, or in the absence of such specified time, immediately upon receipt of the said notice by the Council Chair.

4.11.6 Removal. A Planning Council member may be removed from the Council for failure to discharge their duties or inappropriate conduct that negatively impacts the discharge of their duties. Removal will be in accordance with these Bylaws and the Ryan White HIV/AIDS Treatment Extension Act of 2009. A Planning Council member may be removed by:

- Discretion of the Chief Elected Official;
- Recommendation of the Council to the Chief Elected Official upon majority vote with quorum seated;
- or
- Recommendation of the Executive Committee to the Chief Elected Official.

Before any recommendation to the Chief Elected Official is made, a written notice shall be sent to the Council Member from the Council Secretary. Such notice shall inform the Council Member of the proposed action and advise the Council Member that a written statement may be submitted within 15 days of the date of the Notice to the body bringing the action. Such statement, if received within the 15 days, will be considered by the body bringing the action before any final decision is made.

Article 5

Officers of the Planning Council

5.1 Council Officers. The officers of the Council shall consist of a Chair, a Vice-Chair, a Secretary and a Treasurer. The Chief Elected Official shall appoint the Chair. The Vice-Chair, Secretary and Treasurer shall be appointed by the Chairperson. All officers shall serve two-year terms. In the event that an officer resigns, of their free will or caused to resign, a replacement officer will be appointed as soon as practical.

5.2 Chief Elected Official (CEO). The Duties of the CEO are as follows:

5.2.1 As a condition of receiving Part A funding from the Ryan White HIV/AIDS Treatment Extension Act of 2009, (USC §3000ff-12(a)(2)(A)(ii)), the Chief Elected Official is required to establish an HIV health services planning council.

5.2.2 The Chief Elected Official of the EMA is responsible for receiving and disbursing all funds received under Part A of the Treatment Extension Act of 2009 and as such is authorized and empowered to ensure that the Council adheres to the spirit and letter of the Act.

5.2.3 The Chief Elected Official shall serve as Chief Administrative Officer with all the necessary and proper powers to advance the purposes for which this Council has been set up. But in no event shall the Chief Elected Official exercise any veto power over official actions taken by the Council or terminate the Council in its entirety.

5.2.4 The Chief Elected Official or their designee shall have a seat on the Council with all right and privileges attendant thereto.

5.3 Chair of the Council. As principal officer of the Council, the Chair shall:

5.3.1 Be charged, on behalf of the Council, with the responsibility of seeing that the Council policy is executed;

5.3.2 Be responsible for representing the Council with Federal, State, City and Community;

5.3.3 Appoint officers of the Council;

5.3.4 Preside at meetings of the Council;

5.3.5 Preside at Executive Committee meetings;

5.3.6 With Council approval, designate and determine the size and composition of all Standing and Ad Hoc Committees and appoint the Chairpersons of those Committees consistent with Article 9 contained herein;

5.3.7 Appoint, with the approval of the Council, the Parliamentarian;

5.3.8 Hold the right to membership on all Committees;

5.3.9 Delegate specific duties of the office to specific officers or other members of the Council;

5.3.10 Accept written notices as required under these Bylaws from Officers, members and the public;

5.3.11 Perform other duties as assigned by the resolution of the Council.

5.4 Vice Chair. The Vice Chair of the Planning Council shall:

5.4.1 Exercise all the responsibilities and perform all the duties of the Chair in the event that the Chair is absent or unable to act;

5.4.2 Assume the role of the Chair in the event a vacancy occurs;

5.4.3 Any other such duties as designated by the Chair or Planning Council.

5.5 Treasurer. The Treasurer shall:

5.5.1. Be responsible for the monitoring of the allocated budget of the Council, and provide such information to the Council regarding the budget that the Council deems necessary to carry out its duties, purposes and responses as stated in these Bylaws;

5.5.2. Give, or cause to be given, financial statements as necessary, but on at least a quarterly basis.

5.5.3. Exercise all the responsibilities and perform all the duties of the Chair in the event that the Chair and Vice Chair are absent or unable to act;

5.6 Secretary. The Secretary shall:

5.6.1 Keep, or cause to be kept, the minutes of all Council meetings;

- 5.6.2** Give, or cause to be given, all notices of meetings of the Council in accordance with these Bylaws;
- 5.6.3** Call special meetings of the Council as consistent with these Bylaws in accordance with Article 7.9
- 5.6.4** Keep or cause to be kept an updated list of Council members along with the dates of term beginning and expirations, and shall notify in writing, and announce at meetings the expiration of terms of Council members as they accrue in accordance with Article 4 9
- 5.6.5** Perform other duties designated by Resolution of the Council;
- 5.6.6** Publish, or cause to be published/mail or cause to be mailed, the Annual Council Calendar in accordance with Article 7.13
- 5.6.7** Keep an updated list of meeting attendance or cause to be kept of all Council Members for conformity with Article 4, paragraph 11, Replacement of Members and notify the Council Chair and Council at large of any Council member who becomes subject to removal from the Council based on absenteeism as contained in the above referenced Article;
- 5.6.8** Keep an updated calendar or cause to be kept signaling all time sensitive events contained in these Bylaws and notify all parties accordingly.
- 5.6.9** Exercise all the responsibilities and perform all the duties of the Chair in the event that the Chair, Vice Chair and Treasurer are absent or unable to act;

Article 6 Committees

- 6.1 General.** The Council Chair, with the approval of the Planning Council and in accordance with the Bylaws, may designate and determine the size and composition of all the Council's Standing committees and Ad Hoc committees. The Council Chair, with approval of the Planning Council, will designate the Chairs of the Standing and Ad Hoc committees. The Council and these Bylaws shall determine the authority, responsibilities and the restrictions for each Committee. The members of the committee will decide, through a vote with a quorum present, their officers (normally a Vice-Chair and Secretary). Each Committee shall maintain or cause to be maintained minutes of their proceedings and shall report to the Council as required by these Bylaws. For each Committee, a quorum shall consist of one half plus one of the persons then serving on that Committee. Standing and Ad Hoc committees may consist of members and ex-officio committee members. Persons Living with and affected by HIV should be represented on all Committees. Standing and Ad Hoc Committee Chairs shall be current Council Members.
- 6.2 Standing Committees.** The purpose of a Standing Committee is to guide and assist the Council in achieving the duties outlined in Article 3 of the Bylaws. A Standing Committee may not be dissolved without a majority vote of the Planning Council. The following shall constitute the Council's Standing Committees:
 - Continuum of Care Committee
 - Comprehensive Planning Committee
 - Research and Evaluation Committee
 - Community Involvement Activities Committee
- 6.2.1** The goal, objectives, member profile, membership, leadership, roles of officers, manner of conducting business, decision making process and complaints procedure of any of the other standing committees may be decided by the members of the committees so long as the terms are in compliance with these Bylaws and the committee's "Operating Policies and Procedures".
- 6.2.2 Subcommittees.** The purpose of a subcommittee is to assist a Standing Committee undertake its duties as stated in these Bylaws. The subcommittee should be inclusive as opposed to exclusive to ensure the widest representation within the group that it represents. Subcommittees are established by the Chair of the parent committee; the subcommittee chair is appointed by the Chair of the parent committee; and the size of the subcommittee is determined by the parent committee. A subcommittee can be dissolved by majority vote of the parent Committee membership at any meeting at which quorum is present. The Operating Policies and Procedures of the subcommittee will be guided by the Operating Policies & Procedures of the parent committee unless amended by the subcommittee and approved by the parent committee.

6.3 Executive Committee. The Executive Committee shall consist of the Officers of the Council, the Chairs of all Standing Committees, Ad Hoc Committees and a representative of the City of Newark. The Chair of the Planning Council will chair the Executive Committee. The Executive Committee shall be responsible for coordination with Council staff and other advisory duties concerning the affairs of the Council. The Executive Committee shall meet no less frequently than quarterly to ensure the orderly and integrated progressing of work of the Committees of the Council and to plan future activities.

6.3.1 The Executive Committee shall act for the Planning Council on any business-related issues for organizational governance issues in between regularly scheduled Council meetings. Any action that the Executive Committee wishes to undertake must be approved by the full Planning Council at their next scheduled meeting. Said actions must be presented to the Council in the form of a recommendation.

6.3.2 The Executive Committee shall address issues concerning Grievances, Bylaws, Nominations and Personnel. Any action that the Executive Committee wishes to undertake must be approved by the full Planning Council at their next scheduled meeting. Said actions must be presented to the Council in the form of a recommendation.

6.3.3 The Executive Committee shall provide support to the staff of the Planning Council as necessary.

6.3.4 The Executive Committee shall assist in the development of structure for the Council.

6.3.5 The Executive Committee shall establish the process of reviewing, monitoring and evaluating HIV/AIDS goals and objectives for the Planning Council.

6.3.6 The Executive Committee shall not make, alter or repeal any bylaws of the Council without approval of the full Planning Council.

6.3.7 The Executive Committee shall not amend or repeal any resolution previously adopted by the full membership of the Planning Council.

