

COURT APPROVED PROTOCOL

CLAIMS OR LATE CLAIMS INVOLVING FAMILY MEMBERS AND/OR DEPENDANTS

REVISED DECEMBER, 2017

This protocol sets out the documentation required and the processes for allocating payments for Claims or Late Claims under the applicable sections 5.01(2), 6.01 and 6.02 of the Transfused HCV Plan, sections 5.01(2), 5.01(4), 6.01 and 6.02 of the Hemophiliac HCV Plan, sections 5.01(2), 5.01(4)(Hemo), 6.01 and 6.02 of the HCV Late Claims Benefit Plan and applicable special distribution benefits pursuant to the 2016 Allocation Orders.

DOCUMENTATION FOR CLAIMS / LATE CLAIMS MADE BY FAMILY MEMBERS AND/OR DEPENDANTS

1. In addition to any other forms or documentation the Administrator may require, where a claim or Late Claim is made pursuant to section 5.01(2) or 6.01 of the Transfused HCV Plan, section 5.01(2), 5.01(4) or 6.01 of the Hemophiliac HCV Plan and section 5.01(2), 5.01(4)(Hemo) or 6.01 of the HCV Late Claims Benefit Plan, the Administrator shall obtain the following prior to allocating or paying the compensation provided for under the applicable section of the applicable Plan:
 - (a) a declaration signed by each Family Member and/or each Dependant (or, in the case of a minor or a mentally incompetent adult, his or her Personal Representative):
 - (i) providing the name, address and birth date of every living Family Member and/or Dependant who is:
 - A. a Spouse, Child, Parent, Sibling, Grandparent or Grandchild of a deceased HCV Infected Person; and
 - B. a former spouse of the deceased HCV Infected Person to whom the HCV Infected Person was providing support or was under a legal obligation to provide support on the date of the HCV Infected Person's death;
 - (ii) stating that the declarant does not know of any such Family Member and/or Dependant other than those listed; and
 - (iii) identifying each listed Family Member and/or Dependant who is a minor or a mentally incompetent adult, and providing a copy of any guardianship or committee order in respect of such person;

- (b) where a Dependant is a minor or a mentally incompetent adult, a completed Loss of Income/Support or Loss of Services Claim Form; and
 - (c) any further information the Administrator may require pursuant to section 3.04(6) of the Hemophiliac HCV Plan, 3.05(6) of the Transfused HCV Plan or section 3.05(6) of the HCV Late Claims Benefit Plan, such as a family budget.
2. Where a Claim or Late Claim made for loss of support pursuant to section 6.01 of the applicable Plan includes a Dependant who is a Child under the age of 25, loss of support will be presumed to continue until his or her 25th birthday unless the Child provides evidence satisfactory to the Administrator that some other period of loss is appropriate.

DEATH PRIOR TO JANUARY 1, 1999 AND NO FIXED PAYMENT ELECTION

3. Unless the Approved HCV Personal Representative or Approved Late Claim HCV Personal Representative and all of the Family Members and/or Dependents (or, in the case of a minor or a mentally incompetent adult, his or her Personal Representative) of the deceased HCV Infected Person having claims under the applicable Plan agree to elect the fixed payment pursuant to section 5.01(2) of the applicable Plan, or section 5.01(4) of the Hemophiliac HCV Plan, or section 5.01(4)(Hemo) of the HCV Late Claims Benefit Plan, the Administrator shall allocate and pay compensation to each Approved Family Member in accordance with section 6.02 of the applicable Plan, subject to section 7.06 of the applicable Plan.
4. Unless the Approved HCV Personal Representative or Approved Late Claim HCV Personal Representative and all of the Family Members and/or Dependents (or, in the case of a minor or a mentally incompetent adult, his or her Personal Representative) of the deceased HCV Infected Person having claims under the applicable Plan agree to elect the fixed payment pursuant to section 5.01(2) of the applicable Plan, or section 5.01(4) of the Hemophiliac HCV Plan, or section 5.01(4)(Hemo) of the HCV Late Claims Benefit Plan, the Administrator shall:
- (a) allocate loss of support claimed pursuant to section 6.01 of the applicable Plan as follows:
 - (i) one-third to common expenses and two-thirds to exclusive expenses;
 - (ii) an equal share of common expenses to each Approved Dependant or Approved Late Claim Dependant, examples of which are set out on a percentage basis in the following chart:

