
Policy Number: **CC 16-10**

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Revised: 10/23/09; 12/7/10¹, 5/27/14, 5/8/18, 10/1/18,
2/22/21, 3/5/22, 05/31/23

Reviewed: May 23, 2008, 06/24

Subject/Title: Health Care Waste, Fraud and Abuse Policy

Policy:

Oneida Health Hospital (OHH) and its affiliates take health care fraud and abuse very seriously. It is OHH policy that all Affected Persons (defined below) comply with all applicable provisions of federal and state laws and regulations regarding the detection, prevention and correction of fraud, waste and abuse.

Purpose:

The purpose of this Policy is to inform all Affected Persons about those federal and state laws which address or are related to fraud, waste and abuse in federal and state health care programs and to provide general information regarding OHH's efforts to combat fraud, waste and abuse, including the following:

- The Federal False Claims Act;
- The New York State False Claims Act;
- Remedies available under these Acts;
- Other applicable state, civil or criminal laws;
- How employees, contractors and agents can use these regulations;
- Federal and New York whistleblower protections available to employees, contractors and agents;
- Procedures that OHH has in place to detect health care waste, fraud and abuse.

Attached as Exhibit A to this Policy and incorporated by reference is a summary of applicable Fraud and Abuse and Whistleblower Protection Laws, including employees' protections, rights and obligations under Sections 740 and 741 of the New York State Labor Law.

Scope:

This policy applies to all persons affected by OHH's risk areas, including employees, the chief executive officer of OHH and other senior administrators, managers, and contractors, agents, subcontractors, independent contractors (collectively, "Contractors"), and governing body and corporate officers ("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 (OMS), Oneida Medical Practice, P.C. (OMP) and Genesee Physician Practice, PLLC (GPP)), and any other department or entity which is part of OHH, as appropriate.

Procedure:

I. Detecting, Preventing and Correcting Fraud and Abuse:

There are numerous elements to OHH's Corporate Compliance Plan that are in place to **detect, prevent and correct fraud and abuse.**

¹ This policy was revised to ensure it met the regulatory requirements of Section 6032 of the Deficit Reduction Act of 2005 and Fraud Enforcement and Recovery Act of 2009 (FERA).

- A. The following elements that are in place to help **prevent health care fraud** at OHH include:
- A reporting and response system (see OHH Compliance Policies CC 16-1 - *Compliance Reporting System* and CC 16-2 - *Internal Investigations and Response*) to answer questions and receive reports of actual or potential non-compliance or concerns and a procedure for the Corporate Compliance Officer (CCO) to address them.
 - Compliance work plans, which are utilized to schedule proactive compliance audits in areas identified in published government work plans, or in risk area(s) identified by OHH, with a focus on those risk areas identified in 18 NYCRR § 521-1.3(d).
 - Compliance-related training and education, which is initially provided to all Affected Persons, including employees and Board members at a general orientation session or in one-on-one training with the CCO, and annually thereafter which includes the methods available to them and others to prevent health care fraud, including receipt of OHH’s Corporate Compliance Plan and up-to-date compliance-related policies.
 - Performance of monthly federal (OIG) and state (OMIG) exclusion checks for all Affected Persons to ensure that OHH is not employing, contracting or affiliating with an individual who is excluded from a federal or state health care program, including Medicare or Medicaid.
 - A *Billing and Claims Submission Policy* (CC 16-9) which describes the responsibilities for accurate billing, the various risks of claims submissions, and how to decrease such risks.
- B. The following elements that are in place to **help detect and correct health care fraud** at OHH include:
- A developed corporate compliance program structure that includes a CCO who is responsible for the day-to-day oversight of OHH’s Corporate Compliance Program, a related Corporate Compliance Plan for OMP, OMS and GPP, including designation of Corporate Compliance Liaisons responsible for the day-to-day compliance activities of those entities, and a Corporate Compliance Committee to assist the CCO and Corporate Compliance Liaisons in implementing and operationalizing the respective Corporate Compliance Plans.
 - A policy for the return of identified overpayments to the appropriate party (parties may include Medicare, Medicaid, insurance company or self-pay patients) (see Compliance Policy CC 16-23 – *Response to Overpayments*).
 - A policy of non-retaliation and non-intimidation of any individual who reports, in good faith, any action or suspected action by or within OHH that he or she reasonably believes is illegal, fraudulent or in violation of any Laws² or adopted policy of OHH including the OHH Corporate Compliance Plans or Code of Conduct, or objects to or refuses to participate in any activity, policy or practice that he or she reasonably believes is in violation of such Laws or OHH policies or poses a substantial and specific danger to the public health and safety (see Compliance Policy CC 16-33 – *Whistleblower Protection Policy*).
 - Policies that guide the disciplinary action to be taken by OHH (see *Human Resources Disciplinary Policy HR 011* and *Progressive Disciplinary and Sanction Policy for Compliance Program CC 16-30*) in the event health care fraud is found, whether intentional or accidental.
 - A process for promptly responding to any allegations as they are raised and taking corrective actions aimed at reducing the likelihood of similar instances or reoccurrences in the future. A reactive compliance audit may be conducted in order to investigate a potential compliance issue, which may then subsequently be written into the annual work plan. Conducting reactive audits takes precedence over scheduled proactive audits.