6.3.8 The Executive Committee shall undertake all other such duties as described in these Bylaws.

6.3.9 Emergency Situations. Emergency situations may arise whereby the Executive Committee may act without formal approval for their actions by the full Council. Any issue which may fall within the following five areas of concern may warrant the calling of an emergency meeting: 1) financial matters; 2) personnel issues; 3) the priorities/ Recipient's procurement report; 4) grant application issues; and 5) any other issue that the Recipient deems urgent.

Any member of the Executive Committee may call an emergency meeting. Proper notice must be given within twenty-four hours. The Planning Council Chair shall call, or cause to be called, all members of the Executive Committee giving them the purpose, date, time and location of the meeting. A majority of the committee members (50% plus one) must agree to the calling of the meeting in order for it to take place. Any decisions made during an emergency meeting must be ratified by a 2/3 vote of the committee membership. If such an emergency meeting is held, a report must be submitted to the full Planning Council at the next regularly scheduled meeting. This report shall fully outline the nature of the emergency, the deliberation process used, and the results achieved.

6.3.10 Quorum. Quorum of the Executive Committee shall be established by a simple majority which is equal to more than 50% of eligible voting members present.

6.3.11 Minutes. A written record of all official meetings of the Executive Committee shall be kept and made available to the full Planning Council membership and the public. These minutes will be available for public inspection and photocopying at the contracted Agency's offices

6.3.12 Members of the public and non-Executive Committee Planning Council members may attend meetings with or without invitation. Such persons may participate in the actual business of the Committee only with permission from the Chair. These individuals shall not have the right to vote. Any member of the Executive Committee may request the Chair to close the meeting. At the discretion of the Chair, the Executive Committee may be called into closed session excluding members of the public and non-Executive Committee Planning Council members to discuss matters of a confidential or sensitive nature including but not limited to financial and personnel matters. The Chair may request the participation of a person or persons with knowledge of the subject being discussed.

6.4 New Committees. Subject to the approval of the Council, the Chair may create such Standing or Ad Hoc Committees as may be deemed necessary. The Chair of the Council shall appoint the Chair of all such Committees and, subject to the approval of the full Planning Council designate the Committee membership. Any such Committee shall submit a written report of its activities, at least quarterly, to the full Planning Council.

6.4.1 Ad Hoc committees. The purpose of an Ad Hoc committee is to assist the Council in the performance of a specific task or duty as stated in these Bylaws and/or its Operating Policies and Procedures and will be automatically dissolved at the conclusion of the assigned task or duty. The work of the committee may be reviewed on a quarterly basis to consider revising the status of an Ad Hoc committee. There is no limitation on the size of any Ad Hoc committee, although it should be inclusive to ensure the widest representation within the group that it represents. Ad Hoc committees may be added by the Chair or deleted by a majority vote of the Council Members present and voting at any meeting at which quorum is present. The Chair of the Planning Council will appoint a chair of the Ad Hoc Committee.

6.5 Chairs of both Standing and Ad Hoc Committees shall give a report to the full Planning Council on at least a quarterly basis. The Chair of the parent committee will represent the sub-committee at the Planning Council meetings.

6.6 Minutes. All Standing committees, Ad Hoc committees and subcommittees shall generate approved minutes to be distributed to its members and available to Planning Council members and the public upon request. These minutes will be available for public inspection and photocopying at the Contracted Agency's offices.

Article 7

Meetings, Parliamentary Authority, Observers, Agendas, Minutes

7.1 Robert's Rules of Order (and any subsequent revisions) shall govern Planning Council Meetings whenever applicable and consistent with these Bylaws.

7.2 Parliamentarian. The position of Parliamentarian shall be a voluntary or stipend one appointed by the Chair with the majority approval of the Council. The parliamentarian can be, but is not required to be, a member of the Council. The Parliamentarian shall not be afforded officer status or voting rights unless such rights are granted to them by virtue of their Planning Council membership. It is the responsibility of the Parliamentarian to ensure that the Planning Council meetings are conducted in an orderly fashion and in accordance with the aforementioned Robert's Rules of Order.

7.3 Agenda. The Chair shall create, or cause to be created, the agenda prior to any given Planning Council meeting. Such agenda shall include topics developed by the Executive Committee, individual Council members and the public at large. Any items to be listed on the agenda shall be received no later than five working days prior to any given Planning Council meeting. Any unforeseen business, not on the agenda, can be discussed under "New Business" or the Chair, with majority approval from the Planning Council, can request a change of agenda at any time during a meeting.

7.4 Meeting frequency. Meetings will be scheduled to take place every month. The Planning Council meetings will take place a minimum of ten times/year. Meetings will take place at the location announced by publication in accordance with these Bylaws.

7.5 Virtual Meetings. A member of the Planning Council, Executive Committee or committee may attend a meeting via interactive telephone, Internet, satellite, audio or video conferencing or any other technology that enables all participants to be clearly audible to one another. A Planning Council member attending remotely participates in the entire discussion prior to voting on an issue. A member participating remotely may participate in an executive session.

7.6 Observers. Observers are welcome to attend all regularly scheduled Planning Council meetings. Observers shall not interfere with the regularly scheduled business of the Council. Any interference shall be subject to expulsion from the meeting. Observers may participate in committee meetings, in accordance with the committee's operating policies and procedures, and their input will become part of the committee minutes and potentially the committee report to the full Planning Council and thereby available to all Planning Council members.

7.7 Public Testimony. Observers wishing to participate in the Planning Council meeting may do so under the "Public Testimony" part of the agenda. Public Testimony will take place near the beginning of the meeting or at the discretion of the Chair. Anyone wishing to give public testimony must inform the Chair or Planning Council staff before the beginning of the meeting. Public testimony will be limited to three (3) minutes per person or five (5) minutes per individual when representing a group or organization. Planning Council members wishing to give public testimony cannot do so as a representative of the Planning Council.

- 7.8 Guest Speakers.** From time to time the Chair may invite a guest speaker with expertise in a particular area consistent with the Planning Council's mandates and address a topic relevant to the Planning Council's role, work or future. This guest speaker can be put on the agenda or included under any routine agenda item.
- 7.9 Special meetings.** Special meetings of the Council may be called at any time by the Chair of the Planning Council or on the request of twenty-five percent (25%) of the seated members of the Planning Council. Any such request for a special meeting of the Planning Council shall state the purpose(s) for which the meeting is being called, the agenda of the meeting shall be limited to these purpose(s).
- 7.10 Emergency meetings.** Emergency meetings of the Planning Council may be called at any time by the Chair of the Council, the Chief Elected Official, and/or in accordance with the responsibility of the officers as stipulated in the Bylaws. The request for an Emergency meeting shall state the purpose(s) for that meeting and the agenda of the meeting shall be limited to these purpose(s).
- 7.11 Notice of regular meetings.** Notice of the time, place and agenda of any regular or special meeting of the Council shall be sent to each member at their last known email address and shall be sent not less than five (5) days prior to the scheduling for that meeting.
- 7.12 Notice of emergency meetings.** Notice of the time, place and purposes of any emergency meeting of the Council shall be telephoned to each member at their last known telephone number at least forty-eight (48) hours prior to the scheduling of the meeting. In lieu of telephone, e-mail, fax or overnight mail delivery may be used.
- 7.13 Calendar and announcements of meetings.** The Secretary shall create, or cause to be created, a calendar with the dates of Planning Council meetings. This calendar is subject to Council approval. The calendar should be periodically published on the EMA website. As part of the calendar, it will state that individuals can call the Planning Council Offices for the specific agenda for any given meeting. It will also state that should the public wish to participate in the Planning Council meeting, they must make a request to give public testimony as described in paragraph 7 7above.
- 7.14 Quorum.** A quorum of the Council shall be established with a simple majority of the Council's membership (More than 50% of the eligible voting members present). Once a quorum is present at any meeting, the Council may proceed to transact all business. Except for the Chair, all members of the Planning Council who are present may vote on any matter before the Council, except as otherwise provided in these Bylaws.
- 7.15 Majority.** A matter must receive a simple majority of the votes of those present and voting in order to pass. A simple majority shall be more than 50% of the eligible members present and voting within a quorum of Planning Council members seated as required above in order to pass. Any act of a simple majority of the Council members present and voting at a meeting shall constitute the official action of the Council. In the event of a tie, the Chair may cast the deciding vote.
- 7.16 Minutes.** Meetings will routinely be -recorded to assist in the preparation of detailed meeting minutes. Minutes will be sent to all members for their review at least five (5) days prior to the next regularly scheduled meeting. Any member wishing to change, add or propose a correction to the minutes shall either submit such proposed changes, additions, or corrections in writing to the Project Manager or verbally at the time of their approval at the next regularly scheduled meeting. The minutes of the meeting will be formally approved, by vote, at the next regularly scheduled meeting during which a quorum is present. Once approved, the Chair of the Planning Council will be asked to certify the accuracy of the minutes with their signature. All Council minutes are available for public inspection and copying at the Contracted Agency's offices. Any Planning Council member may request that the recording of the proceedings of any meeting be transcribed if approved by a majority vote of either the Planning Council or Executive Committee with a quorum present.

Article 8

Budget

- 8.1 Introduction.** Each year an official Planning Council budget shall be adopted by the Planning Council membership and submitted to the Chief Elected Official and prepared in accordance with the following procedure.
- 8.2 Personnel.** The Contracted Agency shall review/evaluate all staff and their performance. The Executive Committee shall provide comment with regard to their interaction with the Executive Committee, Committee Chairs and the Planning Council as a whole. The Contracted Agency will determine inflationary pay raises and merit pay raises for all staff for the coming fiscal year. This activity should take place before March.

