

## **X. Ch 8. Conflict of Interest**

### **Introduction**

Conflict of interest can be defined as an actual or perceived interest in an action that will result—or has the appearance of resulting—in personal, organizational, or professional gain. To illustrate, conflict of interest occurs when a planning council member has a monetary, personal, or professional interest in a planning council decision or vote. Any group making funding decisions for a Ryan White program should be free from conflicts of interest.

Ryan White legislative provisions on conflict of interest for the planning council as a whole are limited to restrictions on planning council involvement in the management of grant funds and participation in the selection of particular entities as recipients of those funds. In addition, planning council membership requirements for unaligned consumer members require attention to conflict of interest.

Because the potential for conflict of interest is inherent in all the activities of the planning council, HAB/DMHAP has broader expectations and requirements regarding minimizing and managing conflict of interest in the functioning of the planning council. Each of these areas is discussed below.

### **A. Legislative Background**

Ryan White legislative provisions on conflict of interest prohibit three types of activities:

- Planning council involvement in the management of grant funds.
- Planning council participation in the selection of particular entities as recipients of those funds (procurement).
- A financial or governance relationship with funded providers on the part of “unaligned” consumer members of the planning council.

Ryan White legislative provisions governing these restrictions are as follows:

Section 2602(b)(1) of Title XXVI of the Public Health Service (PHS) Act requires that candidates for planning council membership “be selected based on locally delineated and publicized criteria” and that “such criteria shall include a conflict-of-interest standard that is in accordance with paragraph (5).”

Section 2602(b)(5)(A) of the PHS Act (the “paragraph 5” referenced above) addresses conflict of interest for the planning council as a whole. It states that “the planning council...may not be directly involved in the administration of a grant... [and] may not designate (or otherwise be involved in the selection of) particular entities as recipients of any of the amounts provided in the [Ryan White Part A] grant.”

Section 2602(b)(5)(B) of the PHS Act addresses conflict of interest for individual members of the planning council. It states that “[a]n individual may serve on the planning council...only if

the individual agrees that if the individual has a financial interest in an entity, if the individual is an employee of a public or private entity, or if the individual is a member of a public or private organization, and such entity or organization is seeking [Ryan White Part A funding], the individual will not, with respect to the purpose for which the entity seeks such amounts, participate (directly or in an advisory capacity) in the process of selecting entities to receive such amounts for such purpose.”

As explained in the Conference Report from Congress that accompanied the CARE Act Amendments of 1996, H.R. REP. NO. 104-545, at 33-34 (1996) (Conf. Rep), which included these provisions, it is the intent of the legislation that the planning council “provide guidance to the grantee regarding the types of organizations that may best meet each service priority established by the planning council” and “help to guide the grantee in how best to meet the established service priorities.” It is not intended “that the planning council select which particular organizations receive funding, either by specific direction or by narrowly describing a type of organization. The legislation clearly states that such a planning council role is prohibited.” *Id.* at 34.

Regarding conflict of interest by unaligned consumer representatives on planning councils, Section 2602(b)(5)(C) of the PHS Act requires that consumer representatives be individuals “who are receiving HIV-related services” from Ryan White Part A funded providers; but “who are not officers, employees, or consultants to any entity that receives amounts from such a grant, and do not represent any such entity.”

## **B. HAB/DMHAP Expectations**

Below are HAB/DMHAP expectations and requirements for addressing conflict of interest—overall and in specific areas.

### **General Requirements**

Ryan White HIV/AIDS Program conflict-of-interest provisions reinforce the distinction between the planning council’s responsibility to set priorities and the grantee’s responsibility to procure particular services.

Specifically, the law prohibits the planning council as a whole from being directly involved in either the administration of a grant or the selection of particular entities to receive Ryan White Part A funds. This means that planning councils may not:

- Name, recommend, or approve particular entities for funding.
- Be involved in the management of the contracts that govern the procurement of services.
- Participate or otherwise be involved in the review of funding applications or selection of providers of services.

Because of an individual members’ relationship to the planning council, sound practice is not to have them serve on external review panels for the selection of Ryan White Part A providers.

