

**RYAN WHITE TREATMENT EXTENSION ACT OF 2009  
NEWARK ELIGIBLE METROPOLITAN AREA (NEMA)  
HIV HEALTH SERVICES PLANNING COUNCIL**



# **GRIEVANCE PROCEDURES**

**JUNE 5, 1997**

**Review & Revised: July 2018**

The Executive Committee reviewed this document on February 19, 2020. No changes were recommended.

**Approved: September 19, 2018**

## 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’s 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 through the use of 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 1.

## II. ELIGIBLE GRIEVANTS

**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, 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 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 have 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 Planning Council Support Staff 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 Project Manager 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 II), 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 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 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 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.
- Admission 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 affiliation 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 conducts a completed review of the circumstances and all information relating to the grievance (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 recording 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 appoint 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 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 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 case 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 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 person 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 person named, or 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 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 rule 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 any 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 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 the 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:**

- 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 extensions.

**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 judgement 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 expense 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 relation 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 judgement 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 mission 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 service 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 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. APPOINTMENTS/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 the 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 multi-arbitration panel.
- If arbitrator compensation or administrative charges have not been paid in full, the administrator may so inform the parties in order 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.



# Appendix I

## 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 or a decision. It is applied prospectively.

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

## Appendix II

### Newark Eligible Metropolitan Area (NEMA) HIV Health Services Planning Council

#### Ryan White Part A 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.

If you wish to file a grievance with the Newark EMA Ryan White Part A Planning Council, this form must be completed, submitted, and received by the Project Manager within 30 days of the date of the alleged deviation. You will be contacted within ten (10) working days of the receipt of this form by the Project Manager. There is no administrative fee associated with filing this grievance.

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)

\_\_\_\_\_  
\_\_\_\_\_