- 8.3 Finance.** The Treasurer shall assist in the preparation of a detailed budget with narrative. The budget shall outline the anticipated expenses of the Planning Council for the coming fiscal year, including operating expenses, cost of office space, and supplies, as well as all staff salaries.
- 8.4 Executive Committee.** The Treasurer shall present the draft budget to the Executive Committee at their March meeting. The Executive Committee shall either recommend the proposed budget for adoption (with or without amendments) by a majority vote with a quorum seated. Or they will ask the Treasurer to prepare a revised budget for resubmission to the Executive Committee and the Recipient within the next 30 days.
- 8.5 Full Planning Council.** When the Executive Committee is in receipt of a budget that it can recommend (either with or without minimal amendments), the proposed budget will be presented to the full Planning Council for consideration, discussion and adoption. The final budget will then be submitted to the Chief Elected Official for implementation.
- 8.6 The Chief Elected Official.** The CEO may either accept said budget as presented or reject it as excessive, deficient or otherwise unacceptable. Should the CEO reject the proposed budget, they must notify the Contracted Agency and the Treasurer in writing listing any areas which are deemed excessive, deficient or otherwise unacceptable and include recommendations and suggestions on a revised budget not more than 14 days after its approval by the full Planning Council. The Executive Committee shall then make such amendments or modifications as necessary for the acceptance by the CEO within 14 days of receipt of their written rejection and re-submit the budget to the Executive Committee. The Executive Committee will recommend its adoption to the Planning Council. Upon approval of the Planning Council the budget will be resubmitted to the CEO for implementation.

Article 9

Conflict of Interest

- 9.1 Introduction.** Planning Council members, including but not limited to committee members, sub-committee members, staff members, consultants and sub-contractors to the Planning Council are prohibited from using their involvement, relationship and/or influences, whether actual or perceived for personal, organizational or professional gain, whether direct or fiduciary. Such actions shall and will be construed as Conflict of Interest.
- 9.2 Acceptance of profit/income.** Additionally, none of the income or any net earnings of the Planning Council shall inure to the profit of, or be distributed to, Council members by virtue of their positions on the Planning Council. Nor shall they accept said income, earnings or profit by virtue of their position as a Director, Trustee, officer or any other person of any institution or entity receiving funds under the Ryan White HIV/AIDS Treatment Extension Act of 2009, other than accepting funds duly allocated by the Recipient on behalf of and distributed to their institution or entity.
- 9.3 Abstaining from voting.** Any member with a vested interest in the outcome of policies or procedures to be discussed and voted upon shall abstain from that particular vote. While members may take part in discussions as a whole, they may not vote or otherwise participate in deliberations, except in response to direct questions that come before the Council or committee.
- 9.4 Self-disclosure of Conflict.** All Planning Council members are required to complete the "Conflict of Interest Policy and Disclosure Statement" [Appendix B] annually and update it promptly upon any change of affiliation. It is incumbent upon Council and Committee members to self-disclose any conflict, and abstain from voting on action(s) to be taken. Such disclosure will be recorded in the official Council minutes.
- 9.5 Reporting a Conflict of Interest.** If a member feels that they have witnessed a situation that presents a question of conflict of interest, they should approach the Chair and the member in question to discuss it with them. The Chair will make a decision on how to proceed or rectify the situation and may decide to refer the matter to the Executive Committee. Alternatively, any Planning Council member or member of the public, through public testimony, may raise the question of a perceived conflict of interest on the part of another member. In such cases, the Executive Committee shall investigate said conflict and report back to the Council.
- 9.6 Investigation of a Conflict of Interest.** The Executive Committee shall, upon the request of any Council member(s), investigate and make recommendations to the Planning Council concerning any Council member's conflict of Interest or appearance thereof. The final determination of whether a true conflict exists shall be accomplished by a majority vote with a quorum seated. Any member found to be in conflict by the Executive Committee under this Article shall not participate in the proposed action in question. If they did participate in the proposed action their vote will be considered null and void.

9.7 Planning Council's Policy. The Planning Council has adopted a Conflict of Interest Policy. A summary of that policy follows:

Conflict of Interest: It is the policy of the Newark EMA HIV Health Services Planning Council that any voting member (of the full Planning Council or any of the Council's Committee) who also serves as a Director, Trustee, or salaried employee, or otherwise materially benefits from association with any agency which may seek Ryan White Part A funds is deemed to have an "interest" in said agency or agencies. This member may not vote on an issue directly related to the organization, and in some cases, even the work it undertakes or the geographic area it serves. Additionally, they may not vote regarding the allocation or prioritization of any service categories for their county/region. This policy shall not be construed as preventing any member of the Council from full participation in discussion and debate about community needs, service priorities, allocation of funds to broad service categories, and the processes for the results of evaluation of service effectiveness. Rather, individual members are expected to draw upon their lay and professional experiences and knowledge of the HIV service delivery system in the EMA when such matters are under deliberation. All members of the council are expected to assist in keeping the Council focused on directing funds to meet the needs of individuals affected by the HIV epidemic in the most expeditious manner possible without undue regard to the benefit to specific agencies or programs.

Article 10 Grievance Procedures

10.1 The Newark EMA HIV Health Services Planning Council has a detailed Grievance Procedure, [Appendix E] which is available upon request. A summary of the policy follows.

10.2 Eligible Grievants. The following affected parties may file a grievance:

- Funded providers who are receiving Ryan White funding.
- Non-funded providers who are eligible to receive Ryan White funding.
- Consumer groups/PLWHA, coalitions, caucuses.
- Other individuals or groups that may be affected by the Ryan White HIV/AIDS Treatment Extension Act of 2009 request for proposals selection and awards process, disbursement process and/or Council process.

10.3 The following types of Grievances may be filed:

- Deviations from an established, written priority setting or resource allocation process (e.g. failure to follow established conflict of interest procedures).
- Deviations from an established, written process for any subsequent changes to priorities or allocations. (The process of assigning funding allocation percentages to previously determined priorities.)
- The process of ranking of service priorities within the EMA.

10.4 Time. The grievant has ten (10) working days' time in which to challenge a decision or document released to the public domain.

10.5 Intake. The Project Manager will serve as the "Intake Person".

10.6 The rules, policies and procedures surrounding the remaining grievance procedure (including non-binding facilitation, non-binding mediation, and binding arbitration) are described in the said mentioned policy, which is available upon request.

Article 11 Code of Ethics, Confidentiality

11.1 All Planning Council members, including Standing Committee, Subcommittee and Ad Hoc Committee members, staff members, consultants, sub-contractors and volunteers to the Planning Council shall adhere to the Newark EMA HIV Health Services Planning Council Code of Ethics and Standards of Conduct [Appendix C] and will sign a Confidentiality Agreement [Appendix D] upon appointment and/or start of employment.

11.2 Confidentiality Agreement Staff and volunteers of the Planning Council receive and review personal and sensitive information about existing members and applicants. Confidential member or applicant information should never be discussed, shared, or released to persons other than current Planning Council Support Staff or Planning Council members. Confidential information includes, but is not limited to HIV status, medical information, gender identity,

ethnicity, age, sexual orientation or immigration status. All Staff, volunteers and Planning Council members must sign a Confidentiality Agreement. Failure to abide by the terms of this agreement may result in a disciplinary procedure, up to and including removal of employment and/or membership in the Newark EMA HIV Health Services Planning Council. Any perceived violation of the Confidentiality Agreement will be addressed and resolved by the Planning Council's Executive Committee.

Article 12 Office and Planning Council Staff

- 12.1 Office.** The principal office of the Planning Council shall be determined by the Contracted Agency. This office will be located within the Newark Eligible Metropolitan Area (NEMA)
- 12.2 Project Manager.** The Project Manager shall be an employee of the Contracted Agency. The Project Manager shall direct the overall operations of the Planning Council and implement its policies. The Project Manager shall also perform such duties as may be requested from time to time by the Planning Council. The Project Manager shall report to the Director of the Contracted Agency and the Chair of the Planning Council.
- 12.3 Staff.** The Project Manager shall be responsible for the organization and management of sufficient professional and other staff to accomplish the functions of the Planning Council, subject to the guidance and budget approved by the Planning Council. The Project Manager will be expected to give a report, on behalf of all staff, to the Planning Council at each regular meeting summarizing work undertaken since the previous report.
- 12.4 Personnel policies.** Policies and procedure for the selection, salary, promotion and discharge of staff shall be set by the Contracted Agency.
- 12.5 Responsibilities.** The staff of the Contracted Agency shall be responsible for supporting the Planning Council and its Committees, compiling agendas for each meeting, keeping the minutes for all meetings, coordinating the priority setting, strategic planning and evaluation. Records should be held for seven years. Staff will also ensure that the Planning Council undertake all of its mandates under the Ryan White HIV/AIDS Treatment Extension Act of 2009 and monitor the work of the Planning Council. Staff will also be responsible for liaising with the Recipient, particularly in preparation for submission of the annual Part A application to HRSA by the Recipient.