Allocation of Common Expenses as a Percentage of the Loss of Support				
adult \ minor	0	1	2	3
0	0	33.33	16.66	11.11
1	33.33	16.66	11.11	8.33
2	16.66	11.11	8.33	6.66
3	11.11	8.33	6.66	5.55

- (iii) a share of exclusive expenses to each Approved Dependant or Approved Late Claim Dependant calculated in accordance with the equations provided in subparagraph 3(a)(iv) below, with the result that exclusive expenses for an Approved Dependant or Approved Late Claim Dependant who is an adult shall be 1.5 times the exclusive expenses for an Approved Dependant or Approved Late Claim Dependant who is a minor, examples of which are set out on a percentage basis in the following chart:

Allocation of Exclusive Expenses as a Percentage of the Loss of Support				
adult \ minor	0	1	2	3
0	0	66.66	33.33	22.22
1	66.66	40	25	18.18
2	33.33	26.66	20	14.8
3	22.22	19.04	16.66	13.33

- (iv) the following equations shall be used to calculate the allocation of exclusive expenses:

S = loss of support

A = the share of exclusive expenses for each adult who is an Approved Dependant or Approved Late Claim

Dependant

M = the share of exclusive expenses for each minor who is an Approved Dependant or Approved Late Claim Dependant

n_a = number of adults who are Approved Dependents or Approved Late Claim Dependents

n_m = number of minors who are Approved Dependents or Approved Late Claim Dependents

$$M = \frac{4S}{3(3n_a + 2n_m)} \quad A = \frac{2S}{(3n_a + 2n_m)}$$

- (v) if an Approved Dependant or Approved Late Claim Dependant does not agree with the Administrator's allocation of the loss of support, he or she must file a Request for Review in accordance with the Protocol Rules for References and Arbitrations. Fund Counsel shall provide a copy of any Request for Review to the appropriate Public Guardian and Trustee and/or Children's Lawyer, if Applicable. Thereafter the Administrator shall allocate loss of support as directed by the Referee, Arbitrator or Court once the award, report or order is final;
- (b) where no review of the allocation of loss of support is taken or following a review of the allocation of loss of support once the award, report or order concerning allocation of loss of support is final, the Administrator shall pay loss of support in accordance with the allocation as follows:
 - (i) for each Approved Dependant or Approved Late Claim Dependant who is a mentally incompetent adult, his or her share of the common expenses and the exclusive expenses to the Personal Representative legally appointed to manage his or her financial affairs, subject to subparagraph 3(b)(viii) below;
 - (ii) to each Approved Dependant or Approved Late Claim Dependant who is a mentally competent adult, his or her share of the exclusive expenses;
 - (iii) to each Approved Dependant or Approved Late Claim Dependant who is a mentally competent adult and who does not reside in the same household with Approved Dependents who are minors, his or her share of the common expenses;
 - (iv) subject to subparagraphs 3(b)(vi) and 3(b)(vii) below, for those Approved Dependents or Approved Late Claim Dependents who are mentally competent adults who reside in the same household as Approved Dependents or Approved Late Claim Dependents who are minors, the adult's share of the common expenses and the minor's share of the common expenses and the exclusive expenses, to the adult member of the household who provides an undertaking to the Administrator that:

