

## CONFLICT OF INTEREST FOR SHARING OF HEALTH CARE RESOURCES

**1. REASON FOR ISSUE:** This Veterans Health Administration (VHA) directive contains mandatory procedures and responsibilities regarding avoidance of prohibited conflicts of interest (COI) by Department of Veterans Affairs (VA) employees involved in contracting for sharing of health care resources (HCR).

**2. SUMMARY OF MAJOR CHANGES:** This directive provides updated policy for COI for the sharing of HCR. Updates to duration of COI agreement and duration of conflicting relationship(s) are described in paragraph 6.c and updated responsibilities in paragraph 5.

**3. RELATED ISSUES:** VA Directive 1663, Health Care Resources Contracting-Buying 38 U.S.C. § 8153, dated August 10, 2006; and VHA Directive 1660.01, Health Care Resources Sharing Authority-Selling, dated June 20, 2018.

**4. RESPONSIBLE OFFICE:** VHA Procurement and Logistics Office (19PLO) is responsible for the contents of this directive. Questions may be referred to the 19PLO Medical Sharing Office (MSO) Office mail group at [VHACOMSOG@va.gov](mailto:VHACOMSOG@va.gov).

**5. RESCISSIONS:** VHA Handbook 1660.03, Conflict of Interest for the Aspects of Contracting for Sharing of Health Care Resources, dated November 4, 2015, is rescinded.

**6. RECERTIFICATION:** This VHA directive is scheduled for recertification on or before the last working day of September 30, 2026. This VHA directive will continue to serve as national VHA policy until it is recertified or rescinded.

**BY DIRECTION OF THE OFFICE OF THE  
UNDER SECRETARY FOR HEALTH:**

/s/ Deborah E. Kramer  
Acting Assistant Under Secretary for Health  
for Support

**NOTE:** All references herein to VA and VHA documents incorporate by reference subsequent VA and VHA documents on the same or similar subject matter.

**DISTRIBUTION:** Emailed to the VHA Publications Distribution List on September 16, 2021.

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## CONFLICT OF INTEREST FOR THE ASPECTS OF CONTRACTING FOR SHARING OF HEALTH CARE RESOURCES

### 1. PURPOSE

This Veterans Health Administration (VHA) directive provides mandatory procedures and responsibilities regarding avoidance of conflicts of interest (COI) by Department of Veterans Affairs (VA) employees involved in contracts or agreements for sharing of health care resources (HCR). **AUTHORITY:** 18 U.S.C. § 208(a) and 38 U.S.C. § 8153; and 5 C.F.R. §§ 2635.402 and 2635.502.

### 2. BACKGROUND

This directive clarifies the criminal COI prohibitions so VA employees who are dually-appointed at the affiliate or otherwise have a financial interest in a contract or agreement have a better understanding of the ethics laws' limitations on their involvement in procurements with affiliated institutions and other non-government entities with which they have a relationship. Government Accountability Office (GAO) and Office of Inspector General (OIG) have documented violations of COI laws by VA employees in connection with VA contracting for HCR with affiliated medical schools or non-government entities, especially by those VA employees with appointments at the affiliate universities. In accordance with 18 U.S.C. § 208(a), Government employees have a legal and ethical responsibility to follow the intent and letter of the law.

### 3. DEFINITIONS

a. **Criminal Conflict of Interest.** A criminal COI exists when an employee participates personally and substantially in a particular matter (e.g., a contract) that would have a direct and predictable effect on the employee's own financial interest or the financial interest of the employee's spouse, minor child, general partner, any person or entity whom the employee serves as an officer, director, trustee or employee, or any person with whom the employee is negotiating or has an arrangement for prospective employment.

b. **Health Care Resources.** HCR are the provision of a broad range of health and medical services, including: hospital and ambulatory care, mental health services, medical and surgical services, examinations, treatment, rehabilitative services and appliances, preventive health care, home care, hospice, blood products, as well as medical specialties such as radiology and cardiovascular surgery. **NOTE:** *HCR also refer to health care support and administrative resources, the use of medical equipment, space and home oxygen. Health care support and administrative resources include those services, apart from direct patient care, determined necessary for the operation of VA medical facilities.*

(1) **Health Care Support Resources.** Health care support resources serve medically related purposes (e.g., biomedical equipment repair, patient transport).