Article 13 Validity of Acts

- 13.1 Improper participation.** No act by the Planning Council or any Planning Council Committee shall be invalid by reason of the improper participation/vote of any member unless the improper participation/vote has acted as a swing vote, in effect, creating a majority vote by one. In such a case, such an act shall become invalid and a subsequent deliberation and vote shall be conducted at the next regularly scheduled meeting.
- 13.2 Votes when a quorum is NOT present.** Any act by the Council or a Committee which has been taken at a meeting at which a quorum has not been established shall be considered an act by the "Committee of the Whole". The discussion shall be summarized, opened for further discussion and vote at the next regularly scheduled meeting at which a quorum is present.

Article 14 Bylaws

- 14.1 Amendments.** These Bylaws may be amended from time to time by a vote of the majority of the voting members of the Council at any meeting at which a quorum is present. Members of the Planning Council must have been sent written notice of the proposed amendment(s) at least five days prior to the date of the meeting at which such amendment(s) is/are to be considered. Amendments or additions to the Bylaws will be referred to the Bylaws Committee for specific incorporation into the Bylaws document.
- 14.2 Invalidity of Provisions.** In the event any provision hereof conflicts with the provision of the Act or is declared to be invalid by a court of competent jurisdiction, such provision shall be deemed stricken from said Bylaws. The remainder of these Bylaws shall be in full force and effect without regard to such invalid provision.
- 14.3 Notification.** Any such amendment or modification to these Bylaws, if duly approved by the full Planning Council, shall be considered part of the official Bylaws of the Newark EMA HIV Health Services Planning Council. All amendments and modifications shall be sent to the Chief Elected Official who is invited to review such changes as to their legality

and conformity with the Ryan White HIV/AIDS Treatment Extension Act of 2009 and the U.S. District Court decision in Russel et al versus The City of Newark et al.

APPENDIX A

Newark EMA HIV Health Services Planning Council

Anti-Discrimination and Harassment Policy

General

The Newark EMA HIV Health Services Planning Council is an equal opportunity employer. State and Federal law make it unlawful for employers to discriminate in the employment of an individual by reason of:

- Race
- Religion
- Creed
- Color
- Ancestry
- National origin
- Sex
- Age
- Marital status
- Disability (physical or mental)
- Pregnancy
- Sexual orientation or affectional preference
- Liability for service in the Armed Forces of the United States.

The Newark EMA HIV Health Services Planning Council is committed to complying with all State and Federal anti-discrimination laws which prohibit discrimination with respect to hiring, promotion, compensation, transfer, retention, and benefits, including the obligation to provide employees, as well as other individuals affiliated with the Newark EMA HIV Health Services Planning Council including volunteers, Council and committee members, with a work environment free of discrimination which encompasses freedom from unlawful work place harassment, including sexual harassment.

Harassment

1. Unlawful Harassment Will Not Be Tolerated

The Newark EMA HIV Health Services Planning Council is committed to using its best efforts to provide a workplace free of harassment or intimidation based on any category protected by law (i.e. the categories listed above). Verbal or physical conduct based on any of the above listed categories that unreasonably interferes with another individual's work performance, creates an intimidating, offensive or hostile work environment or adversely affects employment opportunities will not be tolerated. Nor will the Planning Council tolerate any retaliation against a person for initiating a harassment complaint brought in good faith.

2. Workplace Harassment

Workplace harassment because of an individual's race, national origin, marital status, color, pregnancy, creed, age, gender, religion, veteran status, affectional or sexual preference, or disability is unlawful. Workplace harassment can take many forms and it is impossible to describe all potential situations. You may find helpful the following examples of acts that may be perceived as harassing behavior:

- Kidding, joking, teasing, tormenting, verbal abuse, comments or remarks based upon someone's membership in a protected status
- Imitating a person's speech, accent, physical or mental disability
- Cartoons, e-mail, or other communications referencing a person's protected status
- Attributing specific behavior or descriptions to an ethnic group, gender, age, group, race or nationality, etc. or to an individual who is a member of that group
- The use of slang, derogatory or demeaning language
- Sabotaging the work of another employee, volunteer, Council or /committee member.

Unwelcome behavior may constitute workplace harassment, whether or not it takes place during business hours, at the office, and whether it is the behavior of another employee, a volunteer, a Council or committee member, a client, a vendor, a consultant, or any other individual with whom you interact in your capacity as an employee, volunteer, or member of the Planning Council or one of its committees.

3. Sexual Harassment

Sexual harassment is one form of workplace harassment. Like other types of workplace harassment, the definition of sexual harassment is constantly changing. However, New Jersey and Federal courts and agencies, recognize two types of unwelcome behavior that can constitute sexual harassment.

- A. The first type is labeled *quid pro quo* sexual harassment. It occurs when an employee, volunteer, Council or committee member, client, vendor, or consultant is either expressly told or it is implied that they must submit to unwelcome sexual behavior as a condition of keeping their position or remaining eligible for a benefit, raise, or promotion
- B. The second type, *hostile work environment*, can exist where unwelcome behavior, whether directed at a particular person or not, creates an intimidating, hostile, or offensive working environment. The question of whether a hostile work environment exists does not depend on whether the behavior was *intended* to be offensive, but whether it would be *perceived* as offensive to a reasonable person of the same sex. The courts have determined that the best judge of whether behavior is offensive is the person receiving the unwanted or offensive treatment. Some examples of conduct that would be offensive include:
 - Unwanted sexual jokes, teasing, or remarks
 - "dirty" jokes or sexually oriented language
 - Personal questions about social or sexual life
 - Introduction of sexual topics into the discussion
 - The use of subtle hints, suggestions, or unseemly gestures
 - Making comments about a person's anatomy or sexual comments about clothing or appearance
 - Touching any part of a person's body without their consent
 - Repeated, unwelcome requests for dates or sexual favors which are unwelcome
 - Staring at someone repeatedly
 - Displays of nude or pornographic pictures, cartoons or drawings
 - The use of slang, derogatory, or demeaning language
 - Lewd actions, or leering
 - Blocking or impairing a person's movement
 - Hugging, patting, pinching, etc.
 - Unwelcome letters, e-mails, telephone calls etc.
 - Whistling or catcalls
 - Sexual gestures with hands or body movements

Complaints of Discrimination

1. Inform the immediate supervisor or Project Manager of the problem or incident as soon as possible. If the complaint is against a Council or committee member, the Chair of the Planning Council should be informed. If the complaint is about the immediate supervisor or Project Manager, then complainant should refer the problem or incident directly to the Chair of the Planning Council
2. The person in receipt of the complaint (immediate supervisor, Project Manager or Chair of the Planning Council) will, or will cause to, promptly and thoroughly investigate the alleged discriminatory conduct. The investigation will include notifying and interviewing the person accused of misconduct.
3. If the person accused denies the conduct, the investigator will perform fact-finding including, but not necessarily limited to, witness interviews.
4. To the extent possible, complaints will be handled in a confidential manner.
5. Upon a determination that inappropriate conduct exists or did occur, appropriate corrective action, as determined by the Executive Committee, will be taken within a reasonable period of time, including disciplinary action against the offender (e.g., oral or written reprimand with appropriate notation in their personnel file, possible termination (if an employee) or removal from the Planning Council.
6. The complainant shall be provided with appropriate information concerning the outcome of the investigation.
7. If an investigation reveals that a claim was made under false pretenses, then action may be taken against the complainant.
8. If the complainant is dissatisfied with process or outcome, then they may refer the issue to the Chair of the Executive Committee (if not already approached). The Planning Council Chair has the final authority and review of complaints brought forth by staff, volunteers, Council or committee members.
9. Planning Council members, as a final resort, may refer any unresolved issues to the Mayor of the City of Newark

No Retaliation

Employees, volunteers, Council and committee members are prohibited from taking any retaliatory action, reprisal or using intimidation against an individual who makes a complaint of unlawful discrimination or retaliation. No person should suffer retaliation, reprisal or intimidation as a result of using the internal complaint procedure. Anyone who violates this policy will be subject to appropriate corrective action up to and including termination. or removal from the Planning Council

Newark EMA HIV Health Services Planning Council

Anti-Discrimination and Harassment Policy

Acknowledgement of Receipt

I acknowledge that I have received a copy of the Newark EMA HIV Health Services Planning Council “Anti-Discrimination and Harassment Policy.” I understand that the policy covers not only employees and volunteers but also Planning Council and Planning Council committee members. I am aware of the overall content of the policy and the fact that it includes a description of the complaints procedure.

Signature _____ Date _____

Name _____

Newark EMA HIV Health Services Planning Council

Conflict of Interest Policy and Disclosure Statement

1. INTRODUCTION

As stated by the Ryan white Treatment Extension Act of 2009, it is the responsibility of Planning Councils to establish priorities for the allocation of Part A funds within each Eligible Metropolitan Area (EMA). According to the Act, these priorities must be based upon size and demographics of the population of individuals with HIV disease, documented need, cost and outcome effectiveness of proposed strategies, priorities of HIV infected communities for whom the services are intended, coordination with programs for HIV prevention and for the prevention and treatment of substance abuse, the availability of other governmental and non-governmental resources, and capacity development needs resulting from disparities in the availability of HIV related services in historically underserved communities. In order to ensure that priorities are based upon the above objective criteria, the Health Resources and Services Administration (HRSA) expects each Planning Council to define Conflict of Interest and develop a plan for its management. This plan will become part of the Council's operating procedures and bylaws.

