
Policy Number: **CC 16-33**

Original Date: May 1, 2014

Revised: June, 2017, 8/18

Reviewed: 7/16; 6/17, 8/18

Subject/Title: **Whistleblower Protection Policy**

Policy: Oneida Health Hospital (OHH), Oneida Medical Practice (OMP) and Oneida Medical Services d/b/a Women’s Health Associates (OMS/WHA), (collectively referred to herein as “OHH”) recognize that a critical aspect of the Compliance Program is the establishment of a culture that promotes prevention, detection, and resolution of instances of conduct that does not conform to federal and state requirements, private payer healthcare program requirements as well as our organization’s code of conduct. In accordance with state and federal laws, policies and whistleblower provisions, OHH has established a compliance reporting process and a strict non-intimidation/non-retaliation policy to protect employees and others who report problems and concerns in good faith. Any form of retaliation, intimidation or retribution is prohibited.

No trustee, officer, employee, contractor or volunteer of OHH (collectively referred to herein as “Staff”) who, in good faith, reports any action or suspected action by or within OHH that is illegal, fraudulent or in violation of any adopted policy of OHH shall suffer intimidation, harassment, discrimination or other retaliation, or in the case of employees, an adverse employment consequence.

This policy of non-intimidation and non-retaliation for good faith participation in Oneida Health’s Corporate Compliance program applies to and includes, but is not limited to:

- a. reporting potential issues
- b. investigating issues
- c. self-evaluations
- d. audits
- e. remedial actions, and
- f. reporting to appropriate officials as provided in Sections 740 and 741 of the NYS Labor Law.

Purpose: To ensure that OHH fosters a culture of non-retaliation and non-retribution particularly with regard to Staff who report, in good faith, actual or suspected non-compliance with laws, regulations, policies and the OHH Corporate Compliance plans or Code of Conduct.

Scope: This policy applies to all Affected Persons of OHH including Board members, officers, managers, and other workforce members including, employees, trainees, volunteers, providers, consultants, independent contractors, students and temporary workers (“Affected Persons”) and throughout OHH, including the hospital and all of its departments and health centers, the Extended Care Facility and OHH’s affiliated physician practices (Oneida Medical Services, PLLC, Oneida Medical Practice, PC and

Genesee Physician Practice, PLLC), and any other department or entity which is part of OHH.

Responsibilities: All individuals identified in the scope of this policy are responsible for meeting the requirements of this policy.

The OHH Corporate Compliance Director is responsible for maintaining this policy and communicating this policy to members of the workforce.

Compliance: Failure to comply with this or any other Corporate Compliance policy may result in disciplinary actions as per OHH's Disciplinary Policy HR-11 and Progressive Disciplinary and Sanction Policy for Compliance Program CC 16-30. Legal actions also may be taken for violations of applicable regulations and standards.

Procedure:

- All Staff will have an open line of communication and are encouraged to communicate any issues or areas of concern to the Compliance Director. All Staff have a duty and responsibility to promptly report any known or suspected misconduct, including actual or potential violations of laws, regulations, policies, procedures, the Corporate Compliance plan(s), or the Code of Conduct to their Director/Manager, the Compliance Officer, the Compliance Director, or President/CEO. The reporter can discuss issues of concern directly with any of the above Staff and be assured of having anonymity and a guarantee that there will be no retribution for fraud and abuse information provided.
- OHH has established a Hotline (phone number: 315-361-2116) which is available for any individual to report actual or potential violations of any rule or regulation. The Hotline provides a confidential means for reporters that choose to remain anonymous. All reports made to the Hotline will be investigated in a prompt and reasonable manner by the Compliance Director, or designee, as appropriate. Individuals will not be subject to retaliation on the part of any person affiliated with OHH based on reports that are submitted in good faith. Any such retaliation is a violation of the Compliance Plans and our Code of Conduct and should be reported immediately to the Compliance Director, Compliance Officer, VP of Human Resources or the President/CEO.
- Other avenues that can be utilized to report potential or actual compliance violations include reports in person using the chain of command, direct phone calls, e-mails and/or any form of handwritten memoranda to the Compliance Director or Officer. If an individual does not want to use the Hotline or any other reporting structure because of the individuals or circumstances involved in the report, the President/CEO, any member of the Executive Staff, Nursing Supervisors, or any member of the Compliance Committee can and should be contacted.
- All Staff have an affirmative duty and responsibility for reporting perceived misconduct, including actual or potential violations of laws, regulations, policies, procedures, or OHH's code of conduct.
- An "open-door policy" will be maintained at all levels of management to encourage Staff to report problems and concerns.
- Staff are encouraged to utilize the Hotline. In furtherance of their protection against retaliation, callers may remain anonymous or may seek confidentiality.
- Staff may also proceed up the chain-of-command or communicate with the Human Resources Department if their problem or concern is not resolved.
- Any form of retaliation against any Staff who reports a perceived problem or concern in good faith is strictly prohibited.