- A. the common expenses will be used for the benefit of all Approved Dependants or Approved Late Claim Dependants resident in the household;
 - B. the exclusive expenses for each Approved Dependant or Approved Late Claim Dependant who is a minor in the household will be used for his or her direct benefit; and
- (v) the Administrator will be notified if there is a material change of circumstances in the household, such as the departure of an Approved Dependant or Approved Late Claim Dependant from the household;
- (vi) subject to subparagraphs 3(b)(vi) and 3(b)(vii) below, for those Approved Dependants or Approved Late Claim Dependants who are minors who do not reside in the same household with an Approved Dependant or Approved Late Claim Dependants who is a mentally competent adult, each minor's share of the common expenses and the exclusive expenses to the person with care and control of the minor on that person's undertaking to the Administrator that:
 - A. the monies will be used for the benefit of the minor; and
 - B. the Administrator will be notified if there is a material change of circumstances in the household, such as the departure of the minor from the household;
- (vii) if at any time the Administrator has a concern that the undertaking in subparagraph 3(b)(iv) or 3(b)(v) above is not being complied with or that the circumstances in the household have changed so that payment to the adult member of the household or the adult with care and control of the minor who provided the undertaking is no longer reasonable, the Administrator shall reassess and recalculate the allocation of compensation if necessary and/or adjust payment of the compensation for loss of support accordingly, and in so doing shall in its discretion, direct or redirect payments to any person, who in the Administrator's opinion is best qualified to administer the payment on behalf of an Approved Dependant or Approved Late Claim Dependant who is a minor including, if appropriate, the Public Guardian and Trustee or the Children's Lawyer; and
- (viii) notwithstanding the provisions of subparagraph 3(b)(iv) or 3(b)(v) above, the Administrator retains the discretion to pay the common expenses and the exclusive expenses for an Approved Dependant or Approved Late Claim Dependant who is a minor to the person who in the Administrator's opinion is best qualified to administer the payment on behalf of the Approved Dependant or Approved Late Claim Dependant who is a minor

including, if appropriate, the Public Guardian and Trustee or the Children's Lawyer; and

- (ix) if at any time the Administrator has a concern that the share of the common expenses and/or the exclusive expenses of the Approved Dependant or Approved Late Claim Dependant who is a mentally incompetent adult are not being used for his or her benefit, the Administrator shall withhold those payments and notify the appropriate Public Guardian and Trustee through Fund Counsel. The Administrator shall recommence making payments in the manner and at the time directed by the appropriate Public Guardian and Trustee or by order of the Court.

DEATH PRIOR TO JANUARY 1, 1999 AND ELECTION MADE PURSUANT TO SECTION 5.01(2) OF THE APPLICABLE PLAN

- 5. If the Approved HCV Personal Representative or Approved Late Claim HCV Personal Representative and all of the Family Members and/or Dependants (or, in the case of a minor or a mentally incompetent adult, his or her Personal Representative) of the deceased HCV-Infected Person having claims under the applicable Plan agree to elect the fixed payment pursuant to section 5.01(2) of the applicable Plan in full satisfaction of all their Claims or Late Claims (including all potential Claims or Late Claims pursuant to Article Six of the applicable Plan), the Administrator shall:
 - (a) accept an election pursuant to section 5.01(2) of the applicable Plan, provided that any Family Member who is a minor or a mentally incompetent adult is not also a Dependant and that the sum of all of the amounts which would have been payable had Claims been made pursuant to Section 6.02 of the Plan is less than 7/12ths of the applicable fixed payment amount, and allocate and pay the compensation, subject to section 7.06 of the applicable Plan, as follows:
 - (i) 5/12ths of the fixed payment to the Approved HCV Personal Representative on behalf of the estate of the HCV Infected Person who has died;
 - (ii) to each Family Member, the amount to which he or she would have been entitled pursuant to section 6.02 of the applicable Plan, and such payments shall be a first charge against 7/12ths of the fixed payment; and
 - (iii) where the Family Members who received amounts under subparagraph 4(a)(ii) above comprise the entire group of Family Members and Dependants, the remainder of 7/12ths of the fixed payment to each Family Member on a pro rata basis, calculated in accordance with the equation provided in subparagraph 4(a)(v) below; or
 - (iv) where there is one or more Dependant who would not have been entitled to a payment under Section 6.02 of the applicable Plan, the remainder of the 7/12ths of the fixed payment to each Dependant and/or Family Member as they shall all agree, provided that no Family Member who is a

minor or a mentally incompetent adult shall receive less than his or her pro rata share of the remainder of the 7/12ths of the fixed payment , calculated in accordance with the equation provided in subparagraph 4(a)(v) below; and

- (v) the following equation shall be used to calculate the allocation of the remainder of the 7/12ths fixed payment to each Family Member where required by subparagraph 4(a)(iii) above or to each Family Member who is a minor or a mentally incompetent adult where required by subparagraph 4(a)(iv) above:

FMP ₁ ,	= the amount an individual Family Member
FMP ₂ , etc.	would have been entitled to if claiming the
	preset Family Member payment pursuant to
	section 6.02 of the applicable Plan
PRS ₁ ,	= an individual Family Member's pro rata share
PRS ₂ , etc.	of the remainder of the 7/12ths of the fixed
	payment
T	= FMP ₁ + FMP ₂ + etc.
PRS ₁	= (FMP ₁ /T x 7/12ths of the fixed payment) –
	FMP ₁
PRS ₂ , etc.	= (FMP ₂ /T x 7/12ths of the fixed payment) –
	FMP ₂

- (b) if one or more of the Dependents is a minor and/or a mentally incompetent adult and the sum of all of the amounts which would have been payable had Claims or Late Claims been made pursuant to section 6.02 of the applicable Plan is less than 7/12ths of the fixed payment, apply to the Court for directions through Fund Counsel with notice to the Approved HCV Personal Representative, or Approved Late Claim HCV Personal Representative, Family Members and/or Dependents and the appropriate Public Guardian and Trustee and/or Children's Lawyer and thereafter allocate and pay the compensation as directed by the Court once its order is final; or
- (c) reject the election pursuant to section 5.01(2) of the applicable Plan, if the sum of all of the amounts which would be payable pursuant to section 6.02 of that Plan is equal to or greater than 7/12ths of the fixed payment, and allocate and pay compensation pursuant to section 5.01(1), 6.01 and/or 6.02 of that Plan, as applicable in accordance with the provisions of this Protocol.

DEATH PRIOR TO JANUARY 1, 1999 AND ELECTION MADE UNDER SECTION 5.01(4) OF THE HEMOPHILIAC HCV PLAN OR SECTION 5.01(4)(HEMO) OF THE HCV LATE CLAIMS BENEFIT PLAN

6. If the Approved HCV Personal Representative or Approved Late Claim HCV Personal Representative and all of the Family Members and/or Dependants (or, in the case of a minor or a mentally incompetent adult, his or her Personal Representative) of the deceased Primarily-Infected Hemophiliac (or person with Thalassemia Major) also infected with HIV having Claims or Late Claims under the applicable Plan agree to claim the fixed payment pursuant to section 5.01(4) of the Hemophiliac HCV Plan or section 5.01(4)(Hemo) of the HCV Late Claims Benefit Plan in full satisfaction of all their Claims or Late Claims (including all potential Claims or Late Claims pursuant to Article 6 of the applicable Plan), the Administrator shall:
 - (a) provided that no Dependant is a minor and/or a mentally incompetent adult, allocate and pay the compensation, subject to section 7.06 of the applicable Plan, as follows:
 - (i) to each Family Member (who may or may not also be an Dependant), his or her pro rata share calculated in accordance with the equation provided in subparagraph 5(a)(iv) below, using as his or her FMP for the calculation the amount he or she would have been paid if he or she had a claim pursuant to section 6.02 of the applicable Plan;
 - (ii) to each Dependant who would not have been entitled to a payment under section 6.02, his or her pro rata share calculated in accordance with the equation provided in subparagraph 5(a)(iv) below, using as his or her FMP for the calculation a deemed amount equivalent to what an Family Member under the age of 21 would be paid pursuant to section 6.02 of that Plan; and
 - (iii) to the Approved HCV Personal Representative or Approved Late Claim Personal Representative on behalf of the estate of the Primarily-Infected Hemophiliac (or person with Thalassemia Major) also infected with HIV who has died, a pro rata share calculated in accordance with the equation provided in subparagraph 5(a)(iv) below, using as its FMP for the calculation a deemed amount of \$50,000;
 - (iv) the following equation shall be used to calculate each pro rata share of the fixed payment compensation:

FMP₁, = the amount directed in subparagraph 5(a)(i),
FMP₂, etc. (ii) or (iii) above to be used in the equation in
respect of each Family Member, Dependant or
the Approved HCV Personal Representative
T = FMP₁ + FMP₂ + etc.
PRS₁, = the pro rata share of each Family Member,
PRS₂, etc. Dependant or the Approved HCV Personal
Representative
PRS₁, = (FMP₁/T) x the fixed payment
PRS₂, etc. = (FMP₂/T) x the fixed payment

- (b) if one or more of the Dependents is a minor and/or a mentally incompetent adult, apply to the Court for directions through Fund Counsel with notice to the Approved HCV Personal Representative, Approved Late Claim Personal Representative, Family Members and/or Dependents and the appropriate Public Guardian and Trustee and/or Children's Lawyer and thereafter allocate and pay the compensation as directed by the Court once its order is final.