Procurement and contract monitoring activities are responsibilities of the grantee and/or the administrative agent of the grantee. They include developing requests for proposals (RFPs), conducting technical assistance and bidders' conferences, conducting the application review process (typically using external review panels), negotiating contracts, awarding funds, developing reimbursement and accounting systems, and conducting program and fiscal monitoring.

Because planning council members may include representatives of the Ryan White Part A grantee, use of Ryan White Part A funds by the grantee may pose conflict of interest issues. Use of Ryan White Part A funds by the Ryan White Part A grantee for delivery of particular services (e.g., medical care through a health department clinic) should be based on direction from the planning council and/or an objective review process. While local rules on procurement of services may allow the grantee to use funds it administers for its own services, HAB/DMHAP expects that such use will be subject to a public process if other entities in the community could provide the same services. Such a process is in keeping with the spirit of the Ryan White Program, which bases the appropriate and efficient use of scarce resources on input from community and organizational representatives who are directly affected by the HIV epidemic.

### **Planning Council Support**

While the legislation prohibits planning councils from participating or otherwise being involved in selecting particular entities for funding, they may be involved in selecting particular entities and individuals to carry out activities directly related to planning council functions and responsibilities. These activities include:

- General planning council administrative duties.
- Needs assessments, such as PLWHA surveys and studies of barriers to care.
- Assessment of service delivery patterns.
- Planning activities such as writing the comprehensive plan.
- Assessment of the administrative mechanism.
- Technical assistance.
- Program evaluation.

In making determinations about who will carry out these activities, planning councils should be keenly attuned to potential conflicts of interest (real or perceived). HAB/DMHAP expects that planning councils and grantees will work together to ensure that high quality planning council support is available and that conflict of interest is minimized through a mutually agreeable process. The planning council must use an open, public process to contract for planning council support services – preferably a competitive RFP process under the direction of the grantee. If a planning council's procedures allow planning council members or the agencies they represent to compete in this process, the planning council must define specific parameters and processes to manage real or perceived conflicts of interest. A planning council member who has a financial interest in, is an employee of, or is a member of that entity should not be involved or otherwise participate in the selection process.

## **Conflict of Interest and How Best to Meet Priorities**

The Ryan White legislation gives planning councils the responsibility not only to set priorities, but also to establish how best to meet those priorities. The intent of this legislative provision is to establish a role for the planning council in guiding the grantee in identifying the types of organizations and service delivery models or mechanisms that best meet each service priority established by the council. Types of organizations may include, for example, outpatient clinics, community-based organizations that serve affected populations and historically underserved communities, and other types of entities that have been identified as effective in serving identified populations. Planning councils may also identify certain population groups that need to be served, geographic areas in which services should be delivered, and particular State or local government programs that the planning council feels best meet the needs of PLWHA (e.g., a State AIDS Drug Assistance Program [ADAP] or health department clinic). They can identify service models that are effective in reaching and service specific populations.

The language developed by the planning council regarding how best to meet each service priority may not name particular providers as recipients of funds. Nor may the planning council participate or otherwise be involved with drafting specific contract proposal review criteria, reviewing funding applications, or selecting service providers. The grantee, not the planning council, is responsible for developing and implementing an RFP and contract award process. The grantee is obligated to ensure that the outcome of that process meets the priorities established by the council, including directions from the planning council regarding how best to meet the priorities and the dollar amounts allocated to each priority area.

HAB/DMHAP recognizes that in some EMAs/TGAs and for some service categories with a small provider pool, language on how best to meet the priority may result in only a few or a single provider applying for funds. As long as the planning council does not name a particular provider, however, the council is not in violation of the conflict of interest requirements in the Act. A planning council's designation of the State ADAP program and/or a local health department program as the best way to meet a service priority does not violate conflict of interest requirements.

## **Monitoring of Contracts and Redistribution of Funds**

The planning council is prohibited from being involved in grant administration, and therefore, may not be involved in monitoring the fiscal or program performance of individual contractors. These activities are the responsibility of the grantee. Planning councils cannot name, recommend, or otherwise be involved in the approval of particular providers if a grantee redistributes program funds within a service category based on monitoring of individual contracts.

