



# HHS ETHICS POLICY

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*The HHS Ethics Policy incorporates standards of ethical conduct, guidance from statutory law, and provisions of the HHS HR Policy Manual, Contract Management Handbook, Travel Policy, Computer Usage Policy and other relevant sources. Throughout this policy, relevant sources are cited to and hyperlinks are provided for ease of reference.*

## **I. Standards of Ethical Conduct for Employees of the Texas Health and Human Services System**

The following standards of conduct apply to every employee and form the basis for this policy. Where a situation is not specifically covered in this ethics policy, employees shall apply the principles set forth below in determining whether their conduct is proper.<sup>1</sup>

- (1) Employees shall protect and conserve state property and shall not use it for other than authorized activities.
- (2) Employees shall act impartially and not give inappropriate preferential treatment to any private organization or individual.
- (3) Employees shall adhere to all laws and regulations that provide equal opportunity for all persons regardless of race, color, religion, sex, national origin, age, or disability.
- (4) Employees shall disclose waste, fraud, abuse, corruption, and ethical concerns to appropriate authorities.
- (5) Employees shall not accept or solicit any gift, favor, or service that might reasonably tend to influence or appear to influence the employee in the discharge of official duties or that the employee knows, or should know, is being offered with the intent to influence the official actions of the employee or the agency.
- (6) Employees shall not accept other employment or engage in a business or professional activity that the employee might reasonably expect would require or induce the employee to disclose confidential information acquired because of his or her official position.
- (7) Employees shall not accept other employment or compensation that could reasonably be expected to impair the employee's independent judgment in the performance of the employee's official duties.
- (8) Employees shall not make personal investments that could reasonably be expected to create a substantial conflict between the employee's private interests and the public interest.

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<sup>1</sup> The Texas Legislature enacted minimum standards of acceptable conduct for all state employees. Those standards are located in Chapter 572 of the Government Code and serve as a basis for disciplinary action, if necessary. In addition to those minimum standards, all HHS employees must adhere to the HHS Standards of Ethical Conduct and [agency work rules](#) located in the HHS HR Policy Manual.

- (9) Employees shall not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the employee's official powers or performed the employee's official duties in favor of another.
- (10) Employees shall endeavor to avoid any conduct creating the appearance that they are violating law or the ethical standards set forth in this policy. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

#### **A. Related Statutes**

In addition to the HHS standards of ethical conduct, there are federal and state conflict of interest statutes that prohibit certain conduct. Criminal conflict of interest statutes of general applicability to all employees are summarized in the appropriate sections of this policy and must be taken into consideration in determining whether conduct is proper. Citations to other generally applicable statutes relating to employee conduct are discussed throughout and employees are further cautioned that there may be additional statutory and regulatory restrictions applicable to them generally or as employees of their specific agencies or operational areas. Because HHS employees are considered to be on notice of the requirements of any statute, an employee should not rely upon any description or synopsis of a statutory restriction but should refer to the statute itself and obtain the advice of their supervisor or an HHS Ethics Officer.

The second HHS Standard of Ethical Conduct specifically requires that all employees shall adhere to all laws and regulations that provide equal employment opportunities for employees and applicants for employment and prohibit discrimination based on: race, color, religion, sex, national origin, age, disability, veteran status, or genetic information. See <https://hhsconnection.hhs.texas.gov/rights-responsibilities/civil-rights/employee-rights> HHS employees are entitled to specific rights to equal opportunity in the workplace and freedom from harassment.

It is also the responsibility of HHS employees and our contractors to not discriminate against clients, consumers or applicants for services. Clients, consumers and applicants are protected from discrimination by federal and state laws. These laws and policies define nine groups, called, protected classes, which are protected from discrimination. These are defined by: race, color, national origin, sex, age, religion, disability, political belief and sexual orientation (of these protected classes, political belief and sexual orientation do not apply to all programs and services; HHS contractors may not require clients to participate in inherently religious activities as part of their program). See <https://hhsconnection.hhs.texas.gov/rights-responsibilities/civil-rights/employee-responsibilities>

Additional information concerning employee rights and responsibilities in the workplace can be obtained by contacting the HHS Office of Civil Rights or visiting their website at <https://hhsconnection.hhs.texas.gov/rights-responsibilities/civil-rights>.

## **B. Disciplinary Action**

Violations or suspected violations of these provisions must be reported promptly, verbally or in writing, to your supervisor. A violation of this policy, related statutes or internal operating manuals addressing ethics may be cause for appropriate corrective or disciplinary action, up to and including termination. For example, employees working on the federal Social Security program are expected to follow all federal Social Security Administration policies and procedures related to ethics, including the reporting of fraud, waste, and abuse. In some cases, failure to follow these standards and the HHS Work Rules located in the [HHS HR Policy Manual, Chapter 1, Employment Practices. D. Standards of Conduct](#), will violate one of the criminal statutes referred to in this policy.

Disciplinary action will be based on the expectation that HHS employees are familiar with the Standards of Ethical Conduct and are aware of required duties and responsibilities. Such action shall be in accordance with applicable provisions of the HHS HR Policy Manual and may be in addition to any action or penalty prescribed by law. Employment with an HHS agency requires compliance with this policy.

## **C. Ethics Training and Advice**

All HHS employees are responsible for completing the required computer-based ethics training modules within 60 days of hire and every two years thereafter. In addition to these required courses, employees may have agency, program, or job-specific training requirements. Knowingly and intentionally failing to comply with ethics requirements may be considered as a violation of this policy. For additional information about the HHS ethics training requirements, refer to the [HHS HR Policy Manual, Chapter 1. Employment Practices. C. Required Training](#), and [HHS Circular C-031, Ethics Training for HHS Employees](#).

Further, HHS employees are encouraged to seek advice about the HHS Ethics Policy, including the incorporated Standards of Ethical Conduct, related statutes and internal agency operating manuals addressing ethics, by contacting your supervisor or the HHS Ethics Office. Employees can access the office and related resources at [HHS Ethics Office](#).

Disciplinary action will not be taken against an employee who engages in conduct in good faith reliance upon the advice of an HHS Ethics Officer; provided the employee, in seeking such advice, has made full disclosure of all relevant circumstances.

The HHS Ethics Office is within the Office of Chief Counsel, reporting directly to the Chief Counsel, and is the designated resource in the HHS system for ethics guidance and policy interpretation.

Employees may contact the Ethics Office directly regarding any good faith report or to ask questions about this policy and applicable operating procedures, rules, laws, and regulations. Retaliation against an HHS employee who makes a good faith report of any actual or potential ethics violation or appearance of impropriety will not be tolerated by HHS executive leadership.

## D. Social Media and Ethics

Use of social media is critical to the success of HHS in achieving its mission. Social media also helps us tell our story to the general public and our stakeholders. The term social media is used to describe online communication tools that allow users to interact by posting and sharing information, conversations, photos, videos and other content electronically. Examples of social media tools include but are not limited to: blogs; microblogs; social networking sites, video and photo sharing sites and podcasting forums. See [HHS Social Media Policy, Circular C-042](#); See also the [DSHS Social Media Policy AA-5002](#). There are a host of HHS policy provisions and legal requirement when using social media in the workplace and when sharing, discussing, or commenting about HHS while using personal social media accounts. See [HHS HR Manual, Standards of Conduct, D.14. Social Media](#). For additional guidance, staff contact the HHS Ethics Office, Legal Division, and depending on agency affiliation, either the HHSC or DSHS Privacy Office, or either the HHSC or DSHS Communications Division.

## II. Acceptance of Benefits

Public servants are generally prohibited from accepting certain gifts or “benefits.” Violations of these laws carry criminal penalties, and complaints alleging such violations are handled by local prosecutors.

The statutory definition of “benefit” is “anything reasonably regarded as pecuniary gain or pecuniary advantage, including the benefit of any third party in whose welfare the employee is interested – such as a family member.” This definition does not include benefits received from another governmental entity such as a waiver to attend a conference hosted by that entity, but could include benefits from other entities, such as an association. For examples of benefits, the Texas Ethics Commission has stated in their advisory opinions that the following gifts are benefits: a \$50 clock, a hotel room, a hunting trip, football tickets, a \$160 rifle, and a \$60 restaurant meal. However, an item such as a cup of coffee or water is not considered a benefit. See *Texas Ethics Advisory Opinions Nos. 118, 130 (1993)*

*Ex: Y works for DSHS and was invited to attend a conference hosted by another state agency. The agency receives federal funds to host the conference every year and has the authority to waive or discount registration for state employees employed with DSHS. The discount or waiver is not a benefit within the meaning of the prohibition.*

Additionally, HHS employees should not accept or solicit any gift, favor, or service that might reasonably tend to influence the employee in the discharge of official duties or that the employee knows or should know is being offered with the intent to influence the employee’s official conduct. See Texas Government Code Section 572.051(a)(1).