2. DEFINING CONFLICT OF INTEREST

The membership of the Planning Council is dictated by the Ryan White Treatment Extension Act of 2009 to ensure a range of perspectives and expertise from all of the communities within the eligible metropolitan area. It is expected that each of these members will contribute to a discussion from their own expertise and background. This contribution should not be misconstrued as a conflict of Interest.

A Conflict of Interest involves an actual or perceived interest by a member in an action by the planning body, which results or appears to result in personal, organizational, geographical or professional gain. It includes direct or indirect financial or other personal or professional interest or gain where the benefit can go to the member, a partner or family member, friend, other members, people living with HIV/AIDS or business associates. Like other members, people living with or affected by HIV/AIDS can also have Conflicts of Interest.

Differentiating between "Conflict of Interest" and "speaking to one's expertise" may be quite difficult. The former is when one's objective in arguing for a particular point is for personal or professional gain (as defined above). The later is in the spirit of contribution to a discussion for the greater good, i.e. with the intent of reaching a decision that is based upon as much factual evidence as can be gathered. A hallmark of this spirit of contribution is listening and considering all perspectives with the aim of reaching an objective decision that will bring the greatest benefit to the ultimate recipients of Ryan White funds. For the purposes of this Policy, Conflict of Interest shall be defined as:

Conflict of Interest: It is the policy of the Newark EMA HIV Health Services Planning Council that any voting member (of the full Planning Council or any of the Council's committees) who also serves as a Director, Trustee, or salaried employee, or otherwise materially benefits from association with any agency which may seek Ryan White Part A funds is deemed to have an "interest" in said agency or agencies. This member may not vote on an issue directly related to the organization, and in some cases, even the work it undertakes or the geographic area it serves. Additionally, they may not vote regarding the allocation or prioritization of any service categories for their county/region. This policy shall not be construed as preventing any member of the Council from full participation in discussion and debate about community needs, service priorities, allocation of funds to broad service categories, and the processes for the results of evaluation of service effectiveness. Rather, individual members are expected to draw upon their lay and professional experiences and knowledge of the HIV service delivery system in the EMA when such matters are under deliberation. All members of the Council are expected to assist in keeping the Council focused

on directing funds to meet the needs of individuals affected by the HIV epidemic in the most expeditious manner possible without undue regard to the benefit to specific agencies or programs

Originally Approved prior to 1999
Updated 8/31/1999; 2/9/2008; 10/20/2021

3. LEGISLATIVE REQUIREMENTS RELATED TO CONFLICT OF INTEREST

The following summarize the primary points from the Ryan White Treatment Extension Act of 2009 regarding Conflict of Interest:

- Planning Councils may not be directly involved in the administration of a grant nor may they designate particular providers as recipients of any amounts provided in the grant;
- Individual Planning Council and committee) members must not participate in the grantee's process for provider selection if they have any of the following relationships with an organization seeking a grant:
 1. Financial interest
 2. Membership
 3. Employment

4. SITUATIONS THAT COULD RESULT IN A CONFLICT OF INTEREST

- Allowing one person or group to dominate the Ryan White Treatment Extension Act of 2009 process.
- Confusing Planning Council priority setting with grantee procurement and contracting.
- Setting priorities and allocating resources based on individual interests rather than the results of a Needs Assessment and/or Comprehensive Health Plan.
- Using decision-making processes that do not give equal weight to the opinions of each voting member.
- Confusing the evaluation of effectiveness of services with evaluation of providers.
- Influencing discussion by arguing for funds to be allocated to an area where there is personal or professional gain (e.g. a service category or political entity) or duality of interest (e.g. geographical area)

5. MANAGING CONFLICT OF INTEREST

Approaches to preventing and minimizing Conflict of Interest;

- Adopt Conflict of Interest policies and apply them consistently;
- Clarify disclosure requirements and use disclosure forms;
- Require verbal disclosure when discussion begins;
- Keep mission always present in members' minds;
- Address Conflict of Interest in orientation and training;
- Limit discussion on specific providers;
- Implement an open and orderly meeting process;
- Keep all processes well defined and open to the public, and keep community members informed;
- Assign responsibilities for resolving Conflict of Interest.

The role of People Living with HIV/AIDS in helping to manage Conflict of Interest:

- Request orientation on Conflict of Interest;
- Request, review, and clarify Conflict of Interest policy;
- Complete and regularly update disclosure forms;
- Make sure that People Living with HIV/AIDS serve on the committee responsible for dealing with Conflict of Interest;
- Disclose possible Conflict of Interest situations before they become an issue;
- Help to find "unaffiliated" People Living with HIV/AIDS members (not employed by or a Board member of provider organizations and not employed by or affiliated with the grantee).

Responsibilities for Resolving Conflicts of Interests:

- Disclosure forms will be completed by each Planning Council and Committee member and will be updated when their Affiliation changes;
- Committee members will be asked by the Chairperson to also verbally disclose any actual or perceived Conflicts of Interest at the beginning of each and every discussion during the priority setting and resource allocations process;
- Committee members will recuse themselves from discussing and voting on areas where they hold Conflicts of Interests;
- The Comprehensive Planning Committee Chairperson will objectively guide the Priority Setting Process and will relinquish their right to vote except in the case of a tie vote;

- All Committee members and Planning Council staff are responsible for ensuring that the Committee adheres to the Conflict of Interest Policy and Priority Setting Process;
- Deviations from the Priority Setting Process can be grieved by following the Council's Grievance Procedures. The Project Manager will serve as the initial contact for Council and committee members to resolve any potential grievance.

DISCLOSURE STATEMENT

The Newark EMA HIV Health Services Planning Council; in order to ensure the objectivity of all of our decision making processes and to avoid Conflicts of Interest from disrupting this process, requires all Planning Council and Committee members to disclose any personal, professional or volunteer affiliations with entity or individual currently providing or interested in providing any Ryan White Part A service.

Affiliation will include but is not limited to:

- Employment with a service provider as a full time, part time, or per diem staff person;
- Employment with a service provider as a paid consultant;
- Volunteer with a service provider
- Board member, Advisory Committee member, etc. with a service provider;
- Recipient (customer, client, patient) of direct or support services from a service provider;
- Professional relationship with the priority or allocation process (e.g. Council staff, Recipient employees.)

The above will also include the involvement of any family member, significant other or business associate in similar capacity as stated above.

In the space provided below, please disclose any affiliations that could be perceived as Conflicts of Interest:

Newark EMA HIV Health Services Planning Council

Code of Ethics and Standards of Conduct

Purpose

Members of the Newark EMA HIV Health Services Planning Council are expected to adhere to these Standards of Conduct with regard to their participation in all activities related to the Planning Council.

Confidentiality

Any information obtained due to participation in any activity related to the Planning Council, particularly information regarding any individual, such as HIV status, financial situation, personal information, MUST NOT be disclosed to anyone for any purpose without written authorization from the person or self-disclosure. This includes, but is not limited to, information obtained within Planning Council or council committee meetings and activities. Likewise personal information obtained outside of Planning Council or committee activities must not be disclosed at Planning Council or committee events unless consent, preferably written authorization, is given or self-disclosure.

Acceptance of Gifts or Favors

No member of the Planning Council shall accept from any person, directly or indirectly, whether by themselves or through a member of their family or through any partner or business associate, any gift, favor, service, employment or offer of employment or any other thing of value, which they know, or has reason to believe is made or offered to them with the intent to influence their performance of duties as a member of the Planning Council. Likewise, no Planning Council member should expect gifts, preferential treatment for themselves or a family member because of their Planning Council membership.

Not Exclusive

Nothing in this appendix should be construed as exclusive. Members of the Planning Council are expected to adhere to customary business standards.

Violations

The Planning Council may take action against any member that violates the above Code of Ethics and Standards of Conduct. This action may include any steps up to recommendation for termination from Planning Council membership. Action may be taken following an investigation by the Planning Council or the Executive Committee and may be taken only following a majority vote of either body when quorum is present. See paragraph 4.11.6 of the Newark EMA HIV Health Services Planning Council official Bylaws.

APPENDIX D

Newark EMA HIV Health Services Planning Council

Confidentiality Agreement

1. Purpose

Staff and volunteers of the Planning Council (PC) receive and review personal and sensitive information about existing members and applicants. Therefore, this Confidentiality Agreement aims to protect the identity, personal information and privacy of existing members and applicants of the Newark EMA HIV Health Services Council.

2. Confidential Information

Confidential member or applicant information including any files and/or documents should never be discussed in the presence of parties or shared/released to parties other than current Planning Council Support Staff or members. Confidential information includes, but is not limited, to the following:

- Information identifying the member or applicant as a person living with HIV
- Information regarding any other medical information
- Information regarding the member or applicant's gender identity
- Information regarding the member or applicant's ethnicity
- Information regarding the member or applicant's age
- Information regarding the member or applicant's sexual orientation
- Information regarding the member or applicant's immigration status
- Any other sensitive information obtained because of the member or applicant's Planning Council membership.