(2) **Administrative Resources.** Administrative resources include services not unique to the provision of medical care but deemed necessary to support the operation of a medical center (e.g., transcription services, grounds maintenance).

c. **Health Care Resources Contracts.** HCR contracts are contracts or agreements entered into between VA and a non-Federal entity for the acquisition of HCR. **NOTE:** *The purchase of HCR should be facilitated through a Third-Party Administrator (TPA). This can be done either through its contracted networks, such as Patient-Centered Community Care (PC3) network, the Community Care Network (CCN) or by establishing a Veterans Care Agreement (VCA).*

#### 4. POLICY

It is VHA policy that a VA employee may not participate personally and substantially in a health care resources (HCR) procurement in which the employee has a financial interest or if the procurement involves an entity outside the Federal government with which that employee has a disqualifying relationship.

#### 5. RESPONSIBILITIES

a. **Under Secretary for Health.** The Under Secretary for Health is responsible for:

(1) Ensuring overall VHA compliance with this directive.

(2) Receiving certification confirming that the annual reminder of the requirements of this directive, including any significant changes, was sent to all affected employees.

b. **Assistant Under Secretary for Health for Support.** The Assistant Under Secretary for Health for Support is responsible for establishing policy and providing guidance and oversight as necessary to ensure communicating the timely and successful implementation of this directive.

c. **Assistant Under Secretary for Health for Operations.** The Assistant Under Secretary for Health for Operations is responsible for:

(1) Communicating the contents of this directive to each of the Veterans Integrated Services Networks (VISN).

(2) Assisting VISN Directors to resolve implementation and compliance challenges in all VA medical facilities within that VISN.

(3) Providing oversight of VISNs to ensure compliance with this directive, relevant standards and applicable regulations.

d. **Assistant Under Secretary for Health for Community Care.** The Assistant Under Secretary for Health for Community Care is responsible for providing overall enterprise-wide guidance to community care staff as it relates to the purchasing of health care resources.

e. **Executive Director, VHA Procurement and Logistics Office.** The Executive Director of the Procurement and Logistics Office, is responsible for:

(1) Overseeing the Medical Sharing/Affiliate Office, which is the responsible program for the development and update of the contents of this directive.

(2) Periodically assessing the procedures and responsibilities regarding avoidance of prohibited conflicts of interest for continued need, currency and effectiveness.

(3) Coordinating with the Assistant Under Secretary for Health for Operations, VISN Directors and VA medical facility Directors to ensure all necessary action is taken and funding is obtained to address avoidance of prohibited conflicts of interest in a manner that meets the requirements of Federal, State and local statutes and regulations; applicable Executive Orders; and VA and VHA directives.

f. **Veterans Integrated Service Network Director.** Each VISN Director is responsible for ensuring that all facilities within the VISN comply with this directive.

g. **VA Medical Facility Director.** Each VA medical facility Director is responsible for:

(1) Ensuring that each VA medical facility Chief of Staff, physician, clinician, researcher, and allied health supervisor or manager and any individual who assumes these duties receives a copy of this directive and COI Acknowledgment as it pertains to HCR contracts. (For a sample COI Acknowledgment, see Appendix A.)

(2) Ensuring that all employees in the positions listed in paragraph 5.g.(1) receive an annual reminder of the requirements of this directive, including any significant changes to law or national policy and that these employees acknowledge receipt of the reminder.

(3) Sending an annual certification to the Under Secretary for Health confirming that the annual reminder of the requirements of this directive was sent to all affected employees.

h. **Contracting Officers.** Contracting officers for procurement and sharing of HCR are responsible for:

(1) Ensuring that any member assigned to an Integrated Product Team (IPT) receives a written opinion from an Office of General Counsel (OGC) Deputy Ethics Official ([governmentethics@va.gov](mailto:governmentethics@va.gov)) that the member does not have a COI, prior to acting for VA on contracts or agreements for sharing of HCR involving entities with which the member has a disqualifying relationship or in which the member has a financial interest (see paragraph 6.a.).