With limited exceptions, HHS employees may not accept any gift, gratuity, or entertainment whatsoever from a prohibited source. The term “prohibited source” includes, but is not limited to:

- a vendor or entity that contracts with or is likely to become interested in a contract or other transaction with the agency;
- lobbying firms or lobbyists;
- an affiliated interest of a lobbying firm;

- anyone employed by or affiliated with a vendor or lobbyist;
- an entity subject to audit, inspection, or investigation by HHS as noted in Section 660.016 of the Government Code; and
- legal counsel for a party adverse to HHS.

This definition does not include independent relationships or a group of entities serving in the collective capacity as sponsors of a conference or public event at which agency employees attend. However, employees must remain vigilant of the potential appearance of impropriety associated with the acceptance of various benefits from such entities.

## **A. Bribery**

As a public servant, state criminal law prohibits you from intentionally or knowingly offering, soliciting, and/o accepting a gift in return for your decision, opinion, recommendation, vote, or other exercise of official discretion. See Penal Code § 36.02. A violation of this law is a second-degree felony, punishable by imprisonment for 2 to 20 years, a fine of not more than \$10,000, or both.

An attempt to bribe is an “offer to confer any benefit with the intent of influencing the employee in a specific exercise of official action.” A bribery offense occurs even if a benefit is offered after an employee leaves the agency if the benefit relates back to a discretionary act on the job. Common sense should raise a question about whether something is a bribe. If you have a question about bribery, please contact the HHS Ethics Office.

*Ex.1: X works as a pharmacist for the Medicaid program but dreams of a big job at Y pharmaceutical company. X is good friends with the company’s VP of Government Programs who told X that the company wants to have more drugs in the Medicaid program. X’s friend also knows that X wants another job and asks X if some favorable decisions can be made to benefit the company. X’s agency job includes recommending drugs for preferred status in the Medicaid program, so X begins to routinely recommend drugs from Y pharmaceutical. Shortly thereafter, the company announced the creation of a new high-salary job and X is hired. The creation of this job for X in exchange for a benefit provided by X to Y could suggest bribery and/or the misuse of X’s position for personal gain.*

*Ex.2: X managed a team that reviewed and approved consumer products for inclusion in the WIC Program. X was also very involved in charity work for a local nonprofit food bank. When meeting with prospective vendors, X often talked about his volunteer work, passed out brochures about the nonprofit, and encouraged the vendors to donate goods or sponsorships to the food bank. At a minimum, his actions could create an appearance of impropriety. This would be true even if these actions took place outside of work hours. If the vendors cooperated and were then awarded a contract with the program, the facts could suggest bribery and/or the misuse of X’s position for personal gain or benefit of another.*

## **B. Honoraria**

State law makes it a criminal offense for a public servant to accept an honorarium, *which is a* payment for services the public servant would not have been asked to provide but for the



person's status as a public servant. [See Penal Code § 36.07](#) This prohibition extends to a request for or acceptance of a payment of an honorarium to a third party if the speaker agrees to speak in exchange for such payment. A violation of Section 36.07 is a Class A misdemeanor, punishable by a fine of not more than \$4,000, jail confinement for not more than one year, or both.

This prohibition means, for example, that as an HHS employee you may not accept a gift or payment for giving a speech if your official position was a reason for your invitation to speak. You may, however, accept meals, transportation, and lodging in connection with a work-related speech if they are not from an entity that your agency intends to audit, examine, or investigate or is auditing, examining, or investigating, and your speech is more than perfunctory. You may also accept a gift that is not a "benefit" such as a certificate or plaque or something of a minimal value.

*Ex.1: If an HHS employee is invited to speak at a meeting of current or potential vendors to the agency on the topic of contracting with her agency, she cannot accept anything more than transportation, lodging, and meals for speaking at the meeting. However, if the employee's agency intends to audit, examine, or investigate or is auditing, examining, or investigating the person or entity paying the travel costs, she cannot accept the transportation, lodging, or meals.*

*Ex.2: If an HHS employee is invited to provide non-substantive opening remarks at a professional conference related to his job duties at HHS, he cannot accept a speaker's fee because the invitation was made based on his employment with the agency; nor can he accept transportation, lodging and meals because his remarks are merely perfunctory, i.e. not of a substantive nature.*

*Ex.3: In her personal time, X is an award-winning quilter and is invited to speak at a quilting conference out -of-state. X can accept a speaker's fee and other benefits associated with this activity because it is not related to her job duties or the programs and services provided by HHS.*

### **C. Exceptions to the Prohibition on Benefits to Public Servants**

As public servants, HHS employees are generally prohibited by the Penal Code, except where stricter agency policies apply, from receiving any "benefit." There are, however, exceptions to these prohibitions. **You may accept a gift, payment, or contribution if the gift, payment, or contribution fits into *any one* of the following categories.**

- **Items Worth Less Than \$50:** You may accept an item with a value of less than \$50, which may include food, from someone who is not a prohibited source.<sup>2</sup> The definition of prohibited source does not include independent relationships or a group of entities servicing in their collective capacity as sponsors of a conference or public event at which agency employees attend. **Additionally, this exception does not apply to cash, checks, gift cards, or negotiable instruments.** See *Texas Attorney General Opinion GA-0527 (2007) (Gift*

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<sup>2</sup> The term "prohibited source" includes, but is not limited to, a vendor or entity that contracts with or is likely to become interested in a contract or other transaction with the agency; lobbying firms or lobbyists; an affiliated interest of a lobbying firm; anyone employed by or affiliated with a vendor or lobbyist; an entity subject to audit, inspection, or investigation by HHS as noted in Govt. Code § 660.016; and legal counsel for a party adverse to HHS.

*certificates are considered cash equivalents*). When considering questions of value, employees should consult with their supervisor and use their best judgment.

- **Independent Relationship**: There is an exception from the general prohibition on the acceptance of benefits, or a gift from a prohibited source, based on the following:
  - kinship;
  - a personal relationship independent of your official status;
  - a professional relationship independent of your official status; or
  - a business relationship independent of your official status

*Ex.1: X and Y are college friends and former roommates. They spend yearly vacations together at Y's cabin in west Texas. X now works in contract management and Y works for a vendor. Because of their independent relationship that arose separate and apart from their positions of employment regarding HHS, they can still vacation together with X accepting the benefit of access to Y's cabin. However, because of X's job duties they must be mindful of any potential conflicts of interest and appearances of impropriety.*

*Ex.2: X works as a contract manager at HHS. For the last five years, Y has served as the key point of contact for a vendor whose contract X manages. Although they have worked together for many years and consider themselves "professional acquaintances," X is prohibited from accepting benefits from Y because he represents a prohibited source. The independent relationship exception does not apply because they met and developed their relationship while performing their work for HHS.*

- **Fees for Services**: You may accept a payment to which you are lawfully entitled in a capacity other than your official status. In this case, you may accept the offer without restriction. Remember, you may not take an honorarium for a service that you would not have been asked to provide but for your official status.

*Ex.: Y is a singer-songwriter and receives compensation for performing at weddings on the weekends. She is legally entitled to payment for her services.*

- **Political Contributions**: You may accept a political contribution as a candidate or officeholder as defined by Title 15, Election Code.
- **Government Property**: You may accept an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the entity.
- **Food and Entertainment**: Benefits in the form of food or entertainment are permissible if accepted as a "guest" at a local reception, event, or gathering of persons attending from a variety of organizations in addition to HHS agencies. This type of event is sometimes referred to as a *widely attended gathering* and requires attendance of 25 or more people, attendance is related to work responsibilities, and a sponsor of the event issued the invitation. For most state employees there is no applicable reporting requirement. However, the agency head and board members may be required to report certain gifts on their annual personal financial statement.

