

# Use of Alternates and Proxy Voting by RWHAP Planning Councils/Planning Bodies

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This reference document is intended to serve as a tool to assist Ryan White HIV/AIDS Program (RWHAP) Part A Planning Councils/Planning Bodies (PC/PBs) that are considering the use of alternate members or proxy voting. It provides information about factors to consider in deciding whether to begin using alternates or proxy voting, or to refine current policies and procedures. As discussed below, your first step should be to determine whether state or local open meeting laws in your jurisdiction limit or prohibit use of proxy voting, or state any requirements regarding use of alternates. Once you know what is permitted, the information here can help your PC/PB assess its options and make decisions appropriate to your situation.

## Introduction

RWHAP Part A PC/PBs carry out numerous legislatively defined tasks. As decision-making bodies that decide how Part A funds are allocated, planning councils must complete many tasks based on an annual calendar, so every meeting is important. Planning bodies carry out similar tasks, but in an advisory rather than a decision-making role. PC/PBs are also expected to have membership that is both representative of legislatively-required categories and reflective of the local HIV epidemic.

PC/PBs work to ensure a quorum at every meeting and maintain active participation by unaligned consumer members. In the early years of the epidemic, planning councils used a variety of approaches to accomplish this. One strategy was the use of **alternates** to attend and vote at meetings when regular members, most often consumers, were ill and could not attend. Today, some PC/PBs continue to use some form of alternate membership, and some use **proxy voting**. This summary describes both strategies, their advantages and disadvantages, and sound practices for their use.

## Definitions: Proxy Voting and Use of Alternates

**Proxy Voting:** Proxy voting is a practice in which a member of a decision-making body (the “principal”) delegates voting power to another member or to someone else (the “proxy”), when the principal cannot attend the meeting. A “specific proxy” tells the proxy how to vote. A “general proxy” allows the proxy to decide how to vote. Proxy voting is common in annual shareholder meetings of publicly held corporations. It is less common in nonprofit organizations or governmental boards or commissions, and some states and localities prohibit its use.

**Alternate Members:** An alternate (or “associate”) member is an individual who is authorized to represent a regular voting member who is unable to attend a particular meeting, and to participate actively and vote during that meeting. Alternates have no voting rights except when they are representing an absent voting member. Typically, alternates participate in deliberations and then decide how to vote, rather than following the direction of the regular member. Some bodies allow all members to have alternates, while others limit this right to certain categories of members. State and local laws typically allow the use of alternates.

## How PC/PBs Use Proxy Voting and Alternates

A review of publicly available PC/PB Bylaws<sup>1</sup> indicates that a majority of PC/PBs do not permit either proxy voting or the use of alternates. However, about one in four uses alternate or associate members, and one in eight allows proxy voting (one does both, using alternates as the proxy voters). More than 40% of PC/PBs specifically state in their Bylaws that they do not permit proxy voting. Where proxy voting or alternates are permitted, the PC/PB sometimes has policies and procedures to guide the process.

### PROXY VOTING

Where proxy voting is permitted, Bylaws provide differing levels of information and varied requirements:

- *Who may use a proxy:* This option may be available only to unaligned consumers, or to any member living with HIV, to representatives of state agencies (e.g., Medicaid or Part B), or to any member.
- *Who may serve as a proxy voter:* PC/PBs may allow proxies to be given to any voting member of the PC/PB or only to members who are consumers or are living with HIV.
- *Reason:* Some PC/PBs allow proxy voting only in cases of illness; others allow it for any absence.
- *Written designation:* Designation of a proxy must usually be communicated in writing to PC/PB support staff or the Chair before the meeting, with documentation kept on file.
- *Length of proxy designation:* Designation may be for a single meeting, two meetings, a specified period of time, or whenever needed during the regular member's term.
- *Limits on use:* Sometimes, a limited number of proxy votes are permitted in one meeting. Bylaws may also limit the number of meetings per year for which regular members may use a proxy without jeopardizing their membership due to poor attendance.
- *Implications for quorum:* Bylaws vary. They may: be silent on whether proxy voting affects quorum, specify that the proxy does count towards quorum, or state that it does not.
- *Guidance on how to vote:* Bylaws often do not specify whether the proxy voter is told how to vote by the principal. It appears, however, that there may be an assumption that the principal specifies how to vote. One PC specifies that the proxy voter may vote only on issues that were on the agenda, since no guidance can be provided on unexpected issues.

