

MEMORANDUM

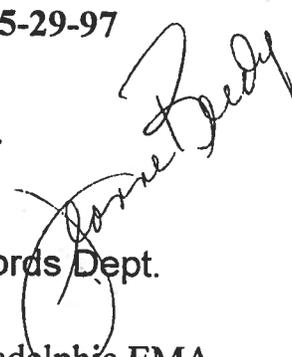
City of Philadelphia

Date: 5-29-97

To: Stephanie L. Franklin-Suber, City Solicitor

From: Jeanne Reedy, Executive Assistant, Records Dept.

Subject: Proposed Grievance Procedures For The Philadelphia EMA
HIV Commission And The Philadelphia Department Of Public
Health



The above Proposed Grievance Procedures, promulgated by The Health Department were received in the Department of Records on 4-28-97 for filing and advertising.

Inasmuch as there were no requests for hearings these Procedures became effective midnight 5-28-97.

cc: Eric H. Auerbach, Esq., Senior Attorney, Law Department

John P. Straub, Esq., Chief Deputy City Solicitor, Law Department

Grievance Procedures

Title I of the Ryan White CARE Act Amendments of 1996 Philadelphia Department of Public Health

1. Grievance Procedure Requirement

Section 2602 [c] [2] of the Ryan White CARE Act Amendments of 1996 requires that to be eligible to receive funds under this part, a grantee shall develop grievance procedures that are determined by the Secretary to be consistent with the model grievance procedures developed by the U.S. Department of Health and Human Services. Such procedures shall include a process for submitting grievances to binding arbitration.

2. Policy

It is the policy of the Philadelphia Department of Public Health ("the Department"), as grantee for the Philadelphia eligible metropolitan area (EMA) of the Title I CARE Act program, to provide a process by which (1) a grievant's complaint with respect to funding decisions can be addressed and quickly resolved; and (2) a grievance can be externally assessed and resolved by independent, conflict-of-interest free mediators and arbitrators. A grievant shall not be discriminated against nor suffer retaliation as a result of filing a grievance in good faith, or participating in the investigation of a grievance. Grievances are limited to allegations of failure to follow stated processes for decision-making for Title I contract awards. All applicants to and recipients of Title I funds may be required to agree in writing to follow and be bound by the Department's grievance procedures. Qualified applicants and recipients are defined as individual not-for-profit corporations that have met all the program guidance requirements, including application deadlines, page limitations, and other criteria determined by the Department.

3. Scope of Coverage and Exclusive Remedy

These procedures apply to grievances involving the process of selecting contractors and making awards under the Ryan White CARE Act Title I program for care and treatment of persons with HIV disease in the Philadelphia EMA. For the Department, this refers to the decision-making process in which the Department selects service providers according to

the Planning Council's priorities for the EMA's current or upcoming Title I grant year. Primarily this will involve the process of the Department to procure Title I-funded services, including the processes of the Department's HIV Resource Allocations Advisory Committee and the Department's process for entering into a conformed contract or internal agreement (when applicable) with general and specific service provisions as determined by the Health Commissioner. The Department's process used to make funding decisions appears in Appendix A. ***These procedures are the exclusive remedy for grievances and grievants subject to this policy.*** Adherence to the procedures and time frames stated herein is mandatory for grievances to remain eligible for redress and consideration. These procedures are subject to amendment by the Department at its discretion in accordance with laws and regulations of the U.S. Department of Health and Human Services, the City and County of Philadelphia, and the State of Pennsylvania.

4. Definitions

The major terms and entities involved in the grievance process are described below.

A ***grievance*** is an expression of dissatisfaction with a process of selecting Title I contractors and making funding awards as implemented, which is brought to the attention of the Department as grantee. The Ryan White CARE Act Amendments of 1996 also require that Planning Councils implement grievance procedures. (For grievances regarding the Philadelphia EMA's Planning Council, refer to the Philadelphia EMA HIV Commission grievance procedures for Title I.)

A ***grievance procedure*** is a mechanism that enables an entity to express dissatisfaction to the responsible party and obtain an assessment and decision regarding the complaint.

The ***Philadelphia Department of Public Health*** serves as the Title I grantee for the Philadelphia EMA. The EMA consists of the Pennsylvania counties of Bucks, Chester, Delaware, Montgomery, and Philadelphia and the New Jersey counties of Burlington, Camden, Gloucester, and Salem. The Department also serves as the grantee for Philadelphia's direct cooperative agreement for HIV prevention with the Centers for

Disease Control and Prevention (CDC). City of Philadelphia General Funds for HIV prevention and care services are also disbursed through the Department. The Department's *AIDS Activities Coordinating Office* (AACO) is responsible for managing Title I and CDC funds. The Director of AAACO reports to the Commissioner of Health.

The HIV Resource Allocations Advisory Committee makes recommendations to the Commissioner of Health on HIV funding decisions. The Committee is an ongoing group of 16 persons (6 consumer members, 6 non-consumer members, and 4 alternate consumer members) free of conflict of interest in the outcome of their funding recommendations who advise the Commissioner on HIV service procurement and objectively review HIV funding proposals.

The Philadelphia EMA HIV Commission serves as the Title I Planning Council for the EMA. It is also the Community Planning Group for Philadelphia's prevention cooperative agreement with the CDC for prevention activities within the City of Philadelphia. The HIV Commission is not involved in the process to procure HIV services or designate particular providers. The sole exceptions are that the Commission may prioritize services that only the grantee, as public health authority, is in a position to provide.

Business days, for the purposes of these procedures, are days the City of Philadelphia offices are open. City of Philadelphia offices are closed on weekends and holidays (a current list of holidays is available from the Department).

An *HIV Services Procurement Announcement* is a list of HIV/AIDS services, providers, and contract amounts that is posted in the Department to inform the public of the results of Title I funding decisions and to certify that the published process to procure HIV services was followed. The location of this posting will be announced in advance.

Dispute prevention is a series of techniques or approaches that are used 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.

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Grievance is a complaint or dispute that has reached the stage where the affected party seeks a structured approach to its resolution. A **grievant** is an entity or person seeking a structured resolution to a grievance.

Mediation is a voluntary process in which an impartial and independent third party assists parties to a dispute in reaching an acceptable resolution to the issues in the dispute. A **mediator** is a trained and independent third party that helps the parties to a dispute reach an agreement on a determined set of issues. Mediators are selected to mediate a particular dispute by a **mediation contractor**, an independent entity providing dispute resolution services.

Arbitration is the submission of a dispute to an impartial and independent third party for a binding determination. Arbitration is carried out in conformity with a predetermined set of rules. The decision of an arbitrator is final and binding and has the force of law, although it does not set precedent. An **arbitrator** is an individual selected to decide a dispute. Arbitrators are selected by an **arbitration contractor**, an independent entity providing dispute resolution services.

5. Grievance Prevention

Grievance procedures have as a starting point measures that prevent disputes from arising in the first place. The Department will make all reasonable efforts to prevent circumstances or situations regarding funding decisions that may lead to a grievance. The Department will cooperate with entities directly affected by the outcome of a funding decision if the entity believes the Department failed to adhere to its documented process for procuring Title I-funded services. This cooperation includes but is not limited to the Department providing an explanation of its rationale for the decision in an effort to resolve a disagreement at as early and informal a stage as possible. The Department seeks to avoid or minimize the number of situations that must be elevated to the formal grievance process.

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It is the Department's expectation that entities that have a disagreement regarding the process by which a funding decision was made will identify the situation to the Department at the earliest possible opportunity. The Department shall attempt to resolve informally disputes by providing information or statements to entities that believe the procurement process was not adhered to by the Department. Grievants are expected to cooperate with the Department in efforts to resolve the disagreement before the grievant pursues the formal grievance option.

