

 <b>Office of Mental Health</b>  Official Policy Manual	Date issued 05/30/2024	Page 1 of 5	Section # OM-350
	Section: Operational Management – Employee Relations		
	Directive: Outside Employment		
	Policy Owner: Director, Bureau of Cultural Competence		

## **A. Policy Statement**

The engagement of outside employment by any employee of the Office of Mental Health must not adversely affect her/his availability or capacity to perform the duties and functions for which s/he is employed. All outside employment, including any services provided in connection with an academic affiliation, shall be conducted in accordance with the requirements of this policy directive.

All employees in positions allocated to Grade 23 and above and such other employees who are ineligible to be compensated for overtime work at time and one half rate must formally request approval for outside employment according to the procedures set forth within this policy directive.

In addition, the Commissioner, Deputy, Associate and Assistant Commissioner must advise the Department of State, Board of Public Disclosure of plans to engage in activity for which compensation, direct or indirect, is received. An application shall be submitted and reviewed in accordance with the rules promulgated by the Board of Public Disclosure.

*This policy directive shall not apply to the duties and functions performed by directors of research institutes in connection with and directly related to a position to which they are jointly appointed by the Commissioner and the dean of a medical college. This policy directive also shall not apply to services performed by Office of Mental Health employees for the Research Foundation, which instead, are subject to the terms and conditions of the agreement between the Foundation and the Interoffice Coordinating Council.*

## **B. Relevant Statutes and Standards**

Public Officers Law Section 73, Business or professional activities by state officers and employees and party officers  
4 NYCRR 6.3, Dual employment in the State service  
9 NYCRR Part 136, Payment of Extra-Service Compensation  
9 NYCRR 4.3, Executive Order No. 3: Establishing a Board of Public Disclosure

### **C. Definitions**

1. Local Governmental Unit means the identifiable entity within the local government which directs and administers a local comprehensive planning process for services to the mentally ill, the mentally retarded and developmentally disabled and those suffering from alcoholism, substance abuse or substance dependence.
2. Outside Employment means any personal service activity outside of an employee's Office of Mental Health assignment for which a fee, salary, retainer fee, stipend, gratuity, or any other consideration of value is received in payment or recognition for services rendered. Outside employment includes, but is not limited to: all privately conducted professional and technical services; teaching; lecturing; consultation; and any services provided in connection with an academic affiliation.
3. Academic Affiliation means formal, written contract between an Office of Mental Health facility, regional office, or bureau/division of the central office and an accredited college, medical school, university or training center. The purpose of an academic affiliation is to enable the Office of Mental Health to provide educational services at any location. Educational services provided in connection with an academic affiliation include, but are not limited to: developing curricula; organizing and conducting teaching programs; and supervising the training of mental health professionals (e.g. psychiatric residents).

### **D. Body of Directive**

This policy directive consists of three components:

1. Criteria Pertaining to Outside Employment
2. Review and Approval Responsibilities
3. Composition and Responsibilities of the Council on Ethics

#### **1) Criteria Pertaining to Outside Employment**

(a) Employees engaged in outside employment are prohibited from:

- (1) Engaging in activities which present a conflict of interest and/or discredit the State of New York or the Office of Mental Health;
- (2) Engaging in such activities during regular duty hours except as noted in D.1(d);
- (3) Using on-duty State employees in the conduct of outside employment;

