

June 10, 2004

**VETERANS HEALTH ADMINISTRATION ALTERNATIVE DISPUTE RESOLUTION
PROGRAM FOR EEO-RELATED ISSUES**

1. PURPOSE: This Veterans Health Administration (VHA) Directive establishes VHA policy regarding the use of Alternative Dispute Resolution (ADR) methods to resolve disputed issues pertaining only to matters involving Equal Employment Opportunity (EEO) issues.

2. BACKGROUND

a. VHA is committed to providing its employees with a work environment that enables them to deliver quality patient care and services to the Nation's veterans. To do this, employees must have access to effective and efficient mechanisms for resolving workplace disputes. In addition to the traditional administrative adjudication processes, every VHA employee must have the opportunity to utilize an ADR process to resolve workplace differences or disputes, which can be offered at any stage of the complaint process.

b. There are numerous forms of ADR currently being used in the Federal sector; however, in accordance with VHA policy, mediation is the preferred ADR process used to resolve EEO disputes when an employee elects to use that process. The process must be conducted in accordance with Title 29 Code of Federal Regulations (CFR) 1614, Equal Employment Opportunity Commission (EEOC) Management Directive (MD) 110 (EEOC MD-110), and in accordance with applicable collective bargaining agreements.

c. Mediation is an ADR process in which a skilled, impartial third-party, called a mediator, assists the parties in reaching a mutually agreeable resolution to a dispute by facilitating better communication, identifying interests, and helping explore possible solutions. Local facilities may find it beneficial to offer employees more than one type of ADR process for resolving disputes, such as conciliation, facilitation, interest-based problem solving, peer review, neutral fact-finding, and early neutral evaluation.

3. POLICY: It is VHA policy to offer mediation for all appropriate EEO related issues regardless of the stage of the complaint process. These issues are reviewed on a case by case basis to determine the appropriateness for mediation. When an aggrieved employee has agreed to pursue resolution through mediation, management must participate in the process.

4. ACTION: The following process must be implemented:

a. Upon verbal or written notification to the EEO Manager, the ADR Coordinator, or Veterans Integrated Services Network (VISN) Lead Coordinator that an aggrieved individual wishes mediation, a mediation session must be scheduled and management must participate. Management is strongly encouraged to expedite the mediation process and make every effort possible to complete it as early as possible.

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b. Management must participate in the mediation process when an employee has agreed to mediation. In rare instances, indicators can exist that may make the matter inappropriate for mediation. When the following indicators are present, the EEO Manager must conduct a case-by-case determination as to whether the matter is appropriate for mediation:

- (1) An indication that fraud, waste or abuse has been committed;
- (2) An allegation of patient abuse;
- (3) An allegation of sustained, continuing sexual harassment; and
- (4) A removal for cause, e.g., removal based upon the commission of a felony.

c. If mediation is refused by management, VA Form 10-0413, Notice of Refusal to Mediate for EEO Related Issues, must be completed by the EEO Manager/ADR Coordinator, signed by the appropriate manager/supervisor/key staff official and the facility director, and routed through the appropriate channels as shown on the form within 5 working days following the refusal (see Att. A). A copy of VA Form 10-0413 must be provided to the EEO Counselor for the case.

NOTE: VA Form 10-0413 can be accessed at the following address:

<http://vawww.vhaco.va.gov/eo/Documents/Refusal%20to%20Mediate.pdf>

5. REFERENCES: VHA Directive 2002-028, Alternative Dispute Resolution – Mediation Program, dated May 23, 2002.

6. FOLLOW-UP RESPONSIBILITIES: Assistant Deputy Under Secretary for Health for Operations and Management (10N) is responsible for the contents of this Directive. Questions may be referred to 202-273-8907.

7. RESCISSIONS: VHA Directive 2004-001, dated January 6, 2004, is rescinded. This VHA Directive expires June 30, 2007.

Jonathan B. Perlin, MD, PhD, MSHA, FACP
Acting Under Secretary for Health

Attachment

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