



POLICY AND PROCEDURE NOTICE: PPPN-063 SANCTIONS FOR NONCOMPLIANCE

Summary and Purpose of PPPN: This policy establishes the process for imposing sanctions on a subrecipient which is found to be out of compliance with contractual requirements. The policy also outlines what optional actions may be taken by the Ryan White Program Office before imposing a sanction; the reasons for imposing sanctions; how the Ryan White Program Office imposes a sanction, and the time frame for imposing a sanction. Finally, the policy explains how the subrecipient responds to either a required action or a sanction and the recourse available to a subrecipient regarding that action or sanction.

In the event that a discrepancy occurs between Ryan White Program's sanctions policy and the current contract/agreement with the subrecipient, the most recently enacted contract will be followed.

Authority:

Uniform Grant Management Standards (UGMS) as amended by revised federal circulars 74-4, A-122, A-128 and A-133;

Policy and Procedure:

Each subrecipient signs a contract/agreement which outlines tasks or requirements associated with receiving Ryan White Part A funds from Fulton County. In signing the contract, the subrecipient agrees to perform those tasks or requirements. Noncompliance results when a discrepancy is found in the administration of a program or a service, or an irregularity is found in the way the subrecipient is spending and/or accounting for the funds. The discrepancy may be found during a compliance review or it may be found by staff responsible for monitoring subrecipient compliance with reporting or financial accounting activities. The subrecipient may also be found in noncompliance for failing to cooperate with the investigation of a complaint or failing to respond to adverse findings resulting from a complaint filed against the subrecipient.

The Ryan White Program has various options it may take in regard to contract noncompliance. The options include emergency action, corrective action or imposition of a sanction. The decision to require corrective action or to impose a sanction depends on the severity of the finding or if similar or recurring problems have been found in the past.

Emergency Action

The Ryan White Program Office is authorized to take an immediate emergency action when a reviewer determines that a finding of noncompliance warrants such action.

1. Time frame and method for notifying subrecipient of emergency action:
 - The reviewer, after conferring with appropriate Ryan White Program staff, gives a verbal notice on-site or by phone to the subrecipient to immediately discontinue the action or process. The reviewer provides written notice of the required emergency action by certified mail within 10 calendar days.
2. Time frame for the subrecipient to respond to emergency action:
 - The subrecipient must immediately discontinue the action or process that has prompted the required emergency action. In addition, the subrecipient must provide an acceptable action plan in a time frame specified by the Ryan White Program to ensure that the circumstances or conditions which caused noncompliance will not recur.
3. Ryan White Program action when the subrecipient fails to respond to the emergency action notice:
 - The Ryan White Program will decide what additional actions or recourse may be needed in order to effectively stop the noncompliant action or process. Recourse may include the imposition of any of the corrective actions listed in this policy and/or imposition of any of the sanctions described in this policy or any combination thereof. The Ryan White Program may also refer the matter to the County Attorney for appropriate action.
4. Ryan White Program communication regarding emergency action:
 - When emergency action is required, the Ryan White Program must notify the County Manager through appropriate agency channels.
5. Discontinuing emergency action:
 - Emergency action is discontinued when the condition causing the Ryan White Program to take emergency action has been eliminated and the Ryan White Program is reasonably sure that the condition will not reoccur. Compliance will be determined by accelerated monitoring or other appropriate procedures. The Ryan White Program notifies the subrecipient in writing that the condition which elicited the emergency action(s) has been resolved and additional action is not required.

Corrective Action

When possible, Ryan White Program staff will require the subrecipient to remedy adverse findings by recommending that the subrecipient take certain corrective action(s) before

imposing a sanction(s). When corrective action is recommended, the subrecipient is subject to the following Ryan White Program actions:

- announced or unannounced compliance reviews to determine the cause(s) of noncompliance;
- technical assistance/training from other divisions and programs to assist the subrecipient in rectifying certain noncompliant areas of service delivery or administration;
- follow up site visits, and
- accelerated monitoring.

The decision to require corrective action or to impose a sanction depends on the severity of the finding or if similar or recurring problems have been found in the past.

1. Time frame and method for notifying the subrecipient of required corrective action:

- Within 45 calendar days of finding subrecipient irregularities the Ryan White Program sends the subrecipient a written notice requiring corrective action to resolve the irregularities. The notice may be part of the site visit report or it may be a letter relating findings from contract monitoring activities. The notice informs the subrecipient of the need to develop a Corrective Action Plan action plan to address the irregularities that were found, the expected time frame for resolving the irregularities and the time frame for responding to the corrective action requirement. See: [PPPN-064 Corrective Action Plan](#).

2. Time frame for the subrecipient to respond to the corrective action:

- The subrecipient has 30 calendar days from the date of the letter to respond to the corrective action requirement by outlining the action that has been taken or will be taken to address the findings. A time frame for completing the action plan and how the subrecipient will determine the effectiveness of the action plan should be included.

