

200 Independence Avenue SW
Washington, DC 20201

DATE: October 27, 2011

TO: All Employees

FROM: Donald M. Berwick, M.D. /s/
Administrator

Marilyn Tavenner /s/
Principal Deputy Administrator
And Chief Operating Officer

SUBJECT: Policy Statement and Guidance on Workplace Harassment, Offensive, and
Inappropriate Conduct

The Centers for Medicare & Medicaid Services (CMS) is committed to maintaining a high standard of conduct in the workplace and providing a work environment free from harassing, offensive or inappropriate activity. Such activities are adverse to the overall accomplishment of our mission and the efficient operation of the Federal service. This memorandum defines which conduct constitutes harassing, offensive, or inappropriate behavior in the workplace; informs all CMS employees of their roles and responsibilities in the proactive prevention of workplace harassment; and clarifies how to report instances of alleged harassment. Additionally, the memorandum serves to communicate the consequences of engaging in harassing, offensive, or inappropriate behavior, including discipline up to and including removal from federal service.

1. AUTHORITY.

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16; the Age Discrimination in Employment Act, 29 U.S.C. § 633a; the Rehabilitation Act, 29 U.S.C. § 791(g); the Civil Service Reform Act, 5 U.S.C. § 2302(b)(10); Title 29, Code of Federal Regulations (C.F.R) Parts 1604.11, 1605.2, 1606.8, and 1614; Executive Order 11478, as amended May 28, 1998; and Enforcement Guidance: Vicarious Employer Responsibility for Unlawful Harassment by Supervisors, EEOC 915.002, June 18, 1999.

2. POLICY STATEMENT.

(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 (including pregnancy), national origin, age, disability, family medical history, or 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 sexual orientation, 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.

Accordingly, CMS has zero tolerance for harassment or any other form of unlawful discrimination. In addition, CMS will not tolerate retaliation against any employee for reporting matters under this policy or procedure, or for assisting in any inquiry about such a report.

(b) Extension of Coverage to Private Contractors. This policy also applies to incidents of harassment, offensive or inappropriate activities as described herein committed at any CMS facility by employees of private contractors against CMS employees and anywhere by CMS employees against employees of private contractors. Any reference to “employees” or “staff” within this policy includes “private contractors” within the meaning and scope of those terms.

(c) Definition of Harassment. Harassment includes unwelcome intimidation, ridicule, insult, comments, bullying, or physical conduct based on race, color, religion, sex (including pregnancy), national origin, age, disability, family medical history, or genetic information and sexual orientation, or retaliation where:

- (1) An employee’s acceptance or rejection of such conduct explicitly or implicitly forms the basis for an employment decision affecting the employee; or
- (2) The conduct is sufficiently severe or pervasive as to alter the terms, conditions, or privileges of the employee’s employment, or otherwise create an abusive work environment. This type of harassment typically does not involve discrete personnel actions such as denial of promotion.

(d) Conduct Covered by this Policy. The conduct covered by this policy is broader than the legal definition of harassment listed above. It includes any comments or conduct that disparages, denigrates or demonstrates hostility or aversion towards any person (including applicants for employment) that could reasonably be interpreted as harassing, offensive or inappropriate in the workplace. Physical comments, jokes, gestures, written documents, photocopies, e-mails, pictures, images or other items or behavior in a work or work-related environment are covered by this policy. Examples of prohibited 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, message, etc.). This is because the goal of this policy is to avoid, or at least limit, harm to any employee subjected to unwelcome hostile or abusive conduct based on a protected characteristic by ensuring that appropriate officials are notified of — and have the opportunity to promptly correct — such conduct before it becomes so severe or pervasive as to violate the law, or as soon as possible thereafter.

3. RESPONSIBILITIES.

(a) Agency. The responsibility of the Centers for Medicare & Medicaid Services to its employees is to create an environment that is free of harassment, and to take immediate corrective or disciplinary action if violations of this policy occur. To accomplish this, everyone must share the responsibility of enforcing a “zero tolerance” for harassment in the workplace.

The extent of an individual's specific responsibility depends on their level of authority within the agency.