(2) Ensuring that if the procurement for HCR services involves an affiliate and a VA employee holds an academic appointment but receives no remuneration or benefits of significant value from the affiliate and is not subject to direction or control by the affiliate, such a VA employee may be eligible to participate in the procurement under the direction of the contracting officer. The contracting officer must ensure that such a VA

employee requests and receives a written opinion from an OGC Deputy Ethics Official approving participation in the procurement (see paragraph 9 for discussion of what constitutes remuneration or benefits of significant value from the affiliate). This is ensured by:

(a) Maintaining a copy of all relevant written legal opinions from an OGC Deputy Ethics Official in the official contract file.

(b) Including a copy of the signed COI Acknowledgment in the official contract file.

i. **VA Employees.** Employees whose duties include HCR procurements are responsible for providing the contracting officer a copy of the signed COI Acknowledgment form or, alternatively, reviewing this directive and signing a new COI Acknowledgment form for the contract file (see Appendix A). **NOTE:** *Descriptions of the specific activities permitted and prohibited for VA employees with a direct or imputed financial interest in the contract, as discussed in paragraph 8.a., are included under paragraphs 9 and 10.*

## 6. EXPLANATION OF FEDERAL LAWS

a. Federal law prohibits any Federal employee, whether full-time or part-time, with or without compensation or any special government employee, from participating personally and substantially in a particular matter in which the employee, to the employee's knowledge, has a financial interest, if the particular matter would directly and predictably affect that financial interest (see 18 U.S.C. § 208(a)). This law imputes to the employee the financial interests of the employee's spouse, minor children, and general partner(s); an organization for which the employee serves as officer, director, trustee, general partner, or employee; and an organization with which the employee is negotiating or has an arrangement for prospective employment.

b. A contract is a particular matter that could result in a COI. Individual payment vouchers on the contract are also particular matters. A financial interest is directly and predictably affected by a particular matter whenever there is a close causal link between any official decision or action to be taken in the matter and any expected effect (i.e., gain or loss, regardless of amount) on the financial interest. Personal and substantial participation is a direct action that is of significance to the matter. 18 U.S.C. § 208(a) applies to all VA employees, all particular matters, and all covered financial interests. **NOTE:** *The COI restriction here is given in the context of contracts or agreements for sharing of HCR because these areas have produced concerns in the past. The prohibition summarized in the previous paragraph may arise in other VA contracts as well. Other statutes and regulations, such as the procurement integrity statutes (41 U.S.C. §§ 2101-07) and the Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. part 2635), may apply to specific conduct.*

c. If a VA employee has a direct or imputed financial interest in a contract or agreement for sharing of HCR between VA and an affiliate (or other non-government entity), due to employment or negotiation for prospective employment or ownership or

stock ownership, 18 U.S.C. § 208(a) prohibits that employee from participating personally and substantially in the contract as part of the employee's official duties as a VA employee. Additionally, if the VA employee earns consulting or contracting fees from the non-government entity, the VA employee may not participate in the contracting process between VA and the entity if the contract will have a direct and predictable effect on the ability or willingness of the entity to pay the employee the fees. This prohibition applies even though the individual may not personally gain or lose financially from the contract or agreement for sharing of HCR between VA and the affiliate, but rather because the financial interest of the affiliate or non-government entity (which is imputed to the employee by law) is affected by the contract or agreement for sharing for HCR. **NOTE:** *Even if a VA employee does not fall into any of the categories described under the criminal COI statute, the employee may, nevertheless, have a relationship with the outside entity (e.g., consultant or contractor) that would prohibit participation in the contracting process under 5 C.F.R. § 2635.502 due to the appearance of a COI. This includes employees who work for the outside entity in a non-employment capacity (e.g., as a contractor) and employees who served the outside entity, within the past year, as an employee, contractor, or other position listed in the regulation. A VA employee with a relationship to an outside entity, or who had such a relationship in the past year, should seek advice from an OGC Deputy Ethics Official before participating in the contracting process involving that outside entity.*

## 7. SPECIFIC ACTIVITIES PROHIBITED

For contracts or agreements for sharing of HCR, VA employees with direct or imputed financial interests in the contract or agreement for HCR as discussed in paragraph 6.a., or interests giving rise to the appearance of a COI as discussed in paragraph 6.c., are prohibited from:

- a. Drafting specifications or solicitations.
- b. Acting as a Contracting Officer Representative (COR).
- c. Negotiating any parts of the contract, including price.
- d. Evaluating proposals.
- e. Selecting or recommending the contractor.
- f. Reviewing, certifying or approving the contract itself or any award, modification, extension, specification, bid, proposal, payment voucher, time record or any other document of significance to the contract.
- g. Evaluating contractor performance.
- h. Reviewing or reporting time and attendance for contract administration purposes.