3. Exclusion from Confidential Information

Information regarding Planning Council member's HIV status and demographics may be released only to the Ryan White Recipient's Office – Newark Department of Health, Planning Council Support Staff and the Health Resources and Services Administration (HRSA), by self-report and/or in aggregate form for the purpose of reviewing Planning Council membership candidacy and meeting federal and/or local mandates for the representation of key stakeholders (Reflectiveness Report).

4. Terms

By signing this Confidentiality Agreement, I agree to the highest ethical standards to protect the confidentiality of all PC members and to abide by the following provisions:

- All communications between the Planning Council Support Staff, and PC volunteers related to fellow members or applicants are confidential.
- All information contained in documents or records, or discussed during interviews, needs assessments, meetings or other situations that may arise as the Council carries out its mandated responsibilities shall remain confidential, including the personal views, experiences, concerns and other sensitive information shared by any members of the Planning Council or its subcommittees, or otherwise obtained because of my Planning Council membership.
- All minutes, reports or documents posted on the Council's website and social media, personal information shared in a committee, or Planning Council meeting – with special emphasis on information shared at the *Community Activities Committee* meetings – should be referenced generally rather than identified with a particular individual.
- The PC Support Staff and/or volunteer shall not disclose confidential information to a third party without the member or applicant's express consent to release such information. It is up to the individual to decide whether and when to publicly disclose his/her HIV status, medical status, co-morbidities, and other personal information.
- As a PC staff and/or volunteer, I have a duty to keep member and/or applicant information confidential throughout my term as staff and/or volunteer as well as after my employment and/or volunteer status ends.

Failure to abide by the terms of this Confidentiality Agreement may result in disciplinary procedures against me, up to and including the removal of my employment and/or volunteer membership with the Newark EMA HIV Health

Services Planning Council. Any perceived violation of the Planning Council's Confidentiality Agreement is to be addressed and resolved by the Planning Council's Executive Committee

Approved 10/20/2021

5. Acknowledgement

I _____, acknowledge:

- Reading the Newark EMA HIV Health Service Planning Council' Confidentiality Agreement in its entirety.
- Receiving a copy of this statement and having an opportunity to discuss it with a member of the Planning Council Executive Committee or Planning Council Support Staff.
- Understanding the terms of this confidentiality agreement and my responsibilities as a Planning Council employee and/or Volunteer member.
- Agreeing to the conditions set forth in this Statement of Confidentiality.

Signature of Staff or Volunteer

Date

APPENDIX E

1. NEWARK EMA HIV HEALTH SERVICES PLANNING COUNCIL .

GRIEVANCE PROCEDURES

I. INTRODUCTION

- A. **Scope:** Section 2602(b)(6) of the Ryan White Treatment Extension Act of 2009 requires that “To be eligible to receive funds, the Planning Council shall develop grievance procedures with respect to funding under this part including procedures for subsequent grievances that cannot be resolved to binding arbitration. Such procedures shall also be described in the bylaws of the Planning Council and be consistent with sub section (c). “Accordingly, the procedures covered by this document specifically apply to disputes Involving funding decisions between the Planning Council and “eligible grievant(s)”.

This document is intended to set forth and promulgate procedures for the resolution of grievances against the Newark EMA HIV Health Services Planning Council in accordance with model grievance procedures developed by the Secretary of the Department of HRSA in accordance with section 2602(c)(1)(a) of the Ryan White Treatment Extension Act of 2009.

- B. **Position Statement:** It is the Newark EMA HIV Health Services Planning Council’s position that all providers/potential providers should be allowed equal access to the system as well as fair and unbiased consideration as part of the awards process. To this end, efforts have been made by the Recipient to eliminate conflicts of interest and/or deviations from acceptable procedures using third-party RFP review and award process. Nevertheless, it is recognized that disputes will occasionally arise. It is the position of the Newark EMA that every attempt should be made to resolve challenges and/or disputes without the use of formal grievance procedures. However, it is also understood that, in some cases, formalized procedural steps up to and including binding arbitration may be the necessary and appropriate means to adequately resolve them.
- C. **Definitions:** Definitions of terms used throughout the grievance procedure are contained in Appendix E-1

II. ELIGIBLE GREIVANTS

A. AFFECTED PARTIES:

1. Funded providers who are receiving Ryan white funding.
2. Non-funded providers who are eligible to receive Ryan White funding.
3. Consumer groups/PLWHA coalitions and caucuses.
4. Other individuals or groups that may be affected by the Ryan White Treatment Extension Act of 2009 RFP selection and awards process, disbursement process and/or Council process

III. TYPES OF GRIEVANCES

A. SPECIFIC COUNCIL GRIEVANCES:

1. Deviations from an established, written priority setting or resource allocation process (e.g., failure to follow established conflict of interest procedures).
2. Deviations from an established, written process for any subsequent changes to priorities or allocations.

B. SPECIFIC GRIEVANCES FOR OTHER ENTITIES & INDIVIDUALS, CONSUMERS & AFFECTED PARTIES:

1. The process of assigning funding allocation percentages to previously determined priorities.
2. The process of ranking of service priorities within the EMA.

IV. METHODS OF GRIEVANCE RESOLUTION

A. NON-BINDING FACILITATION:

Non-binding procedures are techniques in which the parties to a dispute attempt to agree to a solution. Wherever possible the Council will use non-binding approaches to resolve disputes.

B. MEDIATION:

If the use of non-binding facilitation techniques has not resulted in a solution acceptable to both parties, eligible grievants may request Mediation. Mediation is a non-binding process in which an objective, neutral, third party who has been selected by the Grievance Committee assists the grievant and affected party reach a grievance resolution that both parties can accept.

C. ARBITRATION:

Arbitration involves the submission of a dispute to an impartial individual or panel for a binding determination. The grievance procedures set forth in this document specify the use of arbitration to resolve disputes when other methods have failed.

V. RULES FOR GRIEVANCE RESOLUTION

A. DISPUTE PREVENTION & AVOIDANCE:

The Newark EMA Planning Council (Council) will make all reasonable efforts to prevent circumstances or situations that could give rise to a grievance. The Council will endeavor to resolve a disagreement at as early and informal stage as possible to avoid or minimize the number of situations that must be elevated to the formal grievance process. The Council has in place some mechanisms, which may avoid disputes such as:

- Clear, written statements of Council's decision-making processes and principles for decisions;
- The opportunity for groups and individuals to interact and voice their concerns and during Council meetings verbally and/or in writing;
- The ability of funded and non-funded providers, planning Council members, coalition groups, and others to provide feedback on ways to improve the decision making process either through Council Committee participation or directly at Council meetings either verbally or in writing;
- Training of staff and volunteers in techniques of inclusion during the decision-making process;
- Developing, publicizing and following appropriate policies and procedures;
- Identifying the Council's Executive Director as the "Point of Contact" to work internally with questions or concerns.

B. TIME:

The grievant has ten (10) working days' time in which to challenge a decision or document released to the public domain. These grievance procedures as set forth by the Council address all future processes: remedies cannot be applied retroactively.

C. INTAKE:

As previously stated, the Council's Executive Director will serve as the "Intake Person" in the grievance process. The Intake Person will be familiar with the grievance procedure and be able to assist the potential grievant in completing the standard written intake form (Appendix E-2), direct the potential grievant to the most appropriate process and determine whether there have been attempts to resolve the dispute. The Intake Person will forward to the potential grievant a confirmation letter (Appendix III) and description of the grievance process upon receipt of the intake form. The Intake Person will then forward the grievance to the Chair of the Grievance Committee within 5 business days.

D. NON-BINDING FACILITATION:

- Grievance Committee determines whether or not grievance falls within the scope of grievance procedures (2 to 5 days from the date the Intake Person receives the returned signed consent form from the grievant).
- Grievance Committee notifies other "affected party" (1 to 2 days).
- Grievance Committee selects independent third- party facilitator (5 to 10 days).
- Affected parties and third- party facilitator meet (10 to 15 days).
- Resolution or decision by affected parties not to continue and refer to mediation (5 days). No stenographic or audiovisual records will be permitted.

E. COSTS:

Third party facilitator will be drawn from a list of volunteers compiled in advance and maintained by the Council. In the event where a volunteer is unavailable, the services of a paid facilitator from the American Arbitration Association (AAA) will be secured. Payment for these services will be equally divided between both parties to the grievance.

F. CONFIDENTIALITY:

All parties will be provided with a copy of this grievance procedure within 5 business days after receipt of the written intake form. Prior to the first meeting, parties will be required to attest, in writing, to the fact that they have read, understood, and agree to its terms especially as they relate to confidentiality, liability and expenses.

All information that is disclosed to the facilitator by the parties or witnesses during non-binding facilitation will be considered by the facilitator to be confidential and will not be divulged without the express consent of the appropriate parties. All records, reports and/or other documents received by the facilitator will be considered to be confidential and the property of the Grievance Committee of the Council. The facilitator shall not be compelled to divulge such records or to testify in regard to the non-binding facilitation in any adversary proceeding or judicial forum.

The parties must maintain the confidentiality of the non-binding facilitation sessions. They may not rely on nor introduce any information from the facilitation sessions as evidence in any arbitration, or judicial, or other proceeding:

- Views expressed or suggestions made by another party with respect to a possible settlement of the dispute.
- Admissions made by another party in the course of the facilitation proceedings.
- Proposals made or views expressed by the facilitator, or

- The fact that another party had not indicated willingness to accept a proposal for settlement made by the facilitator.