(1) Managers/Supervisors. To proactively foster jurisdictions that are free from acts of harassment and to educate individuals under their supervision or control, managers and supervisors are responsible for:

- Providing their employees with a copy of this policy and explaining its content. This will include, at a minimum, who to contact if an employee feels that he or she has been the victim of, or affected by, harassment;
- Advising their employees that they are encouraged to make their immediate supervisor, or higher level management, aware of any conduct on the part of a non-employee or another employee (including a supervisor) that they believe constitutes harassment;
- Informing their employees that harassment is prohibited conduct that will not be tolerated and that corrective or disciplinary action, up to and including removal, will be taken against any person found to be engaged in harassment;
- Immediately contacting the Harassment Prevention Coordinator (HPC) upon becoming aware of conduct that is, or appears to constitute, harassment;
- Informing the alleged harasser (or manager of the alleged harasser) that an allegation of workplace harassment has been made by another employee regarding his or her conduct; and
- Assisting the HPC and/or CMS officials, as may be required, in obtaining information, making necessary inquiries, and resolving allegations of conduct that are, or appear to constitute, workplace harassment.

(2) Employees. Each CMS employee is personally responsible for:

- Ensuring that his or her conduct is not inappropriate or offensive to other employees, job applicants, visitors or any other person directly associated with the performance of his or her official duties;
- Assisting CMS in its efforts to prevent and eliminate a hostile and offensive work environment; and
- Immediately contacting his or her manager and/or the Harassment Prevention Coordinator (HPC) upon experiencing or becoming aware of conduct that is, or appears to constitute, harassment.
- Cooperating in the investigation and fact finding of allegations of workplace harassment by providing any information he or she possesses concerning the allegation.

NOTE: In addition, all employees are strongly encouraged to notify their immediate supervisor, higher level management, or the HPC of any actions or conduct on the part of another employee (including a supervisor) that is, or appears to constitute, workplace harassment.

(3) The Office of Equal Opportunity and Civil Rights (OEOCR). OEOCR is responsible for:

- Disseminating this policy to all employees on an annual basis and periodically reminding employees of their responsibilities under this policy;
- Developing and providing periodic training for all employees on this policy and its requirements;
- Ensuring that rating officials receive feedback regarding the managers' performance under this measure; and
- Providing oversight, technical assistance, and support to CMS staff to ensure compliance with this policy.
- Providing an annual program briefing to the Union including statistics, HPRC activities, the number of employees investigated, the number of employees found to be in violation of this policy, etc.

(b) Harassment Prevention Coordinator. The CMS Harassment Prevention Coordinator position is hereby established and is responsible for:

(1) Receiving reports alleging violations of this policy and, as described in Section 4 of this policy, making or directing further inquiries into such reports, as appropriate and necessary;

(2) Maintaining a written record of reports made and actions taken pursuant to this policy. These records will be maintained in a secure location;

(3) Maintaining a website at <http://www.CMSHarassmentPrevention.com> and an email address complaint@CMSHarassmentPrevention.com to respond to inquiries from CMS employees;

(4) Staffing a telephone line with non-supervisory staff to respond to inquiries from CMS staff or their representatives about workplace harassment. Callers shall be provided with information about the requirements of this policy, as well as the existence of alternate methods of redress for employees to seek resolution of their disputes. All inquiries on this line will be treated confidentially; and

(5) Reporting to the Director, OEOCR, or his or her designee, on the actions taken pursuant to this policy so the Director can determine CMS's compliance with federal sector EEO requirements, and providing a copy of the reports, findings, and actions, as requested.

(c) Harassment Prevention Review Committee. The Harassment Prevention Review Committee (HPRC) is hereby established and has the following scope:

(1) The purpose of the HPRC is to provide oversight of the agency's Prevention of Workplace Harassment program. The HPRC will convene on a quarterly basis to review program statistics, analyze trends, and monitor and maintain consistency in the application and administration of the process.

(2) The HPRC may be composed of representatives from the OEOCR, the Office of Operations Management (OOM), and the Office of the Administrator (OA).

4. PROCEDURES.

(a) Reporting Hostile or Abusive Conduct.

(1) Any employee who has been subjected to unwelcome hostile or abusive conduct is strongly encouraged to report the matter to the HPC and/or his or her manager.

(2) Any employee who has been subjected to unwelcome hostile or abusive conduct is encouraged to inform the person(s) responsible for the conduct that it is unwelcome and offensive, and request that it cease. If the employee is uncomfortable confronting the responsible person(s) about the conduct, he or she is strongly encouraged to report the matter to his or her manager and/or the HPC.