## 8. SPECIFIC ACTIVITIES PERMITTED

The following specific activities are permitted by a VA employee who has a direct or imputed financial interest in the contract as discussed in paragraph 6.a. (including the imputed interests of the outside entity involved in the contract) or interests giving rise to the appearance of a COI discussed in paragraph 6.c.:

a. Directing the professional services provided under the contract solely for purposes of ensuring quality of care.

b. Developing workload projections, so long as such projections are developed independently of the contract for purposes of operating the VA medical facility or contract for research tasks and not developed for purposes of contract specification or for contract renewal.

c. Developing specific tasks to be obtained outside the VA medical facility for a research project, so long as such descriptions of research needs are developed independently of the contract or agreement for sharing of HCR.

d. Providing direct patient care within the employee's VA responsibilities.

e. Performing oversight and administration within the employee's VA responsibilities, including record keeping and quality assurance activities conducted as part of VA medical facility operations.

f. Participating in any particular matter in which neither the employee nor the non-government entity (including the affiliate) with whom the employee has a relationship has a financial interest (e.g., acting as COR in another contract that does not involve the physician's, clinician's or researcher's outside employer or any entity the physician serves as an officer, director, trustee or general partner or in which entity the physician otherwise has a financial interest).

g. Engaging in outside activities, such as teaching by a full-time employee.

## **9. DETERMINATION BY OFFICE OF GENERAL COUNSEL**

a. A case-by-case determination is necessary to determine whether a VA employee has a financial interest in contracting for HCR services that disqualifies the employee from participating in such services. Generally, if a physician or clinician has a faculty appointment and receives any compensation for affiliate duties, such as teaching courses or conducting research, and is under the direction and control of the affiliate, the physician or clinician will be considered an employee of the affiliate and has at least an imputed financial interest in VA contracts with the school. An affiliated physician or clinician may only participate in the contract subject to a written opinion from an OGC Deputy Ethics Official. The permissible activities described in paragraph 8 are not "participation" in the contract for purposes of 18 U.S.C. § 208(a). For purposes of this prohibition, compensation that will create the employer-employee relationship (in conjunction with an appointment and supervision by the affiliate) includes current and ongoing benefits of significant monetary value including, but not limited to: wages, salary, and other taxable benefits such as affiliate contributions to life insurance,

disability insurance, retirement plans, and subsidized tuition benefits for the employee or family members.

b. Perks and benefits that are not compensation, however, will not alone create an employer-employee relationship and, therefore, will not trigger the COI prohibition. Benefits that are not considered to be compensation include general faculty benefits that are given to all faculty members by virtue of their appointments and that are not part of the individual's employment arrangement. These are usually of minimal value or are required by the faculty appointment, such as: parking permits, library access, admissions to artistic and athletic events, access to online university resources, and office space. Also excluded from compensation for university appointees for purposes of this prohibition are royalties and other payments earned from patents or copyrights, as well as the use of titles and honorifics associated with faculty membership and benefits to which an employee had previously accrued entitlement during prior employment with the affiliated institution, such as funds within a retirement account. A benefit was previously accrued if its receipt is not contingent upon continued current association with the affiliate. In addition, malpractice coverage for uncompensated clinical care duties is not compensation or a benefit to the clinician.

c. Where the VA employee has a name-only appointment at the affiliate without any compensation, he or she is not considered an employee of the affiliate for purposes of 18 U.S.C. § 208(a). Consequently, the university's financial interest is not imputed to the employee and the employee's work on the contract does not create any COI concern under 18 U.S.C. §§ 208(a). **NOTE:** *Such a relationship may still create appearance issues under 5 C.F.R. § 2635.502 and an employee should seek the advice of an OGC Deputy Ethics Official. See paragraph 10 for how to contact an OGC Deputy Ethics Official on the OGC Ethics Specialty Team for further explanation or advice.*

