
Policy Number: **CC 16-33**
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Reviewed: 7/16; 6/17, 8/18

Subject/Title: Whistleblower Protection Policy

Policy:

It is Oneida Health Hospital's policy that Board members, officers, managers, and other workforce members, including employees, trainees, volunteers, providers, consultants, independent contractors, students and temporary workers ("Affected Persons") recognize that a critical aspect of its Corporate 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, including New York State Medicaid and private payer healthcare program requirements, as well as our organization's code of conduct. To ensure that OHH fosters a culture of non-retaliation and non-retribution, an Affected Person (as hereinafter defined) who makes a good faith report of any actual or suspected non-compliance with laws, regulations, policies and the OHH Corporate Compliance Plans or Code of Conduct, will not experience any form of retaliation, intimidation or retribution is prohibited.

This policy of non-intimidation and non-retaliation for good faith participation in OHH'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:

The purpose of this policy is to ensure no Affected Person of OHH 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, in accordance with state and federal law. A summary of whistleblower protections under the federal and state False Claims Acts and Sections 740 and 741 of the NYS Labor Law is attached to this policy as Attachment 1 and incorporated by reference.

Scope:

This policy applies to all Affected Persons of OHH, including the hospital and all of its departments and health centers, the Extended Care Facility, OHH's affiliated physician practices (Oneida Medical Services, PLLC, Oneida Medical Practice, P.C. and Genesee Physician Practice, PLLC), and any other department or entity which is part of OHH, as appropriate.

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 all Affected Persons.

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 action also may be taken for violations of applicable federal and state laws and regulations and standards.

Procedure:

1. Affected Persons have a duty and responsibility to promptly report, in good faith, 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. Affected Persons can report issues of concern and be assured of having confidentiality and a guarantee that there will be no retribution for reports provided in good faith. A good faith report is one which an individual reasonably believes to be true, and reasonably believes constitutes illegal conduct, fraud, or a violation of OHH policies.
2. Affected Persons have an open line of communication and are encouraged to report any issues or areas of concern to the Corporate Compliance Officer (CCO) or Corporate Compliance Director (CCD). Reports may also be made to a member of the Corporate Compliance Committee, the Corporate Compliance Liaisons for OMP, OMS, and GPP, or an immediate supervisor, who in turn can seek assistance from the CCD. Affected Persons are encouraged to utilize OHH's established Compliance Hotline (extension 2116 or 315-361-2116) which is available for any individual to report actual or potential violations or misconduct. The Compliance Hotline provides callers a confidential means to report, and, in furtherance of protection against retaliation, callers may also choose to remain anonymous.
3. All reports will be investigated in a prompt and reasonable manner by the CCD or designee, as appropriate, in accordance with OHH's *Internal Investigations and Response* policy (see Policy CC 16-2).
4. Affected Persons will not be subject to intimidation or retaliation on the part of any person affiliated with OHH based on reports that are submitted in good faith and, in the case of employees of OHH, subject to an adverse employment consequence, including but not limited to termination, demotion, or suspension. Any form of intimidation or retaliation against any Affected Person who reports a perceived problem or concern in good faith is strictly prohibited. Any form of intimidation or retaliation is a violation of the OHH's Corporate Compliance Plan and Code of Conduct and is strictly prohibited. Any such conduct should be reported immediately to the CCD, CCO, VP of Human Resources, or the President/CEO of OHH.
5. The CCD or CCO may also be contacted by direct phone call, e-mail and/or any form of handwritten memoranda. If an Affected Person does not want to use the Compliance Hotline or any other of the identified reporting methods because of the individual(s) or circumstance(s) involved, reports may also be made using the chain of command or by contacting the President/CEO, any member of the Executive Staff or an officer of the Board of Trustees (Board). An "open-door policy" will be maintained at all levels of management to encourage Affected Persons to report problems and concerns.
6. Affected Persons who commit, attempt to commit, or condone any form of intimidation or retaliation against any individual who has reported a suspected violation will be subject to discipline up to, and including, termination of his/her employment or affiliation with OHH.
7. Affected Persons 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.

8. All reports made via the confidential method (Compliance Hotline) must be kept confidential, whether requested or not. Individuals reporting via other methods may also request confidentiality. Confidentiality will be maintained unless the matter is turned over to law enforcement. OHH may be legally required to report crimes or potential crimes and infractions to external governmental agencies.
9. The CCD, CCO, 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 Board of Trustees and the Corporate Compliance Committee.
11. A copy of this policy is available to all employees on OHH's intranet. In addition, it will be distributed as part of initial orientation to all Affected Persons. A copy of this policy may also be found on OHH's website at <https://www.oneidahealth.org/wp-content/uploads/Whistleblower-Policy-2021.pdf>. A hard copy of this policy will also be provided upon request.

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
18 NYCRR 521.3(c)

Forms: N/A

Special Notes: Please consult OHH Compliance Policy *Healthcare Waste, Fraud and Abuse* (CC 16-10) for more detailed information of Fraud and Abuse and Whistleblower Protection Laws

Attachment 1

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.