

Official Activity Expense Payments and Service Payments from Outside Sources

In June 2014, the Joint Commission on Public Ethics (JCOPE) adopted final regulations to establish the procedures and conditions for approval and acceptance of payments from outside sources. This regulation creates a process which will ensure that outside payments for official activities and/or services are only provided in a manner that will not produce an actual or the appearance of a conflict of interest. This would include payments related to the attendance, registration, travel, lodging, and food for New York State officials and employees for activities or services that are part of their official duties. The effect of these regulations is to supersede prior Advisory Opinions or other guidance to the extent they are inconsistent with the final regulations. The following are the most important points regarding official activity expense payments.

What is an “Official Activity Expense Payment” or a “Service Payment”?

An Official Activity Expense Payment and/or Service Payment only applies to activities that are deemed work duties. An Official Activity Expense Payment means payment or reimbursement for the cost of attendance, registration, travel, food, or lodging relating to the State employee’s Official Activity.¹ A Service Payment means any payment of money made in consideration for a Service provided.² An “Official Activity” is a State employee’s attendance or “Service” at a meeting, conference, seminar, convention, or professional program that is part of his or her official duties and benefits the Office of Mental Health (OMH). “Service” means any action or service performed by a State employee that is part of his or her official duties and benefits OMH. Such action may include, but is not limited to, delivering a speech, writing or publishing an article, or making a presentation.

Is an employee required to obtain prior approval to accept an Official Activity Expense or Service Payment?

Yes. Employees must receive prior approval from: (1) the OMH Commissioner or his/her designee for Facility Directors and Central Office/Regional Office employees, or (2) the Facility Director or his/her designee for facility employees. Employees must submit OMH Form 96 ADM (Request for Approval for Reimbursement for Official Activity Expenses from Outside Organizations/Individuals) within a reasonable period of time prior to the date of the Official Activity or Service for which the payment is offered. Employees must make all necessary inquiries to obtain the information required to complete the form accurately. Complete and accurate information is required so that a determination as to whether the person or entity offering the payment is an Interested Source can be made.

An Interested Source means any person or entity who on his or her own behalf, or on behalf of an entity:

- is regulated by, negotiates with, appears before, seeks to contract with or has contracts with, or does other business with OMH, any of its facilities or any other State agency when OMH receives the benefits of the contract;
- lobbies OMH or any of its facilities or is the spouse or unemancipated child of such lobbyist;
- is involved in any administrative or judicial proceeding which is adverse to the employee or OMH; or
- has received or applied for funds from OMH or any of its facilities at any time during the previous 12 months up to and including the date of the proposed or actual receipt of the honorarium.

¹ Official Activity Expense Payment does not include any payment or reimbursement for such costs when they have been bargained for by OMH, e.g. where the company is required to pay the expense under a contract.

² State employees may not accept additional compensation—from an outside source—for a service or activity that constitutes a work duty.

Conditions for Approval

If the entity offering the payment is not an Interested Source, the request to accept an Official Activity Expense Payment or Service Payment may be approved if the following conditions are met:

- The Official Activity Expense Payment or Service Payment covers only the period of time that the State employee is reasonably required to be present for such Official Activity;
- The Official Activity Expense Payment, if not made by the organization or individual making payment, could be lawfully paid by OMH in accordance with our travel policy;
- The Official Activity Expense Payment is made on behalf of the State employee at a rate not greater than the rate at which OMH would pay or reimburse the employee under our travel policy;
- OMH determines that the organization or individual making payment is not being used to conceal that the Official Activity Expense Payment or Service Payment is actually offered or paid by an Interested Source; and
- The Official Activity and the corresponding Official Activity Expense Payment or Service Payment is consistent with [Public Officers Law §74 \(Code of Ethics\)](#).

If the entity offering the payment is an Interested Source, the request may be approved only if all the conditions listed above are met and in addition, all the following conditions are met:

- It is not reasonable, under the circumstances, to infer that the Official Activity Expense Payment or Service Payment was intended to influence the employee in the performance of his or her official duties.
- The Official Activity Expense Payment or Service Payment could not, under the circumstances, reasonably be expected to influence the employee in the performance of his or her official duties.
- The Official Activity Expense Payment or Service Payment is not, under the circumstances, intended as a reward for any official action on his or her part.

JCOPE has also determined the following:

- For all OMH employees, all pharmaceutical companies are interested sources for the payment of Official Activity Expense Payment or Service Payment.
- If a particular entity is an Interested Source for one OMH facility, it is an Interested Source for all OMH facilities.

Service Payments

If a Service Payment is approved, OMH must direct that the Service Payment be made directly to the general fund of the State.

Reporting Requirements

Employees who are required to file a Financial Disclosure Statement pursuant to Public Officers Law §73-a, must report any Official Activity Expense Payment or Service Payment in excess of \$1000 (or all Official Activity Expense Payment or Service Payment the aggregate total of which exceeds \$1000 received from a single person/entity) in his or her Financial Disclosure Statement for the applicable year.

For questions and additional information, please contact:

- For facility employees, the facility's designated Ethics Officer.
- For Central Office employees, Daniel Ragone, Bureau of Central Office Personnel Services at (518) 474-2413 or Daniel.Ragone@omh.ny.gov.
- In Counsel's Office, Riele Morgiewicz at (518) 474-1331 or Riele.Morgiewicz@omh.ny.gov