The grantee must share information about subcontract awards and expenditures with the planning council so that both can monitor spending on each of the service categories identified as priorities by the planning council. The planning council should be able to readily evaluate the level of expenditure, number of people served, and other aggregate information for particular service categories and target populations, and compare actual and projected expenditures and

service utilization. Sound practice is for planning councils to receive data on projected and actual expenditure of funds on a regular quarterly or biannual basis given the need to ensure that funds are fully expended and meet priority PLWHA needs.

If money is not being spent in a timely fashion, or target populations are not being served, the planning council can reallocate funds to another service category. Planning Council prior approval is required before funds can be reallocated from one service category to another. The grantee and the planning council must work together to share appropriate information and ensure that any changes to the planning council priorities are reflected in the grantee's disbursement (or re-disbursement) of funds.

### **C. Managing Conflict of Interest**

HAB/DMHAP expects planning councils to include in their bylaws and operating procedures provisions for handling conflict of interest in carrying out all planning council activities. Provisions should define conflict of interest and outline ways to manage it. These areas are described below.

#### **Defining Conflict of Interest**

Conflict of interest can be defined as *an actual or perceived interest by the member in an action that results or has the appearance of resulting in personal, organizational, or professional gain.*

As appropriate, the definition may cover both the member and a close relative, such as a spouse, domestic partner, sibling, parent, or child.

This actual or perceived bias in the decision-making process is based on the dual role played by a planning council members who is ~~are~~ affiliated with other organizations as an employee, a Board member, a member, a consultant, or in some other capacity. Most State and local governments have conflict of interest standards in place. Planning councils may wish to refer to them and assess whether they are applicable or can be adapted to the needs of the planning council.

#### **Areas Where Conflict of Interest Can Happen**

Although the legislation does not define conflict of interest beyond its relationship to the selection of particular entities, the potential for conflict of interest is present in all Ryan White Part A processes, among them needs assessment, comprehensive planning, priority setting, allocation of funds, and evaluation. Because the activities of the planning council are so central to the allocation and disbursement of resources within an EMA/TGA, the actions of any one member or a group of planning council members can actually be – or be perceived to be – based on individual rather than common interest. It is the responsibility of the planning council as a whole to define conflict of interest, and to specify those actions to which it applies and the types of relationships and decision making covered by it.

Following are conflict of interest considerations for specific areas:

**Membership.** In most instances, conflict of interest does not apply to PLWHA whose sole relationship to a Ryan White Part A-funded provider is that of a client receiving services or an uncompensated volunteer. However, PLWHA, like other planning council members, should not be involved in decisions that can affect entities in which they have a financial interest or a governance responsibility. Examples of financial interest include being officers, Board members, employees, or paid consultants to Ryan White Part A provider agencies or to the administrative agency that administers that Ryan White Part A grant.

Many members wear “multiple hats” and thus need to clearly identify the perspective they are representing in their membership. A good example of this is the member who is an employee of a funded provider, is a PLWHA, and is a member of a community of color.

Expectations should be clearly defined for members who represent a community. A good planning process gathers diverse perspectives. However, the role of a representative should be communicated clearly, including a job description stating how the representative is expected to communicate with members of the community they represent. This would help deal with a problem where PLWHA either come with a personal agenda or advocate for a particular service provider.

**Leadership.** An actual or perceived conflict of interest can occur when planning councils are chaired solely by a representative of the grantee. Therefore the Ryan White legislation stipulates that councils cannot be chaired solely by an employee of the grantee. It can, however, be co-chaired by a grantee representative along with another member of the council. Some planning councils require that one co-chair be a consumer or PLWHA.

**Needs Assessment.** An actual or perceived conflict of interest can occur in the conduct of a needs assessment, particularly with respect to its implementation in planning, priority setting, and resource allocation. Conflict of interest can emerge at decision points of the needs assessment process such as the following:

- How to conduct a needs assessment.
- Which groups to survey.
- What providers to contact when seeking PLWHA to participate in surveys or focus groups.
- What questions to ask.
- How to phrase the questions.
- How to interpret the results.
- How to review external data, such as epidemiologic data.
- Which data to use.
- Which results to implement.

