

# Drafting Policy on Business Ethics

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The Office of Inspector General's (OIG) attention to fraud and abuse has certainly changed the way hospitals and their vendors conduct business. For many years, it has been common practice for vendors to court their clients with gifts and outings to get their product purchased, and some companies seem to have an endless flow of cash to provide these perks. However, the new awareness of potential fraud demands ethics policies to address this type of business activity.

## The First Steps

Writing a policy for a healthcare facility to address this problem is a complex process. When I was asked to create one, I decided to first review the list of my facility's vendors to get an overview of the companies this policy would impact. To gain external input, I contacted several of the largest healthcare vendors to learn their ethics policies and positions on embracing restrictions on customer perks. Many companies sent me their policies, and I found some common approaches to restricting and defining perks.

Many of these borrowed policies served as a guide in drafting our policy. While it's impossible to write a one-size-fits-all policy on ethics, the process can be streamlined by first evaluating the type of facility you work for, its geographic location, mission statement, and its various types of funding sources. For example, a county-owned hospital might have a very different mission statement and patient population from a private, for-profit hospital. Whether your facility is a Medicare provider or treats only private-pay patients, the cost of doing business today is affected by the cost of purchasing supplies and equipment that have perks built into the price. As a result, ethics are becoming part of the global network of vendor language. And while enforcing a policy may be challenging, it's still a necessity.

## The Facility Dictates the Policy

When developing or revising an ethics policy, personalize it to reflect the values of your organization. You might start with a statement like, "To enable [facility name] to conduct business effectively and to promote confidence in the integrity of its officers and employees, the highest standards of loyalty and ethical principles must be maintained. All officers and employees must avoid situations in which their personal activities or relationships could create or appear to create a conflict of interest or make it difficult to objectively carry out job responsibilities."

In interviewing hospital personnel about their perceptions of ethics in dealing with vendors, I found many instances where they observed an act that may have been acceptable, but had the appearance of impropriety. Therefore, it is important that all employees avoid situations in which their actions or dealings could be misunderstood: the mere appearance of a conflict or a breach of confidence by an individual can often be as serious as an actual conflict or breach. In some cases, it could result in irreparable damage to the organization and its reputation.

Further, employees need to know that the ethics policy applies to everyone in the organization, not just the line personnel and those who do business with the organization, such as doctors, vendors, and contract workers.

The policy should set forth guidelines for those business areas in which employees are most likely to encounter difficulties, but it should note that they are only guidelines and may not address every specific situation that may arise. Consider including wording that states that the interests of your organization should prevail over those of any individual.

## Common Ethical Dilemmas

One of the most common ethical issues is the acceptance of gifts. Your policy should clearly state that employees may not solicit or accept gifts from any actual or potential competitor, supplier, vendor, or customer, whether in cash, gift certificates, merchandise, or service (other than items of a nominal value) or any other payments, loans, or advances, or any property at cost or below fair market value. Travel accommodations, airline or other transportation tickets, hotel accommodations, and other similar gratuities should also be covered and defined specifically when possible. No gift should be accepted if it might influence or appear to influence the independent judgment of the employee.

Even with an established policy, from time to time prohibited gifts may still be sent to your employees, and guidelines are necessary for how these situations should be handled. When possible, the gifts should be returned to the donor with a letter of explanation. For perishable gifts that are impractical to return, donate them to a charity in the name of the donor or place them in a public area where all employees can access them.

Business entertainment is another common situation where guidelines are needed. List examples of what is appropriate when paying for lunch, dinner, or beverages when in conjunction with a business meeting. If alcohol is permitted as part of an event, your policy should include limits.

Another issue to address are invitations to an event from a competitor, supplier, vendor, or customer. Payment for transportation, lodging, and other expenses should be discussed in the policy. Some organizations' policies state that invitations should not be accepted when the host pays for travel, hotel, or other expenses. If that will be the case in your facility's policy, there will need to be budgeted funds to accommodate required travel needs.

Depending on your type of facility, consider incorporating the facility's policy statement on how employees are expected to handle confidential or proprietary information. This would cover information relating to strategic planning decisions, operations, goals, financial or business prospects, competitive bids, technical processes, or confidential employee, patient, financial, operational, or statistical information. Private facilities would have more rigid requirements than public ones. You may also need to include any laws that would apply to proprietary information.

## **Conflicts of Interest**

When addressing guidelines for conflict situations, consider the geographic and economic environment of your facility. Some conflicts cannot be avoided if your facility is in a remote area of the country with limited local resources and personnel, which would make it more likely that some employees would have either direct or indirect relationships with local vendors or representatives for national vendors. As a result, requiring employees to disclose these relationships in writing can go a long way toward avoiding a potential problem.

Include examples in your policy so employees can have a better understanding of questionable situations. For example, "A potential conflict could occur when an employee has an interest in, or connection with, an organization of such a nature that it might influence or appear to influence the independent judgment of the employee." Conflicts may be difficult to detect, and sometimes it is only a matter of degree between an acceptable and unacceptable activity.

Further, remember to address the conflicts that can occur with the sale or purchase of products, services, supplies, or equipment; the purchase, sale, and lease of real estate; the purchase of advertising space and time; the investment and borrowing of funds; the investments in competitors, suppliers, or customers; the selection and use of consultants or other professional advisers; and in the selection or supervision of contractors, suppliers, or vendors.

Internal conflicts of interest, such as relatives working in the same area, can easily be incorporated into this policy. External conflicts might cover such things as employees serving as officers or directors outside of your organization. The duties of an employee on the board of directors or serving as an officer of an outside company, association, or organization are separate from and in addition to the duties and responsibilities that employee has to your organization. Remember that many associations and organizations pay their outside officers and directors fees for services as well as offering reimbursement for out-of-pocket expenses incurred while attending meetings or other functions. Generally, it is acceptable for the employee who is serving in an outside capacity to accept and retain such fees and reimbursements. However, if stock or the opportunity to purchase stock in consideration for his/her services is offered, your policy should direct the employee to contact your legal counsel before accepting this type of offer.

Federal or state laws prohibit some organizations from making direct or indirect political contributions of any kind, including transportation or other services at company expense. Be sure to include this type of statement if it applies to your organization.

An employee who is not in a conflict of interest situation may confront one through job change or company reorganization. Be sure to address steps employees can take to work through any difficult situations if this should happen. The policy should note that a reasonable amount of time will be allowed to help the employee and the organization to make needed adjustments to comply.

## Final Considerations

Finally, your policy should include the disciplinary actions to be taken when violations occur. This would address actions up to and including termination. Other policies in your organization that directly or indirectly support this ethics policy should be listed either within the body of the document or at the end.

Once the basic elements of your policy are drafted, consider having it reviewed by some of the employees who will adhere to it. This will help you to craft a clear and reasonable policy and help employees understand and support the completed policy.

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