

Public - Private Partnership Programmes

for Healthcare Services

Corruption Prevention Guide

for Service Providers



CORRUPTION PREVENTION GUIDE FOR SERVICE PROVIDERS

Purpose

To enhance the efficiency of providing healthcare services to the public, the Department of Health and the Hospital Authority (i.e. the “programme administrators”) have been actively collaborating with the private sector to implement healthcare Public-Private Partnership (PPP) programmes. The service providers engaged in the PPP programmes, including healthcare professionals and others (e.g. radiology centres), are exposed to the risks of corruption (e.g. accepting advantages from other service providers for referring programme participants to them for further services) and other malpractices (e.g. colluding with the programme participants to make fraudulent claims for payment from the programme administrators). While these malpractices would undermine the programme participants’ interest, the service providers concerned may also be liable to criminal prosecution and disciplinary sanction. This checklist, which is by no means exhaustive, highlights the key measures to help the service providers avoid falling prey to such risks. They should adopt the recommended practices applicable to the programmes they serve.

Comply with Law and Professional Rules/Regulations

Relevant Legislations and Offences

- Understand and abide by the relevant legal provisions, and be vigilant about any possible offence, including the following:

Prevention of Bribery Ordinance (POBO) (Cap. 201)

- ▶ **Section 4(1)** – It is an offence to offer any advantage¹ to a public servant² as an inducement to or reward for that public servant’s performing or abstaining from performing any act in his capacity as public servant.

¹ “Advantage” includes money, gift, discount, commission, loan, offer of employment, service, etc. but excludes entertainment (i.e. provision of food/drink for consumption on the occasion when it is provided, and other entertainment connected with or provided at the same time as such provision).

² “Public servants” are, generally speaking, the members or employees of a public body and they include but are not limited to staff of the Department of Health and the Hospital Authority.



Case in Perspective

A service provider, who is tendering for a contract of the programme administrator, offers a sum of money to the latter's staff member (public servant) as the reward for his favouritism in the tender assessment process. In doing so, the service provider commits an offence under Section 4(1) of the POBO.

- ▶ **Section 8** – It is an offence, while having dealings of any kind with a government department/office or a public body, to offer any advantage to any government officer or public servant employed in that department/office or public body.

Case in Perspective

A healthcare professional is appointed to provide service in a PPP programme. He offers boxes of mooncakes to an officer (public servant) of the programme administrator (public body) during the Mid-Autumn Festival. As the healthcare professional is having dealings with the programme administrator under a service agreement, he commits an offence under Section 8 of the POBO in offering an advantage to an employee of the programme administrator.

- ▶ **Section 9(1)** – It is an offence for an agent³, without his principal's⁴ permission, to solicit or accept advantages for performing an act in relation to the principal's affairs or business.

³ An "agent" is a person employed by or acting for the principal, including a staff member employed by a service provider. An individual healthcare professional (e.g. a medical practitioner) is an agent of the programme participant who consults him or receives services from him.

⁴ For staff of healthcare service providers, their "principals" are their employers (e.g. private hospitals, radiology centres). For individual healthcare professionals, their principals are the individuals who receive services from them.

Case in Perspective

A healthcare professional (an agent) accepts rebates from an individual/organisation for referring a patient to him/it for further services. If the patient (the principal) has not given permission for accepting such rebates, the healthcare professional commits an offence under Section 9(1) of the POBO.

Other Ordinances and Offences

- ▶ **Fraud, Section 16A of the Theft Ordinance (Cap. 210)** – It is an offence for any person, by any deceit and with intent to defraud, to induce another person to commit an act or make an omission which results in benefiting any person, or in prejudice or a substantial risk of prejudice to any person.

Case in Perspective

In submitting to a programme administrator an application for monthly payment, a staff member of a medical laboratory uses falsified service records (e.g. laboratory test records with an inflated number of tests conducted) to deceive the programme administrator of payment. The staff member thereby commits an offence of fraud under Section 16A of the Theft Ordinance.