² “Laws” means any duly enacted federal, state or local laws, rules, regulations, executive orders, any judicial or administrative decision, ruling, or order.

II. Reporting Potential Fraud and Abuse Issues:

Affected Persons of OHH have an obligation to report suspected fraud, waste or abuse, regardless of whether such wrongful actions are undertaken by a peer, supervisor, Contractor, or provider. When an Affected Person suspects fraud, waste or abuse:

- Report it to the CCO, Renee Olmsted, directly at extension 2117 or 315-361-2117. You may also call the OHH Compliance Hotline at extension 2116 or 315-361-2116 (reports can be made anonymously).
- You are not required to report a possible False Claim Act violation to OHH first. You may report possible False Claim Act violations directly to the U.S. Department of Health & Human Services, Office of the Inspector General (OIG). However, Affected Persons are encouraged to contact the CCO so OHH can investigate and correct any issues as quickly as possible.
- There will be no retaliation taken against you if you inform OHH or the federal government of a possible False Claims Act violation.

III. False Claims Act Training:

- OHH trains all Affected Persons regarding the federal and state False Claims Acts and also provides periodic updates through the dissemination of this policy. All members of our workforce are required to participate in training about the federal and state False Claims Acts. All Contractors are required to accept educational information offered by OHH or to participate in scheduled training, as determined by the organization.
- Specifically, members of the Medical Staff and other providers receive this policy as part of the new credentialing provider packet. Temporary hires receive the policy as part of the information packet provided on their first date of hire. This policy is also a part of the employee handbook. All Affected Persons receive this policy during the general orientation process.

If you have any questions about the information contained in this Policy, please call:

- Renee Olmsted, RHIA, Corporate Compliance Officer, 315-361-2117

You may also reach out to the Corporate Compliance Liaisons or any member of the Corporate Compliance Committee, who will seek guidance from the CCO, with any questions or for further information related to this Policy.

Other related Policies/Procedures: All Compliance policies are online on the intranet.
See also references below.

Previous Policy #: NA

References:

1. OMIG document: "Employee Education Requirement Regarding False Claims Recoveries."
2. OMIG document: "The Fraud Enforcement and Recovery Act of 2009 and its Significance to Medicaid Providers."
3. Public Law Document: Official Summary 5/20/09, Public Law, Fraud Enforcement and Recovery Act of 2009 or FERA.
4. Reed Smith Health Industry Alert: May 2009 FERA, Significant Changes to FCA Liability Provisions.
5. DHHS, CMS: SMDL #06-024: Guidance to State Medicaid agencies on the implementation of section 6032 of the Deficit Reduction Act of 2005.
6. DRA 6032: Employee Education about False Claims Recovery-Frequently Asked Questions
7. OHH Policies:
 - Compliance Policies: 9, 23, 30
 - CC 16-1 Compliance Reporting System

- CC 16-2 Internal Investigations and Response
- CC 16-4 Compliance Hotline
- CC 16-33 Whistleblower Protection Policy
- Human Resources Policy HR-68 Code of Conduct and Disruptive Behavior and HR 11 Discipline Policy
- OHH and OMP, OMS and GPP Corporate Compliance Plans

Standards: NA

Forms: NA

Approved By: Corporate Compliance 6/14, 10/18, 2/22/21, 3/22, 7/23

EXHIBIT A
SUMMARY OF FRAUD AND ABUSE
AND WHISTLEBLOWER PROTECTION LAWS

A. FEDERAL AND STATE FRAUD AND ABUSE LAWS

(1) The False Claims Act (31 U.S.C. §§ 3729-3733)

The False Claims Act (FCA) is a federal law designed to prevent and detect fraud, waste and abuse in federal healthcare programs, including Medicaid and Medicare. Under the FCA, a civil action may be brought against any person who:

- knowingly presents, or causes to be presented, a false or fraudulent claim for payment;
- knowingly makes, uses or causes to be made or used a false record or statement to get a false or fraudulent claim paid;
- conspires to defraud the government by getting a false or fraudulent claim allowed or paid; or
- acts in reckless disregard of the truth or falsity of information.