If grievance prevention or informal resolution through cooperation does not succeed, entities may initiate the formal, structured grievance process.

6. Steps of the Grievance Process

Formal grievances regarding HIV funding decisions will be addressed by the Department using the three-part approach outlined below. The specific processes, time frames, and rules for each step are described in detail in later sections of the procedures. The Department will engage independent mediator(s) and arbitrator(s) through a mediation and arbitration contractor.

Step 1. Review of the Funding Decision Process. The grievant initiates the process with a Request for Review of the Funding Decision Process to the Department. The request must state, along with other information, the nature of the alleged non-adherence by the Department in its published decision-making process. Following receipt of the written request, an internal review of the documentation of the process being grieved will occur and a report will be prepared and issued by the Department. The report may include a recommended resolution to the grievance. The maximum number of business days between the Department's posting of an HIV Services Procurement Announcement and the end of Step 1 is 30 business days.

Step 2. Mediation. If the recommended resolution included in the Review of the Funding Decision Process (Step 1) is unsatisfactory to the grievant, the next step is mediation. Mediation begins with the submission by the grievant of a Request for Mediation and the

payment of an administrative filing fee (set annually) to the mediation contractor. The mediation contractor will be designated by the Department annually. Information about the current mediation contractor appears in Appendix E. The mediation contractor identifies and provides an independent and impartial third party mediator to resolve a particular grievance. The mediator's role is to facilitate a process in which the Department and the grievant reach a mutually acceptable agreement on a resolution to the grievance. The maximum number of business days from the date a grievant files a mediation request to the end of Step 2 is 30 business days.

Step 3. Arbitration. In the event that Mediation (Step 2) is unsuccessful, the next step is arbitration. Arbitration begins with the submission by the grievant of a Request for Arbitration and the payment of an administrative filing fee (set annually) to the arbitration contractor. The arbitration contractor will be designated by the Department annually. Information about the current arbitration contractor appears in Appendix E. Arbitration will be carried out in conformity with a set of rules. This shall include review by the arbitrator of all relevant information related to the grievance. Following this review, the arbitrator renders a resolution that shall be binding on the Department and the grievant. The maximum number of business days from the date a grievant files an arbitration request to the end of Step 3 is 30 business days.

7. Who May Bring a Grievance

Entities directly affected by the outcome of a Department Title I funding are eligible to initiate a grievance. These are limited to: (1) providers eligible to receive Title I funding; (2) consumer groups or coalitions or caucuses of people living with HIV disease that were in existence prior to the procurement process potentially being grieved; and (3) the Title I Planning Council, which currently is the Philadelphia EMA HIV Commission.

8. What May Be Grieved

Providers and consumer groups or coalitions or caucus grievants may grieve only: (1) alleged deviations from the Department's established contracting and awards process (e.g. the selection of a particular provider in a manner inconsistent with the Department's

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established procurement process); and (2) alleged deviations from the established process for any subsequent changes to the selection of contractors or awards.

The HIV Commission may grieve only : (1) contracts and awards not consistent with priorities (including general language regarding how best to meet those priorities) and allocations in the form of percent of the total award by service category made by the HIV Commission; and (2) contract and award changes not consistent with priorities (including general language regarding how best to meet those priorities) and resource allocations in the form of percent of the total award by service category made by the HIV Commission. The HIV Commission's decision to grieve the Department must be made by a majority of voting Commission members at a regular meeting of the Commission. The grievance may be filed on behalf of the Commission only by the Commission's co-chairs.

9. Funding of Contracts While a Grievance is in Process

Every effort will be made to resolve grievances as soon as possible. Owing to the emergency nature of HIV epidemic and to remain in compliance with Federal funding requirements, conforming HIV service contracts that resulted from the procurement process being grieved will not be delayed or postponed because of the filing of a grievance or during a grievance's resolution.

10. Grievance Procedure Costs

Step 1. Review of the Funding Decision Process. No costs are charged to the grievant for the Review of the Funding Decision Process (Step 1).

Step 2. Mediation. Mediation costs will be as follows: (a) the administrative fee to file a dispute with the mediation contractor is payable with the filing of the claim by the grieving party; (b) the mediator's cost is evenly shared by the Department and the grievant. The mediator's cost is paid in advance of the mediation based on an estimated total cost supplied by the mediator, with the final fee adjusted at the conclusion of the mediation. The current rates appear in Appendix E and may change from time to time according to the actual contractual rates for the mediation provider.

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Step 3. Arbitration. Arbitration costs will be as follows: (a) the administrative fee to file a dispute with the arbitration contractor is payable with the filing of the claim by the grieving party; (b) the arbitrator's cost is evenly shared by the Department and the grievant. The arbitrator's cost is paid in advance of the arbitration based on an estimated total cost supplied by the arbitrator, with the final fee adjusted at the conclusion of the arbitration. The current rates appear in Appendix E and may change from time to time according to the actual contractual rates for the arbitration provider.

11. Confidentiality

Grievants shall agree to confidentiality of the process during all three parts of the grievance process until the grievance is resolved. Attendance at all meetings related to a grievance at any stage is limited. Meetings conducted by the Department at Step 1 are limited to persons invited by the meeting host. Only those persons invited by the mediator or arbitrator are permitted to attend meetings and hearings at Steps 2 and 3.

12. Time Extensions

The Title I program is an emergency public health program with a mandate to expedite expenditures, so strict time constraints on the grievance procedure are necessary. Time frames identified in this procedure may be altered only by mutual agreement, in writing, of both parties to the specific time frame.

13. Request for Review of the Funding Decision Process (Step 1)

In order to initiate a review of the funding decision process by the Department, a written request from an eligible grievant must be submitted to the Department. The request must be made and post-marked no later than five (5) business days following the Department's publishing and posting of the HIV Services Procurement Announcement(s). The request must state the specific nature of the Department's non-adherence of its published HIV procurement process. The request must be made using the Department's form to Request for Review of the Funding Decision Process (Appendix B) and must be made by way of the U.S. Postal Service with a return receipt requested. No other filings will be accepted.

There is no administrative fee for filing a request.

Within five (5) business days of receipt by the Department of a completed request to Review of the Funding Decision Process, the Department shall determine the eligibility of the grievant according to the criteria in these procedures. The Department will issue a determination in writing to the grievant of the eligibility of the grievance.

For eligible grievances, the Department will initiate an investigation of the specific circumstance(s) cited in the request and issue a written response to the grievant within 15 business days. Documentation of the decision-making process may be the primary source of information for this investigation. The written response shall include recommended actions to resolve the grievance.

If the Department's written response satisfies the grievant, the grievant shall sign a copy of the report's resolution page and return it to the Department within five (5) business days. If the grievant is not satisfied by the report, the grievant may choose to seek mediation (Step 2). If the grievant has neither accepted the proposed resolution nor initiated mediation within the allowable time frame, the grievance is considered resolved and ended.

The maximum number of business days between the Department's posting of an HIV Services Procurement Announcement and the end of Step 1 is 30 business days.

14. Mediation (Step 2)

Filing and Fee. Mediation is limited to grievants who have pursued other forms of resolution, including Request for Review of the Funding Decision Process (Step 1). A grievant may initiate mediation by filing a Request for Mediation with the mediation contractor within five (5) days of receipt of the Department's written response containing the Department's resolution proposal included in its Review of the Funding Decision Process. The Request for Mediation must include an initial memorandum (not exceeding two [2] pages) on how the grieving party was affected by a Title I funding decision and what remedy is sought. An administrative filing fee must accompany a request for

mediation in order for the filing to be complete. The mediation contractor shall send a copy of the Request for Mediation to the Department within 24 hours of a filing. At the time of filing of a Request for Mediation, the mediation contractor will supply the filing party with a complete copy of the grievance procedures.

