

NYC HEALTH + HOSPITALS

Non-Intimidation & Non-Retaliation Whistleblower Policy

I. POLICY

It is the policy of NYC Health + Hospitals (“the System”) to strictly prohibit Retaliation, in any form, for good faith reporting of Prohibited Acts or otherwise engaging in Protected Conduct.

II. APPLICABILITY

This Policy applies to all Workforce Members and Business Partners, and former employees (collectively referred to herein as “Covered Persons”) that, in good faith, participate in NYC Health + Hospitals Corporate Compliance and Ethics Program (also referred to as the “Compliance Program”)

III. PURPOSE

It is the objective of this Policy to set forth the rights, responsibilities, and protections of any Covered Person who in good faith reports Prohibited Acts, or other conduct that fails to comply with the requirements of the Compliance Program.

IV. DEFINITIONS

- A. Whistleblower: The term “Whistleblower” means any Covered Person that engages in Protected Conduct as described in section V, or in good faith reports Prohibited Acts or other conduct that fails to comply with the requirements of the Compliance Program.
- B. Retaliation: The term “Retaliation” (or retaliatory conduct or action) means the discharge, suspension, demotion, engagement of threatening or coercive conduct, penalization, discrimination or other adverse employment, contractual, business-related or patient care-related action imposed against any Covered Person as a consequence of engaging in Protected Conduct or other participation in the Compliance Program.
- C. Prohibited Acts: an action or occurrence taken against a Covered Person for engaging

in Protected Conduct or participating in the Compliance Program, which results in undue hardship/negative consequences towards the Covered Person.

D. Business Partner: For purposes of the Compliance Program, the term Business Partner means any non-Workforce Member, contractor, subcontractor, vendor or other third-party (collectively “Third Party”) that is required by law or contract to comply with the Compliance Program, and that, in acting on behalf of or otherwise being associated with NYC Health + Hospitals, engages in activities, functions, and duties that:

- (i) Contribute to the System’s entitlement to receive payment from Federal healthcare programs or private payors, including, for example, those Third Parties that deliver, furnish, prescribe, direct, order or otherwise provide healthcare items and/or services; or
- (ii) May place the System in a position to commit significant noncompliance with Federal health care program or private payor requirements, or fraud, waste and abuse prohibitions, including, for example, those Third Parties that:
 - (a) Provide billing or coding functions;
 - (b) Monitor the healthcare provided by the System;
 - (c) Establish and administer:
 - 1) The formulary of the System; or
 - 2) Medical benefit coverage policies and procedures; or
 - (d) Review beneficiary claims and services submitted for payment to Federal healthcare programs or private payors; or
 - (e) Exercise decision making authority (*e.g.*, clinical decisions, coverage determinations, appeals and grievances, health plan enrollment/disenrollment functions, the processing of pharmacy or medical claims) in administration of Federal health care programs or private payor health plans.

V. RETALIATION PROHIBITED/WHISTLEBLOWER PROTECTION

A. Protected Conduct includes:

- (i) Good faith, participation in the Compliance Program, as determined by the Office of Corporate Compliance (“OCC”), which includes engaging in any of the following activities (hereinafter collectively referred to as “Protected Conduct”):

1. Reporting and participating in investigations of potential compliance issues and other concerns including, without limitation, those surrounding the engagement of Covered Persons in activities that are prohibited under section V(B) below;¹
2. Performing self-evaluations, internal investigations, and audits;²
3. Reporting or filing a compliance complaint to a supervisor or manager³ or to the OCC;
4. Making compliance inquiries;
5. Cooperating with or implementing remedial actions in response to noted compliance deficiencies and/or failures;⁴
6. Reporting to or providing (or threatening to report or provide) information to appropriate officials as provided under New York Labor Law §§ 740 and 741;⁵
7. Objecting to or refusing to participate in any activity, policy or practice that:
 - (a) Violates applicable law⁶ or NYC Health + Hospitals' internal policies;
 - (b) Constitutes improper quality of patient care;⁷ or
 - (c) Constitutes health care fraud;⁸
8. Disclosing or otherwise reporting “information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior” by a Covered Person involving, for example, “investments, travel, the acquisition of real property and the

¹ See 18 NYCRR § 521.3(c)(8).

² See *id.*

³ Supervisors and managers must inform the Office of Corporate Compliance of any complaint reported to them that falls under this Policy.

⁴ See *id.*

⁵ See Social Services Law § 363-d(2)(h); 18 NYCRR § 521.3(c)(8); see also Labor Law §§ 740(2)(a-b), 741(2)(a).

⁶ See Labor Law § 740(2)(c); see also 45 CFR § 160.316(c).

⁷ See *id.* at § 741(2)(b).