- Any Staff who commits or condones any form of retaliation will be subject to discipline up to, and including, termination of his/her affiliation with OHH.
- Staff cannot exempt themselves from the consequences of their own misconduct by reporting the issue, although self-reporting may be taken into account in determining the appropriate course of action.
- Confidentiality will be maintained to the extent that is practical and allowable by law. OHH may be legally required to report crimes or potential crimes and infractions to external governmental agencies.
- The Corporate Compliance Director, Compliance Officer, the President/CEO and the VP of Human Resources will collectively administer this policy and will report instances of both Compliance concerns and any violations of this policy to both the Audit Oversight Committee and the Corporate Compliance Committee.
- A copy of this policy will be available to all Staff on the facility's intranet. In addition, it will be distributed as part of initial orientation to all Board members, employees, Medical Staff and volunteers.

Other Related Policies: All Compliance Policies

Previous Policy Number: NA

References: CC 16-1 Compliance Reporting & Response System
 CC 16-2 Internal Investigations
 CC 16-4 Compliance Hotline Operation
 CC16-10 Health Care Waste, Fraud and Abuse
 CC 16-30 Progressive Disciplinary and Sanction Policy for Compliance Program
 CC16-45 Corporate Compliance Code of Conduct
 HR-11 Disciplinary Policy
 HR-68 Code of Conduct and Disruptive Behavior
 Language in OHH, OMP and OMS/WHA Corporate Compliance Plans
 Nonprofit Revitalization Act of 2013 text
 New York Law Journal, November 4, 2013

Standards: Federal False Claims Act, 31 U.S.C 3730 (h) Fraud and Abuse: Civil Actions for False Claims
 New York False Claims Act, State Finance Law § 191

New York State Labor Law § 704, 741

Nonprofit Revitalization Act of 2013 (NRA), Not-For-Profit Corporation Law § 715-B

18NYCRR 521.3(c)

Forms: N/A

Special Notes:

Please consult OHH's Healthcare Waste, Fraud and Abuse Policy (CC 16-10) for more detailed information of Fraud and Abuse and Whistleblower Protection Laws

WHISTLEBLOWER PROTECTIONS

1) Federal False Claims Act (31 U.S.C. §3730(h))

The Federal False Claims Act provides protection to qui tam relators (individuals who commence a False Claims action) who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA. 31 U.S.C. 3730(h). Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

2) New York State False Claim Act (State Finance Law §191)

The New York State False Claim Act also provides protection to qui tam relators (individuals who commence a False Claims action) who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the Act. Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

3) New York State Labor Law, Section 740

An employer may not take any retaliatory action against an employee if the employee discloses information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that the employer is in violation of a law that creates a substantial and specific danger to the public health and safety or which constitutes health care fraud under Penal Law §177 (knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions). The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.

4) New York State Labor Law, Section 741

A health care employer may not take any retaliatory action against an employee if the employee discloses certain information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that, in good faith, the employee believes constitute improper quality of patient care. The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation, unless the danger is imminent to the public or patient and the employee believes in good faith that reporting to a supervisor would not result in corrective action. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.

5) Not-For-Profit Corporation Law – Whistleblower Policy Requirements

Not-For-Profit Corporation Law § 715-B requires all not-for-profit corporations in New York with 20 or more employees and annual revenues exceeding \$1,000,000 to adopt a Whistleblower Policy that contains the following elements:

1. Provides that there will be no intimidation, harassment, discrimination or an adverse employment consequence for any trustee, officer, employee or volunteer who in good faith reports any action or suspected action within the corporation that is illegal, fraudulent or in violation of any adopted policy;
2. Contains procedures for reporting violations or suspected violations of law or corporate policies, including procedures for preserving the confidentiality of reported information;
3. Requires that an employee, officer, or trustee of the corporation be designated to administer the whistleblower policy and report to a committee of independent trustees of the Board of Trustees; and,
4. Requires that a copy of the whistleblower policy be distributed to all trustees, officers, employees and to volunteers who provide substantial services to the corporation.