A good needs assessment contains input from consumers and Ryan White Part A providers, as well as agencies beyond the currently funded providers. As such, examples of conflict of interest regarding their input into a needs assessment process might include the following:

- A provider convinces the council to overemphasize the input of its own clients.

- A provider representative determines which agency clients (e.g., the happy ones!) should be targeted for the needs assessment.
- The needs assessment is limited to soliciting the opinions of planning council members rather than focusing on obtaining community input.

**Priority Setting and Resource Allocation.** Examples of conflict of interest in the priority-setting process include the following:

- Failure to use the council’s criteria to set priorities.
- Priorities that are set based on who was the most vocal at the priority-setting meeting.
- Efforts by members affiliated with providers to influence priorities and allocations for their own benefit.
- Efforts by individual members to advocate narrowly for the interests of a particular subpopulation or geographic community instead of basing decisions on the needs of all the eligible PLWHA in the EMA/TGA.
- A choice to fund services that do not match the needs identified in the needs assessment.

When setting priorities, planning councils should look at the big picture—the continuum of care—rather than focus on individual categories of funding. An overall plan minimizes the chances for a single advocacy group to dominate. Priorities should reflect the service needs of all PLWHA throughout the service area. The setting of priorities and the allocation of resources should flow from the data, such as the results of the needs assessment and client utilization data, not from the individual interests of the members. Funding decisions should reflect changes in the local epidemic and be designed to meet the service gaps and unmet need of PLWHA in their region. In justifying priorities, planning councils should discuss the availability of other funding sources to lessen the need for Ryan White Part A funding of a particular service and reduce duplication of effort. The more data-based the decision-making process, the less likely it is that conflicts of interest will influence the process.

**Comprehensive Planning.** In comprehensive planning, conflict of interest can lead to problems such as the following:

- Inadequate planning for underserved populations and subpopulation groups.
- Focus on particular service categories or service models based on provider interests rather than identified needs of PLWHA in and out of care.
- Lack of follow-through in using the results of needs assessments to set goals and objectives.
- An ineffective planning process that results in an ineffective service delivery system not responsive to a changing epidemic.

For effective planning, the planning council should develop a structure that includes specific steps in the development of a plan and a timeline for implementation. A clearly defined planning process provides for broad community input with emphasis on unaligned consumers and prevents persons or organizations with conflicts of interest from directing the process in a biased or unfair way and helps ensure that a plan is followed.

**Assessment and Evaluation.** Planning councils are responsible for assessing their own planning process and have the option of evaluating the cost-effectiveness and efficiency of funded services in meeting the needs identified by their needs assessment. The results of this evaluation should be used to improve the council's ability to plan and the EMA's/TGA's ability to deliver high quality, cost-effective services to meet the needs of PLWHA in their communities. However, conflict of interest can influence: [NOTE: The planning council does not deliver services.]

- The extent to which evaluation is conducted.
- How it is conducted.
- Who can conduct it.
- What the results are.
- How the results are interpreted and used.

Conflict of interest can lead to a stagnant process where the *status quo* is maintained, with no real evaluation of the planning council's efficiency and effectiveness or the cost-effectiveness and outcomes of the services provided by the EMA/TGA.

### **Techniques for Managing Conflict of Interest**

HAB/DMHAP expects planning councils to employ a variety of strategies to minimize conflict of interest and its potential adverse effects, such as keeping members self-aware of the potential for conflict of interest and using procedures that can minimize or address conflicts. In a broader sense, where the planning council's deliberations are open and accessible to consumers and the broader public, members are less likely to engage in behavior that reflects narrow concerns or conflict of interest. Examples of useful strategies are as follows:

- **Conflict of Interest Policies and Procedures.** Successful resolution of conflict of interest situations requires adoption of conflict of interest policies and their routine and consistent application in planning council deliberations and decision making. Broad standards should be outlined in the planning council's bylaws and detailed in separate policies and procedures. The planning council needs to decide what it considers to be a fair and practical method to manage and resolve conflict of interest issues, recognizing that no solution is perfect. Conflict of interest cannot be fully prevented or resolved; it can be managed consistently and fairly. Specific standards and procedures include the following:
  - Define conflict of interest to cover not only the individual member but also his/her close relatives.
  - Prohibit those with a potential conflict of interest from voting on issues relating to a particular category of service or other matters that directly affect organizations with which they are affiliated. Permit them to vote only on a slate of priorities or a combined set of allocations.