(3) Any employee who has been subjected to unwelcome hostile or abusive conduct by his or her manager is strongly encouraged to report the matter to the HPC and/or to the next highest level of management.

(4) Employees who know of hostile or abusive conduct directed at others are strongly encouraged to report the matter to the HPC or his or her supervisor, who will subsequently report the matter to the HPC.

(5) Initial contacts to the HPC will be confidential. Employees may obtain information about this policy, or report hostile or abusive conduct to the HPC by accessing the website, calling, emailing or faxing. Contact information for the HPC is provided on the last page of this policy.

NOTE: Reports and actions pursuant to this policy do not replace, substitute, include, or otherwise satisfy the different forums that an employee may utilize, including but not limited to the following processes: EEO, the negotiated grievance procedure, Merit Systems Protection Board (MSPB), or other statutory process. For further information concerning how an employee may pursue rights under one of these separate processes, see Section 5 of this policy.

(b) Management Response to Harassment Reports.

(1) Conducting Limited Inquiries. A supervisor or manager who receives a report of, or otherwise becomes aware of, hostile or abusive conduct involving subordinates within his or her chain-of-command must contact the HPC, who will collect information as to:

- (a) What conduct is at issue and whether it arguably could be considered hostile or abusive;
- (b) Who may be involved;

(c) Whether any immediate corrective action is required to protect the alleged victim from further hostile or abusive conduct; and

(d) What action is necessary and appropriate to otherwise address the report.

(2) Notifying Appropriate Officials of Report.

(a) A supervisor or manager who becomes aware of allegedly hostile or abusive conduct involving employees outside of his or her chain-of-command must immediately notify the HPC.

(b) Supervisors and managers who become aware of hostile or abusive conduct within their chain-of-command must notify the HPC immediately.

(c) Harassment Prevention Coordinator Response to Harassment Reports. When the allegation is transmitted to the HPC, the HPC shall:

1. Immediately acknowledge receipt of the report;
2. Notify the Office(s) implicated in the report, including the Regional Office if the report concerns a field office; and
3. Immediately conduct a limited inquiry and take any other necessary and appropriate action.

(d) Performing Further Investigation. The HPC shall direct further investigations by:

(1) Deciding whether further investigation is necessary. The HPC shall have discretion to decide whether further investigation is required, or if the limited inquiry is sufficient to determine whether corrective action is necessary. These decisions are fact specific, and must be made on a case-by-case basis;

(2) Deciding how investigations will be carried-out. When the HPC determines that further investigation is necessary, the HPC shall conduct the investigation swiftly, impartially, and in a manner appropriate to the allegation; and

(3) If an investigation determines that an employee has violated this policy, the appropriate management official will determine the type and severity of the discipline to be imposed subject to the 2010 Master Labor Agreement (MLA) and appropriate appeal rights.

(e) Resolving Conflicts of Interest in Inquiries or Investigations.

(1) If an Office Director, Center Director, or similar high ranking official is implicated in the potentially harassing conduct, the HPC shall inform the OEOCR and an alternate method of investigation may be employed, including, but not limited to, transferring of the investigation to the Department of Health and Human Services for disposition.

(2) Any dispute between the affected Office and the HPC regarding further investigation will be resolved by the Chief Operating Officer or designee.

(f) Taking Corrective Action. If it is determined that unwelcome hostile or abusive conduct occurred, then corrective action will be necessary.

Appropriate corrective action, disciplinary or otherwise, up to and including removal will be taken against any supervisor or other management official who fails to perform his or her obligations as set forth in this policy, including any unreasonable failure to report known violations of this policy.

(g) Maintaining Confidentiality, Keeping Records, and Monitoring Compliance.

(1) Maintaining Confidentiality. All reports of hostile or abusive conduct and related information will be maintained on a confidential basis to the greatest extent possible. The identity of the employee alleging violations of this policy will be kept confidential, except as necessary to conduct an appropriate investigation into the alleged violations or when otherwise required by law.

(2) Monitoring the Procedures. The HPC must ensure that these procedures are properly executed by:

(a) Monitoring inquiries and investigations under this policy of reported or otherwise discovered hostile or abusive conduct;

(b) Providing guidance concerning the information to be gathered and methods to be used during inquiries and investigations; and

(c) Otherwise assuring that the investigations is swift, thorough, impartial, and appropriate to the allegation.