Selection. The mediator will be assigned by the mediation contractor from a panel of mediators and arbitration professionals who have been preapproved by the Department.

Memoranda and Meetings. At least seven (7) days prior to the mediation, each party will provide a mediation memorandum not to exceed five (5) pages to the mediation contractor outlining the substance of the dispute and their respective positions. The filing party will also indicate the relief requested. The mediator will designate a time and location for a mediation meeting. At the mediation meeting, the mediator will initially meet with both parties and give each side an equal amount of time determined by the mediator to verbally augment their written memoranda. The mediator will then privately meet with each side to discuss their settlement positions and provide suggestions as to settlement. This process will not exceed three (3) hours.

Resolution. If the mediator can resolve the dispute, the parties will draft a document delineating the agreement. If the mediator cannot resolve the dispute, he or she will make a nonbinding verbal recommendation in the presence of both parties. The parties may, at their discretion, mutually reduce that recommendation to writing. This recommendation, as well as documents or discussion resulting from the mediation, are inadmissible in any subsequent binding arbitration. If the mediation is unsuccessful, the filing party will have five (5) business days to file a Request for Arbitration. If such a request is not filed, the matter is then considered closed.

Rules. Mediation will be governed by the following rules:

- a) The mediator shall have sole authority to determine the mediation procedure in compliance with these rules, including the limitation of non-party attendees, hours for meetings, and all meeting conditions.

- b) Both parties will agree to confidentiality during the process and will sign confidentiality agreements.
- c) Based on the information provided in the Request for Mediation, the mediation contractor will decide whether the grievant is eligible to raise a dispute and whether the issue raised is within the scope of the grievance procedures.
- d) The mediator will recommend whether the remedy is remedial or prospective.
- e) The mediation contractor will assign a mediator to particular disputes.
- f) No witnesses may be presented at a mediation.
- g) Mediations are scheduled for one (1) or more hours.
- h) Mediations are nonbinding unless ending in a signed resolution. Upon signing, a mediation settlement or agreement becomes final and binding upon all parties.

Timing. The mediation contractor will complete the nonbinding mediation process within 30 days of receipt of the request for mediation.

15. Arbitration (Step 3)

Filing and Fee. When steps to prevent disputes and mediation have failed to resolve disputes, arbitration will be used. Arbitration is final and binding and not appealable to any forum, including any court or government or quasi-governmental entity. A grievant may initiate arbitration by filing a Request for Arbitration with the arbitration contractor within five (5) days of the end of Step 2. An administrative filing fee must accompany a Request for Arbitration. The arbitration contractor shall send a copy of the Request for Arbitration to the Department within 24 hours of a filing. Within 30 days of receipt of the Request for Arbitration, the arbitration contractor will complete the arbitration process.

Selection. The arbitrator will be assigned by the arbitration contractor from a panel of arbitration professionals who have been preapproved by the Department. Unless the parties agree to allow the mediator from Step 2 to hear the arbitration, the arbitrator must be a different individual than the original mediator.

Memoranda and Hearing. At least seven (7) business days prior to the arbitration, each

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party will provide an arbitration memorandum not to exceed ten (10) pages to the arbitrator outlining the substance of the dispute. The arbitrator will have sole discretion to rule on the admissibility of evidence and the testimony of witnesses. No information regarding the mediator's recommendation is admissible at the arbitration. The parties may agree to limit the arbitrator's award by agreeing to predetermined high and low parameters prior to arbitration. The arbitrator will designate a time and location for the arbitration. The filing party will also indicate the relief requested. At least five (5) business days prior to the arbitration, each party must send to all other parties a list of documents to be submitted and witnesses to be presented at the arbitration and copies of all documents not previously sent to all parties.

Representation. The grievant and Department have the right to be represented by counsel in Step 3, but each party is responsible for paying for their own counsel.

Timing. The arbitration process must be completed within thirty (30) business days.

Rules. Arbitration will be governed by the following rules:

- a) The arbitrator shall have sole authority to determine the arbitration procedure in compliance with these rules, including the limitation of non-party attendees, hours for meetings, and all meeting conditions.
- b) These rules, as in place at the time of the proceeding, shall govern all arbitration proceedings. The rules may, however, be modified or voided by agreement of all parties. Rulings of legal issues are based on the principles of law which would be applicable if the case were heard in the appropriate court of public jurisdiction. This rule may be changed by agreement of all parties in the dispute.
- c) Both parties will agree to confidentiality during the process and will sign confidentiality agreements.
- d) Based on the information provided in the Request for Arbitration, the arbitrator will decide whether the grievant is eligible to raise a dispute and whether the issue raised is within the scope of the grievance procedures.
- e) The arbitration contractor will assign an arbitrator to particular disputes. The

arbitrator shall have the following powers: to examine any object or site relevant to the case; to make rulings on any matter or motion submitted; to administer oaths and affirmations to witnesses; to allow evidence to be introduced; to rule on the admissibility of evidence; and to invite the parties to submit hearing briefs.

- f) All documents filed with the arbitration contractor are deemed to be filed on the date they are received by the arbitration contractor. The filing party shall send copies of all documents filed with the arbitration contractor to all other parties in the proceeding, within 24 hours of filing, or upon mailing to the arbitration contractor, whichever shall occur first.
- g) Any party to a proceeding under these rules may be represented by any attorney who is a member in good standing of the bar of any state or federal court.
- h) Standard arbitration is binding in nature and offers the opportunity to present evidence in a manner similar to a non-jury trial in the public courts. The parties may also agree to a "high/low" arbitration, which is an expedited hearing whereby the parties agree beforehand to limit the award within high and low parameters.
- i) The parties may also agree to "baseball" arbitration, which is an expedited hearing in which the arbitrator selects either the last best demand or the last best offer, without modification. The parties may also agree to other award parameters or methods.
- j) Any document not sent in accordance to the grievance procedures for arbitration or any witnesses not so identified may be excluded at the time of the arbitration at the sole discretion of the arbitrator.
- k) The law of the case shall be substantive law of the jurisdiction(s) in which the Department sits. In the event of a dispute as to the applicability of substantive law, all parties shall submit briefs to the arbitrator, who shall decide the appropriate law of the case.
- l) Any action commenced before the arbitrator may be dismissed before the arbitration by filing a Stipulation of Dismissal signed by all the parties. Unless otherwise stated, the dismissal is without prejudice.
- m) If a matter is scheduled for an arbitration and the grievant appears but the Department does not, the arbitrator shall hear the case and, based on the evidence presented, enter an award. If the Department appears but the grievant does not, the arbitrator shall

enter an award in favor of the Department.

- n) The arbitrator shall grant continuances to any party, upon good cause shown by the requesting party.
- o) All arbitration findings shall be in writing and signed by the arbitrator issuing the finding. The decision is final and binding and thereon may be entered in a public court of appropriate jurisdiction.
- p) Arbitration awards shall be made solely at the determination of the arbitrator and may include: public acknowledgment by the Department of the specific funding decision process not adhered to; requirement that the Department modify its funding decision process to prevent future instances of non-adherence; and in extreme cases, awarding of next available Title I funds not to exceed the amount of the grievant's original proposed funding request. The award will be provided within 10 days of the arbitration and sent by mail. No monetary award shall be imposed for retroactive relief, punitive damages, delay damages, or interest, unless all parties agree, in advance and in writing, that the prevailing party would be entitled to such an award.
- q) The expense of witnesses, cost of proofs, and the costs of stenographic record shall be borne by the party requesting such services, and shall be paid directly to the provider of such services.