*Ex.1: State employees receiving a mass email invite from a coalition of vendors to attend a conference focusing on recent trends in technology. If the sponsors are inviting public and private sector employees for the purposes of an educational exchange, the employees may attend and accept snacks, small promotional items, and randomly drawn door prizes because this falls within the Food and Entertainment exception, i.e., as a widely attended gathering of more than 25 people related to their work experience. All HHS employees are encouraged to consult with their supervisors and use their best judgment when assessing the appropriateness of accepting such benefits.*

*Ex.2: An after-work professional gathering for networking purposes and exchange of ideas is sponsored by a law firm and attorneys from both public and private practice are invited by the firm. This event qualifies for the exception because it is for a large diverse gathering, related to work and the invitation was sent directly from the sponsor.*

*Ex.3: An advocacy group offered X complimentary seats at a baseball game. Sporting events do not meet the definition of a widely attended gathering because they do not generally provide an opportunity for a work-related exchange of ideas like a networking reception or educational event.*

*Ex.4: A small group of state employees attended a strategy meeting with a nonprofit organization to discuss possible collaborations to improve client services. The nonprofit provided lunch for the meeting participants. This is not a widely attended gathering because its purpose is to explore collaborative options instead of furthering educational or professional networking objectives.*

- Transportation, Lodging, and Meals: You may accept transportation, meals, and lodging as described by Section II. B, Honoraria.
- Services to a First Responder: Complimentary legal advice or legal services relating to a will, power of attorney, advance directive, or other estate planning document rendered:
  - To a public servant who is a first responder; and
  - Through a program or clinic that is:
    - Operated by a local bar association or the State Bar of Texas; and
    - Approved by the head of the agency employing the public servant, if the public servant is employed by an agency. [Penal Code § 36.10](#)<sup>3</sup>

In this section, “first responder” means:

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<sup>3</sup> In this section, “first responder” means:

- a peace officer whose duties include responding rapidly to an emergency;
- fire protection personnel, as that term is defined by [§ 419.021, Government Code](#);
- a volunteer firefighter who performs firefighting duties on behalf of a political subdivision and who is not serving as a member of the Texas Legislature or holding a statewide elected office;
- an ambulance driver; or
- an individual certified as emergency medical services personnel by the Department of State Health Services.

- a peace officer whose duties include responding rapidly to an emergency;
  - fire protection personnel, as that term is defined by Section 419.021, Government Code;
  - a volunteer firefighter who performs firefighting duties on behalf of a political subdivision and who is not serving as a member of the Texas Legislature or holding a statewide elected office;
  - an ambulance driver; or
  - an individual certified as emergency medical services personnel by the Department of State Health Services.
- Gifts to State Agencies: The provisions of the Government Code and the Penal Code that regulate gifts to public officers and employees do not apply to gifts given to a state agency. The statutes applicable to each HHS agency will determine whether the agency has the authority to accept gifts. If the agency has the authority to accept gifts, it may only do so if the gifts can be used in carrying out the agency's powers and duties. Such gifts are state property and cannot be used for private purposes. Even in legally permissible circumstances, management should consider whether the acceptance of the gift would create an appearance of impropriety. [See Texas Ethics Commission, EAO No. 130 \(1993\)](#).
  - Benefits from External Sources Because of an Agency Approved Collaborative Effort: An HHS agency may accept goods and services received from external sources because of a negotiated effort to benefit a program that the agency is authorized to administer.
  - Gifts from an HHS Agency: An HHS employee may receive and accept a gift from an HHS agency in accordance with various provisions of the HHS HR Manual.
  - Gifts from Consumers and the Community: A state supported living center or state hospital employee may accept from a consumer, consumer's family member, or consumer's friend unsolicited baked goods that can be shared and eaten during work hours or arts and crafts of minimal monetary value. This is also true of gifts received by agency employees from local community groups.
  - Disaster Response Personnel: Employees working in response to a disaster situation may accept food, beverages, and small sundries provided during their time of service.
  - Inspections: If an employee's job requires the employee to accept something, *e.g.*, a sample of food at a regulated entity, it is not considered a benefit.
  - De Minimus Items: Goods and services of minimal value, such as coffee mugs, coasters, key rings, or other promotional items are not prohibited benefits as long as they are unsolicited and not offered or accepted in exchange for any action or inaction on the part of an HHS employee.

Because no list would be complete, even in instances where acceptance of a gift is permissible, HHS employees are expected to be aware of the potential perceptions created by the acceptance of gifts from parties with whom they conduct public business and to avoid accepting gifts that may create an appearance of impropriety or potential conflict of interest.

## **D. Proper Disposition of Prohibited Benefits**

An HHS employee who receives a prohibited gift may dispose of the gift in one of the following ways.

- Return any tangible item to the source, if possible, at the source's expense.
- If it is not practical to return a tangible item because it is perishable, the item may, at the discretion of the employee's supervisor or an HHS Ethics Office ethics advisor, be given to a tax-exempt charitable organization formed for educational, religious, or scientific purposes or destroyed.
- For any entertainment, favor, service, benefit, or other intangible, reimburse the source by paying the market value. Subsequent reciprocation by the employee does not constitute reimbursement.

Employees should keep a record of all actions taken to comply with these provisions including obtaining receipts for any items donated to charity. An employee who promptly complies with the requirements of this provision will not be deemed to have improperly accepted an unsolicited gift. An employee who promptly consults with the HHS Ethics Office to determine whether acceptance of an unsolicited gift is proper and who, upon the advice of an Ethics Officer, returns or otherwise disposes of the gift in accordance with these provisions will be considered in compliance with this policy.

## **III. Restrictions on HHS Agency Purchases of Food**

In accordance with state regulations, food purchases by HHS agencies are generally not permitted except in the following circumstances:

- a) the agency has express statutory authority to purchase food; or
- b) the agency is purchasing food for a conference or seminar with funds appropriated under [Article IX, Section 8.07 of the General Appropriations Act](#)

Except for the provisions cited above, HHS agencies may not purchase food for conferences or seminars. The restriction applies to both direct purchases of food, as well as indirect purchases through a third-party vendor. For example, a purchase of food is still prohibited where the agency contracts with a conference planner to plan the conference or seminar and the cost of food is included in the invoice to the agency. The term "food," for purposes of this policy, includes beverages.

*See also:*

- a) [Texas Comptroller of Public Accounts FMX, Restricted Expenditures: Food and Equipment Related to Food Preparation or Storage](#), and
- b) [Texas Comptroller of Public Accounts: FMX, Authority to Sponsor and Charge Fees](#)

Notwithstanding the provisions above, HHS agencies may not use appropriated funds to purchase food or beverages for internal business meetings.

#### **IV. Group Solicitation of Persons or Organizations Who Do Business with the Agency**

State law places special restrictions on organizations made up of people employed by state regulatory agencies. For additional details, please refer to Section 572.055 of the Government Code.

An association or organization of an HHS agency's employees may not solicit, accept, or agree to accept anything of value from a business entity or a person associated with such an entity that is regulated by the employees' agency and that must obtain a permit from the employees' agency to operate in Texas.

*Ex. 1: An organization of HHS employees is prohibited from accepting anything of value from a person who represents a nursing home.*

#### **V. Travel**

Except as provided in Section II, B above, HHS employees are responsible for ensuring that all travel on behalf of the agency is planned, authorized, and reimbursed in compliance with all applicable laws and the travel and reimbursement policies and procedures developed by the State of Texas Comptroller. Agency employees are also required to comply with all applicable provisions of the [HHS System Travel Policy](#). For further information, refer to Chapter 660 of the Government Code and various travel laws and regulations contained in the General Appropriations Act, Article IX, Part 5. All travel must be planned for maximum economy and efficiency and all expenses submitted for reimbursement must be directly associated with official state business.

##### **A. Combining State and Personal Business**

When traveling on official business, an agency employee may take personal time and return from the business trip later if the combination is cost neutral or saves the state travel money. The employee must detail the savings on the appropriate forms provided by the agency travel department, clearly note the off-duty and on-duty times and claim reimbursement only for the on-duty times. See [HHS System Travel Policy](#), Page 10.

*Ex.: X traveled to Washington, D.C. on official agency business. His meetings began Wednesday, so he flew to Washington on Tuesday night. His meetings concluded on Friday afternoon, but he decided to stay in Washington until Sunday to visit family. This is permissible if no additional hotel, travel, or meal charges accrue to the state. In addition, X must ensure that his return flight will not incur additional fees or fare increases. X's travel voucher should reflect that he was on duty from Thursday night until Friday afternoon and that he was off-duty from Friday afternoon until he begins his travel back to the office. He may only seek reimbursement for the on-duty times.*

## **B. Employee Travel Credit Cards**

The use of state travel charge cards provides a savings for the state and a benefit to HHS employees who must travel as a requirement of their official duties. State travel charge cards are only issued and may only be used for official state business. Specific criteria apply when determining eligibility for issuance of a card. The requirements include but are not limited to (1) qualifying for the charge card based on the employee's credit ratings, not salary levels; (2) not having had a previous state card revoked; (3) not failing to return any overpayments from previous travel vouchers; and (4) not being indebted to the State of Texas.