## 10. GOVERNMENT ETHICS OFFICIAL AT DEPARTMENT OF VETERANS AFFAIRS

Any concerns that involve criminal COI law or the Standards of Ethical Conduct are matters for the Designated Agency Ethics Official (DAEO). The DAEO, along with attorneys on the Ethics Specialty Team (EST), addresses issues involving the application of criminal COI laws (18 U.S.C. chapter 11) and the Standards of Ethical Conduct for Executive Branch Employees (5 C.F.R. part 2635). The DAEO, the Alternate DAEO, EST Deputy Ethics Officials, and Deputy DAEOs are the only source of authoritative advice on criminal conflicts of interest and the legal questions relating to the Standards of Ethical Conduct. If an employee is located at VA Central Office (VACO), these Ethics Officials can be contacted at [governmentethics@va.gov](mailto:governmentethics@va.gov).

a. If an employee is located outside VACO, please contact the following based on location:

(1) [OGCNorthAtlanticEthics@va.gov](mailto:OGCNorthAtlanticEthics@va.gov): CT, DC, DE, MA, MD, ME, NC, NH, NJ, NY, PA, RI, VA, VT, WV.

(2) [OGCSouthEastEthics@va.gov](mailto:OGCSouthEastEthics@va.gov): AL, FL, GA, KY, Puerto Rico, SC, TN.

(3) [OGCMidwestEthics@va.gov](mailto:OGCMidwestEthics@va.gov): IA, IL, IN, KS, MI, MN, MO, NE, ND, OH, SD, WI.

(4) [OGCContinentalEthics@va.gov](mailto:OGCContinentalEthics@va.gov): AR, CO, LA, MS, MT, OK, TX, UT, WY.

(5) [OGCPacificEthics@va.gov](mailto:OGCPacificEthics@va.gov): AK, AZ, CA, Guam, HI, ID, NM, NV or, Philippines, WA.

b. Employees who provide all relevant facts to a Deputy Ethics Official and follow the given advice in good faith a cannot face administrative action if a regulatory ethics violation occurs. The imposition of criminal sanctions ultimately rests with the Department of Justice (DOJ) after receiving the matter from the Inspector General, but DOJ is unlikely to take criminal action against an employee who fully disclosed all facts and received an Ethics opinion.

## 11. TRAINING

Please see Appendix A for information regarding the required Tier Level 1 Medical Sharing/Affiliate Office Customer training for individuals that have roles in the health-care resources contract process.

## 12. RECORDS MANAGEMENT

All records regardless of format (e.g., paper, electronic, electronic systems) created by this directive shall be managed as required by the National Archives and Records Administration (NARA) approved records schedules found in VHA Records Control Schedule 10 -1. Questions regarding any aspect of records management should be addressed to the appropriate Records Manager or Records Liaison.

## 13. REFERENCES

a. 18 U.S.C. § 208.

b. 38 U.S.C. § 8153.

c. 41 U.S.C. §§ 2101-07

d. 5 C.F.R. § 2635.502.

e. 5 C.F.R. part 2640.

f. VA Directive 1663, Health Care Resources Contracting – Buying Title 38 U.S.C. 8153, dated May 10, 2018.

g. VA Directive 8002, Financial Disclosure Reports, dated July 1, 2015.

h. VHA Directive 1200.05, Requirements for the Protection of Human Subjects in Research, Dated January 7, 2019.

i. VHA Directive 1660.01, Health Care Resources Sharing Authority-Selling, dated June 20, 2018.

**SAMPLE CONFLICT OF INTEREST ACKNOWLEDGMENT**

*Instructions:*

*This acknowledgement form is to be completed only by individuals who have roles in the health-care resources contract process, i.e., Chief of Staff, physician, clinician, researcher and allied health supervisor or manager and any individual who assumes these duties in the future or any Veterans Administration (VA) employee who participates in Health Care Resources (HCR) Contracts.*

Description of Requirement:

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**I have received, read and agree to abide by the guidance contained in VHA Directive 1660.03 as it pertains to conflicts of interest in contracts or agreements for sharing of HCR.**

I have taken the Tier Level 1 Medical Sharing/Affiliate Office Customer training commensurate with my position, available at:  
<https://vaww.vashare.vha.va.gov/sites/PLOMSO/train/Lists/MSOTrainingSchedule/MyItem.aspx>. **NOTE:** *This is an internal VA website that is not available to the public.*

I understand that a copy of this acknowledgement will be placed in the official procurement file of any HCR Contracts in which I am involved.

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(Signature)

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(Date)