



## Functional Planning Council Bylaws: Hints for 2020 and Beyond<sup>1</sup>

Every Ryan White HIV/AIDS Program (RWHAP) Part A Planning Council (PC) has Bylaws to guide its operations. While PC Bylaws do not have quite the legal weight of the Bylaws of an incorporated nonprofit organization, they are very important. They specify membership composition and terms, officers, meetings, and key policies; help PCs meet federal, state, and local legislative requirements; and provide continuity and clarity for new PC members and PC support (PCS) staff. If a PC fails to follow its Bylaws, its funding decisions (allocations or reallocations) can be challenged through the grievance process.

Most PCs developed their Bylaws many years ago, as their Part A program was being established. Some have revised them significantly since that time – because they became a merged prevention and care planning body, needed to address changes in Ryan White legislation or regulations, had to meet changing city or county requirements (especially if the PC is an official board or commission), or identified a need to change structure and operations to improve planning. A few PCs have left their Bylaws largely unchanged since the Ryan White legislation was last updated in 2009, but over 60% have amended them in the past three years.

Unusual circumstances like the COVID-19 emergency help to highlight the importance of PC Bylaws: they play a major role in enabling – or preventing – PC meetings and other actions necessary for implementing legislative duties in difficult and unexpected situations. Following are nine hints for ensuring that your PC's Bylaws are appropriate and functional in both normal and anything-but-normal times.

**1. Think carefully about whether your PC is best served by concise Bylaws supported by policies and procedures (P&P) or detailed Bylaws that include rules and procedures.**

Bylaws are a lot harder to change than P&P – which can be an advantage if you want to protect key requirements, but a disadvantage if they make change very difficult. It is much easier to revise or temporarily suspend P&P (usually a majority vote of the PC is sufficient) than to amend Bylaws (which usually require prior notice of 30 days and a super-majority like a two-thirds vote of members). Thus if you want flexibility to refine your committee structure as needed, your Bylaws can require and describe only the Executive or Steering Committee and specify that other standing and special/*ad hoc* committees may be established by majority vote of the PC. If you want flexibility to refine your open nominations process based on what works, state in the Bylaws that all members must go through an open nominations process as laid out in PC-approved P&P.

**2. Be aware of review processes required after PC approval.** The chief elected official (CEO) establishes the PC and has the right to review Bylaws. Sometimes jurisdictions ask for a legal review to ensure that the Bylaws reflect state and local as well as federal requirements. If that review is lengthy

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and complex, be sure to begin the process soon enough to have the amended Bylaws in place when you need them. This may also be a reason for simplifying your Bylaws and putting detailed processes into P&P.

- 3. Include provisions to extend terms of current members if nominations or CEO appointments are delayed.** This can happen due to a natural disaster like a severe flood or hurricane, a crisis like the COVID-19 pandemic, or damage that makes city or county offices unsafe. With no special provisions, PC members lose voting rights when their terms end – a PC with two-year terms could temporarily lose half its voting members under such a delay. This will not happen if your Bylaws specify under Member Terms that “current members shall serve until their successors are appointed and seated.”
- 4. If your PC allows members to take a leave of absence, specify in the Bylaws that a person on authorized leave does not count towards quorum.** Otherwise, a person on six months’ leave due to illness, a family situation, or temporary deployment out of town will still count towards quorum. During the COVID-19 emergency, some PC members – especially public employees and medical provider staff – have been reassigned and are unable to participate in PC meetings. This can also happen when other health-related emergency or natural disaster occurs. With a simple but formal process for requesting a leave of absence, these members can be temporarily removed from the list of members who are counted in determining quorum – to avoid meeting cancellations due to lack of quorum.
- 5. If your jurisdiction is vulnerable to long-lasting dislocations or operational disruptions (perhaps all Part A jurisdictions now fit that description), consider adding Bylaws provisions that reduce quorum requirements and add other flexibility in such situations.** The need for emergency provisions became clear in New Orleans after Hurricane Katrina. They might specify that when the governor or the city or county CEO declares an emergency, the PC may hold meetings with reduced quorum requirements, reduced notice (for example, meeting notice posted only online), and/or only electronic public participation. Such provisions should be consistent with your jurisdiction’s open meetings laws, but can be worded to apply when some of those requirements are suspended, as occurred with COVID-19. In states where open meeting laws permit meetings to be held electronically under normal conditions (as do about 1/3 of states with Part A programs), Bylaws could permit meetings to be held electronically or some members to connect remotely under unusual circumstances short of a state of emergency, even if the PC requires face-to-face meetings under normal conditions. There should be a clear trigger for such provisions – e.g., school or business closings – and a clear limit on their duration.
- 6. Include Bylaws provisions that automatically incorporate changes in federal legislation or regulations, so you are not immediately out of compliance when they occur.** Your PC will still need to amend the Bylaws to incorporate changes in required membership or legislative requirements, but there will be no need to rush the process. Some PCs include a statement of compliance near the beginning of the Bylaws; for example:  
*The Planning Council will follow the provisions of current Ryan White legislation and the regulations and guidance of the Health Resources and Services*

*Administration (HRSA), as well as all applicable local, state, and federal laws and regulations.*

Some PC Bylaws reference the legislation in several articles, most often Duties/ Responsibilities and Membership. For example:

- *Consistent with current Ryan White legislation and HRSA guidance [and the requirements of the CDC HIV Planning Guidance, if this is a joint prevention and care body], the Planning Council will carry out the following duties and responsibilities....*
- *In accordance with the Ryan White HIV/AIDS Treatment Extension Act or subsequent reauthorizations....*

- 7. Understand the implications of stating in the Bylaws that your meetings will be conducted using *Robert's Rules of Order*.** Some actions are required or forbidden by *Robert's Rules* unless your Bylaws clearly state that they are permitted – Bylaws take precedence. For example, under *Robert's Rules*, proxy voting is not permitted and the Bylaws cannot not be suspended for any reason. If your PC doesn't use *Robert's Rules of Order*, Bylaws should specify what process will be used for managing meetings, or indicate how this will be determined (e.g., by vote of the PC).
- 8. Remove or change any Bylaws provisions the PC does not follow and has no expectation of following.** Some PCs do not regularly review their Bylaws, and are surprised when a new member or someone else looks at those Bylaws and realizes that some PC actions are inconsistent with them. Perhaps the PC has changed its committee structure and the standing committees listed are no longer correct. Quite a few PCs have Bylaws that allow the PC Chair to establish new committees, but sometimes that practice has changed, and establishment of new standing committees are approved by the PC. Perhaps your Bylaws state that any member who misses three consecutive PC meetings without an excused absence is considered to have resigned, but the PC is not enforcing that attendance requirement. Or the Bylaws have detailed Conflict of Interest (COI) requirements but they are not enforced. Whatever the discrepancies, PC officers and PCS staff should be knowledgeable about Bylaws provisions and should check regularly to see that they are being followed. If not, either the practices or the Bylaws need to be changed. This is important because failure to follow your Bylaws could lead to a grievance. An organization or individual could challenge the PC's allocation or reallocation decisions as improper because stated policies or processes were not followed, or people who are not legitimate members according to the Bylaws were allowed to vote.
- 9. Be sure some committee or task force has clear responsibility for regularly reviewing your Bylaws regularly and recommending needed changes.** A thorough review should occur at least every three years, or whenever legislation, regulations, or PC roles change – or the PC feels that its current structure and operations need review or updating. For example, many PCs could benefit from a post-COVID-19 Bylaws review.