HHS employees with state travel charge cards are responsible for submitting travel reimbursement requests and using the funds to timely pay the charges on their state charge card accounts. Inappropriate and unauthorized charges may result in the cancellation of the card and disciplinary action. Examples of inappropriate or unauthorized charges include, but are not limited to, the following:

- Meal or tip while on business at or within 50 miles of the employee's designated headquarters or the home city.
- Meal expenses incurred while not on state business.
- Alcoholic beverages.
- Excess airline baggage charges for personal belongings.
- Other tips and gratuities.
- Mileage for an employee's personal vehicle for a family trip.
- Personal purchases unrelated to business-related travel expenses.

See [HHS System Travel Policy](#), Pages 15-16.

*Ex.1: X accompanied his supervisor on a high-level trip. Although he knew the agenda for the trip, he neglected to bring enough professional clothing. Since they are in a major city with great shopping, he plans to purchase a new suit with agency funds for the next day. His purchase, although it is presumably for business use, is inappropriate and unauthorized. Instead, X should purchase new clothing at his own expense, or have his current clothing dry-cleaned at his own expense, if necessary.*

*Ex.2: Y drove his vehicle to San Antonio for a meeting on Thursday and Friday. Instead of returning home on Friday, he decided to combine business and personal travel by inviting his family to meet him in San Antonio before driving to South Padre Island. They all drove back to Austin together on Sunday. Y cannot obtain reimbursement for mileage for the return trip or any of the expenses incurred during his family trip. He may seek reimbursement for mileage to San Antonio and expenses incurred while he was conducting business on behalf of the state.*

## **C. Non-Reimbursable Travel Expenses**

As stewards of public funds, HHS employees should remain mindful of the fees and expense incurred while traveling on state business. The following is a partial listing of non-reimbursable travel expenses.

- Video rentals
- Personal phone calls
- Unauthorized overweight baggage charges
- Laundry and dry cleaning
- Gasoline and repairs for personal vehicles
- Driving and parking citations
- Late payment toll fee charges
- Attendance at award ceremonies when the traveler is not nominated for, receiving, or presenting an award

Any questions that may arise regarding travel related expenditures or reimbursements should be referred to your supervisor or the HHS Travel Office.

#### **D. Conferences and Training Seminars**

Travel expenses associated with conferences and seminars are only reimbursable if the travel clearly involves justifiable state business. All payments for registration fees should follow the established procurement process and shall be paid directly to the sponsoring organization. Conferences and seminars sponsored by an HHS agency are required to use television, video-conferencing, and telephone conferencing technology to the greatest extent possible. Per the [HHS System Travel Policy](#), if travel is required, the employee must obtain a certificate from the Executive Commissioner or designee certifying that travel is the only option. HHS employees are encouraged to discuss attendance at conferences and seminars that may require travel with their supervisors to ensure that such activities will be reimbursable.

HHS employees attending conferences and seminars sponsored by HHS or outside entities must remain vigilant of the potential for conflicts of interest or appearances of impropriety.

*Ex. 1: An IT employee should not accept a complimentary registration to attend an industry conference solely sponsored by and dedicated to marketing one particular software product. If the product is being used by the agency, the facts suggest a potential conflict of interest. If the product is not being used by the agency, the facts suggest an appearance of impropriety. In either case, it appears that the complimentary registration is being provided to influence the employee in the exercise of his official duties. Such action violates the HHS Ethics Policy and may involve violation of various criminal laws.*

*Ex. 2: X receives approval to attend an educational seminar. One of the sponsors is a major vendor for HHS. The sponsor invites X to a VIP dinner during the conference that includes a chance to mingle with many of the speakers. X cannot accept the dinner invitation from a vendor. This invitation and the benefit constitute a gift from a prohibited source. However, if the sponsor provided dinner for all conference attendees, as part of the official conference agenda, X would be able to attend the dinner.*

*Ex. 3: As the local lead on planning your division's regional conference, you have secured a new hotel as the venue. In exchange for booking the conference and guest rooms, the hotel provided a complimentary suite on the concierge floor. Because you are acting in your official capacity and on behalf of the agency, you cannot accept the suite for personal use. You must inform your Division Director who in turn will make the decision on how use of the room will be allocated. All such decisions must be made with the goal of saving public funds.*



## **E. Frequent Flier Miles, Bonus Points, and Other Travel Benefits**

The Penal Code permits HHS and other state employees traveling on official business to accept frequent flier miles, bonus points, food coupons, and other travel benefits for personal use. *See [Penal Code Section 39.02](#)*.

## **VI. Conflicts of Interest**

State law makes it a criminal offense for an employee to engage in conduct that conflicts with the proper performance of their official duties. The standards for state conflicts of interest laws can be found in Section 572.051 of the Government Code and the HHS Ethics Policy, Standards of Conduct, Nos. 5-9, Pages 1-2 . A conflict of interest exists when an employee's private interest conflicts or interferes with their ability to perform their public duties. A few examples of a conflict of interest include, but are not limited to, the following:

- using or attempting to use an HHS position for advantage in a personal matter; or
- accepting a gift, a service, a job, or professional activity that could appear to influence job performance or disclose confidential information.

### **A. Pecuniary Interest**

An HHS employee may not have a pecuniary interest – economic or monetary interest - in a lobbying firm; or an affiliated interest of a lobbying firm, whether as an officer, a director, a partner, an owner, an employee, an attorney, a consultant, or otherwise.

### **B. Personal Investments**

The Standards of Ethical Conduct, provision 8, at the beginning of this policy state that a public servant shall not make personal investments that could reasonably be expected to create a substantial conflict between the public servant's private interest and the public interest. See also [§ 572.051\(a\)\(4\) of the Government Code](#).

HHS employees are required to exercise care in making personal investments and to avoid investments that create a conflict or may appear to create a conflict with their agency duties. HHS employees should not develop financial interests in organizations that may be regulated by an HHS agency or that receive or may receive substantial amounts of funding from an HHS agency.

### **C. Nepotism**

As provided in the [Human Resources Policy Manual, Chapter 1, D.4](#), no one may be hired or placed in a position within the direct chain of command of a relative. This is regardless of whether the relative would be in a subordinate or superior position to that of the applicant. A "relative" is an individual related to the applicant within the third degree of consanguinity (blood) or the second degree of affinity (marriage).

- Termination of marriage by divorce or death terminates the relationship, unless a child of that marriage is living. If a child of that marriage is living, the marriage is treated as continuing to exist as long as a child of that marriage lives.
- A step-relationship or adoptive relationship is considered the same degree as a natural relationship.

The following table describes the degrees of relationship:

<p><b>Relatives within the third degree of <i>consanguinity</i> (blood):</b></p> <ol style="list-style-type: none"> <li>1. Parent or child (first degree)</li> <li>2. Grandparent, grandchild, sister, or brother (second degree)</li> <li>3. Great grandparent, great grandchild, aunt, uncle, niece, or nephew (third degree)</li> </ol>
<p><b>Relatives within the second degree of <i>affinity</i> (marriage):</b></p> <ol style="list-style-type: none"> <li>1. Spouse, father-in-law, mother-in-law, sons-in-law, daughters-in-law, stepsons and stepdaughters (first degree)</li> <li>2. Sisters-in-law, brothers-in-law, spouse's grandmothers, spouse's grandfathers, spouse's granddaughters, and spouse's grandsons (second degree)</li> </ol>

*Ex.:* X and Y are brother and sister and they work in the same agency division but report to different managers. This situation is permitted because X and Y are not in the same direct chain of supervision meaning that neither supervises or could be in the position to supervise the other. When considering questions of nepotism, it is important to note that the key inquiry is not whether individuals who are related can work in the same area, instead it is whether individuals related in the prohibited degree are working in the direct line of supervision of each other.

#### **D. Disclosure**

All HHS employees have a duty to immediately disclose in writing to their supervisor and the Chief Ethics Officer any outside employment or activity involving themselves or family members that could reasonably violate or potentially violate the conflict of interest standards of conduct provided in Section 572.051 of the Government Code and/or the conflict of interest provisions of the HHS Ethics Policy.

If a conflict of interest develops at any point in the chain of command, HHS management with oversight over that employee will take immediate action to ensure that management of any particular matter or contract does not benefit or create an appearance of a benefit to any employee or employee's family member.