16. Effective Date and Amendments

These procedures are effective June 1, 1997 pending their approval by the U.S. Department of Health and Human Services, Health Resources and Services Administration. Subsequently, the procedures are subject to amendment by the Department at its discretion in accordance with the laws and regulations of the U.S. Department of Health and Human Services, the City and County of Philadelphia, and the State of Pennsylvania.

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APPENDICES

- A. Philadelphia Department of Public Health Procurement Process for HIV Activities
- B. Form to Request Review of Funding Decision Process (Step 1)
- C. Form to Request Mediation (Step 2)
- D. Form to Request Arbitration (Step 3)
- E. Information on the Current Mediation and Arbitration Contractor

Appendix A
Philadelphia Department of Public Health
Procurement Process for Title I

1. Procurement is the process by which the Philadelphia Department of Public Health (the Department) identifies and selects providers to deliver health and support services through performance-based contracts. Because Title I funding of the Ryan White CARE Act to support these contracts is in the form of an annual grant by the Federal government to the City of Philadelphia, contracts are not guaranteed to be continued past the last day of the project year.
2. The Commissioner of Public Health makes all funding decisions for Title I after consideration of the recommendations of the Department's HIV Resource Allocations Advisory Committee (the Committee), described below.
3. Priorities and general instructions for procuring Title I services are received by the Department from the Philadelphia EMA HIV Commission (the Commission), which serves as the Title I Planning Council for the Philadelphia eligible metropolitan area.
4. Based on the Commission's priorities and available funding, the Department develops a plan to procure Title I services. Examples of procurement processes include but are not limited to: sole source, small bidders conference, request for proposal, competing continuation, and non-competing continuation.
5. The Department presents the Title I procurement plan to the HIV Resource Allocations Advisory Committee (the Committee) for its review and approval. The Department maintains the Committee in order to assure the involvement of the community, especially people with HIV disease in procurement decisions and in order to institutionalize objective and conflict-of-interest free decision-making of HIV-specific funding for which the City of Philadelphia is the grantee. No less than half the Committee shall be consumers, defined as persons with HIV infection or in the case of minors under the age of 18, their caretaker or guardian. All Committee members are free of conflict of interest in the outcome of their funding recommendations. The Committee's processes, materials, meetings, and deliberations are confidential unless documentation of them is necessary in order for the Department to respond to a grievance as described in the Title I grievance procedures.

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6. Following the Committee's approval of the procurement plan, the Department proceeds to implement procurements. The types of procurements include:
 - a) "Sole source" procurements are those for which the Department has determined that a particular provider, because of the unique nature of the service it delivers, best meets a Commission service priority. The Department obtains a written bid from the provider for the service and negotiates a performance based service contract based on such bid.
 - b) "Small bidders conference" procurements are those for which the Department has determined that a particular service has a limited number of providers capable of delivering the service. The Department brings the providers together to facilitate an agreement among the providers as to how the services goals may be met through a single or multiple coordinated contracts. The Department obtains a written bid from the provider or providers for the service and negotiates a performance-based service contract or contracts based on such bid.
 - c) "Request for proposal" procurements solicit service proposals from prospective and current Title I providers that are objectively reviewed by the Committee through its standing conflict-of-interest free objective review process.
 - d) "Competing continuation" procurements solicit service proposals from current Title I providers that are objectively reviewed by the Committee.
 - e) "Non-competing continuation" procurements are only for current Title I providers in good standing who are required to submit a proposal to the Department to continue or expand services. Providers "in good standing" are those Title I contractors that have satisfactorily delivered the minimum type and number of service provisions and that have complied with all required reporting and invoicing conditions of their current contract. Non-competing continuation proposals are assessed by the Department.
7. Based on the procurement plan and Committee instructions, the Department prepares a Program Guidance stating the scope of services requested, provider qualifications, funding restrictions, other requirements, and instructions on how potential applicants

can participate in the process. Applicants will be asked to submit to the Department multiple copies of a written proposal including a narrative and a budget on or before a specific date and time. Additional items or attachments may also be required.

Applicants may be allowed up to 30 calendar days for preparing proposals. Technical assistance activities may also be organized by the Department and made available to potential applicants to assist them during the application process.

8. All proposals received by the Department in response to the Program Guidance are dated and time stamped upon receipt. Following the closing date and time for receiving proposals, the Department assesses all proposals for timeliness and completeness. Proposals received after the stated closing date and time specified in the Program Guidance will not be reviewed.
9. Prior to receiving proposals to review, a list of applicants to be reviewed is presented by the Department to the Committee. Each Committee member discloses in writing to the Department and the Committee any affiliations in the previous 12 months with applicant organizations that appear on the list. The Committee jointly reviews all members' affiliation disclosures and where necessary members are recused from the review process.
10. The Committee elects a Review Chair from among the members participating in the review.
11. Using a common evaluation report, each proposal is objectively reviewed and scored by at least two (2) Committee members, one of whom is a consumer, according to a 100-point scale of evaluation criteria that is published in the Program Guidance. Up to five (5) points may be added or deducted at the reviewer's discretion; reviewers may deduct points to recognize incomplete proposals or they may add points to recognize outstanding proposals from grassroots or minority organizations. Total scores are the basis for ranking the proposals being reviewed and to assist the Committee determine recommendations for funding amounts.
12. In addition to numerical scores, members record qualitative assessments regarding the strengths and weaknesses of individual proposals reviewed. A synthesis of reviewers' strengths and weaknesses statements may be conveyed to the applicant upon written request from the applicant following the announcement of the Commissioner's final

decisions.

13. All reviewers present verbal summaries to other Committee members of each proposal and their evaluations according to a standard evaluation report format. Reviewers respond to questions from other Committee members about the proposals they have reviewed. No action is taken at this time.
14. The Department presents service data, evaluation data, and contract compliance information on current City contracts of the applicant (if available) and program data for contractors with whom the Department has existing or recent contractual relationships. This information is used to augment member's reviews of proposals.
15. The Review Chair facilitates a consensus decision-making process to assign to each proposal one of the following three recommendations: (1) RECOMMENDED FOR FUNDING, which means the Committee recommends that the proposal be approved as written; (2) RECOMMENDED FOR FUNDING WITH CONDITIONS, which means the Committee recommends that the proposal be approved with mandatory programmatic conditions that must be accepted by the applicant during the contract negotiation phase of the process; and (3) NOT RECOMMENDED FOR FUNDING, which means the Committee recommends the proposal not be approved. When all proposals have received a recommendation by consensus of the Committee, all recommendations are read aloud for the record.
16. Proposals RECOMMENDED FOR FUNDING and RECOMMENDED FOR FUNDING WITH CONDITIONS are numerically ranked by consensus of the Committee with the first choice being ranked 1, the next choice ranked 2, and so on until each recommended proposal is assigned a unique numerical rank. When ranking is completed, the results are read aloud for the record.
17. Proposals NOT RECOMMENDED FOR FUNDING are returned to the Department indicating reasons for the recommendation and identified strengths and weaknesses language, or other relevant factors included where possible.
18. The Review Chair facilitates a consensus decision-making process to determine funding recommendations for ranked proposals. The consensus process uses information on available funding, data on the proposals generated during the review, and the HIV Commission's priorities and general instructions. When funding award

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recommendations are completed, the results are read aloud for the record.

