



*Administrator*

Washington, DC 20201

DATE: September 21, 2004

TO: All Employees

FROM: Mark B. McClellan, M.D., Ph.D. /s/  
Administrator

Leslie Norwalk /s/  
Deputy Administrator

SUBJECT: Policy Statement on Sexual Harassment, Offensive, and Inappropriate  
Conduct

The Centers for Medicare & Medicaid Services (CMS) is committed to maintaining a high standard of conduct in the work place and to providing a work environment free from sexually harassing, offensive, or inappropriate activity. Such activities are adverse to the overall accomplishment of our mission and the efficient operation of the Federal service. Accordingly, 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.

Sexual harassment is a form of sex discrimination prohibited by Title VII of the Civil Rights Act of 1964, as amended. It involves unwanted and unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- they are made explicitly or implicitly a condition of an individual's employment; or
- employment decisions (promotions, work assignments, etc.) are based on whether the victim submits to or rejects these sexual advances; or
- they unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive work environment.

Moreover, CMS has a zero tolerance policy for any conduct of a sexual nature that could reasonably be interpreted as harassing, offensive, or inappropriate in the workplace. Thus, in addition to the Title VII standard cited above, any physical contact, comments, jokes, gestures, written documents, photocopies, e-mails, pictures, images, or other items or behavior of a sexual nature in a work or work-related environment constitutes harassing, offensive, and inappropriate conduct and will not be tolerated.

Each CMS employee bears the legal and ethical responsibility to refrain from such unacceptable conduct in the work place. Managers and supervisors bear the additional responsibility for taking prompt and effective corrective action when they become aware of, or should have been aware of, the sexually harassing, offensive, or inappropriate activities, regardless of whether any employee complains to the manager that such activities are unwelcome. Managers and supervisors are required to take action even when the employee asks the manager to keep the matter confidential and not to report it. Doing nothing raises issues of liability for the Agency.

Depending on the severity of the circumstances, effective action may entail removing the harasser/offender from the work environment and imposing some form of discipline ranging from a written reprimand to removal from Federal service. Managers and supervisors who tolerate such harassing, offensive or inappropriate behavior, or fail to take prompt and effective corrective action upon becoming aware of such activities, may receive a reduced rating on their equal employment opportunity performance element and also may be subject to disciplinary action, up to and including removal from the Federal service.

Any employee who believes he or she has been subjected to sexual harassment, offensive, or inappropriate conduct of a sexual nature should immediately report this to a supervisor or manager for corrective action. If the employee's supervisor is the source of the harassing, offensive, or inappropriate action, the employee should speak to the next higher level of management. Employees are free to report incidents of sexual harassment, offensive, or inappropriate conduct without fear of reprisal. Also, the Agency will protect the confidentiality of harassment allegations to the extent possible. The Agency will conduct a prompt, thorough, and impartial investigation into allegations of sexual harassment and, as appropriate, corrective action will be taken. Additionally, if a supervisor/manager does not take immediate action to stop harassment, the employee may bring the matter to the attention of the Office of Equal Opportunity and Civil Rights (OEOCR). If the employee wishes to pursue a complaint of discrimination, the employee must contact OEOCR within 45 calendar days of the incident about which she or he is complaining.

This policy also applies to incidents of sexual harassment, offensive, or inappropriate activities of a sexual nature committed at any CMS facility by employees of private contractors against CMS employees, and anywhere by CMS employees against employees of private contractors. Victims of such harassment, offensive or inappropriate conduct should immediately report these incidents to their immediate supervisor/manager who in turn must immediately report the incident to the alleged harasser/offender's supervisor.

For questions regarding this policy, please contact OEOCR, at 410-786-5110, or visit OEOCR's Web page at [http://cmsnet.cms.hhs.gov/hpages/oecr/about\\_oecr.htm](http://cmsnet.cms.hhs.gov/hpages/oecr/about_oecr.htm).