### **VII. Vendor References and Endorsements**

To ensure fair dealings with all HHS vendors, HHS personnel may not endorse or provide a reference for any HHS individual vendor or a vendor's products or services. In response to such requests, HHS personnel who have been authorized by their supervisor to communicate publicly

about the contract or procurement at issue may only provide factual information, such as that a vendor worked for the agency and the type of work that was performed.

## **VIII. Release of Agency Information**

### **A. Purpose**

The purpose of this section of the Ethics Policy is to establish protections regarding the release of HHS information that may be subject to legal restrictions on disclosure. This is to ensure that any information generated or acquired by the agency in any media or format including, but not limited to agency research, collected or generated data, reports audio or visual recordings, publications, draft rules, draft regulations and draft policies, including any working papers on the above, is only released in accordance with applicable agency policies, state and federal laws, and ethical standards. These provisions are subject to appropriate levels of management review and authorization consistent with Public Information Act presumption that all information held by governmental agencies is public unless made confidential by the Act or other law.

This section of the Ethics Policy is intended to be used in coordination with, and does not replace or supersede, [HHS HR Policy Manual, Work Rule 20](#), which states, "*HHS employees must . . . keep all HHS information and all information obtained as an HHS employee confidential, except as otherwise required by law, e.g., the Public Information Act, Texas Government Code, Chapter 552 (client-related information may be released only in accordance with sound professional practices, state and federal regulations, and HHS policies and procedures).*"

### **B. Scope**

This section applies to all HHS agency employees and to any information in any format or media including, but not limited to text, video, numerical, or verbal that has been created, generated, produced, obtained or purchased by HHS.

### **C. Policy**

Employees of HHS, subject to the "exceptions" outlined below, are generally prohibited from publicly releasing or sharing any agency generated information, written or verbal, whether in draft or final form, generated, acquired or obtained as result of employment with HHS, with any entity, person or persons not employed by HHS.

### **D. Exceptions**

- a) Information expressly authorized for release by the HHS Open Records Division, pursuant to the Public Information Act codified in Chapter 552 of the Government Code;
- b) Information deemed releasable by the Open Records Division of the Office of the Attorney General, or a court if the matter is litigated;
- c) Information authorized for release in compliance with HIPAA;
- d) Information expressly authorized for release to a requesting media entity or organization by the HHS Communications Division or DSHS Media Relations;

- e) Information expressly approved or authorized for release by an appropriate level of the employee's management;
- f) Information produced in discovery;
- g) Information authorized for release pursuant to the terms of an agency contract;
- h) Information that is of a type that is standard or routine for release by the employee's HHS division or unit; and/or
- i) Information released in compliance with any other HHS policy governing the handling or release of HHS data or information. Such policies include, but are not limited to, confidential information and privacy policies, data use agreements, and policies on employee data requests, research and publications.

## **E. Enforcement**

HHS agency employees who fail to comply with the policy may be subject to disciplinary action in accordance with the [HHS HR Policy Manual, Chapters 1., Employment Practices, F. Corrective and Disciplinary Actions](#).

## **F. Definitions**

"Agency" or "HHS system agency" means one of the following: the Texas Health and Human Services Commission or the Department of State Health Services.

"Confidential information" means information that must be protected from unauthorized disclosure or public release based on state or federal law or other legal agreement.

"Data" means information as processed, stored, or transmitted by a computer, including paper documents.

"Data Use Agreement" (DUA) means the current version of the HHS Data Use Agreement that defines HHS confidential information and specifies the privacy, security, and breach notification requirements for recipients of HHS confidential information.

"Employee" for purposes of this policy, includes any member of the workforce of an HHS agency, including employees, trainees, residents (medical graduates engaged in specialized practice under supervision in a hospital), interns, and other persons whose conduct, in the performance of work is under the direct control of such HHS agency, whether or not they are paid by the HHS agency.

"HHS system" means the Texas Health and Human Services Commission and its related agency, the Department of State Health Services.

"Information" is what is produced in any format or media, and includes but is not limited to, agency research, collected or generated data, reports, publications, draft rules, audio or visual recordings, draft regulations and draft policies, including any working papers, or similar writings, analysis, or documented expressions of agency views or opinions.

## **IX. Contracting**

### **A. HHS Ethics Requirements for Staff Involved in Entering or Managing Contracts**

The nature of purchasing and contracting makes it critical that all involved staff remain independent and free from the perception of impropriety. Any erosion of public trust or hint of impropriety is detrimental to the integrity of the purchasing and contracting process.

As required in rule, all HHS agency staff involved in procurement and contracting activities must act in the best interest of the state and avoid any activity that could potentially impair or give the appearance of impairing their ability to carry out their duties with independence and objectivity. Failing to abide by these rules, or to disclose a potential conflict of interest, could result in dismissal or referral to law enforcement.<sup>4</sup>

In addition, HHS agencies may have their own ethics or conflict of interest provisions in statute, and all HHS agencies should ensure their policies reflect these provisions, and that staff adhere to them.

### **B. Contracting Personnel Code of Ethics**

In addition to the provisions of the HHS Ethics Policy, the HHS Contract Management Handbook, and standards of conduct that apply to all state agency employees, personnel involved with contracting must adhere to the Contracting Personnel Code of Ethics.<sup>5</sup> Management and executive staff should lead by example, setting the standard for ethical behavior, and providing guidance to contracting personnel. The Code of Ethics is as follows.

(1) Earning, and maintaining, the public's trust by adhering to the highest standards of integrity and ethical behavior in the contracting profession which includes acting:

- with integrity and doing the right thing at all times;
- with honesty and transparency;
- with independence and impartiality; and
- as a responsible steward of public funds.

(2) Avoiding the intent or appearance of any unethical or compromising practices in all relationships, actions, and communications with HHS Agency program staff, potential contractors, and stakeholders.

(3) Conducting all procurement and contracting activities in strict accordance with all statutes, rules, and policies that govern procurement and contracting throughout the contract lifecycle.

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<sup>4</sup> Title 1, Part 15, Chapter 391 Subchapter E. Standards of Conduct for Vendors and HHSC Procurement and Contracting Staff.

<sup>5</sup> Title 1, Part 15, Chapter 391 Subchapter E. Standards of Conduct for Vendors and HHSC Procurement and Contracting Staff.

- (4) Ensuring compliance with statutes, rules and policies that prohibit contracts for goods and services where contracting personnel, or agency officials, have a financial interest or could receive a financial benefit.
- (5) Never soliciting or accepting money, loans, credits, gifts, favors, services or any other form of enrichment from prospective bidders, suppliers, or contractors.
- (6) Being vigilant in identifying, correcting, and if needed, reporting any potential violations or concerns related to ethical behavior, standards of conduct, and conflicts of interest.
- (7) Promoting positive working relationships with the supplier and contractor community by acting with fairness and impartiality throughout the contracting lifecycle.
- (8) Promoting an environment where all business concerns, from large to small, including historically underutilized businesses, have equal opportunity to compete for the State's business.
- (9) Ensuring protection of HHS confidential data and information by including required data use agreements in contracts, and accountability for protecting this data and information.

### **C. Conflicts of Interest in Contracting**

As provided in Title 1, Part 15, Chapter 391 Subchapter E of the Texas Administrative Code:

- (a) All contracting personnel must:
  - (1) adhere to ethics requirements adopted in rule, ethics policies, and any code of ethics approved by the executive head of the agency; and
  - (2) sign and submit all ethics, disclosure, confidentiality, and other forms required in the ordinary course of a procurement and any further administration or management of a contract.
- (b) Contracting personnel must disclose, in writing, any potential or actual conflict of interest concerning any contract or procurement in which they are, or may become, engaged.
- (c) To avoid conflicts of interest, contracting personnel must not:
  - (1) participate in any work on a contract knowing that the contracting personnel, or member of that contracting personnel's immediate family, as described in §573.002 of the Texas Government Code, has an actual or potential financial interest in the contract, including, but not limited to, prospective employment.<sup>6</sup> The term "participate" includes, but is not limited to, decision making, approval, disapproval, recommendation, giving advice, investigation or similar action.
  - (2) solicit or accept a benefit from a vendor;
  - (3) be employed by, or agree to work for, a vendor;
  - (4) disclose confidential information; or
  - (5) be employed at pay classification B9, or higher, as determined by HHSC, if the spouse of that contracting personnel is an officer, manager, or paid consultant of a Texas trade association or businesses that contracts with HHSC.

