

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services
200 Independence Avenue SW
Washington, DC 20201



DATE: December 18, 2017
TO: All CMS Employees
FROM: Seema Verma /s/
Administrator
SUBJECT: Equal Employment Opportunity Policy Statement

The Centers for Medicare & Medicaid Services (CMS) is committed to ensuring a workplace free from unlawful discrimination and harassment, and fostering a work environment that fully uses the capabilities of every employee at all organizational levels.

It is the policy of CMS to provide equal opportunity for all employees and applicants for employment regardless of race, color, national origin, religion, sex, age, physical or mental disability, genetic information, or sexual orientation; to promote full realization of equal opportunity through continuing affirmative employment; and to maintain a workplace free of discriminatory practices and policies. This policy applies to all personnel/employment programs, and management practices and decisions including, but not limited to, recruitment/hiring, merit promotion, transfers, reassignments, training and career development, benefits, and separation. We are personally committed to equal employment opportunity (EEO) and the realization of a fully represented workforce through the implementation of an effective affirmative employment program.

CMS is committed to the principles of equal employment opportunity. All employees and managers must do their part to preserve these principles in our organization by following this EEO policy. Working together, we will cultivate an environment that allows all employees to achieve their highest potential. Simply reducing or preventing discrimination is not enough. We must aggressively promote equal employment opportunity for all persons in the workplace. It is the responsibility of every employee to practice the principles of equal employment opportunity. Toward that end, equal employment opportunity is in the work plan of every CMS manager as a Critical Element.

CMS's Office of Equal Opportunity and Civil Rights (OEOCR)

OEOCR acts in a neutral capacity to resolve and process claims of employment discrimination. To initiate the EEO complaint process the individual must contact OEOCR within 45 calendar days of the alleged discriminatory event. Contact information for OEOCR is provided at the end of this policy statement.

Office of Special Counsel

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency whose mission includes protecting federal employees under the Whistleblower Protection Act. An individual may contact the OSC by telephone at (800) 572-2249 or (202) 254-3670 with whistleblower claims or allegations of prohibited personnel actions, including discrimination based on the EEO factors of race, color, religion, sex, national origin, age and disability, and non-EEO factors of marital status and political affiliation. For additional contact information, to include TTY information, please see www.osc.gov.

Harassment

CMS maintains a zero tolerance for harassment, unlawful discrimination, and retaliation. It is the policy of CMS to maintain a model workplace free from harassment and other forms of unlawful discrimination based on race, color, religion, sex, national origin, age, disability, genetic information and sexual orientation. Moreover, consistent with Presidential Executive Orders and other laws designed to protect federal employees, we must vigilantly prevent discrimination based on parental status, marital status, political affiliation, military service, or any other non-merit based factor. These commitments must be exemplified in all of our management practices and decisions, including recruitment and hiring practices, appraisal systems, promotions, and training and career development programs. All CMS employees are responsible for maintaining a high standard of conduct in the workplace and must refrain from engaging in harassing, offensive, or inappropriate activities. In addition, CMS will not tolerate retaliation against any employee for reporting matters under this policy, or for assisting in any inquiry about such matters.

An employee who chooses to pursue statutory, administrative, or collective bargaining remedies for unlawful harassment must select one of the available forums:

- (1) For an EEO complaint pursuant to 29 C.F.R. § 1614, contact an EEO counselor in OEOCR within 45 calendar days from the personnel action or most recent incident of alleged harassment, as required in 29 C.F.R. § 1614.105(a)(1).
- (2) For a bargaining unit employee's grievance, file a written grievance in accordance with the provisions of the Master Labor Agreement.
- (3) For an appeal to the Merit Systems Protection Board pursuant to 5 C.F.R. § 1201.22, file a written appeal with the Board within 30 calendar days of the effective date of an appealable adverse action as defined in 5 C.F.R. § 1201.3, or within 30 calendar days of the date of receipt of the Agency's decision, whichever is later.

Please refer to the "Policy Statement on Workplace Harassment, Offensive, and Inappropriate Conduct" at <http://intranet.cms.gov/Component/OEOCR/Resources/PWHPolicyStatementandGuidance.pdf>

Retaliation

The U.S. Equal Employment Opportunity Commission (EEOC), an independent federal agency with authority over the processing of complaints of discrimination, has issued regulations stating that no person shall be subject to retaliation for opposing any practice made

unlawful by Title VII of the Civil Rights Act (Title VII) (42 U.S.C. 2000e *et seq.*), the Age Discrimination in Employment Act (ADEA) (29 U.S.C. 621 *et seq.*), the Equal Pay Act (29 U.S.C. 206(d)), the Rehabilitation Act (29 U.S.C. 791 *et seq.*), or the Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. 2000ff *et seq.*); or for participating in any stage of the administrative or judicial proceedings under those statutes. *See* 29 C.F.R. 1614.101(b). Accordingly, unlawful discrimination or harassment against an employee because he or she has engaged in or cooperated with the EEO process (e.g., filed an EEO complaint, been a witness in an EEO complaint, assisted in the EEO complaint process, or opposed EEO discrimination) is unlawful and will not be tolerated. CMS supports the rights of all employees to exercise their rights under the civil rights statutes.