- ▶ **Conspiracy to Defraud, Common Law** – This offence concerns two or more persons dishonestly agreeing to commit fraud against another person.

Case in Perspective

A private doctor of a PPP programme conspires with a programme participant to fabricate bogus consultation/treatment records, with a view to deceiving the programme administrator of payment. The doctor subsequently uses such service records to claim payment from the programme administrator, and then



shares the proceeds obtained with the programme participant. Both the doctor and the participant commit an offence of Conspiracy to Defraud.

- ▶ **Personal Data (Privacy) Ordinance (Cap. 486)** – Observe the requirements set out in the Ordinance in handling the personal data and health records of the programme participants, and monitor staff's compliance.

Professional Rules and Regulations

- Comply with the codes issued by the relevant professional bodies, including the following and others:
 - ▶ The “Code of Professional Conduct” of the Medical Council of Hong Kong;
 - ▶ the “Code of Professional Discipline” of the Dental Council of Hong Kong;
 - ▶ the “Code of Professional Conduct for Registered Chinese Medicine Practitioners in Hong Kong” of the Chinese Medicine Council of Hong Kong; and
 - ▶ the “Code of Ethics and Professional Conduct for Nurses in Hong Kong” of the Nursing Council of Hong Kong.

Follow Probity Requirements

- Set out the probity standards expected of staff by issuing a staff code of conduct, covering the offer and acceptance of advantages, declaration of conflict of interest, handling of confidential information, etc.
- Strictly follow the probity requirements set out by the programme administrator in the tender documents and service contracts/agreements.

- Follow the recommended practices in the “Integrity and Corruption Prevention Guide on Managing Relationship with Public Servants”, which is available on the ICAC website, when having business dealings with public servants.
- Do not offer, solicit or accept any advantage defined in the POBO when providing services under a PPP programme, and prohibit staff and agents from doing so.
- Develop a mechanism to properly handle the conflict of interest declared by staff.
- Keep all confidential information, including programme participants’ health records, in a secure manner and restrict its access to authorised parties only on a need-to-know basis.

Comply with Service Contract/Agreement

- Strictly comply with the requirements set out in the service contracts/agreements and the guidelines/instructions issued by the programme administrator when providing services, including:
 - ▶ the scope and standards of services;
 - ▶ the updating/submission of health records (e.g. radiological investigation reports) to the programme administrator within the specified time frame;
 - ▶ the manpower deployment (e.g. the qualifications/experience of medical practitioners, the nurse-to-patient ratio);
 - ▶ the specifications of medical equipment/consumables (e.g. water treatment plants and water distribution systems in haemodialysis centres) and the requirements on periodic maintenance; and
 - ▶ the regular submission of quality assurance reports (e.g. water test reports for haemodialysis procedures, maintenance records of radiological equipment) to the programme administrator.



Adopt Best Practices

Provision of Healthcare Services

- Ensure that adequate service sessions are reserved for the PPP programme participants.
- Check the programme participants' identity proof (e.g. Hong Kong Identity Card) and confirm their eligibility before providing them with services.
- Notify the programme participants of their remaining service quotas upon service completion, if applicable.

Updating/Submission of Health Records

- Update/submit programme participants' health records according to the requirements set out in the service contract/agreement (e.g. through the Electronic Health Record Sharing System and within the specified time frame).
- Adopt measures to protect the confidentiality of the health records and privacy of the programme participants. For example, only allow authorised staff to access the health record system, and conduct risk assessment for using portable devices to update/submit health records under special circumstances (e.g. when providing an outreaching service).

Collection of Service Fees

- Well inform the programme participants of the level of fees chargeable and obtain their consent before providing any charged service.
- For programme participants who are recipients of Comprehensive Social Security Assistance or holders of medical fee waiver certificates, verify their status before waiving their payments.
- Issue serially numbered receipts to the programme participants immediately after the collection of service fees from them, where applicable.