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<sup>6</sup> The definition of "immediate family" is defined, pursuant to Texas Government Code §573.002 as an individual related to the you within the third degree of consanguinity (blood) or the second degree of affinity (marriage

- (d) To avoid conflicts of interest, former contracting personnel must not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former contracting personnel participated during the period of employment, either through personal involvement or because the case or proceeding was a matter within the contracting personnel's official responsibility (see Texas Government Code §572.054, Representation by Former Officer or Employee of Regulatory Agency Restricted; Criminal Offense).
- (e) When a potential violation of this subchapter is discovered by any HHSC employee, that employee must promptly file a written statement concerning the matter with the Chief Ethics Officer for HHSC. If an actual violation is found to have occurred, or a potential conflict of interest has not been disclosed, the contracting personnel involved will be disciplined, including up to possible dismissal or referral to law enforcement.

#### **D. Disclosure**

All contract and procurement personnel must disclose any actual, or potential conflict of interest and any situation that could create an appearance of impropriety. Such disclosure must be timely, complete and in compliance with agency procedures for notifying management of circumstances that could compromise the impartiality of the contact management and procurement process. See [HHS Contract Management Handbook](#), Section 2.0 Standards of Ethical Conduct; See also [HHS Procurement Manual](#)

If a conflict of interest is identified at any point in the procurement or contract management process, HHS management with oversight over that point must take immediate action to ensure that management of any particular matter or contract does not benefit or create an appearance of a benefit to any employee or employee's family member.

#### **E. Vendor Interaction**

HHS recognizes that strategic communication between public procurement professionals, agency staff, and the vendor community is imperative and encouraged. Through interaction with the vendor community, as an agency we can understand what products and services vendors are able to provide to support the agency in providing resources to the community and to share general information about the needs of the agency. If used effectively, communication with industry representatives can provide the best products, resources, and services for procurement needs.

The [HHS Vendor Interaction Policy](#) sets forth the specific requirements that HHS employees must follow when considering, planning and participating in vendor interactions. Each employee is expected to use their best judgment when interacting with vendor representatives. Before meeting with a vendor representative, all HHS employees must accomplish the following:

- Be familiar with the HHS Ethics Policy
- Review the HHS Ethics Policy for Contracting and Procurement Personnel
- Ensure that all training and disclosure requirements are up to date

If at any point an employee is faced with an ethical dilemma that is not addressed in the agency Ethics Policies, the employee should immediately cease all communications with the vendor

representative and consult with the agency's procurement office, their supervisor, or the HHS Chief Ethics Officer for guidance.

## **X. Restrictions on Employment**

The Standards of Ethical Conduct, provision 6, at the beginning of this policy provide that a public servant shall not accept other employment or engage in a business or professional activity that:

- might reasonably require or induce the employee to disclose confidential information acquired by reason of his/her position as a public servant; or
- could reasonably be expected to impair the employee's independence of judgment in the performance of her official duties.

[See Sections 572.051\(a\)\(2\) and \(3\) of the Government Code.](#)

### **A. Dual State Employment**

HHS employees are prohibited from working for another Texas state agency or a Texas institution of higher education as an employee.

HHS employees, with prior approval for outside employment, may contract with another Texas state agency or a Texas institution of higher education. For more information, refer to the [HHS HR Policy Manual, Chapter 1, Employment Practices, D5. Off-Duty and Outside Employment Activity](#).

### **B. Outside Employment and Volunteer Activity**

An HHS employee may not maintain second employment with a company or volunteer with an entity that could benefit from access to confidential information the employee knows because of the employee's official position. An HHS employee who manages a certain type of contract should not take a second job with a vendor in that same type of business, even if that vendor does not have a current contract with the employing HHS agency. The employee might unintentionally disclose information that may prove helpful to the vendor in future contract bids.

The [HHS HR Policy Manual, Chapter 1, Employment Practices, D.5. Off-Duty and Outside Employment Activity](#) and the [HR Guidance Handbook, Chapter 1, D.5., Off-Duty and Outside Employment or Activity](#) describes the restrictions on outside employment and sets out the approval process that an HHS employee must follow before accepting outside employment and any volunteer activity. The HHS HR Policy Manual requires employees to complete and submit [Form HR 0302](#), the moonlighting and outside activities form, and submit it to their supervisor. The agency's review will consider whether the requested outside employment or activity could create a reasonable conflict or appearance of impropriety with their work duties at the agency.

*Ex.: An HHS employee manages a contract with Vendor X for the employing HHS agency. The employee should not accept employment from a non-contracting vendor in competition with Vendor X. The outside employment might influence the employee's objectivity in managing the HHS agency contract with Vendor X.*



When considering an outside activity, HHS employees should not work or volunteer with a (a) contractor that the employee monitors as an HHS employee; (b) facility that the employee has a regulatory responsibility for as part of his work duties; or (c) another state agency. HHS employees must not engage in outside employment or activities that interfere or impede the ability of the employees to perform their HHS duties fairly, honestly, and efficiently.

The [HHS HR Manual, Chapter 1, J.3.](#), Employee Volunteers, provides that an employee may volunteer at a state agency if done willingly and without coercion. However, an FLSA non-exempt employee may only provide services that are:

- not closely related to the employee's job duties; and
- physically located away from the employee's regular workstation.

Note: the HR Manual makes exceptions for Friendship Volunteers at State Hospitals and State Supported Living Centers who have an approved long-term friendship assignment.

### **C. The Revolving Door**

State and federal law impose restrictions on the ability of former state employees to work in the private sector while conducting business with the agencies where they were once employed. Statutory restrictions on the activities of former state employees are intended to prevent those former employees from making unfair use of special knowledge, skill, or information obtained during state employment about a particular project or activity for personal financial gain, as well as from exploiting friendships or contacts with current state employees for personal financial gain. Management recognizes that HHS employees develop portable skills and knowledge they can use in the private sector and the employees should not be unreasonably prevented from pursuing private sector employment. However, all former HHS employees should avoid conflicts of interest, improprieties, or the appearance of impropriety in a post-state employment situation.

#### **▪ *Permanent Restrictions***

State law *permanently* prohibits a former state employee at or above an A17 salary level (approximately \$36,000 annually) from representing any person or receiving compensation for services rendered on behalf of any person regarding a particular matter in which the employee participated during state employment. A person who violates this provision commits a Class A misdemeanor, punishable by a fine of not more than \$4,000, jail confinement for not more than one year, or both. [See § 572.054 of the Government Code.](#)

The statutory definition of a “particular matter” is “a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding.” [See § 572.054\(h\)\(2\).](#) However, the term does not include a rulemaking proceeding that was concluded before an agency officer or employee’s service or employment ceased. [See § 572.054\(d\).](#) The Texas Ethics Commission has determined that a “matter” is something that involves the exercise of discretion by a particular agency. [See Texas Ethics Advisory Opinion No. 232 \(1994\).](#) Section 572.054(h)(1) of the Government Code defines the term “participated” as having taken action through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

▪ ***Time Limited Restrictions***

There are time limited restrictions that apply to former members of a governing body, former heads of regulatory agencies, and former or retired employees of all state agencies. For example, Govt. Code § 572.054(a) prohibits a former member of a governing body or a former executive head of a regulatory agency from making any communication to or appearance before an officer or employee of the agency in which the member or executive head served before the *second anniversary* of the last date of service or employment. This prohibition only applies to communications or appearances that are made (1) with the intent to influence; and (2) on behalf of any person in connection with any matter on which the person seeks official action. [See Government Code § 572.054\(a\)\(1\) and \(2\).](#)

There is also a time limited restriction that applies specifically to contracting with the executive head of a state agency and contracts. A state agency is prohibited from entering into a contract with the executive head of the state agency, with a person who at any time during the *four* years before the date of the contract was the executive head of the state agency, or with a person who employs a current or former executive head of a state agency, unless the governing body: (1) votes, in an open meeting, to approve the contract; and (2) notifies the Legislative Budget Board, not later than the fifth day before the date of the vote, of the terms of the proposed contract. [See Government Code § 669.003.](#) Further, the terms of a contract with a current or former executive head of a state agency are subject to disclosure under the Texas Public Information Act and may not be considered for exception from required disclosure under that law. [See Government Code § 669.004.](#)

Another time limited restriction applies to any employee who participated in a procurement or contract negotiation involving a person. Section 572.069 of the Government Code, provides that a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the *second anniversary* of the date the contract is signed or the procurement is terminated or withdrawn. Under the revolving door law, a “person” is an individual or business entity. [See Texas Ethics Advisory Opinion No. 232 \(1994\).](#)

Further, state law prohibits a state agency from entering into any of the following contracts with a former or retired employee of that agency for *one year* after the employee separates from the agency:

- an employment contract;
- a professional services contract; or
- a consulting services contract.