### Sample Bylaws Provisions for Proxy Voting

*Any PLWH member who is absent due to illness may appoint a proxy. An individual Council member may serve as proxy for only one member. The designated proxy must be a voting member of the Council.*

*The use and designation of a proxy must be communicated to Planning Council Staff prior to the start of the meeting. Designation of a proxy must be documented in writing within the Planning Council files. A proxy may serve for up to two meetings to represent a PLWH member who is unable to attend due to illness.*

*Proxies do not count towards quorum.*

## ALTERNATE MEMBERSHIP

There are no established standards for the use of alternates, and fewer specific practices from other types of bodies than for proxy voting. PC/PBs that use alternates vary considerably in the amount and type of information provided in the Bylaws, but often address the following:

- *Who may use an alternate:* Most often only unaligned consumer members or only members with HIV are entitled to alternates, but sometimes representatives of state agencies or all PC/PB members are allowed to use alternates.
- *Reason:* Bylaws may allow alternates only for absence due to illness or for any absence.
- *Pool versus individual alternates:* The PC/PB may have a pool of alternates, or individual members may choose their own alternates or may have an alternate assigned to them.
- *Vetting:* Process ranges from no vetting at all (with the alternate named by an individual member) to full vetting and appointment by the CEO in the same way as regular members; In most cases, alternates appear to go through the open nominations process, but for some PC/PBs are approved only by the PC/PB, or by the PC/PB and the Health Department.
- *Orientation, training, and attendance:* In some PC/PBs, alternates must participate in the same orientation and training and meet the same attendance requirements as voting members of the PC/PB.
- *Length of appointment:* Alternates often serve a fixed term. Individual alternates may serve the same term as “their” regular member; pool alternates may be appointed for a period of one or more years and be assigned to an individual member for a single meeting as needed.
- *Limits on use:* Bylaws often limit the number of meetings per year for which a regular member may make use of an alternate without being in violation of attendance requirements.
- *Factors in selection:* The alternate may be expected to be as much like the member as possible in terms of race/ethnicity, gender or gender identity, or other characteristics, to maintain reflectiveness.
- *Implications for quorum:* Alternates generally count towards quorum.
- *Guidance on how to vote:* Alternates typically make up their own minds about how to vote, based on the discussion and their own preferences.

### Sample Bylaws Provisions for Individual Alternates

*Under certain circumstances as defined by policy and procedure, Planning Council members living with HIV may have an alternate assigned to represent them during any absence due to illness related to their HIV status. Other Council members do not qualify to have alternates assigned or appointed during absences for any reason.*

*Alternates will be people with HIV, and there shall be a maximum of one alternate for every Council member living with HIV.*

*Alternates will be selected using an open nominations process, according to the established policies and procedures for nomination and appointment to the Council. They will be appointed to terms of the same length as Council members.*

*Alternates will receive the same orientation and training as Council members, serve as voting members of a committee, and have the same attendance requirements as Council members. They will participate fully in activities and meetings of the Council, including discussion, but vote only at those meetings which they are replacing an official Council member.*

*Serving as an alternate is viewed as preparation for full Council membership. If a Council seat becomes vacant, alternates shall be considered for full membership as Council members.*

### **Sample Bylaws Provisions for a Pool of Alternates**

*There shall be a panel of 6 unaligned consumers of Part A services who shall be appointed as alternates to the members serving in the unaligned consumer category of the Planning Council.*

*These alternates, referred to as pool alternates, shall be present at all meetings, and shall be available to act in the absence of any unaligned consumer member of the Council at any given meeting.*

*Pool alternates shall be appointed as such by the Chief Elected Official in the same manner as regular members of the Council, except that pool alternates shall serve one-year terms, without limitation on reappointment to additional terms.*

*To be eligible to vote at any meeting, the pool alternates must have completed a new member orientation and attended the most recent prior Planning Council meeting.*