3. Ryan White Program action when the subrecipient fails to respond to the corrective action notice:

- The Ryan White Program will decide whether or not to issue a formal sanction if, by the end of 30 calendar days after the date of the letter, the subrecipient fails to respond by providing the proposed Corrective Action Plan.

4. Ryan White Program action when the subrecipient responds to the corrective action notice:

- Ryan White Program staff which directed the use of a corrective action reviews the subrecipient's response and evaluates it. Within 30 calendar days or less from receipt of the plan, the following alternatives are available:
 - A. When the corrective action is acceptable, Ryan White Program staff will reply in writing acknowledging receipt of the response and that it is accepted.
 - B. When the corrective action is unacceptable, staff informs the subrecipient in writing that additional action or information is needed. The subrecipient must respond within 15 calendar days of the date of the letter. Staff may discuss unacceptable portions of the corrective action plan with the subrecipient over the telephone. Any agreements of changes from those discussions should be documented in the subrecipient's file. The Ryan White Program may decide to impose a formal sanction if the subrecipient fails to negotiate a satisfactory corrective action plan.

5. Ryan White Program action when corrective action fails to resolve noncompliance:

- When corrective action has been required and the subrecipient is still not in compliance or will not comply, the Ryan White Program may then decide to impose a sanction. Staff involved in the finding, the Assistant Director, Ryan White Program and the Director, Ryan White Program determine what sanction is appropriate for the finding.

Sanctions That May be Imposed

One or more sanctions may be imposed depending on the extent of the problem, the impact on the clients being served and/or the seriousness of the problem. For the purposes of this policy, sanctions are shown in three different levels depending on the seriousness of the action to be taken.

Level I Sanctions

One or more of the following Level I sanctions may be imposed:

- accelerated monitoring;
- requiring the subrecipient to accept technical/management assistance or training;
- disallowing claims for payment or reimbursement on expenditures and expenditures for which prior approval was required but not obtained;
- requiring additional, more detailed programmatic reports;
- requiring additional prior approvals for expenditure of funds, and/or

- referral to the Fulton County Grants Management Division or Internal Audit for monitoring.

1. Imposing the level I sanction:

- Fulton County Ryan White Staff may impose the Level I sanction on the program's behalf or on behalf of Fulton County Grants Management or Title VI staff.

2. Time frame for subrecipient sanction notification:

- The Ryan White Program provides written notice by certified mail to the subrecipient within 30 calendar days of finding noncompliance.

3. Content of the sanction notice and method of calculating response time:

- Ryan White Program staff issues a written notice to the subrecipient telling the subrecipient that this is the official notice imposing the sanction. **The sanction is effective upon receipt of the notice.** The notice must contain the following:
 - the area(s) found to be in noncompliance;
 - any reference to previous correspondence;
 - a narrative outlining what must be done to achieve compliance;
 - the expected time frame for reaching compliance, and
 - the deadline for the subrecipient to reply.
- The time frame for the subrecipient's response begins with the receipt date on the return receipt or the date delivery was attempted whichever comes first. That date is considered day zero.
- NOTE: When accelerated monitoring is one of the sanctions, a notice may not be sent prior to performing the monitoring.

4. Subrecipient action in response to a notice of sanction:

- The subrecipient has 30 calendar days from the date the sanction notice is received to respond in writing to the findings. The written response is sent to the person imposing the sanction and must include the following:
 - acknowledgment of receiving the notice;
 - a narrative telling how the area(s) of noncompliance will be corrected, and
 - specific time frames for achieving compliance.
- The subrecipient may also ask for reasonable technical/management assistance or training to correct the area of noncompliance. The division or program will decide if

the request is reasonable and within the capability of the Ryan White Program to provide the requested assistance.

5. Ryan White Program action when the subrecipient fails to respond to the Level I sanction notice:

- The Ryan White Program will decide whether or not to issue additional sanctions if, by the end of 30 calendar days, the subrecipient fails to respond by providing the proposed action plan.

6. Action required of the Ryan White Program when a subrecipient responds to the sanction:

- The Ryan White Program evaluates the response to determine if the actions to be taken are appropriate and acceptable. The following alternatives are available:
 - When the response is acceptable, the division or program acknowledges receipt of the response in writing and informs the subrecipient that it is accepted.
 - When the response is unacceptable, the division director or program director (or their designee) and the staff who issued the sanction, may negotiate directly with the subrecipient to agree on an acceptable response or impose additional sanctions.
- All decisions and agreements are reduced to writing and sent to the subrecipient for authorized approval signatures.