EEO Alternative Dispute Resolution

Managers and supervisors must continue to take positive steps towards ensuring a productive work environment and reaching early resolution of complaints, as appropriate. We encourage all managers, supervisors and employees to use the Agency's EEO Alternative Dispute Resolution (ADR) program. Using EEO ADR as a vehicle to resolve conflicts in the workplace can significantly reduce the number of EEO complaints and employee grievances. EEO ADR can help improve communication and the quality of work life in CMS.

The OEOCR Director has the discretion to determine whether a dispute in the EEO process is appropriate for EEO ADR. If an employee in the EEO process requests EEO ADR and the matter is referred to EEO ADR by the OEOCR Director, management is required to participate in the EEO ADR process.

Cooperation in the EEO Process

CMS's EEO complaint processing program is an essential part of our EEO effort. Through this program, CMS has the ability to properly address the EEO-related concerns of our employees and applicants for employment. Employees and managers who are called as witnesses in the processing of a formal or informal EEO complaint must cooperate in a candid, prompt fashion, and must respond fully and truthfully to inquiries by EEO counselors, investigators, and other EEO officials and Agency representatives. Federal regulations further provide for disciplinary action to be taken against employees and managers who fail to cooperate in the EEO process. Failure to cooperate in the EEO process may result in discipline up to and including termination from federal service.

Official Time

In accordance with EEOC regulations, an individual involved in the EEO complaint process and his or her personal representative (if an Agency employee and otherwise in a duty status) are entitled to a reasonable amount of official time to present the complaint and respond to Agency and EEOC requests for information. All employees are responsible for requesting official time from their supervisors two business days in advance. Except for mandatory situations when an employee must be released, such as investigations, EEO ADR, depositions, and hearings, the employee and the manager should arrive at a mutual understanding as to the amount of official time to be used prior to the employee's use of such time. The form for requesting official time is available on the CMS intranet in the forms locator (Form CMS-

20102). Managers and employees may consult OEOCR for guidance on EEO official time. Pursuant to EEOC regulations, any full or partial denials of EEO official time must be included in the employee's EEO complaint file.

Reasonable Accommodation

CMS has a legal obligation to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment and who request reasonable accommodation, unless to do so would cause undue hardship. In general, a reasonable accommodation is any change in the work environment or in the way things are customarily done that enables a qualified individual with a disability to enjoy equal employment opportunities.

The reasonable accommodation process begins when an employee or applicant for employment makes a request for reasonable accommodation. Requests for reasonable accommodation should be directed to the employee's immediate supervisor or the Office of Equal Opportunity and Civil Rights. Upon receipt of a request, either verbal or written, the manager must initiate an interactive communication with the individual regarding the request and should contact OEOCR to facilitate processing of the request.

Agency officials are obligated to treat an employee's medical information and documentation confidentially to avoid any unauthorized disclosure. Reasonable Accommodation Coordinators located in OEOCR are available to assist managers and employees in exchanging information and reaching appropriate decisions on reasonable accommodation requests. To reach a Reasonable Accommodation Coordinator, please contact reasonableaccommodationprogram@cms.hhs.gov.

Commissioned Corps Officers

The EEO rights and timeframes for members of the U.S. Public Health Service Commissioned Corps differ from those that apply in the civil service. Commissioned Corps officers should consult the Commissioned Corps Personnel Manual, issued by the Surgeon General. Instruction 6, Sub-Chapter CC26.1, "Equal Opportunity: Discrimination Complaints Processing," of the manual establishes the rights of commissioned officers to be free from discrimination and from reprisal for filing discrimination complaints. It also establishes the procedures to be used by active duty Commissioned Corps officers in processing complaints. The Instruction is available on the Division of Commissioned Personnel's (DCP) website at <https://dcp.psc.gov/>.

OEOCR processes EEO complaints filed by Commissioned Corps officers who are assigned to CMS. Additional information for Commissioned Corps officers may be found on the OEOCR intranet page. Contact information for OEOCR is provided at the end of this policy statement.

Threats of Violence

If an employee receives any type of threat of violence or has any concern regarding personal safety, he or she should immediately contact the CMS Guard Service at x62929 (for Baltimore offices) and the Federal Protective Services at (877) 437-7411 (for all other offices).

OEOCR Contact Information

For questions regarding this policy, please contact:

Centers for Medicare & Medicaid Services
Office of Equal Opportunity and Civil Rights
7500 Security Boulevard, Room N2-22-16 Baltimore,
Maryland 21244-1850
Phone: (410) 786-5110
Fax: (410) 786-9549
VP: (443) 842-5703
<http://intranet.cms.gov/Component/OEOCR/Index.html>