*If there are more pool alternates than unaligned consumer member absences at a meeting, pool alternates eligible to vote at that meeting will be selected by random drawing by the Chair of the meeting.*

*When representing an absent member, the alternate shall count towards quorum and shall have all voting rights accorded to members. Pool alternates not representing an absent member may participate in discussion but may not vote at a Planning Council meeting.*

*Each pool alternate will serve as a voting member of one standing committee.*

*Pool alternates shall serve as the primary pool of candidates from which voting members are replaced when consumer member vacancies occur during the year.*

## **Benefits and Challenges of Using Proxy Voting or Alternate Members**

Use of alternates or proxy voting brings both benefits and challenges, as summarized in the chart beginning on page 5 .

For proxy voting, the determining factor may be whether state and local Open Meeting laws permit it. Laws may allow or forbid proxy voting specifically or include other requirements that lead to legal opinions about proxy voting. For example:

- Sunshine laws in Texas and Florida do not permit a board or commission member to delegate authority to deliberate or to vote to another person, unless there is clear statutory authority to do so.
- California's Brown Act and Sunshine Ordinance (which covers local "legislative" bodies) does not mention proxy voting. However, some legal opinions have found that proxy voting is prohibited because the Act assumes that decisions will be made at meetings, and because proxy voting would circumvent the requirement for an open process in which the public has the right to participate. In addition, several California municipalities require that members of appointive boards, commissions, and other units of government be "present" to vote at meetings, or explicitly prohibit proxy voting. For example, the Good Government Guide from the City Attorney of San Francisco says that an absent member of a board or commission "may not vote by proxy," and the San Diego City Attorney issued an opinion in 2006 on requirements for community planning group compliance with the Brown Act and Council Policy, determining "proxy voting in any meeting held to conduct the public business" is prohibited.
- The Louisiana Open Meeting Law requires voting *viva voce* ("with living voice"), which the Attorney General has determined to require that members be physically present to vote; this prohibits proxy voting by absent members.

The following chart addresses a number of issues PC/PBs should consider in determining whether to use proxy voting (where legally permitted) or alternates.

## Issues, Benefits, and Challenges in Use of Proxy Voting and Alternates

ISSUE	EXPLANATION	PROXY VOTING	ALTERNATE MEMBERS
<b>Ability of Members to Vote When Absent</b>	A member who cannot attend the PC meeting may want to participate in PC decision making	Bylaws may allow the absent member ("principal") to use a proxy voter to vote as the principal specifies	Decision about how to vote is generally made by the alternate, not the absent member
<b>Meeting Quorum Requirements</b>	Counting an alternate or proxy towards quorum can help a PC/PB reach quorum, which can be challenging	Bylaws vary—they may be silent on this, or may specify that the proxy voter counts or does not count towards quorum	An alternate generally counts towards quorum—the alternate is an individual who attends, participates, and votes
<b>Support for the Consumer Voice</b>	Use of alternates and proxies can strengthen the consumer voice where only consumers may use them; some PCs began using alternates at a time when consumers were more likely to miss meetings due to illness	Some PCs protect the consumer voice by allowing only consumers to use proxy voting; the principal may specify how the proxy must vote or Bylaws may require that only consumers may serve as proxy voters	Some PCs use alternates to ensure a consumer voice at all meetings, allowing only consumers to use alternates, and/or only consumers to serve as alternates; some choose alternates with characteristics similar to the regular member to maintain reflectiveness
<b>Supporting Diversity of Voices and Opinions</b>	PC/PBs are expected to meet representation and reflectiveness requirements, to include diverse interests and perspectives	Since proxy voting allows a smaller number of members to make decisions, it can permit fewer voices and less diversity in decision making	<ul style="list-style-type: none"> <li>• Use of alternates does not reduce the number of people making decisions</li> <li>• It can support diversity if care is taken to choose alternates that "look like" the members they are representing</li> </ul>
<b>Effect on Member Attendance</b>	Ready access to proxy voting or alternates may discourage regular attendance by appointed PC members	Some PCs limit the number of times proxy voting may be used and make the proxy appointment good for a limited time period, and/or require a high level of personal meeting attendance	Some PC/PBs limit the number of times an alternate may be used and/or require the member to personally attend a high proportion of PC/PB meetings
<b>State and Local Open Meeting Law Requirements</b>	Open Meeting laws call for open deliberations, and sometimes specify that members must be present to vote or require "one member/one vote"	<ul style="list-style-type: none"> <li>• If the principal specifies how the proxy voter will vote on an issue, this may violate the requirement for a member to be present for discussion in order to vote</li> <li>• If the proxy voter is already a voting member, giving that person a second vote may violate "one member/one vote" requirements</li> </ul>	Since alternates are separate individuals with only one vote and since they generally decide themselves how to vote after participating in deliberations, their use generally meets Open Meeting Law requirements
<b>Open Debate and Decision Making</b>	Governmental or nonprofit bodies are expected "to meet in the open and debate the matters before them, reaching conclusions "in the light of day" <sup>2</sup>	If the principal tells the proxy how to vote, the value of public deliberation is reduced, since that member's vote is not affected by the deliberations	As long as alternates are expected to make their own decisions about how to vote, their involvement does not affect open debate and decision making