7. Lifting the sanction:

- A sanction is lifted when the area(s) of noncompliance has been brought into compliance. Compliance may be determined by monitoring through normal Ryan White Program procedures. The Ryan White Program notifies the subrecipient in writing that the sanction is lifted.
- Should a contract with a subrecipient expire, the sanction remains active until the subrecipient has, if necessary, made restitution or has been prosecuted. In addition, the Ryan White Program may delay contract execution with a subrecipient while proposed or actual sanctions are pending resolution. The Ryan White Program Director and staff imposing the sanction will determine what action, if any, will be taken on the new contract.
- All correspondence, notices and other pertinent documentation about the sanction become a permanent part of the subrecipient's file.

8. Communication regarding sanctions:

- Information regarding sanctions may be shared with other programs in Fulton County. Staff may send a copy of the sanction notice to other staff or verbally advise other staff of the sanction.

Level II Sanctions

The following are the Level II sanctions which may be imposed by the Ryan White Program:

- Probation for a time period specified by the Ryan White Program
- Temporarily withholding a portion of funds
- Other actions the Ryan White Program deems to be appropriate

1. Parties responsible for the sanction decision:

- Staff finding noncompliance involving Level II Sanctions must submit a written report to their supervisor. Project Officers, their supervisor, and the Ryan White Program Director will determine what sanction(s) to impose.

2. Time frame for the subrecipient sanction notification:

- The Ryan White Program provides written sanction notice by certified mail to the subrecipient within 30 calendar days of finding noncompliance.

3. Content of the sanction notice and method of calculating response time:

- Ryan White Program staff issues a written notice to the subrecipient telling the subrecipient that this is the official notice imposing the sanction. The sanction is effective upon receipt of the notice. The notice must contain the following:
 - the area(s) found to be in noncompliance;
 - any references to previous correspondence;
 - a narrative outlining what must be done to achieve compliance;
 - the expected time frame for reaching compliance, and
 - the deadline for the subrecipient to reply.
- The time frame for the subrecipient's response begins with the receipt date on the return receipt or the date delivery was attempted whichever comes first. The date of receipt or attempted delivery is considered day zero.
- **NOTE:** When accelerated monitoring is one of the sanctions or used as a method of determining compliance, a notice may not be sent prior to performing the monitoring.

4. Subrecipient action in response to a notice of sanction:

- The subrecipient has 30 calendar days from the date the sanction notice is received to respond in writing to the findings. The written response is sent to the person imposing the sanction and must include the following:
 - acknowledgment of receiving the notice;
 - a narrative telling how the area(s) of noncompliance will be corrected, and
 - specific time frames for achieving compliance.
 - The subrecipient may also ask for reasonable technical/management assistance or training to correct the area of noncompliance. The division or program will decide if the request is reasonable and within the capability of the Ryan White Program to provide the requested assistance.
5. Ryan White Program action when the subrecipient fails to respond to the Level II sanction notice:
- The Ryan White Program will decide whether or not to issue an additional sanction if, by the end of 30 calendar days, the subrecipient fails to respond by providing the proposed action plan.
6. Action required of the Ryan White Program when a subrecipient responds to the sanction:
- When the response is acceptable, the Ryan White Program acknowledges receipt of the response in writing and informs the subrecipient that it is accepted.
 - When the response is unacceptable, the Ryan White Director (or their designee) and the staff who issued the sanction, may negotiate directly with the subrecipient to agree on an acceptable response or may impose additional sanctions.
 - All decisions and agreements are reduced to writing and sent to the subrecipient for authorized approval signatures.
7. Communication regarding sanctions:
- Internal communication within Fulton County government is essential when noncompliance is found and a Level II sanction is imposed or lifted. Noncompliance in one area can affect other Fulton County programs. When a decision is reached and a notice is sent to the subrecipient, the Project Officer notifies other Ryan White staff by sending them a copy of the notice. The Ryan White Director may share findings with other appropriate Fulton County.

- When a subrecipient is given a Level II sanction, the Ryan White Director notifies the County Manager and the County Attorney.

8. Lifting the sanction:

- A sanction is lifted when the area(s) of noncompliance has been brought into compliance. Compliance may be determined by monitoring through normal Ryan White Program procedures. The Ryan White Program notifies the subrecipient in writing that the sanction is lifted.
- When the contract with a subrecipient expires, the sanction remains active until the subrecipient has, if necessary, made restitution or has been prosecuted. In addition, Fulton County will delay contract execution with a subrecipient while proposed or actual sanctions are pending resolution. The Ryan White Director and staff imposing the sanction will determine what action, if any, will be taken on the new contract.
- All correspondence, notices and other pertinent documentation about the sanction become a permanent part of the subrecipient's file.