19. Committee members turn in to the Department all proposals, evaluation reports, and other documents related to the review.
20. A list of all proposals reviewed is prepared with the Committee's recommendations indicated and transmitted to the Commissioner of Health.
21. The Commissioner of Health determines final awards based on consideration of the Committee's recommendations. All Committee materials related to the review process, including proposals, are available for review by the Health Commissioner.
22. The Department publishes and posts the HIV Services Procurement Announcement(s) at a minimum in the Department's AIDS Office, which includes final funding decisions and a certification of adherence to the published process. Subsequently, a letter will be sent to each applicant organization notifying it of the funding decision related to its proposal.

Appendix B
Philadelphia Department of Public Health
Request for Review of Funding Decision Process for Title I Services
AIDS Activities Coordinating Office
500 South Broad Street, 2nd Floor
Philadelphia, PA 19146
Telephone 215-685-6788

Grievance number **Date**
Number to be assigned by the Health Department

Organization requesting review		
Name of contact person		
Street address		
City	State	ZIP
Telephone		FAX
Statement of Grievance		
Please print or type. Attach additional pages if necessary		
Indicate here the specific nature of the Department's non-adherence to the published HIV procurement process		
Indicate here the number of the step (or steps) of the Department's published HIV procurement process applicable to this grievance		
Indicate here the actions taken by the filing party to attempt to prevent the grievance		
Indicate here the remedy sought by the filing party		
Signature		Date

Submit this form by U.S. mail with a return receipt requested no later than five (5) business days following the posting of the relevant HIV Services Procurement Announcement.

Appendix C
Philadelphia Department of Public Health
Request for Mediation Related to Title I Funding
 AIDS Activities Coordinating Office
 500 South Broad Street, 2nd Floor
 Philadelphia, PA 19146
 Telephone 215-685-6788

Grievance number Date
Use the number assigned for Funding Decision Review

Organization requesting mediation		
Name of contact person		
Street address		
City	State	ZIP
Telephone		FAX
Statement of Grievance		
Please print or type. Attach additional pages if necessary		
Indicate here the specific nature of the Department's non-adherence to the published HIV procurement process		
Indicate here the number of the step (or steps) of the Department's published HIV procurement process applicable to this grievance		
Indicate here the reason(s) why Review of the Funding Decision Process failed to resolve this grievance		
Indicate here the remedy sought by the filing party		
Signature		Date

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 DEPARTMENT OF RECORDS

Attach a memorandum not to exceed two (2) pages indicating how the filing party was affected by a Title I funding decision. An administrative filing fee of \$50.00 (payable to ADR Options, Inc.) is required to request mediation. Submit a completed request form, the attached memorandum, and the filing fee by U.S. mail return receipt requested or in person to ADR Options, Inc. 601 Walnut Street, Suite 750, Philadelphia, PA 19106-3307 Telephone 215-925-9205 no later than five (5) business days following receipt of the Funding Decision Review.

Appendix D
Philadelphia Department of Public Health
Request for Arbitration Related to Title I Funding
AIDS Activities Coordinating Office
500 South Broad Street, 2nd Floor
Philadelphia, PA 19146
Telephone 215-685-6788

Grievance number **Date**
Use the number assigned for Funding Decision Review and Mediation

Organization requesting arbitration		
Name of contact person		
Street address		
City	State	ZIP
Telephone		FAX
Statement of Grievance		
Please print or type. Attach additional pages if necessary		
Indicate here the specific nature of the Department's non-adherence to the published HIV procurement process		
Indicate here the number of the step (or steps) of the Department's published HIV procurement process applicable to this grievance		
Indicate here the reason(s) why mediation failed to resolve this grievance		
Indicate here the remedy sought by the filing party		
Select one of the following arbitration formats		
<input type="checkbox"/> High/Low hearing	<input type="checkbox"/> Expedited hearing	<input type="checkbox"/> Baseball arbitration
Signature		Date
<input type="text"/>		<input type="text"/>

An administrative filing fee of \$50.00 (payable to ADR Options, Inc.) is required to request arbitration. Submit a completed request form and the filing fee by U.S. mail return receipt requested or in person to ADR Options, Inc. 601 Walnut Street, Suite 750, Philadelphia, PA 19106-3307 Telephone 215-925-9205 no later than five (5) business days following the conclusion of mediation of this grievance.

DEPARTMENT OF RECORDS
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Appendix E
Philadelphia Department of Public Health
Information on the Current Mediation and Arbitration Contractor

The Philadelphia Department of Public Health has designated the following entity to serve as the mediation and arbitration contractor for a one-year period beginning on June 1, 1997:

ADR Options, Inc.
The Curtis Center
Suite 750
601 Walnut Street
Philadelphia, PA 19106-3307

Telephone 215-925-9205
Fax 215-928-1669

Thomas B. Rutter, *Chairman of the Board*
Michael T. Carney, *President*

The administrative filing fee for mediation is \$50.00.

The mediator's cost is \$300.00 per hour split by the parties to the dispute and paid in advance of the mediation based on an estimated cost supplied by the mediator with the final cost adjusted at the conclusion of the mediation.

The administrative filing fee for arbitration is \$50.00.

The arbitrator's cost is \$300.00 per hour split by the parties to the dispute and paid in advance of the arbitration based on an estimated cost supplied by the arbitrator with the final cost adjusted at the conclusion of the arbitration.

**GRIEVANCE PROCEDURES FOR TITLE I
Ryan White CARE Reauthorization Act of 1996
PHILADELPHIA EMA HIV COMMISSION**

1. Grievance Procedure Requirement

Section 2602 [c] [2] of the Ryan White CARE Act Amendments of 1996 requires that to be eligible to receive funds under this part, a planning council shall develop grievance procedures that are determined by the Secretary to be consistent with the model grievance procedures developed by the U.S. Department of Health and Human Services. Such procedures shall include a process for submitting grievances to binding arbitration.

2. Policy

It is the policy of the Philadelphia EMA HIV Commission ("the Commission"), as the planning council for the Philadelphia eligible metropolitan area (EMA) of the Title I CARE Act program, to provide a process by which (1) a grievant's complaint with respect to priority setting processes can be addressed and quickly resolved; and (2) a grievance can be externally assessed and resolved by independent, conflict-of-interest free mediators and arbitrators. A grievant shall not be discriminated against nor suffer retaliation as a result of filing a grievance in good faith, or participating in the investigation of a grievance. The emphasis for grievances regards the processes involved in priority setting for the EMA.

3. Scope of Coverage

These procedures apply to grievances involving the deviation from an established, written priority setting or resource allocation process or deviations from an established written process for any subsequent changes to priorities or allocations for the Ryan White CARE Act Title I program for care and treatment of persons with HIV disease in the Philadelphia EMA. For the Commission, this refers to the priority setting process in which the Commission determines priority areas of need for services for the EMA's current or upcoming Title I grant year. The Commission's process used to establish priorities appears in Appendix A.

4. Definitions

The major terms and entities involved in the process of selecting Title I contractors and making awards are described below.

A grievance is a complaint or dispute regarding the priority setting process implemented by the Care Committee on behalf of the Commission that has reached the stage where the affected party seeks a structured approach to it's resolution, and notifies the Commission of such intent. The Ryan White CARE Act Amendments of 1996 also require that grantee implement grievance procedures. (For grievances regarding the Philadelphia Department of Public Health, refer to the Philadelphia Department of Public Health

grievance procedures for Title I.)

A **grievance procedure** is a mechanism that enables an entity to express dissatisfaction to the responsible party and obtain an assessment and decision regarding the complaint.