- Ask anyone with a potential conflict of interest to leave the room during the discussion of that category of service or issue as well as while a vote is being taken. There may be cases where a person can answer direct questions without initiating discussion about a specific service category for which that person has a potential conflict of interest. In such cases, the planning council will need to make a determination of the value of the input and the extent of the conflict.
- Assign a co-chair or a committee to review all conflict of interest concerns. Authorize any planning council member to make a request for review of a perceived conflict of interest; define the process of review in writing, establishing timelines so that any review is undertaken in an expeditious manner; and establish policies for dealing with members who engaged in a conflict of interest and/or refused to cooperate in a conflict of interest review.
- **Disclosure Forms.** Many planning councils require members to complete forms that identify any affiliations that may create real or perceived conflicts of interest. The form might include all of the following:
  - A listing of all relationships the member has to organizations that could benefit from an action by the planning council (such as a current or potential Ryan White Part A provider).
  - The relationship that causes the potential conflict of interest (e.g., member serves on the Board, partner is an employee).
  - The duration of the conflict of interest.
  - A description of what actions will be used to prevent or resolve a conflict of interest.

Disclosure forms should be updated annually or whenever an affiliation changes, to maintain accurate information.

- **Public Disclosure:** Members might be required to declare their potential conflicts of interest verbally once a year, semiannually, or even at every meeting. Sometimes disclosure is specifically required during priority setting and resource allocation. Planning council members should be required to provide a verbal disclosure any time discussion or decision making involves an entity or situation in which the member has a real or perceived conflict of interest.
- **Reminders of conflict of Interest.** Among other actions that may be useful in increasing planning council member awareness of conflict of interest are the following reminders:
  - Provide a written or projected matrix of members and their conflicts of interest at every meeting.
  - Provide members with the planning council’s mission statement to remind them of the purpose of their work.
  - Require members to sign a declaration of commitment to the purposes of the planning council.

- **Well Publicized Open Meetings.** Planning council meetings and most committee members are open to the public. Where members of the public, including consumers, are present, planning council members are reminded of their responsibility to represent and serve the community.
- **Input During Meetings.** Orderly processes that can reduce conflict of interest include allowing for regular input from community members at meetings. Requests for time to comment on concerns should be submitted in advance of meetings and the time allocated for public comment should be limited, while allowing for diverse expression and full debate.
- **Other Forums for Input.** Input beyond the planning council membership can include consumer caucuses, provider caucuses, support groups, and ad hoc committees to get input at each step of the process.
- **Clear Processes With Open Participation.** Processes that are well defined and open to the public protect the interests of all planning council members. Included in those processes should be avenues for broad and balanced input from a variety of sources. The needs assessment process, for example, must include input from providers and consumers as well as other interested parties and should not be dominated by a particular group. Similarly, comprehensive planning activities should be based on a clear structure and process that identifies action steps, timelines, and specific roles and responsibilities. Perhaps most important, the setting of priorities and the allocation of resources must flow from the results of the needs assessment and comprehensive planning process.
- **Member Term Limits and Staggered Terms.** This can allow for new voices to be heard.
- **Grievance Procedures.** In cases where a conflict of interest evolves into a dispute, particularly in relation to a funding decision, the planning council may need to turn to grievance procedures to resolve the situation (See the chapter on Grievance Procedures in this section).

## **X. Ch 9. Effectiveness of Funded Services to Meet Identified Need**

### **Introduction**

The Ryan White HIV/AIDS Program requires that services be provided in a manner that is coordinated, cost effective, and ensures that Ryan White Part A funds are the payer of last resort for HIV/AIDS services. A belief in the cost effectiveness of community-based, ambulatory HIV/AIDS services is at the core of the Ryan White HIV/AIDS Program.

The underlying assumption is that Ryan White services reduce hospitalizations for PLWHA and are more cost effective than inpatient care. An important responsibility for Ryan White Part A entities is to provide programs that make a difference in the most cost efficient manner.