



*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: Equal Employment Opportunity Policy Statement

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

It is the policy of CMS to provide equality of opportunity for all employees and applicants for employment, regardless of race, color, national origin, religion, sex, age, physical or mental disability, 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. All employees will have the freedom to compete on a fair and level playing field with equal opportunity for competition. This policy applies to all personnel/employment programs, management practices and decisions including, but not limited to, recruitment/hiring, merit promotion, transfer, reassignments, training and career development, benefits, and separation. I am personally committed to equal employment opportunity (EEO) and the realization of a fully represented workforce through the implementation of an effective affirmative employment program.

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 all employees to practice the principles of equal employment opportunity. Toward that end, equal employment opportunity is a critical element in the work plan of every CMS manager.

*Harassment, Offensive, and Inappropriate Conduct*

The CMS has a zero tolerance policy for any conduct or comments by employees or contractors that disparages, denigrates, or demonstrates hostility or aversion towards any person based upon race, color, religion, sex, national origin, age, disability, or sexual orientation. Examples of such conduct include, but are not limited to, the use of epithets, slurs, negative stereotypes, threats, intimidation,

hostile acts, and the use, display or dissemination of offensive written or pictorial material (such as posters, calendars, flyers, memoranda, messages, etc.) on walls, bulletin boards, or elsewhere in the workplace, including copy rooms and on an electronic mail system (e-mail). Furthermore, unwanted and unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature will not be tolerated. See Policy Statement on Sexual Harassment, Offensive, and Inappropriate Conduct. Such activities are adverse to the overall accomplishment of our mission and the efficient operation of the service our Agency provides.

Accordingly, all CMS employees and managers are responsible for maintaining a high standard of conduct in the workplace and must refrain from engaging in harassing, offensive, or inappropriate activities. Any employee who has been subjected to, witnessed, or observed harassment, offensive or inappropriate conduct based on race, color, religion, sex, national origin, age, disability, or sexual orientation should immediately report this to a manager or supervisor for corrective action. If the employee's supervisor is the source of the harassment, the employee should speak to the next highest level of management. Employees are free to report incidents of harassment without fear of reprisal. Also, the Agency will protect the confidentiality of harassment allegations to the extent possible.

All managers and supervisors bear the responsibility for ensuring that the workplace is free from harassment and for responding to complaints of harassment, when they become aware of, or should have been aware of the harassing comments or conduct. The Agency will conduct a prompt, thorough, and impartial investigation into allegations of harassment and, as appropriate, corrective action will be taken. 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 the Federal service. Managers who tolerate such harassment or fail to take immediate action when aware of such activities may receive a reduced rating in their EEO performance element and also may be subject to disciplinary action.

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.

### Retaliation

Equal Employment Opportunity Commission (EEOC) regulations provide that no person shall be subject to retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, or the Rehabilitation Act or for participating in any stage of the administrative or judicial proceedings under those statutes. See 29 C.F.R. Section 1614.101(b). Accordingly, discrimination against an employee because she or he has engaged the EEO process (e.g., filed an EEO complaint, been a witness in an EEO complaint, assisted in the EEO complaint process, or protested EEO discrimination) is illegal and thus, will not be tolerated at CMS. The Agency supports the rights of all employees to exercise their rights under the civil rights statutes.

### Cooperation in the EEO Process

The CMS' 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 an EEO complaint must cooperate in a truthful, prompt fashion, and must respond fully, candidly, 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 who fail to cooperate in the EEO process.

### Official Time

Individuals involved in the EEO complaint process are entitled to a reasonable amount of official time to present the complaint and respond to Agency and EEOC requests for information. Employees are responsible for requesting official time in advance. Except for mandatory situations when employees must be released, such as investigations, mediations, 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. As a general rule, the employee and his or her personal representative (if an Agency employee and otherwise in a duty status) will have up to eight hours of official time for preparation through the investigative stage of the complaint. Thereafter, if the employee requests an EEOC-conducted hearing, the employee and the personal representative (if an Agency employee and otherwise in a duty status), will have up to 24 hours of official time, if otherwise on duty, for preparation through the hearing stage.

### Alternative Dispute Resolution

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

### Reasonable Accommodation

The CMS has a legal obligation to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, 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.

Requests for reasonable accommodation should be directed to the employee's immediate supervisor or the Agency's OEOCR. Upon receipt of a request, either verbal or written, the manager must

initiate a discussion with the individual regarding the request and should contact the Agency's Reasonable Accommodation Coordinator (RAC) in OEOCR to facilitate processing of the request. The RAC is available to assist managers and employees in exchanging information and reaching appropriate decisions on reasonable accommodation requests. Also, Agency officials are obligated to treat an employee's medical information and documentation confidentially to avoid any unauthorized disclosure.

The CMS is committed to the principles of EEO. All employees and managers must do their part to preserve these principles in our organization by following this EEO policy. Working together in this endeavor, we will cultivate an environment that allows all employees to achieve their highest potential.

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/oeocr/about\\_oeocr.htm](http://cmsnet.cms.hhs.gov/hpages/oeocr/about_oeocr.htm).