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<b>Robert's Rules of Order (RRO)</b>	Robert's Rules of Order is largely silent on use of alternates but strongly discourages use of proxy voting by nonprofit entities	<ul style="list-style-type: none"> <li>RRO considers proxy voting "incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal, and nontransferable"<sup>3</sup></li> <li>A PC/PB that conducts meetings according to RRO should specify in the Bylaws that proxy voting is allowed and that the Bylaws take precedence over RRO</li> </ul>	RRO permits the use of alternate delegates to assemblies or conventions ("a member authorized to substitute for another member"), but otherwise does not provide specific guidance on alternates
<b>Informed Debate</b>	Continuity of attendance helps ensure informed debate by members and minimizes the amount of background information that must be shared at each PC/PB meeting	<ul style="list-style-type: none"> <li>Proxy voters who are regular voting members should be informed and not require extra background</li> <li>Members who use proxy voting may not be well informed and may need considerable explanation in order to be informed participants when they do attend meetings</li> </ul>	<ul style="list-style-type: none"> <li>Alternates that have the same orientation, training, and attendance requirements as regular voting members should be knowledgeable about the issues and able to participate in informed debate; alternates that do not receive such preparation and attend meetings regularly may have limited background</li> <li>Members who use alternates frequently may not be well informed and may need considerable explanation in order to be informed participants when they do attend meetings</li> </ul>
<b>Practical Issues Related to Priority Setting and Resource Allocation (PSRA)</b>	<ul style="list-style-type: none"> <li>A key legislative duty of PC/PBs is to "establish priorities for the allocation of funds within the eligible area, including how best to meet each priority..." which typically involves multiple sessions over several months that include PSRA training, one or more data presentations, priority setting, development of directives, and allocation of resources to specific service categories</li> <li>Many PC/PBs have policies that allow a member to vote on priorities and allocations only if that member also participated in the data presentation(s) and received any special training on PSRA prior to decision making</li> </ul>	<ul style="list-style-type: none"> <li>Regular PC/PB members who have met all participation requirements to vote themselves would also meet the requirements to serve as proxy voters</li> <li>The absent member providing the proxy would need to have met all prior participation requirements in order to give a proxy for voting on PSRA</li> <li>Since PSRA decision making usually involves multiple discussions, it would be hard for the absent member to predict choices in giving guidance to a proxy voter—this would not be a problem if the decision about how to vote were left to the proxy voter</li> <li>Any failure to meet these local requirements could lead to a grievance, since PSRA decisions involve funding</li> </ul>	<ul style="list-style-type: none"> <li>In order to represent the regular member in voting on PSRA, an alternate would first need to meet all the PC/PB's requirements regarding prior participation in data presentation(s) and any PSRA training</li> <li>To enable the alternate to meet these requirements, the need for an alternate would have to be determined or predicted several months in advance of PSRA decision making</li> <li>Allowing an alternate to participate in decision making without meeting the prior requirements could violate PC/PB policies and lead to a funding-related grievance</li> </ul>