The **Philadelphia EMA HIV Commission** serves as the Title I Planning Council for the Philadelphia EMA. The EMA consists of the Pennsylvania counties of Bucks, Chester, Delaware, Montgomery, and Philadelphia and the New Jersey counties of Burlington, Camden, Gloucester, and Salem. The membership of the Commission also includes the Community Planning Group for Philadelphia's prevention cooperative agreement with the CDC for prevention activities within the City of Philadelphia.

The **Commission's Care Committee** is responsible for determining the process for priority setting and carrying out the process for the EMA. The Care Committee is headed by two co-chairs, of whom at least one is a person living with the virus. The co-chairs report to the Commission co-chairs and the entire Commission body.

Business days, for the purposes of these procedures, are days the City of Philadelphia offices are open. City of Philadelphia offices are closed on holidays, a list of which is available from the Commission.

An **HIV Priority Setting Announcement** is a listing of Title I-eligible services and activities which are prioritized by rank and percent, and approved by the Commission, which is posted in the Commission office to inform the public of the results of and to certify that the published process to prioritized HIV services was followed. The location of this posting will be published in the Commission newsletter as well as other consumer newsletters.

Dispute prevention is a series of techniques or approaches that are used 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.

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

A **grievant** is an entity or person seeking a structured resolution to a grievance.

Mediation is a voluntary process in which an impartial and independent third party assists parties to a dispute in reaching an acceptable resolution to the issues in the dispute. A mediator is a trained and independent third party that helps the parties to a dispute reach an agreement on a determined set of issues. Mediators are selected to mediate a particular dispute by a mediation

contractor, an independent entity providing dispute resolution services.

Arbitration is the submission of a dispute to an impartial and independent third party for a binding determination. Arbitration is carried out in conformity with a predetermined set of rules. The decision of an arbitrator has the force of law, although it does not set precedent. An arbitrator is an individual selected to decide a dispute. Arbitrators are selected by an arbitration contractor, an independent entity providing dispute resolution services.

5. Grievance Prevention

Grievance procedures have as a starting point measures that prevent disputes from arising in the first place. The Commission will make all reasonable efforts to prevent deviation or situations regarding priority setting that may lead to a grievance. The Commission will cooperate with entities directly affected by the outcome of a the priority setting process if the entity believes the Commission deviated from its documented process for priority setting or resource allocations. This cooperation includes but is not limited to the Commission providing an explanation of its process for the decision in an effort to resolve a disagreement at as early and informal a stage as possible. The Commission seeks to avoid or minimize the number of situations that must be elevated to the formal grievance process.

It is the Commission's expectation that entities that have a disagreement regarding the process by which priority setting or resource allocation decisions were made will identify the situation to the Commission at the earliest possible opportunity. The Commission shall attempt to resolve informally disputes by providing information or statements to entities that believe the priority setting process was not adhered to by the Commission. Grievants are expected to cooperate with the Commission in efforts to resolve the disagreement before the grievant pursues the formal grievance option.

If grievance prevention or informal resolution through cooperation does not succeed, entities may initiate the formal, structured grievance process.

6. Steps of the Grievance Process

Formal grievances regarding HIV funding decisions will be addressed by the Commission using the three-part approach outlined below. The specific processes, time frames, and rules for each step is described in detail in later sections of the procedures. The Commission will engage independent mediator(s) and arbitrator(s) through a mediation and arbitration contractor.

Step 1. Internal Conflict Resolution. The grievant initiates the process with a Priority Setting Review Request to the Commission.

The request must state, along with other information, the nature of the alleged non-adherence by the Commission in its published decision-making process. Following receipt of the written request, a grievance committee will be convened whose purpose is to determine whether the grievance falls within the scope of the procedures and to facilitate discussion between both parties. All decisions made by the grievance committee will be written. The grievance committee will be convened within three days of the receipt of the request form. The maximum number of business days between the Department's posting of an HIV Priority Setting Announcement and the end of Step 1 is 40 business days.

Step 2. Non-Binding Mediation. If there is no resolution at the Internal Conflict Resolution (Step 1) for the grievant, the next step is mediation. Mediation begins with the submission by the grievant of a Request for Mediation and the payment of an administrative filing fee (set annually) to the mediation contractor. The mediation contractor will be designated by the Commission annually. Information about the current mediation contractor appears in the Appendix. The mediation contractor identifies and provides an independent and impartial third party mediator to resolve a particular grievance. The mediator's role is to facilitate a process in which the Commission and the grievant reach a mutually acceptable agreement on a resolution to the grievance. The maximum number of business days from the date a grievant files a mediation request to the end of Step 2 is 15 business days.

Step 3. Arbitration. In the event that Non-Binding Mediation (Step 2) is unsuccessful, the next step is arbitration. Arbitration begins with the submission by the grievant of a Request for Arbitration and the payment of an administrative filing fee of \$50.00 to the arbitration contractor. The arbitration contractor will be designated by the Commission annually. Information about the current arbitration contractor appears in the Appendix. Arbitration will be carried out in conformity with a set of rules. This shall include review by the arbitrator of all relevant information related to the grievance. Following this review, the arbitrator renders a resolution that shall be binding on the Commission and the grievant. The maximum number of business days from the date a grievant files an arbitration request to the end of Step 3 is 15 business days.

7. Who May Bring a Grievance

Entities directly affected by the outcome of the Commission's Priority setting process are eligible to initiate a grievance. These are limited to: (1) providers eligible to receive Title I funding; (2) consumer groups or coalitions or caucuses of people living with HIV disease; (3) other affected entities such as caretakers, family members, or partners of those living with the virus, who are not eligible to receive Title I funding, those individuals who are living with the virus, are caretakers, family

members or partners of those living with the virus, may only bring a grievance through a coalition or caucus.

In the event an individual feels there has been a deviation from the established priority setting process s/he may bring this to a caucus, coalition or other consumer group for discussion or review. If the group/caucus agrees with the individual, then they will endorse the grievance. If at any point, the caucus/coalition withdraws support of the grievance/agrees to the recommendations of persons in Steps 1,2, or 3, the grievance process is halted. The caucus/coalition must submit this agreement in writing.

In order to protect employees living with the virus from being pressured to file a grievance for their employer, individuals living with the virus, who work for an provider of services which are funded under Title I, may not bring a grievance which may affect that particular service catagory.

8. What May Be Grieved

Providers and consumer groups or coalitions or caucus grievants may grieve only: (1) alleged deviations from the Commission's process of establishing priorities, allocating funds as a percent to those priorities (e.g. determination of a particular priority or allocation which is developed in a manner inconsistent with the Commission's established priority setting process); and (2) alleged deviations from the established process for any subsequent process to change the priorities or allocations.

9. Grievance Procedure Costs

Step 1. Internal Conflict Resolution. No costs are charged to the grievant for the Priority Setting Review Process (Step 1).

Step 2. Mediation. Mediation costs will be as follows: (a) the administrative fee to file a dispute with the mediation contractor is payable with the filing of the claim by the grieving party using the following scale: 1) for eligible Title I agencies with a budget of \$100,000 or less, \$40.00; 2) for eligible Title I agencies with a budget of more than \$100,000, a fee of \$50.00; 3) for caucuses/coalitions the fee will be \$20.00, and will not be paid by the Commission. (b) the mediator's hourly cost is shared by the Commission and the grievant in the following manner: 1) for agencies with a budget of \$100,000 or less, 25% of the fee; 2) for agencies with a budget of more than \$100,000, 50% of the fee; 3) for caucuses/coalitions the fee will be absorbed by the Commission. The mediator's cost is paid in advance of the mediation based on an estimated total cost supplied by the mediator, with the final fee adjusted at the conclusion of the mediation. The current rates appear in Appendix E.

