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CITY AND COUNTY OF DENVER

DEPARTMENT OF ENVIRONMENTAL HEALTH
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Rules and Regulations Governing Ryan White Grievances Filed with the Manager of Environmental Health

**Department of Environmental Health
Mayor's Office of HIV Resources**

Adopted: December 16, 1997

CITY AND COUNTY OF DENVER
RULES AND REGULATIONS GOVERNING RYAN WHITE GRIEVANCES FILED WITH
THE MANAGER OF ENVIRONMENTAL HEALTH

INTRODUCTION

The Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (PL 101-381), as amended by the Ryan White Comprehensive AIDS Resources Emergency Act Amendments of 1996 (PL 104-146) Section 2602 requires grantees to develop grievance procedures as a condition of eligibility for funding. Such procedures shall include a process for submitting grievances to binding arbitration and shall be reviewed by the Secretary of Health and Human Services.

SUMMARY OF THE GRIEVANCE PROCEDURE

This grievance procedure involves three distinct steps which must be followed in order. Initially a grievant must meet informally with the Manager of the Department of Environmental Health and the Director of the Mayor's Office of HIV Resources to seek an informal resolution to a grievance. Following this informal process the grievant may request mediation and following mediation the grievant may request binding arbitration.

NO RETROACTIVE APPLICATION

With respect to settlements reached through mediation or arbitration there will be no retroactive application. Funding awards made using Ryan White Title I and/or Title II funds approved by the Mayor of Denver are not subject to this grievance procedure. Approved expenditures cannot be reversed through this procedure.

THE GRIEVANCE

WHO MAY FILE A GRIEVANCE

Individuals or entities who reside within the Denver eligible metropolitan area (EMA) and are directly affected by a decision process related to funding are eligible to file a grievance. Directly affected parties include consumers of Ryan White funded services, applicants for Ryan White funding and People Living with HIV/AIDS (PLWH) groups.

The Denver HIV Resources Planning Council.

The grieving party must complete the intake form prepared by the Mayor's Office of HIV Resources (MOHR).

TYPES OF GRIEVANCES

Directly affected parties may grieve:

- (a) deviations from the established contracting and awards process (e.g. the selection of a particular provider in a manner inconsistent with the grantee's established procurement process), and;
- (b) deviations from the established process for any subsequent changes to the selection of contractors or awards.

The Denver HIV Resources Planning Council may grieve:

- (a) contracts and awards not consistent with priorities (including any language regarding how best to meet those priorities) and resource allocations made by the council, and;
- (b) contract and award changes not consistent with priorities and resource allocations made by the council.

FILING A GRIEVANCE

Grievances must be filed within thirty (30) days of the disputed funding decision announcement made by the Piton Foundation, the Denver Mayor's Office or the Mayor's Office of HIV Resources.

FORM

The grievance shall be in writing and shall be signed and verified by the grieving party before a notary public or other person authorized by law to administer oaths and take acknowledgments.

CONTENTS

The full name and current mailing address of the directly affected party filing the grievance.

The full name and current mailing address of the party alleged to have committed the violation.

A short and plain statement of the grievance including date questioned decision was taken, by what entity, and the reasons for filing the grievance.

A statement of previous action taken indicating results of previous attempts at resolution.

A statement of what result the grievant is seeking.

If this is a request for binding arbitration the filing party must attach a copy of the document terminating mediation (see below) to the form.

PLACE OF FILING

Grievances shall be filed with the Manager's Office, Denver Department of Environmental Health during regular business hours.

DATE OF FILING

The grievance shall be deemed filed as of the date of receipt at the Manager's Office.

MANNER OF FILING

Grievances shall be filed either by personal delivery or by certified mail, addressed to:

Manager's Office
Department of Environmental Health
1391 Speer Boulevard, 7th Floor
Denver, Colorado 80204

Staff members of the Mayor's Office of HIV Resources (MOHR) shall be available to assist in drafting and filing of the grievance at:

MOHR
1391 Speer Boulevard, 7th Floor
Denver, Colorado 80204

during regular business hours. Upon receipt of the grievance the Manager's Office shall mail a copy of these rules to the filing party and designate an individual who will be available to answer procedural questions relating to the grievance process.

FILING FEE

There shall be a \$25.00 filing fee due at the time of filing the grievance. The Manager of the Department of Environmental Health may waive this fee for consumers of Ryan White funded services and PLWH groups.