ISSUE	EXPLANATION	PROXY VOTING	ALTERNATE MEMBERS
<p><b>Conflict of Interest (COI)</b></p>	<ul style="list-style-type: none"> <li>PC/PBs are required to have policies and procedures to manage conflict of interest, which involves an actual or perceived interest in an action by the PC/PB that will result or appear to result in personal, organizational, or professional gain</li> <li>PC/PB members who are officers, board members, staff, or paid consultants of Part A subrecipients or potential subrecipients (or their close family members) have a COI with regard to the relevant service categories</li> <li>Consumer members of the PC/PB are considered “unaligned” only if they do not have such a COI</li> </ul>	<p>To avoid difficulties and even a possible grievance, the PC/PB needs a clear policy that clarifies:</p> <ul style="list-style-type: none"> <li>Whether the only COI factor in proxy voting is whether the absent regular member has a COI, or whether COI rules also apply to the proxy voter—for example, if an unaligned consumer gives a proxy to another member who is employed by a Part A subrecipient, is the proxy voter permitted to vote that proxy even if the action involves a service category for which the proxy voter’s agency has funding?</li> <li>Whether the proxy voter’s COI matters only when the proxy voter decides how to vote, or whether it applies even when an absent member with no COI tells the proxy voter how to vote—for example, if an unaligned consumer tells the proxy voter to support reallocation of funds to mental health services, and the proxy voter’s agency has mental health funding, does that COI apply (because it may give the appearance of COI), or does it not apply because the proxy voter simply casts the vote as directed by the unaligned consumer</li> </ul>	<ul style="list-style-type: none"> <li>If the alternate is an unaligned consumer, there should be no COI issues, although sound practice is for alternates to receive the same COI training as regular members and be asked to complete a COI disclosure form annually</li> <li>If the alternate is not an unaligned consumer, the alternate should not only receive COI training and sign a COI disclosure form, but also announce any COI at the meeting and refrain from voting on any issue involving a service category for which the alternate has a COI</li> <li>An alternate who does not understand and follow COI policies and procedures might participate inappropriately in decision making on a funding issue, which could lead to a grievance</li> </ul>
<p><b>Preparation of Future Members</b></p>	<p>Most PC/PBs value opportunities for preparing people to become members of the PC in the future</p>	<p>There is no effect if the proxy voter is already a PC member</p>	<ul style="list-style-type: none"> <li>Alternates may be considered “members in training,” considered first if a vacancy occurs—especially if appointed by the CEO</li> <li>Alternates often have the same orientation, training, and attendance requirements as voting members—which prepare them for full membership</li> </ul>
<p><b>Voting Only by Individuals after Vetting and CEO Appointment</b></p>	<p>Legislation requires that PC members go through an open nominations process and be appointed by the CEO and that they agree to meet Conflict of Interest requirements</p>	<p>Usually the proxy voter is already a voting member of the PC, so this requirement is met</p>	<ul style="list-style-type: none"> <li>Alternates often—but not always—are selected through the open nominations process, recommendation by the PC, and appointment by the CEO; Bylaws do not always state COI requirements for alternates</li> </ul>

## Sound Practices

Following are some sound practices to consider if your PC/PB uses or plans to use proxy voters or alternate members:

### SOUND PRACTICES FOR BOTH PROXY VOTING AND ALTERNATES

1. **Allow use of proxies or alternates only for particular categories of members, ideally only unaligned consumers, and require the proxy voter or alternate to be a consumer—and make this clear in your Bylaws.** This helps to strengthen the consumer voice. You may also want to allow representatives of state agencies who work in the capital or non-consumers located in outlying parts of the Eligible Metropolitan Area (EMA) or Transitional Grant Area (TGA) to use alternates, especially if your EMA or TGA is located a long way from the state capital and/or if the PC/PB—or the applicable state or local Open Meetings law—does not permit members to connect remotely to meetings.
2. **Limit the number of times per year a member can use a proxy or alternate, and maintain meaningful requirements for members to attend meetings.** Otherwise, you may discourage regular member attendance.
3. **Allow proxies or alternates for full PC/PB meetings only.** Bylaws can allow non-PC/PB members to be voting members of committees other than Executive and Membership.
4. **Supplement Bylaws language with policies and procedures that lay out your process in detail,** so there is no confusion about requirements or processes over time. This protects the PC/PB if there is any question about the selection or role of an alternate or proxy voter in decision making, and reduces the likelihood of a grievance in decisions related to funding.