DEATH ON OR AFTER JANUARY 1, 1999 - SECTION 6.02 OF THE TRANSFUSED HCV PLAN, THE HEMOPHILIAC HCV PLAN AND THE HCV LATE CLAIMS BENEFIT PLAN

7. If no fixed payment has been or will be made under section 4.08(2) of the Hemophiliac HCV Plan or section 4.08(2)(Hemo) of the HCV Late Claims Benefit Plan, or where an election under the applicable section has been reversed by re-election¹ and the fixed payment has been accounted for against benefits payable to the Approved Primarily-Infected Hemophiliac who has since died the Administrator shall allocate and pay compensation to each Approved Family Member in accordance with section 6.02 of the applicable Plan, subject to section 7.06 of the applicable Plan.

DEATH ON OR AFTER JANUARY 1, 1999 - SECTION 6.01(1) OF THE TRANSFUSED HCV PLAN, THE HEMOPHILIAC HCV PLAN AND THE HCV LATE CLAIMS BENEFIT PLAN

8. If no fixed payment has been or will be made under section 4.08(2) of the Hemophiliac HCV Plan or section 4.08(2)(Hemo) of the HCV Late Claims Benefit Plan, or where an election under the applicable section has been reversed by re-election² and the fixed payment has been accounted for against benefits payable to the Approved Primarily-

¹ This proposed amendment corresponds with the Joint Committee's proposal to allow class members to reverse an election made pursuant to s.4.08 of the Hemophiliac HCV Plan or s.4.08(Hemo) of the HCV Late Claims Benefit Plan. If the courts do not make an order permitting such re-elections, than this proposed amendment is moot.

² This proposed amendment corresponds with the Joint Committee's proposal to allow class members to reverse an election made pursuant to s.4.08 of the Hemophiliac HCV Plan or s.4.08(Hemo) of the HCV Late Claims Benefit Plan. If the courts do not make an order permitting such re-elections, than this proposed amendment is moot.

Infected Hemophiliac who has since died, the Administrator shall allocate and pay loss of support to each Approved Dependant in accordance with section 6.01(1) of the applicable Plan in the same manner as provided in paragraph 3 above.

NOTES APPLICABLE TO SOME OF THE PROVISIONS OF THIS PROTOCOL

9. Compensation payments for loss of services in the home in accordance with section 6.01(2) of the applicable Plan shall be allocated and paid in the same manner as provided for loss of support under this protocol, subject to the provision in section 6.01(2) that such compensation shall only be allocated and paid to Approved Dependents or Approved Late Claim Dependents living with the HCV Infected Person at the time of the HCV Infected Person's death.
10. All compensation payable under sections 5.01(2), 6.01 and/or 6.02 of any Plan is subject to the restrictions in section 5.01(3), 5.02(2) or 6.02 of the applicable Plan where the deceased HCV Infected Person is also a HIV Secondarily-Infected Person.
11. The amounts referred to in this protocol are subject to the indexing provisions of section 7.02 of the applicable Plan and/or the 2016 Allocation Orders (the August 2016 judgments or orders of the Courts directing the establishment of a discrete Late Claims Benefit Plan and establishing the HCV Special Distribution Benefits).
12. An amount not to exceed \$5,000 to reimburse uninsured funeral expenses may be payable to the Approved HCV Personal Representative or Approved Late Claim HCV Personal Representative on behalf of the estate of the HCV Infected Person who has died, pursuant to section 5.01(2) of the Transfused HCV Plan or the Hemophiliac HCV Plan. An amount not to exceed \$6,728.67 to reimburse uninsured funeral expenses may be payable to the Approved Late Claim HCV Personal Representative on behalf of the estate of the HCV Infected Person who has died, pursuant to section 5.01(2) of the HCV Late Claims Benefit Plan.