REVIEWING GRIEVANCE

The Manager of the Denver Department of Environmental Health or his or her designee is responsible for reviewing the grievance to determine whether it is consistent with the type of grievances listed above. The Manager shall also determine that the grievant is eligible to file a grievance. The Manager shall also provide notice by mail to any person whose interests may be impaired by the disposition of the grievance. The review shall be completed within twenty (20) days of the date on which the grievance is filed and the filing party shall be notified in writing of the response to the grievance.

RULES OF MEDIATION

AGREEMENT OF PARTIES

As a prerequisite to mediation the grievant shall endeavor to eliminate disputes by meeting informally with the Manager of the Department of Environmental Health and the Director of the Mayor's Office of HIV Resources. As a prerequisite to binding arbitration the parties shall endeavor to eliminate the alleged violation by mediation.

Whenever, by stipulation or in their contract the parties have provided for mediation or conciliation of existing or future disputes under these rules, they shall be deemed to have made these rules, as amended and in effect as of the date of the submission of the dispute, a part of their agreement. The parties, by written agreement may vary the procedure set forth in these rules.

APPOINTMENT OF THE MEDIATOR

Following review of a grievance the Mayor of Denver, as chief elected official shall appoint a qualified mediator to serve or select a mediation service which will appoint a qualified mediator. Normally a single mediator will be appointed unless the parties agree otherwise or the mediation service determines otherwise. The mediator or mediation service shall be selected concurrently with the notice of response to the grievance.

QUALIFICATIONS OF THE MEDIATOR

No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation. Prior to accepting an appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the parties. Upon receipt of such information the Mayor shall either replace the mediator or immediately communicate the information to the parties for their comments. In the event that the parties disagree as to whether the mediator shall serve, the Mayor shall appoint another mediator.

VACANCIES

If any mediator shall become unwilling or unable to serve, the Mayor shall appoint another mediator, unless the parties agree otherwise.

REPRESENTATION

Any party may be represented by persons of the party's choice. The names and addresses of such persons shall be communicated in writing to all parties and the mediator.

DATE, TIME AND PLACE OF MEDIATION

The mediator shall fix the date and time of each mediation session. The mediation shall be held at a convenient location, within Adams, Arapahoe, Denver, Douglas or Jefferson counties, agreeable to the mediator and the parties, as the mediator shall determine. Parties shall be advised in writing of the date, time and location of the mediation session at least ten (10) days in advance unless agreed to otherwise by the parties.

IDENTIFICATION OF MATTERS IN DISPUTE

At least ten (10) days prior to the first scheduled mediation session, each party shall provide the mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the discretion of the mediator, such memoranda may be mutually exchanged by the parties.

At the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issues presented.

The mediator may require any party to supplement such information.

AUTHORITY OF THE MEDIATOR

The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning the technical aspects of the dispute, provided that all the parties agree and assume the expense of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the parties, as the mediator shall determine.

The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties.

PRIVACY

Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and the consent of the mediator.

CONFIDENTIALITY

Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents

received by the mediator while serving in that capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in arbitration, judicial, or other proceeding:

- (a) views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
- (b) admissions made by another party in the course of the mediation proceedings;
- (c) proposals made or views expressed by the mediator; or
- (d) the fact that another party had or had not indicated a willingness to accept a proposal for settlement made by the mediator.

NO STENOGRAPHIC RECORD

There shall be no stenographic record of the mediation process.

TERMINATION OF MEDIATION

The mediation shall be terminated;

- (a) by the execution of a settlement agreement by the parties;
- (b) by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or
- (c) by written declaration of a party or parties to the effect that the mediation proceedings are terminated.

EXCLUSION OF LIABILITY

Neither the mediation service nor any mediator is a necessary party in judicial proceedings relating to the mediation.

Neither the mediation service nor any mediator shall be liable to any party for any act or omission in connection with any mediation conducted under these rules.

EXPENSES

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator

or mediation service, and the expenses of any witness and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. Expenses shall be paid within thirty (30) days of receipt of an invoice.

TIME PERIODS FOR CONDUCTING MEDIATION

Determination that grievance or grievant has standing within the scope of these procedures, notification of other party, and selection of mediator: 20 days after the grievance has been filed with Manager's Office, Department of Environmental Health.

Meeting(s) with parties and resolution or decision by third party not to continue (impasse): within 30 days of the selection of a mediator.

BINDING ARBITRATION RULES

AGREEMENT OF PARTIES

As a prerequisite to binding arbitration the parties shall endeavor to resolve the dispute by mediation.