⁸ See *id.* at § 740(2)(c).

disposition of real and personal property and the procurement of goods and services”;⁹

9. Exercising any right established, or participating in any process provided for, under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) including, without limitation, the HIPAA Privacy and Breach Notification Rules;¹⁰ and
10. “Testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing under” NYC Health + Hospitals’ internal policies and procedures and applicable Federal or State law;¹¹

B. Prohibited Acts from the employer, manager or other personnel acting on the behalf of the employer in response to a good faith compliance report include the following:

- (i) Contacting or threatening to contact immigration services in regard to the reporter or family member of the reporter;¹²
- (ii) Engaging in any activity that would adversely impact the reporting individual’s current or future employment; or¹³
- (iii) All other threats or adverse consequences resulting for the reporter as a result of the reporting.

VI. RIGHTS, RESPONSIBILITIES, AND PROTECTIONS OF A WHISTLEBLOWER

A. Rights of a Whistleblower are as follows:

- (i) The right to disclose or threaten to disclose to supervisory personnel of the System, the OCC, and/or a public body any activity, policy or practice that the Whistleblower reasonably feels violated any pertinent regulations or has the capacity to cause harm to public health or safety.¹⁴
- (ii) The right to provide testimonial information to any public body investigating any wrongdoing by the System.¹⁵

⁹ Public Authorities Law § 2824(1)(e) (requiring board members of state or local authorities to establish policies protecting employees from reporting compliance issues).

¹⁰ See 45 CFR § 164.530(g)(1).

¹¹ 45 CFR §160.316(b).

¹² See Labor Law § 740 (1)(e).

¹³ See id.

¹⁴ See id at § 740 (2)(a).

¹⁵ See id at § 740 (2)(b).

- (iii) The right to refuse to participate in any activity, policy or practice of the System that the Whistleblower reasonably believes is in violation of any law, rule or regulation.

B. Responsibilities:

- (i) Except as provided in (ii) below, Whistleblowers should have made documented good faith efforts to notify their supervisor, management or the OCC of wrongdoing prior to engaging a public body.
- (ii) Good faith effort is not required if there is:
 - (a) Imminent danger to public health or safety;¹⁶
 - (b) Reasonable belief that reporting internally would result in destruction of evidence/concealment of the wrongdoing;¹⁷
 - (c) Reasonable belief that the wrongdoing could be expected to endanger the welfare of a minor;¹⁸
 - (d) Reasonable belief that reporting would result in physical harm to the reporter;¹⁹ or
 - (e) Reasonable belief that the supervisor is already aware of the wrongdoing and will not correct the wrongdoing.²⁰

C. Protections: Whistleblowers who feel they are being retaliated against in light of reporting such wrongdoing may be entitled to the following recourse:

- (i) Institution of a civil action in a court of competent jurisdiction for relief within two years after the alleged retaliation took place;²¹
- (ii) Compensation for lost wages, benefits and other renumeration;²²
- (iii) An injunction to restrain continued violations;²³

¹⁶ See id at § 740 (3)(a).

¹⁷ See id at § 740 (3)(b).

¹⁸ See id at § 740 (3)(c).

¹⁹ See id at § 740 (3)(d).

²⁰ See id at § 740 (3)(e).

²¹ See id at § 740 (4)(a).

²² See id at § 740 (5)(d).

²³ See id at § 740 (5)(a).

- (iv) Reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position, or front pay in lieu thereof;²⁴
- (v) Reinstatement of full fringe benefits and seniority rights;²⁵
- (vi) Payment by the employer of reasonable costs, disbursements, and attorney’s fees;²⁶
- (vii) Civil penalty of up to ten thousand dollars;²⁷ and
- (viii) Payment by the employer of punitive damages, if the violation was willful, malicious or wanton, to the extent permitted by law.²⁸

VII. DISCIPLINARY ACTION FOR RETALIATORY CONDUCT

Any Covered Person, or other individual or entity that is under contract, affiliation agreement or has established any other agreement with NYC Health + Hospitals, that engages in retaliatory conduct against a Whistleblower shall face Disciplinary Action, up to and including termination of employment, contract, and/or other affiliation with NYC Health + Hospitals, as outlined in the System’s Disciplinary Policy in Operating Procedure 50-1 “Corporate Compliance and Ethics Program”.

VIII. REPORTING PROCEDURE

All reports of retaliation, or any other compliance-related complaints, can be made to the Office of Corporate Compliance via the NYC Health + Hospitals Compliance Helpline; telephone or fax; email; or by letter as follows:

NYC Health + Hospitals
Office of Corporate Compliance
50 Water Street, Suite 528
New York, NY 10004
Telephone: (646) 458-5632
Facsimile: (646) 458-5624
E-mail: COMPLIANCE@nychhc.org
Confidential Compliance Helpline:
1-866-HELP-HHC (1-866-435-7442)

²⁴ See id at § 740 (5)(b).

²⁵ See id at § 740 (5)(c).

²⁶ See id at § 740 (5)(e).

²⁷ See id at § 740 (5)(f).

²⁸ See id at § 740 (5)(g).