[See § 2252.901 of the Government Code.](#)

An “employment contract” includes a personal services contract regardless of whether the performance of the contract involves the traditional relationship of employer and employee. The term does not apply to an at-will employment relationship.

“Professional services” are services in the following fields or services provided in connection with the professional employment or practice of a person licensed or registered in these fields: accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing.

“Consulting service” means the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee.

There is an exception, however, for certain professional services contracts. A state agency may enter into a professional services contract with a business entity that employs a former or retired agency employee within one year of the employee’s last employment date, provided the former or retired employee does not perform services on projects for the business entity that the employee worked on while employed by the agency.

▪ ***Representation of Nonprofit Organizations or Governmental Bodies***

The Texas Ethics Commission has determined all of the above revolving door laws apply to activity on behalf of a "person." Under the revolving door law, a "person" is an individual or business entity. It does not include a nonprofit organization or governmental body. [See Ethics Advisory Opinion No. 232 \(1994\)](#).

▪ ***Agency Specific Restrictions and Requirements***

*Programs Formerly Administered by the Department of Aging and Disability Services (DADS)*

Programs formerly administered by DADS have an agency specific statutory restriction on certain post-employment activity. The statutory restriction is in Section 22.0033 of the Texas Human Resources Code. The restriction applies to employees who work in programs formerly administered by DADS and are compensated at or above an A17 salary group (approximately \$36,000 annually) as of the last date of state employment.

Programs formerly administered by DADS include programs that fall into the following HHS service categories:

- Aging
  - Care for People 60+
  - Long-Term Care
  - Service for Caregivers
- Disability
  - Acquired Brain Injury
  - Autism
  - Blind and Visually Impaired
  - Children with Special Health Care Needs Program
  - Comprehensive Rehabilitation Services
  - Consumer Directed Services
  - Deaf and Hard of Hearing
  - Early childhood Intervention Services
  - Disability Employment Services

- Independent Living
- Intellectual or Developmental Disabilities (IDD)
- Medical or Physical Disabilities
- Person Centered Planning

For *one year* from the last date of employment, a former employee of a program formerly administered by DADS may not directly or indirectly attempt, or aid in an attempt, to procure a contract with his/her former agency that relates to a program or service in which the former employee was directly concerned or for which the former employee had administrative responsibility. This restriction does not apply if the former employee is employed by another state agency or a community center.

A violation of this restriction is a Class A misdemeanor, punishable by a fine of not more than \$4,000, jail confinement for not more than one year, or both.

### *Health and Human Services Commission*

The Health and Human Services Commission (HHSC), as the state agency responsible for administration of the Medicaid program, has specific post-employment restrictions imposed by federal statute. Section 1396a(a)(4) of United States Code (also known as Section 1902 of the Social Security Act) requires states to have in place restrictions against conflicts of interest where an employee has responsibility for the expenditure of “substantial amounts of funds” under the Medicaid State Plan. The required restrictions are in the United States Code at 18 U.S.C. Sections 207 and 208.. In summary,

18 U.S.C. 207 sets forth 1) permanent restrictions and provides penalties for representation on particular matters by government executive branch employees (and independent agencies) in which the United States or the District of Columbia is a party or has a direct and substantial interest in which the person participated personally and substantially, with two year restrictions concerning matter under official responsibility; and 2) provides a one year restriction to executive branch employees and the legislative branch or members of congress on aiding on advising if they substantially participated in any ongoing trade or treaty negotiation; and 3) one year restrictions on certain senior personnel of the executive branch and independent agencies who, within one year after termination of his or her employment knowingly makes any communication or appearance before any officer or employee of the department or agency in which such person served within one year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency; and additional provisions related to members of congress and elected officers of the house of representatives and employees of either house of congress

18 U.S. Code §208 provides, certain exceptions, that officers and employees of the executive branch of the united States Government, or any independent agency of the United States, participates personally and substantially in a particular matter in which to his knowledge he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest – shall be subject to penalties set forth in section 216 of this title.

Violations of these restrictions are punishable by not more than one-year imprisonment, a fine, or both.

### *HHS Executive Level Employees*

HHS employees at a Director V level or above, are required to meet in person with the HHS Chief Ethics Officer, or designee, prior to separating from employment at HHS. The purpose of the meeting is to provide departing executives with a review of all applicable post-state employment laws and other restrictions that apply to agency employees. This formal review process serves to ensure compliance and heightened awareness regarding post-state employment restrictions. Upon completion, each employee will receive a certificate of completion and a copy will be maintained in the personnel file with HHS. [See HHS Circular 058, Post-Employment Restrictions.](#)

#### ▪ ***Contractual Restrictions***

The HHS agencies sometimes negotiate contracts with vendors and other entities that include post-employment restrictions that are stricter than the law. Employees are strongly advised to consult with their HHS Ethics Office ethics advisor and appropriate agency legal counsel regarding the applicability of such provisions to their individual circumstances.

As a rule, HHS employees should refer to all relevant laws and policies concerning post-state employment, prior to separation from employment with an HHS agency. Please consult the HHS Ethics Office with any questions that you might have.

## **XI. Civic Engagement and Political Activity**

HHS employees are strictly prohibited from using state funds and property for political purposes. For more details refer Chapter 556 of the Texas Government Code and 5 U.S.C. §§ 1501-1508, also known as the Hatch Act.

Provisions of the Hatch Act strictly prohibit a state or local officer whose salary is completely funded by federal funds from becoming a candidate in a partisan election. Further, state law prohibits all HHS employees from coercing a state or local officer or employee to make a political contribution or using official authority or influence to interfere with or affect the result of an election or nomination to office. Employees who violate these provisions risk forfeiture of compensation and disciplinary action up to and including termination.

### **A. Elections**

If an employee is an unpaid volunteer in a political campaign or other political activity, participation must be outside of work hours, or the employee must take leave while engaged in volunteer work. Leave time must be approved prior to the employee taking time off.

## B. Permissible Political Activities

HHS employees are entitled to participate in the political process to the extent that such participation does not violate applicable laws and agency policy. For example, employees may participate, on their own time and without the use of agency resources, in the following political activities:

- assisting in voter registration drives;
- expressing opinions about candidates and issues;
- wearing or displaying political badges, buttons, or stickers;
- attending, organizing, or managing political rallies and meetings;
- joining a political club or party;
- signing or circulating nominating petitions;
- campaigning for or against referendum questions, such as constitutional amendments or municipal ordinances;
- collecting contributions or selling tickets to political fundraising functions; or
- distributing campaign materials in a partisan election outside of the workplace and subject to the preceding conditions.

HHS employees should be diligent in submitting all leave requests and any other applicable forms prior to participating in a political activity that could conflict with their work schedule or the duties and responsibilities of their employment. For additional guidance, consult the [HHS HR Policy Manual, Employment Practices D.6. Political Activities](#).

## XII. Reporting Fraud, Waste and Abuse

[HHS Circular 027](#) establishes Health and Human Services System (HHS) policy concerning program integrity responsibilities and coordination, as well as reporting suspected fraud, waste, and abuse. These terms are, for purposes of this circular, defined as follows:

**Fraud:** Any intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to that person or some other person. The term does not include unintentional technical, clerical, or administrative errors.

Examples of fraud include:

- falsifying financial records to conceal theft of money or property;
- procurement/contracting fraud, including favoritism;
- falsely or fraudulently obtaining benefits for the employee, family or friends;
- intentionally misrepresenting the costs of goods or services provided; and
- accepting a bribe or kickback.

**Waste:** Practices that a reasonably prudent person would deem careless or that would allow inefficient use of resources, items, or services. Waste includes incurring unnecessary costs because of inefficient or ineffective practices, systems, or controls.

Examples of waste include:

- purchase of unneeded supplies or equipment; and
- improper purchase of goods at inflated prices.

**Abuse:** A practice by a provider that is inconsistent with sound fiscal, business, or medical practices and that results in an unnecessary cost to the Medicaid program; the reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care; or a practice by a recipient that results in an unnecessary cost to the Medicaid program.

**Reporting Fraud, Waste, and Abuse:**

Pursuant to Texas Government Code § 321.022, if the administrative head of a department or entity that is subject to audit by the state auditor has reasonable cause to believe that money received from the state by the department or entity or by a client or contractor of the department or entity may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, the administrative head shall report the reason and basis for the belief to the state auditor.

