

Bylaws Provisions That Facilitate PC/PB Operations in an Emergency

THE SITUATION

The COVID-19 emergency has created many challenges for Ryan White HIV/AIDS Program (RWHAP) Part A Planning Councils and Planning Bodies (PC/PBs). Around mid-March 2020, most PC/PB support (PCS) staff were told to work remotely, sometimes with little warning, as were many PC/PB members. Others, including some Health Department and service provider staff, found themselves extremely busy, whether providing their usual services under extremely difficult conditions or reassigned to help deal with the COVID-19 crisis. Most states issued stay-at-home orders, often forbidding gatherings of more than 10 people. Within a few weeks, states with open meetings laws that limited or forbade remote meetings by public entities (including PC/PBs) had issued Executive Orders or legal guidance from the Attorney General permitting virtual meetings, with various requirements and limitations. Some local jurisdictions did the same.

THE CHALLENGES

Many PC/PBs were soon permitted to meet remotely if necessary, during the declared emergency or while large gatherings are forbidden, but they have often faced challenges beyond technology and connectivity. For example:

- **Delayed member appointments:** The expected appointment of new members has been delayed as CEOs focus on the COVID-19 emergency, and current member terms ended with no replacement seated.
- **Delayed officer elections:** During several months when the PC/PB did not meet, terms may have ended for the elected Chair, Vice Chair, or Co-Chairs, so there are no officers.
- **Quorum issues:** Some PC/PB members have become temporarily unavailable for meetings due to work demands or new COVID-19-related assignments, which have made it hard to meet quorum requirements.
- **Emergency conditions:** PC/PBs need to operate differently, continuing necessary activities but without “business as usual” – and without established policies or processes to guide them.

USEFUL BYLAWS PROVISIONS

Some of these challenges can be addressed through appropriate bylaws provisions. Following are some examples of helpful provisions adopted in the past by PC/PBs. Other PC/PBs could consider adopting them in the future, to help them operate in emergencies caused by a pandemic or natural disaster. Below are some sample bylaws provisions addressing specific operational challenges.

- **Delayed member appointments and officer elections:** Some PC/PBs have bylaws provisions that extend the terms of current members or officers until their successors have been appointed or elected and sworn in. The effects of delayed elections are also less serious

when the PC/PB has either Co-Chairs or a Chair and Vice-Chair with staggered terms, rather than all officer terms serving a one-year term or serving terms that end at the same time.

Sample Bylaws Provision on Delayed Member Appointments

A Southeastern EMA includes the following in its Member Terms and Vacancies bylaws.

If appointments are delayed, the current members shall serve until their successors are appointed and seated.

Sample Bylaws Provision on Delayed Officer Elections

The same EMA includes the following in its Officers' Term of Office bylaws.

Officers shall serve for two years or until their successors are elected and seated.

Sample Bylaws Provision on Staggered Officer Terms

A West Coast EMA includes this simple language in its Bylaws.

The Co-Chairs' terms of office are two years, which shall be staggered.

- **Quorum issues/leave of absence:** Under *Robert's Rules of Order*, a person on leave still counts for quorum unless the bylaws say something different. Bylaws can specify when and how a leave of absence can be provided and managed.

Sample Bylaws Provision on Leave of Absence and Quorum

A Midwestern TGA provides detailed requirements and procedures on this in its Bylaws.

A [PC] member may request a leave of absence from the [Membership] Committee. A leave of absence may be not less than two nor more than six months. A leave of absence may be granted by a majority vote of the committee for reasons... [such as personal sickness, personal or family emergency, death in the family]. A member may request a leave of absence not more than twice within a two-year period and may not request a second leave of absence before returning to service and meeting attendance requirements for a period at least equal to the previous leave of absence. If unable to return by the date originally anticipated, a member may request extension of their leave of absence to the maximum duration of six (6) months.... A member who is on a leave of absence shall not be counted as an active member in determining quorum. If a member is unable to return to active membership...after the approved end date of leave of absence..., that person may be recommended for removal.... If there are consecutive excused absences prior to a leave of absence request, they will be included as part of the leave."

Sample Bylaws Provision on Leave of Absence and Quorum

A West Coast EMA includes a brief, focused statement addressing both leave of absence and excuses absences in its Meeting bylaws.

A quorum is defined as more than one-half of the membership, excluding these members on an authorized leave of absence or excused absence.

- **Emergency protocols:** PC/PBs typically do not have bylaws provisions for dealing with natural disasters or emergencies. One exception is a Southern EMA in an area subject to natural disasters, which has adopted an “Emergency Protocol.”

Sample Emergency Protocol Included in Bylaws

A Southern EMA’s Emergency Protocol addresses multiple issues.

Invoking the Emergency Protocol:

Natural or man-made events may occur that constitute an emergency for the residents of the...Eligible Metropolitan Area (EMA.) Such events may impact the ability of the...Planning Council...to meet and/or reach quorum and thus prevent the Council from conducting essential business. When such emergencies occur, the Council may invoke the following Emergency Protocol (Protocol) to assure that its partnership with the Grantee, and clients, is intact and maintains essential services for persons living with HIV/AIDS in the EMA. For these purposes, an “Emergency” is one that is legally declared by the City..., the State..., or the Federal Government of the United States for the area covered by the ... EMA.

Addressing quorum issues resulting from temporary unavailability or physical absence of members. *The bylaws refer to them as “Displaced Planning Council Members,” defined as “members who have expressly stated that they have temporarily relocated and cannot attend meetings in person, or members who cannot be reached or fail to respond to attempts to reach them after ten (10) business days from the first attempt.*

Displaced Planning Council Member(s) will automatically be granted a Leave of Absence. Leave of Absence is defined as the removal of the names of Displaced Planning Council Member(s) from roll call to facilitate the establishment of quorum under emergency circumstances, and such absences shall not count toward absence limits, as defined in the Bylaws.

Addressing delays in the appointment of members or election of officers:

If the emergency occurs at a time that delays the appointment of new or continuing members or the election of Officers/Chairs, the Council may, by majority vote, recommend to the CEO the extension of terms for persons who were members at the time of the emergency, but would have ceased to be members of the Planning Council according to [the Planning Council’s] Bylaws at the end of the...membership year.... This provision is both to establish continuity of operations and to compensate for the delay in appointing new members.

The Emergency Protocol is time-limited to six months, but may be reinstated.

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