(3) Monitoring the Work Environment. Consortium and Regional Administrators, Center, Office, and/or other Directors will be responsible for ensuring that their offices are in full compliance with requirements of this policy. In addition, these officials are responsible for monitoring the work environment following a report alleging a violation of this policy to ensure that there are no further violations or incidents of retaliation against any individual who has reported harassment or participated in the inquiry or investigation.

5. PROCEDURES UNDER THIS POLICY ARE SEPARATE FROM STATUTORY AND COLLECTIVE BARGAINING CLAIMS.

(a) Filing Statutory or Administrative Complaints or Negotiated Grievances. Filing an allegation under this policy is separate and apart from the requirements for filing an EEO complaint, negotiated grievance under the 2010 Master Labor Agreement (MLA), MSPB appeal, or other procedure available to employees. An employee who reports an allegation of harassment under this policy may still avail themselves of the aforementioned forums if they choose. Reporting

alleged harassment under this policy will not delay the time limit requirements for filing through other avenues available to the employee. Any employee who chooses to file under another avenue should be aware of the time limits governing each process. An employee who chooses to pursue statutory, administrative, or collective bargaining remedies for unlawful harassment must select one of the available forums as follows:

(1) For an EEO complaint pursuant to 29 C.F.R. § 1614 (available for all claims of harassment other than those based on sexual orientation), contact an EEO counselor in the Office of Equal Opportunity and Civil Rights within 45 days from the most recent incident of alleged harassment (or personnel action if one is involved), as required in 29 C.F.R. § 1614.105(a)(1); or

(2) For a bargaining unit employee's grievance, file a written grievance in accordance with the provisions of the Master Labor Agreement; or

(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 days of the effective date of an appealable adverse action as defined in 5 C.F.R. § 1201.3, or within 30 days of the date of receipt of the agency's decision, whichever is later.

(b) Reporting Hostile or Abusive Conduct Raised in the Statutory, Administrative, or Collective Bargaining Process. This policy is designed to address hostile or abusive conduct before it rises to the level of illegal discrimination for which an employee can exercise the statutory right to file an EEO complaint, grievance, or MSPB appeal. Its purpose is to ensure that management is notified of and has the opportunity to correct any hostile or abusive conduct, and applies whether or not the employee has filed an EEO complaint, union grievance, or MSPB appeal. CMS's liability for an EEO complaint, grievance, or other action may depend upon whether it was aware of and promptly corrected the hostile or abusive conduct.

(1) If an employee pursues a claim of harassment through the EEO process, an MSPB appeal, or an administrative grievance, the CMS official who receives notice of such claim shall promptly notify the appropriate responsible management official. The management official must treat the notice as a report under Section 4 of these procedures, unless inconsistent with applicable regulatory or statutory requirements.

(2) The HPC shall provide the record of actions taken under this policy to the Office handling a parallel statutory or collective bargaining claim.

6. DISTRIBUTION.

This policy shall be distributed to all employees upon issuance, and annually thereafter. It shall also be distributed to all new employees as part of the CMS New Employee Orientation during their first week of work. This policy will also be made available to employees on-site or as part of the CMS Intranet. If there are any changes in this policy, the Union will be notified prior to any distribution to CMS bargaining unit employees.

7. EFFECTIVE DATE.

The effective date for this policy shall be November 14, 2011.

HPC Contact Information

Toll-Free Hotline Voice: 1-800-994-1553
 TTY: 1-800-994-1556

Toll-Free Fax Line Fax: 1-800-994-1552

Email Address: E-mail: complaint@CMSHarassmentPrevention.com

Website: URL: <http://www.CMSHarassmentPrevention.com>
 Username: CMSPWH
 Password: PREVENT

OEOCR Contact Information

For questions regarding this policy, please contact:
Centers for Medicare & Medicaid Services
Office of Equal Opportunity and Civil Rights
7500 Security Blvd., Room N2-22-16
Baltimore, Maryland 21244-1850
Phone: (410) 786-5110
Fax: (410) 786-9549
TTY: (410) 786-2456

OEOCR Website: <http://cmsnet.cms.hhs.gov/hpages/oeocr/OEOCRContact.html>