G. MEETING PLACE:

The Council's office space, or other location to be determined by the Council, will be used for non-binding facilitation meetings.

H. TIME:

- All of the time periods identified for non-binding facilitation are consecutive schedules.
- In accordance with the consecutive time schedule put forth for non-binding facilitation, the maximum amount of time allowed to complete the non-binding facilitation process is 42 days.

I. TERMINATION:

- Facilitation will be terminated:
- By the execution of a settlement agreement by the parties.
- By a written declaration of the facilitator indicating that the facilitation is not moving toward settlement and that further efforts at facilitation are no longer worthwhile.
- By a written declaration of a party or parties that the facilitation proceedings are terminated.
- Grievant may request that the grievance be brought forward to non-binding mediation firstly, and binding arbitration secondly.

J. FACILITATOR REPORT:

Facilitator submits a summary report to the grievance committee and affected parties allowing parties 5 business days to respond to the Grievance Committee as to the next steps.

K. NON-BINDING MEDIATION:

- Upon recommendation of the facilitator and agreement among parties, the Grievance Committee refers parties to non-binding mediation (2 to 5 days).
- Selection of a third-party Mediator (5 to 10 days).
- Meetings with parties (10 to 15 days).
- Mediator prepares a report to the Grievance Committee summarizing results achieved, recommendations for grievance resolution, reasons for an impasse, recommendation to discontinue the Mediation process, etc. (10 to 15 days).
- Grievance Committee reviews the report and notifies the affected parties with copies of the report (5 to 10 days).
- Affected parties review the report and decide if it satisfactorily addresses the grievance and affected parties decide jointly to select one of the following actions (5 to 10 days):
 - Indicate acceptance of report recommendations.
 - Contact the Grievance Committee to request arbitration.
- No stenographic or audiovisual recordings are permitted.
- All previous rules of confidentiality and termination are applicable to non-binding mediation.
- Intake person will make every reasonable attempt to assist the grievant with this process.
- These professionals will, ideally be drawn from a list of volunteers compiled in advance and maintained by the Council's Grievance Committee. No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation, except by written consent of all parties. Prior to accepting an appointment, the prospective mediator shall sign a conflict-of-interest statement. The Grievance Committee reserves the right to appoint a different mediator if the appointed mediator is unable to serve or serve promptly for any reason.

L. COST:

In the event where a volunteer is unavailable, the services of a paid mediator from the AAA will be secured. Payment for these services will be equally divided between both parties to the grievance. Payment schedule will comply with the AAA rules for remittance.

M. MEETING PLACE:

The Council's office space, or location determined by the Council, will be used for non-binding mediation meetings.

N. TIME:

- All of the time periods identified for non-binding mediation are consecutive schedules.
- In accordance with the consecutive time schedules put forth for non-binding mediation, the maximum amount of time allowed to complete the non-binding mediation process is 80 days.

O. BINDING ARBITRATION:

- Upon receipt of the Mediator's summary report parties contact the Grievance Committee to request arbitration (5 to 10 days).
- Grievance Committee notifies all parties involved as to arbitration proceedings (3 days).
- Grievance Committee informs the parties that the policies and procedures of the American Arbitration Association will be followed.
- The Intake person on behalf of the Grievance Committee contacts the regional offices of the AAA to commence arbitration by submitting three (3) copies of a written submission to arbitrate under AAA rules, signed by all parties. This submission shall contain a statement of the matter in dispute, the amount involved, if any, the remedy sought, and the hearing locale requested, together with the appropriate filing fee (10-15 days).
- The Intake person will make every reasonable attempt to assist the grievant during this process.
- After filing a claim, if either party desires to alter the claim or make a new claim or counterclaim, it shall be made in writing to the AAA, and a copy shall be mailed to the other party and the Grievance Committee. The other party has a period of ten (10) days from the date of such mailing within which to file an answer with the AAA. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.
- Unless the AAA in its discretion determines otherwise, the Expedited Procedures shall be applied in any case where no disclosed claim or counterclaim exceeds \$50,000, exclusive of interest and arbitration costs. Parties may also agree to use the Expedited Procedures in cases involving claims in excess of \$50,000.
- At the request of any party or at the discretion of the AAA, an administrative conference with the AAA and the parties and/or their representatives will be scheduled in appropriate cases to expedite the arbitration proceedings. There is no fee for this service. In large or complex cases, at the request of any party or at the discretion of the arbitrator or the AAA, a preliminary hearing with the parties and/or their representatives and the arbitrator may be scheduled by the arbitrator to specify the issues to be resolved, to stipulate to uncontested facts, and to consider any other matters that will expedite the arbitration proceedings. Consistent with the expedited nature of arbitration, the arbitrator may at the preliminary hearing, establish (i) the extent of and schedule for the production of relevant documents and other information, (ii) the identification of any witnesses to be called, and (iii) a schedule for further hearings to resolve the dispute. There is no administrative fee for the first preliminary hearing.

P. HEARING LOCATION:

- The parties may mutually agree on the locale where the arbitration is to be held. If any party requests that the hearing be held in a specific locale and the other party files no objections thereto within ten (10) days after notice of the request has been sent to it by the AAA, the locale shall be the one requested. If a party objects to the locale requested by the other party, the AAA shall have the power to determine the locale and its decision shall be final and binding.
-

Q. SELECTION OF ARBITRATOR:

- The arbitrator shall be appointed in the following manner: immediately after the filing of the demand or submission, the AAA shall send simultaneously to each party to the dispute an identical list of names of persons chosen from the panel. Each party to the dispute shall have ten (10) days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. In a single-arbitrator case, each party may strike three names on a preemptory basis. In a multi-arbitrator case, each party may strike five names on a preemptory basis. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the panel without the submission of additional lists.
- The dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that a greater number of arbitrators be appointed.
- The AAA together with a copy of the rules shall send notice of appointment of the neutral arbitrator to the arbitrator and the signed acceptance of the arbitrator shall be filed with the AAA prior to the opening of the first hearing.
- Any person appointed as a neutral arbitrator shall disclose to the AAA, any circumstance likely to affect impartiality; including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Upon receipt of such information, the AAA shall communicate the information to the parties. Upon objection of party to the continued service of an arbitrator the AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.
- If for any reason an arbitrator is unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.

R. DATE, TIME OF HEARING:

- The arbitrator shall set the date and time for each hearing. The AAA shall send a notice of hearing to the parties at least ten (10) days in advance of the hearing date, unless otherwise agreed by the parties.
- Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the AAA of the name and address of the representative at least three (3) days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.
- Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties to be, or determined by the arbitrator to be, the official record of the proceeding, it must be made available to the arbitrator and to the other parties for inspection, at a date, time, and place determined by the arbitrator.
- Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.
- The arbitrator shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

- The arbitrator for good cause shown may postpone any hearing upon the request of a party or upon the arbitrator's own initiative and shall also grant such postponement when all of the parties agree.
- Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

S. MAJORITY DECISION:

- If the AAA appoints a panel of arbitrators, all decisions of the arbitrators must be by a majority. The award must also be made by a majority unless the concurrence of all is expressly required by the arbitration agreement or by law.

T. ORDER OF PROCEEDINGS:

- A hearing shall be opened by the filing of the oath of the arbitrator, where required: by the recording of the date, time, and place of the hearing, and the presence of the arbitrator, the parties, and their representatives, if any; and by the receipt by the arbitrator of the statement of the claim and the answering statement, if any.
 - The arbitrator may, at the beginning of the hearing, ask for statements, clarifying the issues involved. In some cases, part or all of the above will have been accomplished at the preliminary hearing conducted by the arbitrator.
 - The complaining party shall then present evidence to support its claim. The defending party shall then present evidence supporting its defense. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence.
 - Exhibits, when offered by either party, may be received in evidence by the arbitrator.
 - The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.
 - There shall be no direct communication between the parties and a neutral arbitrator other than at oral hearing, unless the parties and the arbitrator agree otherwise. Any other oral or written communication from the parties to the neutral arbitrator shall be directed to the AAA for transmittal to the arbitrator.
 - Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.
 - The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently. The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties is absent in default or has waived the right to be present.
 - The arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission. If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine such documents or other evidence.
 - An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the AAA to so advise the parties. The arbitrator shall set the date and time and the AAA shall notify the parties. Any party who desires may be present at such
-

an inspection or investigation. In the event that one or all parties are not present at the inspection or investigation, the arbitrator shall make a verbal or written report to the parties and afford them an opportunity to comment.

- The arbitrator may issue such orders for interim relief as may be deemed necessary to safeguard the property that is the subject matter of the arbitration, without prejudice to the rights of the parties or to the final determination of the dispute.
- The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of the briefs. If documents are to be filed and the date set for their receipt is later than that set for the receipt of the briefs, the later date shall be the date of closing the hearing. The time limit within which the arbitrator is required to make an award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearing.

U. REOPENING OF HEARING:REOPENING OF HEARING:

- The hearing may be reopened on the arbitrator's initiative, or upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed on by the parties in the contract(s), the matter may not be reopened unless the parties agree on an extension of time. When no specific date is fixed in the contract, the arbitrator may reopen the hearing and have thirty (30) days from the closing of the reopened hearing within which to make an award.