Whenever, by stipulation or in their contract the parties have provided for binding arbitration of existing or future disputes under these rules, they shall be deemed to have made these rules, as amended and in effect as of the date of the submission of the dispute, a part of their agreement. The parties, by written agreement, may vary the procedure set forth in these rules.

ADMINISTRATION AND DELEGATION OF DUTIES

When parties agree to arbitrate under these rules they thereby authorize the arbitrator or arbitration service to administer the arbitration.

FILING A REQUEST FOR BINDING ARBITRATION

Within five (5) days of mediation being terminated under TERMINATION OF MEDIATION (b) or (c) above the grieving party may request binding arbitration by timely filing a request for arbitration with the Manager's Office, Denver Department of Environmental Health.

FORM

The request for binding arbitration shall be in writing and shall be signed and verified by the requesting party before a notary public or other person authorized by law to administer oaths and take acknowledgments.

CONTENTS

The full name and current mailing address of the adversely affected party filing the request.

The full name and current mailing address of the party alleged to have committed the violation.

A short and plain statement of the grievance including date questioned decision was taken, by what entity, and the reasons for filing the grievance.

A statement of previous action taken indicating results of previous attempts at resolution.

A statement of what result the grievant is seeking.

The filing party must attach a copy of the document terminating mediation (see above) to the form.

PLACE OF FILING

Requests for arbitration shall be filed with the Manager's Office, Denver Department of Environmental Health during regular business hours.

DATE OF FILING

The grievance shall be deemed filed as of the date of receipt at the Manager's Office, Denver Department of Environmental Health.

MANNER OF FILING

Requests for arbitration shall be filed either by personal delivery or by certified mail, addressed to:

Manager's Office,
Department of Environmental Health
1391 Speer Boulevard, 7th Floor
Denver, Colorado 80204

Staff members of MOHR shall be available to assist in drafting and filing of the grievance at:

MOHR
1391 Speer Boulevard, 7th Floor
Denver, Colorado 80204

during regular business hours. Upon receipt of the request for arbitration the Manager's Office shall mail a copy of these rules to the filing party and designate an individual who will be available to answer procedural questions relating to the binding arbitration process.

FILING FEE

There shall be a \$25.00 filing fee due at the time of filing the request for arbitration. The Manager of the Department of Environmental Health may waive this fee for consumers of Ryan White funded services and PLWH groups.

REVIEWING THE REQUEST FOR ARBITRATION

The Manager of Environmental Health or his or her designee is responsible for reviewing the request for arbitration to determine whether it is consistent with the type of grievances listed above. The Manager shall also determine that the grievant is eligible to file a request for arbitration. The review shall be completed within ten (10) days of the date on which the request for arbitration is filed and the filing party shall be notified in writing of the result.

APPOINTMENT OF AN ARBITRATOR

Following review of a request for arbitration the Mayor of Denver, as chief elected official, shall appoint a qualified arbitrator to serve or select a arbitration service which will appoint a qualified arbitrator. The arbitrator or arbitration service shall be selected concurrently with the notice of response to the filing party.

QUALIFICATIONS OF THE ARBITRATOR

No person shall serve as an arbitrator in any dispute in which that person has any financial or personal interest in the result of the arbitration. Prior to accepting an appointment, the prospective arbitrator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the parties. Upon receipt of such information the Mayor shall either replace the arbitrator or immediately communicate the information to the parties for their comments. In the event that the parties disagree as to whether the arbitrator shall serve the Mayor shall appoint another arbitrator.

VACANCIES

If any arbitrator shall become unwilling or unable to serve, the Mayor shall appoint another arbitrator, unless the parties agree otherwise.

REPRESENTATION

Any party may be represented by persons of the party's choice. The names and addresses of such persons shall be communicated in writing to all parties and the arbitrator.

DATE, TIME AND PLACE OF ARBITRATION

The arbitrator shall fix the date and time of each arbitration session. The arbitrator shall be held at a convenient location within Adams, Arapahoe, Denver, Douglas or Jefferson counties, agreeable

to the mediator and the parties, as the arbitrator shall determine. Parties shall be advised in writing of the time, date and location of the arbitration session at least ten (10) days in advance of the hearing date, unless otherwise agreed by the parties.

TIME PERIOD FOR CONDUCTING BINDING ARBITRATION

Determination by the grievant to request binding arbitration: 5 days following receipt of the termination of mediation.

Notification of the other parties and selection of arbitrator and agreement of the parties to arbitrator: 10 days following receipt of the request for binding arbitration.

Hearing (if necessary): 15 days following the agreement of the parties to arbitrator.