Referral of Programme Participants

- Exercise professional judgement in advising the programme participants to receive further medical investigations or treatments.
- Avoid recommending named service providers (e.g. medical laboratories) to the programme participants, and let them choose the service providers they prefer.
- When it is necessary to recommend particular service providers to the programme participants, exercise professional judgement independently to select the service providers considered to be in the programme participants' best interest.
- Do not receive any advantage from any individual or organisation for referring the programme participants to him/it, unless the programme participants' explicit and voluntary permission has been obtained.
- Disclose any direct or indirect conflict of interest (e.g. the recommended service provider is operated by the recommending party's relative) to the programme participants.
- Obtain the programme participants' explicit and voluntary consent before releasing their personal data and health records to other service providers.

Submission of Payment Claims

- Submit payment claims within the specified time frame together with the required supporting documents (e.g. a list of laboratory tests conducted).
- Check and confirm that the information submitted is true and correct.
- Maintain service records/documentation to facilitate inspections and audits by the programme administrator.
- Properly document the justifications when submitting payment claims under special circumstances (e.g. a laboratory test could not be conducted successfully as a wrong specimen was provided).



Seek Assistance from ICAC

The Corruption Prevention Advisory Service of the Corruption Prevention Department provides free, confidential and tailor-made corruption prevention advice to organisations and individuals, in particular those in the private sector. It pledges to respond to a request for service within two working days.

- ◆ Telephone no. : 2526 6363
- ◆ Fax no. : 2522 0505
- ◆ Email Address : cpas@cpd.icac.org.hk
- ◆ Website : cpas.icac.hk

Any person may lodge a corruption complaint to the ICAC through the following channels:

Report Centre (24-hour service)

- ◆ Address : G/F, 303 Java Road, North Point, Hong Kong
- ◆ Telephone no. : 2526 6366

By Mail

- ◆ G.P.O. Box 1000, Hong Kong

Regional Offices

(Opening hours: Mon – Fri: 9:00 am – 7:00 pm

Sat, Sun and Public Holidays: Closed)

- ◆ **Hong Kong East**

Unit 3, G/F, East Town Building, 16 Fenwick Street, Wanchai, Hong Kong

- ◆ **Hong Kong West/Islands**

G/F, Harbour Commercial Building, 124 Connaught Road Central, Hong Kong

- ◆ **Kowloon East/Sai Kung**

Shop No. 9, G/F, Chevalier Commercial Centre, 8 Wang Hoi Road, Kowloon Bay, Kowloon

- ◆ **Kowloon West**

G/F, Nathan Commercial Building, 434-436 Nathan Road, Kowloon

◆ **New Territories East**

G06-G13, G/F, Sha Tin Government Offices, 1 Sheung Wo Che Road, Sha Tin, New Territories

◆ **New Territories North West**

G/F, Fu Hing Building, 230 Castle Peak Road, Yuen Long, New Territories

◆ **New Territories South West**

Shop B1, G/F, Tsuen Kam Centre, 300-350 Castle Peak Road, Tsuen Wan, New Territories

DISCLAIMER

The descriptions and explanation of legal requirements under the Prevention of Bribery Ordinance and other relevant laws in this Guide are necessarily general and abbreviated for ease of understanding. Users of the Guide are advised to refer to the original text of the relevant laws or seek legal advice on particular issues where necessary. The ICAC will not accept any responsibility, legal or otherwise, for any loss occasioned to any person acting or refraining from action as a result of any material in this Guide.

Case scenarios are used in this Guide to illustrate the legal requirements and corruption risks. These case scenarios should be taken as hypothetical and not referring to any particular real case or any particular organisation or person. Moreover, the advice and recommendations given in the Guide are by no means prescriptive or exhaustive, and are not intended to substitute any legal, regulatory or contractual requirements. Users should refer to the relevant instructions, codes and guidelines issued by the relevant authorities as well as by the Government and the Hospital Authority as appropriate, and adopt the appropriate measures that best suit the operational needs and risk exposures of their organisations.

Throughout this Guide, the male pronoun is used to cover references to both the male and female. No gender preference is intended.