V. WAIVER OF ORAL HEARING:

- The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are unable to agree as to the procedure, the AAA shall specify a fair and equitable procedure.

W. WAIVER OF RULES:

- Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object.

X. EXTENSIONS OF TIME:

- The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any extension.

Y. SERVING OF NOTICE:

- Each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection therewith; or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party. The AAA and the parties may also use facsimile transmission, telex, telegram, or other written forms of electronic communication to give the notices required by these rules.

Z. TIME, FORM, SCOPE OF AWARD:

- The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than thirty (30) days from the date of the AAA's transmittal of the final statements and proofs to the arbitrator.
- The award shall be in writing and shall be signed by a majority of the arbitrators. It shall be executed in the manner required by law.
- The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract. The arbitrator shall, in the award, assess arbitration fees, expenses, and compensation in favor of any party and, in the event that any administrative fees or expenses are due the AAA, in favor of the AAA.
- If the parties settle their dispute during the course of the arbitration, the arbitrator may set forth the terms of the agreed settlement in an award.
- Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any other manner that is permitted by law.

AA. RELEASE OF DOCUMENTS:

- The AAA shall upon the written request of a party, furnish to the party, at its expense, certified copies of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

BB. EXCLUSIONS OF LIABILITY:

- No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate. Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration. Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof. Neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

CC. ADMINISTRATIVE FEES:

- As a not-for-profit organization, the AAA shall prescribe filing and other administrative fees and service charges to compensate it for the cost of providing administrative services. The fees in effect when the fee or charge is incurred shall be applicable. The filing fee shall be advanced by the initiating party or parties, subject to final apportionment by the arbitrator in the award. The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fees.

DD. EXPENSES:

- The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and any witness and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties.
- Unless the parties agree otherwise, members of the National Panel of Commercial Arbitrators appointed as neutrals on cases administered under the Expedited Procedures with claims not exceeding \$10,000, will customarily serve without compensation for the first day of service. Thereafter, arbitrators shall receive compensation as set forth herein. Arbitrators shall charge a rate consistent with the arbitrator's stated rate of compensation, beginning with the first day of hearing in all cases with claims exceeding \$10,000. If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by the Association and confirmed to the parties. Any arrangement for the

compensation of a neutral arbitrator shall be made through the AAA and not directly between the parties and the arbitrator.

- The AAA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to cover the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.

EE. INTERPRETATION/APPLICATION OF RULES:

- The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.
- The parties shall accept all notices from the AAA by telephone. Such notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any notice hereunder; the proceeding shall nonetheless be valid if notice has, in fact, been given by telephone.

VI. EXPEDITED PROCEDURES

A. APPOINTMENT/QUALIFICATIONS OF ARBITRATOR:

Where no disclosed claim or counterclaim exceeds \$50,000, exclusive of interest and arbitration costs, the AAA shall appoint a single arbitrator, from the National Panel of Commercial Arbitrators, without submission of lists of proposed arbitrators.

Where all parties request that a list of proposed arbitrators be sent, the AAA upon payment of the service charge as provided in the Administrative Fees shall submit simultaneously to each party an identical list of five proposed arbitrators, drawn from the National Panel of Commercial Arbitrators, from which one arbitrator shall be appointed. Each party may strike two (2) names from the list on a peremptory basis. The list is returnable to the AAA within seven (7) days from the date of the AAA's mailing to the parties.

If for any reason the appointment of an arbitrator cannot be made from the list, the AAA may make the appointment from among other members of the panel without the submission of additional lists.

The parties will be given notice by telephone by the AAA of the appointment of the arbitrator. The parties shall notify the AAA by telephone within seven (7) days of any objection to the arbitrator appointed. Any objection by a party to the arbitrator shall be confirmed in writing to the AAA with a copy to the other party or parties.

B. DATE, TIME, AND PLACE OF HEARING:

- The arbitrator shall set the date, time, and place of the hearing. The AAA will notify the parties by telephone, at least seven (7) days in advance of the hearing date. A formal notice of hearing will also be sent by the AAA to the parties.

C. THE HEARING:

Generally, the hearing shall be completed within one day. The arbitrator, for good cause shown, may schedule an additional hearing to be held within seven (7) days.

D. TIME OF AWARD:

- Unless otherwise agreed by the parties, the award shall be rendered not later than fourteen days from the date of the closing of the hearing.

E. ADMINISTRATIVE/FILING/OTHER FEES:

- The administrative fees of the AAA are based on the amount of the claim or counterclaim. Arbitrator compensation is not included in this schedule. Unless the parties agree otherwise, arbitrator compensation and administrative fees are subject to allocation by the arbitrator in the award.
- A nonrefundable filing fee is payable in full by a filing party when a claim, counterclaim or additional claim is filed. The filing fee is based on the amount of the claim.
- When no amount can be stated at the time of filing, the minimum fee is \$2,000, subject to increase when the claim or counterclaim is disclosed.
- When a claim or counterclaim is not for a monetary amount, an appropriate filing fee will be determined by the AAA.
- The minimum filing fee for any case having three or more arbitrators is \$2,000.
- For each day of hearing held before a single arbitrator, an administrative fee of \$150 is payable by each party. For each day of hearing held before a multi-arbitrator panel, an administrative fee of \$250 is payable by each party. There is no AAA hearing fee for the initial Procedural Hearing.
- A fee of \$150 is payable by a party causing a postponement of any hearing scheduled before a multiarbitration panel.
- If arbitrator compensation or administrative charges have not been paid in full, the administrator may so inform the parties in order that one of them may advance the required payment. If such payments are not made, the tribunal may order the suspension or termination of the proceedings. If no arbitrator has yet been appointed, the administrator may suspend the proceedings.
- The Hearing Fees do not cover the rental of hearing rooms, which are available on a rental basis. The AAA will provide information regarding availability and rates.

VII. CLOSING

If no action is taken by the "affected parties" within the timelines set forth in this document, the grievance proceedings shall be terminated and will be documented by the Grievance Committee and disseminated to all parties. These grievance procedures as promulgated by the Council address all future processes: Remedies cannot be applied retroactively.

DEFINITIONS

Arbitration: The submission of a dispute to an impartial or independent individual or panel for a binding determination. Arbitration is usually carried out in conformity with a set of rules. The decision of an arbitrator generally has the force of law, although it generally does not set a precedent.

Arbitrator: An individual or panel of individuals selected to decide a dispute or grievance. Arbitrators may be selected by the parties or by an individual or entity.

Binding: A process in which parties agree to be bound by the decision of an arbitrator or other third party.

Costs: Charges for administering a dispute settlement process.

Day: Refers to a working day.

Dispute Prevention: Techniques or approaches that are used by an organization to resolve disagreements at as early and informal a stage as possible to avoid or minimize the number of disputes that reach the grievance process.

Facilitation: A voluntary process involving the use of techniques to improve the flow of information and develop trust between the parties to a dispute. Involves a third party (facilitator) who, as in mediation, uses a process to assist the parties in reaching an agreement that is acceptable to the parties.

Facilitator: A third party who works with the parties to a dispute, providing direction to a process. A facilitator must be independent and must maintain impartiality on the topics under discussion.

Grievance: A complaint or dispute that has reached the stage where the affected party seeks a structured approach to its resolution.

Grievant: A person or entity seeking a structured resolution of a grievance.

Mediation: A voluntary process in which an impartial and usually independent third party assists parties to a dispute in reaching an acceptable resolution to the issues in the dispute. Mediation may involve meetings held by the mediator with the parties together and separately. The results of a mediation can become binding on the parties if the parties agree to make it binding.

Mediator: An impartial, independent third party selected by the Grievance Committee to help the parties reach an agreement on a determined set of issues.

Neutral: A term used to describe an independent third party, including a mediator or arbitrator, selected to resolve a dispute or grievance.

Non-binding: Techniques in which the parties to a dispute attempt to reach an agreement. The results must be agreed to by each party; results are not imposed by the third party as they are in binding arbitration or judicial proceedings.

Party: Refers to one of the participants in the grievance process. This refers to the grievant (or person or group) who brings the grievance action as well as the person or group against which the grievance is brought.

Remedy: This is the relief or result sought by a grievant in bringing a grievance. It includes a process change or reversal of a decision. It is applied prospectively.

Third Party: A term used to describe an independent or impartial person, including a facilitator, mediator, or arbitrator, or arbitrator selected to resolve a dispute or grievance or assist the parties in resolving a dispute or grievance.

Appendix E-2

Newark EMA HIV Health Services Planning Council

Grievance Form

Grievances may be filed against the Planning Council for the following deviations from policy:

- Deviations from an established, written priority-setting or resource-allocation process (for example, failure to follow established conflict of interest procedures), and
- Deviations from an established, written process for any subsequent changes to priorities or allocations.

The procedures that will govern the handling of this grievance are attached.

When completed submit this grievance form to the Project Manager.

Address: _____

Name(s) of Person(s) filing grievance: _____

Address: _____

Telephone Number (daytime): _____

Date of alleged deviation from established policy: _____

Which policy was allegedly deviated from? _____

Describe in detail the alleged deviation, including how you were directly affected and what remedy you seek:
(Add additional pages as needed)