Decision by arbitrator: 15 days following selection of the arbitrator or 15 days following the hearing.

TIME OF DECISION.

The decision shall be made promptly by the arbitrator and, unless otherwise agreed by the parties no later than fifteen days (15) days from the date the arbitrator was selected if no hearing is scheduled. Where there is a hearing the decision of the arbitrator shall be made, unless otherwise agreed by the parties no later than fifteen days (15) from the closing of the hearing.

FORM OF DECISION

The decision shall be in writing and shall be signed by the arbitrator. The decision shall be mailed to all parties involved in the dispute.

EXECUTION OF DECISION

Costs and/or funding decision process changes called for in any decision as a result of binding arbitration shall be made within the time specified in the arbitrator's order.

EXPENSES

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required traveling and other expenses of the arbitrator or arbitration service, and the expenses of any witness and the cost of any proofs or expert advice produced at the direct request of the arbitrator, shall be borne equally by the parties unless they agree otherwise or unless the arbitrator in the award assess such expenses or any part thereof against any of the specified parties. Expenses shall be paid within thirty (30) days of receipt of an invoice.

DEFINITIONS

Arbitration. The submission of a dispute to an impartial or independent individual or panel for a binding determination. Arbitration is usually carried out in conformity with a set of rules. The decision of an arbitrator generally has the force of law, although it generally does not set a precedent.

Arbitrator. An individual or panel of individuals (usually three) selected to decide a dispute or grievance. Arbitrators may be selected by the parties or by an individual or entity.

Binding. A process in which parties agree to be bound by the decision of an arbitrator or other third party.

Costs. Charges for administering a dispute settlement process.

Day. Refers to a working day.

Eligible Metropolitan Area (EMA). Adams, Arapahoe, Denver, Douglas and Jefferson counties.

Facilitation. A voluntary process involving the use of techniques to improve the flow of information and develop trust between the parties to a dispute. Involves third party (facilitator) who, as in mediation, uses a process to assist the parties in reaching an agreement that is acceptable to the parties.

Facilitator. A third party who works with the parties to a dispute, providing direction to a process. A facilitator may be independent or may be drawn from one of the parties, but must maintain impartiality on the topics under discussion.

Grantee. The City and County of Denver.

Grievant:. A person or entity seeking a structured resolution of grievance.

Mediation: A voluntary process in which an impartial and usually independent third party assists parties to a dispute in reaching an acceptable resolution to the issues in the dispute. Mediation may involve meetings held by the mediator with the parties together and separately. The results of a mediation can become binding on the parties if the parties agree to make it binding.

Mediation/arbitration (med/arb): A mixed approach in which parties agree to mediate their differences and submit those issues that cannot be resolved through mediation to arbitration. This technique helps to narrow the issues submitted to arbitration.

Mediator: A trained impartial and usually independent third party selected by the parties to the dispute or by another entity to help the parties reach an agreement on a determined set of issues.

Neutral: A term used to describe an independent third party, including a mediator or arbitrator, selected to resolve the dispute or grievance.

Non-binding: Techniques in which the parties to a dispute attempt to reach an agreement. The results must be agreed to by both parties; results are not imposed by the third party as they are in binding arbitration or in a judicial proceeding.

Party: Refers to one of the participants in the grievance process. This includes the grievant (or person or group) who brings the grievance action, the person or group against which the grievance is brought, and any party whose interests may be impaired by the disposition of the grievance.

Remedy: This is the relief or result sought by a grievant in bringing the grievance. It can include a process change or a reversal of a decision. A remedy applies prospectively.

Standing: A term referring to the eligibility of an individual to bring a grievance.

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

Adopted by the Board of Environmental Health at an emergency rule making hearing at the regular board meeting of June 12, 1997.

Approved for publication by the Board of Environmental Health at the regular board meeting of October 9, 1997. Adopted by the Board of Environmental Health after a public rule making hearing at the regular board meeting of December 11, 1997.

Approved as to Legality:

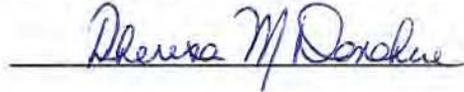
Daniel E. Muse
City Attorney

By: _____

A handwritten signature in blue ink, appearing to read "Daniel E. Muse", written over a horizontal line.

Adopted: December 16, 1997

Theresa M. Donahue
Manager of Environmental Health

A handwritten signature in blue ink, appearing to read "Theresa M. Donahue", written over a horizontal line.