A report to the SAO must be made through one of the following avenues:

- SAO Toll Free Hotline: 1-800-TX-AUDIT
- SAO website: <http://sao.fraud.state.tx.us/>

Any HHS employee or contractor who has reasonable cause to believe that fraud, waste, or abuse has occurred will report the questioned activity to the OIG. All reports made to the OIG must be made through one of the following avenues:

- OIG Toll Free Hotline 1-800-436-6184
- OIG Website: [https://oig.hhsc.state.tx.us/Fraud\\_Report\\_Home.aspx](https://oig.hhsc.state.tx.us/Fraud_Report_Home.aspx)
- Internal Affairs Email: [InternalAffairsReferral@hhsc.state.tx.us](mailto:InternalAffairsReferral@hhsc.state.tx.us)
- OIG Hotline Email: [OIGFraudHotline@hhsc.state.tx.us](mailto:OIGFraudHotline@hhsc.state.tx.us).
- OIG Mailing Address: Office of Inspector General Attn: Fraud, Waste, & Abuse Intake MC 1300 P.O. Box 85200 Austin, Texas 78708-5200

In making a report, it is helpful to provide as much of the following information as possible:

- The name, address, telephone number, and e-mail address of the person making the report (anonymity is acceptable).
- The date(s) the incident(s) occurred.
- The date the incident was discovered.
- A detailed description of the incident, including any known program area, case numbers, or identifying characteristics that will assist the investigation.  
The name, address, telephone number(s), and email address of each person involved in the incident.
- The name, address, contact number, and e-mail address of each known witness. Whether the incident was reported to any other government agencies and, if so, which government agencies.

**Reporting Employee Misconduct:**

Most employee misconduct situations are appropriately handled internally by the relevant management chain. However, HHS supervisors must report allegations of employee fraud, waste, or abuse to OIG's Internal Affairs Section for investigation.

Some activities that warrant action by managers do not meet the OIG's definitions of fraud, waste, or abuse. Such acts may occur independently or in conjunction with fraud, waste, or abuse.

The Internal Affairs Director reserves the right to decline to investigate matters of employee misconduct and/or refer all or part of a case in order to devote limited resources to the OIG's core responsibilities. Employee misconduct appropriate for referral to Internal Affairs includes the following:

- Intentional falsification of documents (e.g., falsification of records related to procurement/contract fraud)
- Theft of state equipment that threatens program integrity by affecting the delivery of services (e.g., theft of electronic benefit transfer cards)
- Privacy/data breaches, in coordination with the HHS Privacy Office (e.g., HIPAA violations, breaches of confidential information, personally identifiable information, Social Security Administration data, etc.) (For DSHS staff, privacy/data breaches should involve the DSHS PrivacyOffice).
- Possession/use of pornography
- Retaliation in possible Whistleblower situations
- Travel Fraud
- Workplace violence
- Providing false testimony in or to any tribunal
- Intentional destruction of state property
- Criminal misconduct (e.g., abuse of official capacity, official oppression, tampering with a governmental record, etc.)

Employee misconduct appropriate for investigation internally by program management includes the following:

- Computer misuse (exception: pornography)
- Retaliation (exception: whistleblower cases)
- Abuse of leave
- Travel documentation errors
- Unlawful possession of a weapon at the workplace
- Ethics violations
- Other general HR policy work rule violations in the Human Resources Manual
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- Other general HR policy work rule violations in the Human Resources Manual

At management's request, Internal Affairs may also investigate alleged employee misconduct that appears serious (e.g., conduct considered a major offense in HR policy). Nothing in this



circular should be construed as preventing management from taking appropriate disciplinary action, when necessary and determined in consultation with the Office of Chief Counsel and Human Resources or contacting local law enforcement to preserve the peace and/or safeguard lives and property.

Most investigation referrals to IA are clear cut, and either fit plainly within Internal Affairs's scope, or they should be handled by management. For the less frequent cases where the allegations do not fall neatly into an appropriate category, then management will consult with Internal Affairs, Human Resources and/or the Office of Chief Counsel.

Each agency or division is responsible for processing the results of an Internal Affairs investigation. For investigative findings of misconduct, the agency or division must notify Internal Affairs, Legal Services, and Human Resources of the actions taken in response to the investigative findings.

**Protection for Reporting Violations of Law, and Confidentiality:**

HHS employees who in good faith report suspected fraud, waste, or abuse may fall within the protection of the Whistleblower Act in Texas Government Code, Chapter 554. Reports made to the OIG involving an audit, inspection, or investigation regarding fraud, waste, and abuse in the provision and delivery of all health and human services in the state are generally confidential by law, and not subject to release in response to an open records request, subpoena, or other means of legal compulsion. Throughout the investigative processes, every effort will be made to maintain the anonymity and to protect the rights of the individuals directly connected with a report of fraud, waste, or abuse. The OIG will disclose the results of an audit, review, or investigation in a final report that is produced after all findings are complete (including legal proceedings), and such final reports are open to the public. The OIG, in the interim, may disclose information obtained from an investigation, audit, or review to appropriate HHS legal staff and/or client representatives based upon applicable confidentiality law, and in accordance with established program integrity related procedures. The OIG has an obligation to provide management with timely and sufficient information to support management's obligations to protect program integrity and to manage the workforce effectively.

**Inquiries:**

Inquiries regarding [Circular 027](#) or requests for assistance with fraud, waste, and abuse training should be directed to the OIG's website: <https://oig.hhsc.texas.gov/contact>. The HHS Office of Chief Counsel is also available to assist with any inquiries.

**XIII. Unauthorized Use of Government Time, Property, and Facilities**

Because HHS resources are intended to support agency business, employees are generally forbidden from using government time, property, facilities, or equipment for purposes other than official business. However, an employee may use the Internet, telephone, and designated email address for limited personal purposes if they do not result in a cost to the agency. Examples of unauthorized use include misuse of personal computers, copiers, personal use of the agency's long-distance number or fax equipment and conducting any outside business on state time. Misuse of government property could result in disciplinary action up to and including

termination. See [HHS HR Policy Manual, Employment Practices, D.3. Use of State Property, Internet and E-Mail System](#).

#### **A. Email**

HHS employees may use the email system for communicating with others on non-official business provided such communication does not disrupt or interfere with official state business, is kept to a minimum duration and frequency, and is not political in nature. However, employees should remain aware that there is no expectation of privacy for anything sent or received through the agency's email system. For a more detailed discussion of the proper use of technology in the workplace see [HHS Circular 021 HHS Enterprise Information Security/Cybersecurity Policy](#).

#### **B. Disposition of Government Property**

All property, equipment, telecommunication devices, and supplies issued to HHS employees for use in performing their jobs belongs to the agency. Upon separation from employment, all such property must be returned to HHS. Work papers, copies of official papers, and notes or diaries of official business are official records and must be returned at the time of separation or upon demand. The same rule applies to electronic building access cards, parking permits, keys, credit cards, and all other credentials.

#### **C. Official Records and Property**

All records and documents, including electronic files, are in the custody of agency employees for official purposes only. Disposal or destruction of records and documents must be made in accordance with the [Texas State Library and Archives Commission's Retention Schedules for Texas State Agencies and Public Universities](#).

The disposal of copies of confidential or sensitive personnel or financial information should be made by placing the documents in confidential trash containers or according to established division procedures.

Employees must promptly report the loss of any agency property to their Division Director. Employees will be held responsible for the loss, disposal, or theft of any official documents or agency-owned property when attributable to the employee's actions. Employees are cautioned against leaving HHS documents and property, including laptops and mobile devices unprotected in automobiles, on public conveyances, in restrooms, or any other unsecured location. Specific steps must be taken when reporting lost or stolen devices. For more information, visit Reporting a Lost/Stolen Device Process.

#### **D. Copyrighted Material/Computer Software**

Any copyrighted material, including but not limited to commercial publications and computer software, made available to employees is protected by copyright laws and may not be copied for any reason without written permission from the copyright owner.

#### **E. Accounting for Money and Property**

Any money, property, or other thing of value, directly or indirectly received by an HHS employee in conjunction with the performance of official duties must be accounted for, deposited, or otherwise disposed of in accordance with established agency procedures.

#### **F. Checks Submitted with Legal Documents**

Sometimes an employee receives a check or other payment that accompanies a legal request or order, such as a subpoena to appear as a witness in a court proceeding. If, in responding to the legal request/order, the employee will act in the role of an employee, *e.g.*, testifying about the employee's job in a hearing involving the agency, then the employee must give the check or other payment to the appropriate person in the employee's agency – regardless of whether the check or other payment is payable to the employee or is in cash. The Chief Counsel for HHS or agency General Counsel must be consulted regarding any checks or payments associated with a legal request or order.