Level III Sanctions and Final Notice of Permanently Withholding Cash Payments

One or more of the following Level III sanctions may be imposed:

- Termination of all or part of the contract.
- Suspension of all or part of the contract.
- Denial of contract renewal or future contract awards for a period not to exceed five years.
- Reduction of contract funding amounts if the subrecipient is not:
 - achieving or maintaining the proposed level of service, or
 - spending funds appropriately and at a rate which will make full use of the award, or providing services as set out in the contract.
 - Contract amendments resulting from noncompliance.
- In addition to these sanctions, this process also applies to a final notice of permanently withholding cash payments.

1. Parties responsible for a decision to impose a sanction:

- Staff finding noncompliance involving Level III Sanctions will submit a written report to their supervisor. Program staff, their supervisor, and the Ryan White Director determine what sanction(s) to impose.

2. Time frame for subrecipient sanction notification:
 - The Ryan White Program provides written notice by certified mail to the subrecipient within 15 calendar days of finding noncompliance.
3. Content of the sanction notice and method of calculating response time:
 - Ryan White Program staff issues a written notice to the subrecipient telling the subrecipient that this is the official notice imposing the sanction, or that this is the final notice of permanently withholding cash payments. The sanction or the permanent withholding of cash payments is effective upon receipt of the notice. The notice must contain the following:
 - the area(s) found to be in noncompliance;
 - any references to previous correspondence;
 - a narrative outlining what must be done to achieve compliance;
 - the expected time frame for reaching compliance; and,
 - the deadline for the subrecipient to reply.
 - The time frame for the subrecipient's response begins with the receipt date on the return receipt or the date delivery was attempted, whichever comes first. The receipt date or the attempted delivery date is considered day zero.
4. Subrecipient response to Level III sanction(s) or final notice of permanently withholding cash payments:
 - When the subrecipient wishes to protest the Level III sanction or final notice, a response requesting a due process hearing must be sent to the Ryan White Program within 15 calendar days of receiving the sanction notice or final notice of permanently withholding cash payments. The response is addressed to the person who sent the notice and must be mailed or hand delivered.
 - The subrecipient may also include the following:
 - a copy of the notification letter;
 - a written summary outlining the grounds upon which the subrecipient bases the request;
 - a written description of the issue or issues to be resolved;
 - a written statement of the relevant facts;
 - documentation in support of the subrecipient's position, and
 - a statement and listing of authorities who support the subrecipient's position.
5. Ryan White Program action when the subrecipient fails to respond:

- After the 15 calendar days have elapsed, the Ryan White Program sends a certified letter notifying the subrecipient that the sanction is being enforced immediately.
6. Ryan White Program response to the subrecipient's due process hearing request:
- Within 10 working days after receiving the due process hearing request, the Ryan White Program will ask the County Attorney's Office to appoint a hearing officer to conduct the due process hearing. No action is taken on the sanction until the due process hearing is completed.
7. Due process hearing:
- The due process hearing allows the person requesting the hearing to:
 - prove that the basis of the proposed action is incorrect,
 - offer verbal and written testimony about the circumstances involved, and
 - question appropriate Fulton County representatives about the proposed action.
 - The hearing officer prepares a written recommendation for decision and a reason for the recommendation upon completion of the hearing. The recommendation is provided to both parties who may then file exceptions with the hearing officer. The recommendation and any exceptions are submitted to the Commissioner of Health, or a person designated by the Commissioner, for a final decision. A final decision is required as soon as possible, but no longer than 60 calendar days from the date the hearing is closed.
 - When the decision is to enforce the sanction, the Ryan White Program informs the subrecipient by certified mail that the sanction will be imposed immediately. When the decision is not to allow the sanction, all Ryan White Program actions regarding that sanction are discontinued.
8. Departmental communication regarding sanctions:
- Internal communication between Ryan White Program, other parts of Fulton County Government, the State of Georgia, and HRSA is essential when noncompliance is found and a Level III sanction is imposed. Noncompliance in one area can affect other programs. When a decision is reached and a notice is sent to the subrecipient, the program manager notifies other entities by sending them a copy of the notice. When a subrecipient is given a Level III sanction, Ryan White Program notifies the County Manager, the County Attorney, and the Office of Grants Management through appropriate channels.
9. Lifting the sanction:
- A sanction is lifted when the area of noncompliance has been brought into compliance. Compliance may be determined by monitoring through normal Ryan White Program or

Fulton County procedures. The Ryan White Program notifies the subrecipient in writing that the sanction is lifted.

- When the contract with a subrecipient is canceled or expires, the sanction remains active until the subrecipient has, if necessary, made restitution or has been prosecuted. In addition, according to the general provisions of Fulton County contracts, Fulton County may delay contract execution with a subrecipient while proposed or actual sanctions are pending resolution.

All correspondence, notices and other pertinent documentation about the sanction becomes a permanent part of the Ryan White subrecipient's file.

Verification:

- Review of documentation.
- Review of site visit reports.
- Review of corrective action plans.

Approved January 2017

Reviewed March 2021