- (4) Carrying out such activities at any location of the Office of Mental Health except as noted in D.1(d);
  - (5) Using any State-owned facilities or equipment except as noted in D.1(d); and
  - (6) Using the designation of the State of New York, the Office of Mental Health, or any facility operated by the Office of Mental Health in connection with any notice, business card, bulletin, or brochure related to outside employment.
- (b) Employees engaged in the delivery of private professional services, a type of outside employment, are prohibited from accepting former patients of State operated psychiatric facilities or programs for treatment, care or service for a period of six months following discharge from an Office of Mental Health operated facility or program.
- (c) Employees receiving prior approval of the Commissioner of the Office of Mental Health or designee or facility director in accordance with D.2) of this policy directive, may be employed by local governmental units or the agencies with which local governmental units contract. Employees will not be allowed, however, to engage in outside employment in any agency funded through direct contract with the Office of Mental Health, ***except as noted in D.1)d)***, or to operate, manage, or have any interest whatsoever in licensed or unlicensed residential facilities funded in whole or in part by the Office of Mental Health except for private homes or family care homes.
- (d) Outside employment
- Outside employment in connection with an academic affiliation will be allowed provided that the employee obtains prior approval of the Commissioner or designee in accordance with D.2), and the contractor does not compensate the employee directly from funds received from the Office of Mental Health.
- Affiliation activities must be clearly beyond the scope of the employee's regularly assigned duties and functions. Employees will be allowed to engage in affiliation activities during regular duty hours, at an Office of Mental Health location, and/or using State-owned facilities and equipment subject to the following conditions:
- i. Where the academic affiliation specifies services to be provided during regular duty hours, the employee must charge leave to

his/her accruals or prearrange an alternative work schedule which is documented and monitored by the supervisor in accordance with the established Alternative Work Schedule Program.

- ii. An employee holding a faculty appointment may be assigned to academic duties at any Office of Mental Health location which is involved in the program specified in the academic affiliation, including the facility where s/he is employed.
  - iii. State-owned facilities or equipment may be used by an employee in carrying out affiliation activities where such use is necessary to the conduct of an education or training program for Office of Mental Health employees.
- (e) Consultation to national professional organizations, federal mental health or mental retardation agencies or other agencies that set standards affecting the Office of Mental Health or its facilities may be performed on duty time. Reimbursement for expenses only may be accepted for such services.

If, however, such consultation services require preparation time after regular duty hours, or if the consultation services are performed on the employee's personal time, and appropriate charges to accrued leave are entered on the time sheet, reasonable fees beyond reimbursement for expenses may be accepted.

## **2) Review and Approval Responsibilities**

All employees serving in positions allocated to Grade 23 and above and such other employees who are ineligible to be compensated for overtime work at time and one half rate, must request and receive prior approval to engage in outside employment, including any services provided in connection with an academic affiliation. The request for approval of outside employment must be reviewed and approved by the appropriate appointing authority.

The facility director shall be the appointing authority for all requests for approval of outside employment by facility directors, central office staff, regional directors and regional office staff.

Those employees requesting such outside employment approval must submit an OMH Form 21 (ADM) MH "Application for Approval of Outside Employment" to either the facility director or the Commissioner or designee, as appropriate. The original application with the indicated action should be retained in the office of the authority to whom it is submitted. It shall be available for inspection and review by duly authorized State officials, and

shall be renewed annually. A copy of the application showing the action taken and bearing the signature of the authority to who it was submitted shall be returned to the applicant.

### **3) Composition and Responsibilities of the Council on Ethics**

A Council on Ethics shall be appointed by the Commissioner to serve as an advisory body to him/her and the Office of Mental Health in cases involving possible conflict of interest or other issues concerning the propriety of outside employment. The Council will furnish to individual employees and officials of the Office of Mental Health advice on the interpretation of the policy expressed herein. As requested, the Council shall make recommendations to the Commissioner, regional directors, and facility directors regarding action that might be taken to ensure proper implementation of this policy.

The Council shall consist of at least one facility director, an attorney on the staff of the Counsel's Office, and such other employees of the Office of Mental Health as the Commissioner designates. The terms of membership shall be staggered and shall not exceed three years. The Commissioner shall designate one of the members of the Council to serve as chairperson. In addition, the chairperson of the Council may select professional employees of the Office of Mental Health to serve on an *ad hoc* basis in order to represent the occupational fields involved in the matters referred to the Council.