Step 3. Arbitration. Arbitration costs will be as follows: (a) the administrative fee to file a dispute with the arbitration contractor is payable with the filing of the claim by the grieving

party using the following scale: 1) for eligible Title I agencies with a budget of \$100,000 or less, \$40.00; 2) for eligible Title I agencies with a budget of more than \$100,000, a fee of \$50.00; 3) there will be no fee for caucuses/coalitions. (b) the arbitrator's hourly cost is shared by the Commission and the grievant in the following manner: 1) for agencies with a budget of \$100,000 or less, 25% of the fee; 2) for agencies with a budget of more than \$100,000, 50% of the fee; 3) for caucuses/coalitions the fee will be absorbed by the Commission. The arbitrator's cost is paid in advance of the arbitration based on an estimated total cost supplied by the arbitrator, with the final fee adjusted at the conclusion of the arbitration. The current rates appear in Appendix E.

10. Confidentiality

Grievants shall agree to confidentiality of the process during all three parts of the grievance process until the grievance is resolved, at which point the resolution will be made public, while the process will remain confidential. Attendance at all meetings related to a grievance at any stage is limited. Meetings conducted by the Grievance Committee at Step 1 are limited to persons invited by the meeting host. Only those persons invited by the mediator or arbitrator are permitted to attend meetings and hearings at Steps 2 and 3.

12. Time Extensions

Time frames identified in this procedure may be altered only by mutual agreement, in writing, of both parties to the specific time frame.

13. Internal Conflict Resolution (Step 1)

In order to initiate a review of the priority setting process by the Commission, written requests from eligible grievants must be submitted to the Commission. Requests must be made and post-marked no later than thirty (30) days following the Commission's publishing and posting of the HIV Priority Setting Announcement. The request must state the specific nature of the Commission's non-adherence of its published HIV priority setting process. The request must be made using the Commission's form, Priority Setting Review Request, (Appendix B) and must be made by way of the U.S. Postal Service with a return receipt requested. No other filings will be accepted. There is no administrative fee for filing a request.

At the point a grievance is filed, or the Commission is notified that a grievance will be filled, an intake person will be assigned to assist the grievant. The role of this person is to guide the grievant through the process, and assure an understanding and compliance with the rules of the procedure as the process continues. The intake person will not act as an advocate, and to that extent, will not be involved in the mediation or arbitration process other than assuring compliance with the timelines and

assisting with the paperwork as appropriate.

For this purpose a rotating list of 10 trained persons will be maintained. Each person will be paid \$100 for their involvement, on matter what the duration of the Claim is. Intake persons will be paid by the Commission, and will have access to equipment (i.e. computer, printer etc.) at the Commission office. The grievant and the assigned intake worker will sign a Conflict Free form indicating no known conflict of interest either socially or professionally.

Within 5 days of the receipt by the Commission of a completed Priority Setting Review request, a Grievance Committee will be convened. This group will be composed of 4 persons at least three of whom will be consumers. These persons will be independent of the Commission and present no conflict of interest for either party involved. All parties will sign a Conflict Free form indicating no known conflict of interest either socially or professionally. The fifth person on this committee will be a Co-Chair of the Commission's Care Committee. This individual; will have no further involvement in this particular dispute should it progress to any other stage in the process. The members of this committee will be drawn randomly form a pool of volunteers who are recruited and trained annually. The person representing the Commission will be one of the two Co-Chairs or the alternate Care Co-Chair. Commission representation will be consistent for each dispute filed.

If the grievance is filed by a caucus or coalition, a representative from this body will also be present as an observer in order to provide feedback to the group for decision making purposes. Representation from this body will also be consistent for each grievance filed.

The purpose of this committee is to determine whether the grievance falls within the scope of the procedures, and to facilitate discussion between both parties in an effort to resolve the grievance. This step will be completed within 5 days. All decisions made by the Grievance Committee will be put into writing, with a copy sent to the caucus or coalition if involved. Decisions made by the Grievance Committee may include recommended actions to resolve the grievance.

In the event the Grievance Committee finds the grievance falls within the scope of the procedures, and discussion between the parties provides no resolution, the grievant has the option of proceeding on to external non-binding mediation. If no application for non-binding mediation is filed, then the original planning process decision is affirmed and the matter is considered closed.

If the Grievance Committee is able to resolve the issue, this will be reflected in the written summary of the committee's action. The

summary will be signed by the grievant and returned to the Commission within five business days.

Resolution If the Grievance Committee can resolve the dispute, the parties will draft a document delineating the agreement. If the Grievance Committee cannot resolve the dispute, a nonbinding recommendation will be made. This recommendation, as well as documents or discussion resulting from the Internal Conflict Resolution, are inadmissible in any subsequent non-binding mediation or binding arbitration. Any recommendations which are made, will also be forward to any involved caucus or coalition. In the event this body agrees to the resolution/recommendation then the grievant cannot proceed futher and the matter is considered closed. If the Internal Conflict Resolutiton is unsuccessful, the filing party will have five (5) business days to file a Request Mediation. If such a request is not filed, the matter is then considered closed.

14. Non-Binding Mediation (Step 2)

Filing and Fee. Mediation is limited to grievants who have pursued other forms of resolution, including Internal Conflict Resolution (Step 1). A grievant may initiate mediation by filing a Request for Mediation with the mediation contractor within five (5) days of receipt of the Grievance Committee's written response containing the proposed resolution included in its Internal Conflict Resolution. The Request for Mediation must include an initial memorandum (not exceeding two [2] pages) on how the grieving party was affected by a Title I funding decision and what remedy is sought. An administrative filing fee must accompany a request for mediation in order for the filing to be complete. The mediation contractor shall send a copy of the Request for Mediation to the Commission and if appropriate, the involved caucus/coalition within 24 hours of a filing. Non-Binding Mediation will be scheduled within 15 of receiving a Request for Mediation.

Selection. The mediator will be assigned by the mediation contractor from a panel of mediators and arbitration professionals who has been preapproved by the Commission. All approved mediators will have received training from a program developed by members of the Care Committee and the Consumer Caucus.

Memoranda and Meetings. At least seven (7) days prior to the mediation, each party will provide a mediation memorandum not to exceed five (5) pages to the mediation contractor outlining the substance of the dispute and their respective positions. The filing party will also indicate the relief requested. The mediator will designate a time and location for a mediation meeting. At the mediation meeting, the mediator will initially meet with both parties and give each side an equal amount of time determined by the mediator to verbally augment their written memoranda. The mediator will then privately meet with each side to discuss their

settlement positions and provide suggestions as to settlement. This process will not exceed three (3) hours.

Resolution. If the mediator can resolve the dispute, the parties will draft a document delineating the agreement. If the mediator cannot resolve the dispute, he or she will make a nonbinding recommendation. This recommendation, as well as documents or discussion resulting from the mediation, are inadmissible in any subsequent binding arbitration. Any recommendations which are made, will also be forward to any involved caucus or coalition. In the event this body agrees to the resolution/recommendation then the grievant cannot proceed futher and the matter is considered closed. If the mediation is unsuccessful, the filing party will have five (5) business days to file a Request for Arbitration. If such a request is not filed, the matter is then considered closed.

Rules. Mediation will be governed by the following rules:

- a) Both parties will agree to confidentiality during the process and will sign confidentiality agreements.
- b) Based on the information provided in the Request for Mediation, the mediation contractor will decide whether the grievant is eligible to raise a dispute and whether the issue raised is within the scope of the grievance procedures.
- c) The mediator will recommend whether the remedy is remedial or prospective.
- d) The mediation contractor will assign a mediator to particular disputes.
- e) No witnesses with the exception of a caucuses/coalition representative, if involved, may be presented at a mediation.
- f) Mediations are scheduled for one (1) or more hours.
- g) Mediations are nonbinding unless ending in a signed resolution.