### SOUND PRACTICES FOR PROXY VOTING

Proxy voting is legally problematic in some jurisdictions because of issues related to open deliberations and public decision making. If your PC/PB feels it must use this method rather than another approach like alternates, consider the following:

1. **Understand and follow state and local Open Meeting laws.** Ask for a legal opinion if there is any question about whether proxy voting is permitted.
2. **Be very clear about whether the principal can (or must) specify how the proxy is to vote on specific issues expected to come before the PC/PB or whether the proxy makes that decision.** Either approach has pros and cons. Allowing the absent principal to decide enables that member to participate in decision making even when absent, but also reduces the significance of discussion during meetings. Allowing the proxy to decide gives that member two votes and increases the proxy voter's influence, but makes deliberations more meaningful. If the principal decides how the proxy will vote, then the proxy should not be permitted to vote on any issues not on the agenda or not included in the instructions from the principal. How you address this issue can determine whether your approach to proxy voting is permitted by your state or local Open Meeting laws.
3. **Limit the number of proxies permitted in a meeting**—ideally only one or two.
4. **Require each proxy authorization to be provided before the meeting, in writing, signed, given to PCS or a specified officer, and kept on file.** This protects the PC/PB in case of any question about the validity of the proxy.



5. **Consider carefully whether to count the proxy towards quorum**—and be sure your decision is consistent with Open Meeting laws.
6. **Have the proxy authorization apply for one meeting only**, unless there is a sound reason for a longer period—for example, if the member has a medical condition that requires more than one month of absence.

### **SOUND PRACTICES FOR USE OF ALTERNATE MEMBERS**

If you use alternate or associate members, treat them as much like regular voting members as possible. Consider the following sound practices:

1. **Consider carefully whether to allow only unaligned consumers or other members to have/use alternates.** Ideally, limit use to unaligned consumers.
2. **Include in Bylaws the number of alternates and their terms**—and whether they can be reappointed.
3. **Recruit a pool of alternates rather than individual alternates.** This is likely to mean more opportunities for representing an absent member and voting, which helps maintain engagement. Recruit alternates to provide reflectiveness, as with regular members. In choosing an alternate from the pool, either use a rotation (so all alternates have the same opportunity to represent an absent member) or choose an alternate that “looks like” the regular member who is unable to attend, to provide diverse perspectives at the meeting.
4. **Use the same open nominations and appointment method for alternates and regular voting members.** Recruit diverse unaligned consumers, vet them, have the Membership Committee recommend them to the Executive Committee and then the full PC/PB, and send them to the CEO for further vetting and appointment. If you allow members other than consumers to use alternates, recruit alternates with backgrounds similar to those categories of members.
5. **Clearly state the rights and expectations for alternates when they are not representing an absent member.** For example, expect the same level of PC/PB meeting attendance and the same committee involvement as for regular members—and provide the same orientation and training and the same expense reimbursements and other supports.
6. **Count alternates towards quorum**, since they will be acting on behalf of regular members, have been vetted, and are expected to participate and vote.
7. **View the role of alternate as preparation for future PC/PB membership**—and take full advantage of this approach. Make this clear when you recruit alternates. If you offer special training for other consumers, always include alternates. If your alternates are appointed by the CEO, explore whether they can become full members to fill a vacancy without a second vetting.

- 1 Bylaws for all 52 RWHAP Part A planning councils and planning bodies were reviewed, but it is likely that a few of them were not the most recent versions of those Bylaws, since not all PC/PBs post Bylaws on their websites.
- 2 Input from Texas to a Cyburbia Forum on Proxy Voting, December 2013. See <https://www.cyburbia.org/forums/threads/proxy-voting.50003/>.
- 3 Robert's Rules of Order Newly Revised, 11th edition, 2011, p 428-429.

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