Timing. The mediation contractor will complete the nonbinding mediation process within 30 days of receipt of the request for mediation.

15. Arbitration (Step 3)

Filing and Fee. When steps to prevent disputes and mediation have failed to resolve disputes, arbitration will be used. Arbitration is binding and not appealable to any forum, including any court or government or quasi-governmental entity. A grievant may initiate arbitration by filing a Request for Arbitration with the arbitration contractor within five (5) days of the end of Step 2. An administrative filing fee must accompany a Request for Arbitration. The arbitration contractor shall send a copy of the Request for Arbitration to the Commission and if appropriate, the involved caucus/coalition within 24 hours of a filing. Within 15 days of receipt of the Request for Arbitration, the arbitration contractor will complete the arbitration process.

Selection. The arbitrator will be assigned by the arbitration contractor from a panel of arbitration professionals who has been preapproved by the Commission. Unless the parties agree to allow the mediator from Step 2 to hear the arbitration, the arbitrator must be a different individual than the original mediator.

Memoranda and Hearing. At least seven (7) business days prior to the arbitration, each party will provide an arbitration memorandum not to exceed ten (10) pages to the arbitrator outlining the substance of the dispute. The arbitrator will have sole discretion to rule on the admissibility of evidence and the testimony of witnesses. No information regarding the mediator's recommendation is admissible at the arbitration. The parties may agree to limit the arbitrator's award by agreeing to predetermined high and low parameters prior to arbitration. The arbitrator will designate a time and location for the arbitration. The filing party will also indicate the relief requested. At least five (5) business days prior to the arbitration, each party must send to all other parties a list of documents to be submitted and witnesses to be presented at the arbitration and copies of all documents not previously sent to all parties.

Representation. The grievant and Commission have the right to be represented by counsel in Step 3, but each party is responsible for paying for their counsel.

Timing. The arbitration process must be completed within thirty (30) business days.

Rules. Arbitration will be governed by the following rules:

- a) These rules, as in place at the time of the proceeding, shall govern all arbitration proceedings. The rules may, however, be modified or voided by agreement of all parties. Rulings of legal issues are based on the principles of law which would be applicable if the case were heard in the appropriate court of public jurisdiction. The rules may be changed by agreement of all parties in the dispute.
- b) Both parties will agree to confidentiality during the process and will sign confidentiality agreements.
- c) Based on the information provided in the Request for Arbitration, the arbitrator will decide whether the grievant is eligible to raise a dispute and whether the issue raised is within the scope of the grievance procedures.
- d) The arbitration contractor will assign an arbitrator to particular disputes. The arbitrator shall have the following powers: to examine any object or site relevant to the case; to make rulings on any matter or motion submitted; to administer oaths and affirmations to witnesses; to allow evidence to be introduced; to rule on the admissibility of evidence; and to invite the parties to submit hearing briefs.
- e) All documents filed with the arbitration contractor are deemed to be filed on the date they are received by the arbitration contractor.

contractor. The filing party shall send copies of all documents filed with the arbitration contractor to all other parties in the proceeding, within 24 hours of filing, or upon mailing to the arbitration contractor, whichever shall occur first.

f) Any party to a proceeding under these rules may be represented by any attorney who is a member in good standing of the bar of any state or federal court.

g) Standard arbitration is binding in nature and offer the opportunity to present evidence in a manner similar to a non-jury trial in the public courts.

h) The parties may also agree to a "high/low" arbitration, which is an expedited hearing whereby the parties agree beforehand to limit the award within high and low parameters.

i) The parties may also agree to "baseball" arbitration, which is an expedited hearing in which the arbitrator selects either the last best demand or the last best offer, without modification.

j) Any document not sent in accordance to the grievance procedures for arbitration or any witnesses not so identified may be excluded at the time of the arbitration at the sole discretion of the arbitrator.

k) Any party may subpoena any witness who offers testimony provided the subpoena is filed with the arbitration contractor and all parties at least ten (10) days prior to the arbitration. Any adverse party may cross-examine these witnesses.

l) The law of the case shall be substantive law of the jurisdiction(s) in which the Commission sits. In the event of a dispute as the applicability of substantive law, all parties shall submit briefs to the arbitrator, who shall decide the appropriate law of the case.

m) Any action commenced before the arbitrator may be dismissed before the arbitration by filing a Stipulation of Dismissal signed by all the parties. Unless otherwise stated, the Dismissal is Without Prejudice.

n) If a matter is scheduled for an arbitration and the grievant appears but the Commission does not, the arbitrator shall hear the case and, based on the evidence presented, enter an award. If the Commission appears but the grievant does not, the arbitrator shall enter an award in favor of the Commission.

o) The arbitrator shall grant continuances to any party, upon good cause shown by the requesting party.

p) All arbitration findings shall be in writing and signed by the arbitrator issuing the finding. The decision is final and binding and thereon may be entered in a public court of appropriate jurisdiction.

q) Arbitration awards may include public acknowledgment by the Commission of the specific priority setting process not adhered to; requirement that the Commission modify its priority setting process to prevent future instances of non-adherence; and in extreme cases, awarding of a specific amount of underspending as determined by the arbitrator to be directed to the identified priority party/group. The award will be provided within 10 days of the arbitration and sent by mail. No monetary award shall be imposed for punitive

damages, delay damages, or interest, unless all parties agree, in advance and in writing, that the prevailing party would be entitled to such an award.

r) The expense of witnesses, cost of proofs, and the costs of stenographic record shall be borne by the party requesting such services, and shall be paid directly to the provider of such services.

APPENDICES

- A. Philadelphia HIV EMA Commission Priority Setting Process
- B. Priority Setting Review Request (Step 1)
- C. Form to Request Mediation (Step 2)
- D. Form to Request Arbitration (Step 3)
- E. Information on the Current Mediation and Arbitration Contractor

Appendix A

The Philadelphia EMA HIV Commission Priority Setting Process

The following are the basic steps involved in the priority setting process by the Philadelphia EMA HIV Commission. The goal of the process is to rank services categories and to assign percent allocations along with general instructions to the grantee on how to implement the service, as well as other relevant information. There may be some variation in the principles, criteria, and activities identified in the first step, based on the establishment of a new working group each year. Another change which is anticipated to occur over time will be the inclusion of additional sources of objective data as they are developed. As a result, additional resources may be used by the Commission in identified steps. After each major step, there are several points listed which reflect the process involved in determining the content of the step.

1. The Commission will establish agreement on the principles, criteria and activities of the process.
2. Review data through the study of data, presentations, and record keeping by Committee members. Data sought on:
 - a. The local HIV epidemic
Resources used:
 - Current epidemiology data
 - Demographic data
 - Data on surveillance trends
 - b. Service gaps and EMA- wide needs
Resources used:
 - Needs Assessment Data
 - Annual administrative report data
 - Monitoring data
 - Data obtained from reports from task forces and caucuses
 - Comprehensive plan
 - c. Consumer needs
Resources used:
 - Testimony from public hearings
3. Estimate the HIV positive population
Resources used:
 - CDC and current epidemiology data
 - Data on surveillance trends
4. Committee sets priorities through individual, team, and Committee consensus process
Steps
 - Establish standards
 - Determine services and activities to be ranked
 - Develop team consensus on priorities
 - Tabulate each team's ranking
 - Develop consensus on ranking,
 - Develop consensus on percentage allocations

- Develop priorities document which includes general instructions to the grantee and other relevant information and recommendations
- Priorities adopted by the Philadelphia EMA HIV Commission at regular meeting.