False claims suits can be brought against individuals and entities. The FCA does not require proof of a specific intent to defraud the government. Providers can be prosecuted for a wide variety of conduct that leads to the submission of a false claim. Examples of a false claim include when an individual or entity purposely bills for a service that was never provided or for a service that has higher reimbursement than the actual service produced. Fraud may also include failing to repay any known overpayment. Abuse may include a range of improper behaviors or billing practices, including billing for a non-covered services; misusing codes on the claim; or inappropriately allocating costs on a cost report.

Violation of the FCA is punishable by a civil penalty of between \$13,508 and \$27,018³ per false claim, as well as an assessment of up to three times the amount claimed as damages sustained by the government (treble damages). The FCA is enforced by the Attorney General of the United States, who is required to investigate violations.

Whistleblower or “Qui Tam” Provision. In order to encourage individuals to come forward and report misconduct involving false claims, the FCA also permits private persons to bring suit on behalf of the United States and entitles the private persons bringing suit to receive a percentage of monies obtained through settlements, penalties and/or fines collected in such action. Actions brought by private persons, or “relators” for violations of the FCA are known as “qui tam” actions. If a qui tam action brought by a relator is frivolous or commenced in order to harass the defendant, the relator may be liable to pay the defendant’s fees and costs associated with such action.

Employee Protections. The FCA prohibits discrimination or retaliation by Samaritan against any employee for taking lawful actions under the False Claims Act. Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employer in false claims actions is entitled to all relief necessary to make the employee whole. Such relief may include reinstatement; two times the amount of back pay, plus interest; and compensation for any special damages, including litigation costs and reasonable attorney fees.

(2) Program Fraud Civil Remedies Act of 1986 (31 U.S.C. Chapter 38, §§ 3801-3812)

The Program Fraud Civil Remedies Act (PFCRA) provides for the imposition of administrative remedies on any person who makes, presents or submits (or causes to be made, presented or submitted) to certain federal agencies a claim or statement that the maker knows or has reason to know: (i) is false, fictitious or fraudulent; or (ii) includes or is supported by any written statement which asserts a material fact which is false, fictitious or fraudulent; or (iii) includes or is supported by any written statement which omits a material fact, is false, fictitious or fraudulent because of the omission and is a

³ Amounts applicable to civil monetary penalties assessed after December 22, 2022; penalty amounts are subject to adjustment annually.
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statement in which the person or entity has a duty to include such material fact; or (iv) is for the provision of items or services which the person or entity has not provided as claimed. The presence of a false claim is not required; a false statement is enough to trigger remedies under PFCRA.

The PFCRA authorizes the imposition of federal administrative charges. It imposes on any person who submits, or causes to be submitted, a false claim or a false statement a civil penalty of up to \$13,508⁴ for each wrongfully filed statement or claim, regardless of whether property, services, or money is actually delivered or paid. If any payment is made, property is transferred, or services are provided in reliance on a false claim, the person submitting it is also subject to an assessment of not more than twice the amount of the false claim. This assessment is in lieu of damages sustained because of the false claim.

(3) New York State False Claims Act (State Finance Law §§ 187-194)

The New York State False Claims Act (the “Act”) closely tracks the Federal False Claims Act. New York State Finance Law makes it unlawful in the State of New York for a person or entity to commit any of the fraudulent acts set forth in the federal False Claims Act. It also makes it unlawful for a person or entity to have property or money of the State or local government and, with the intent to defraud, knowingly conceal, or knowingly and improperly deliver less money or property to the state or local government, or conspires to do the same.

The term “knowingly” is defined under the Act with language identical to that of the Federal False Claims Act, and no proof of specific intent to defraud is not required, provided that acts occurring by mistake or as a result of mere negligence do not subject a person to liability.

The penalty for the commission of any singular act is between \$6,000 and \$12,000⁵, plus three times the amount of all damages, including consequential damages, which the State or local government sustained as a result of the fraudulent act.

Civil enforcement actions under the Act are commenced by either the Attorney General of the State of New York, by any local government, or by any private person who brings an action on behalf of the State or any local government. A private person who brings an action on behalf of the State or a local government may be entitled to receive a percentage of monies obtained through settlements, penalties and/or fines collected in such action. The 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, plus interest; and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees.

(4) Social Service Law §§ 145, 145-b and 145-c

Any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor under Section 145 of the Social Services Law. Section 145-b of this statute makes it unlawful to knowingly obtain, or attempt to obtain, payment for items or services furnished under any Social Services program, including Medicaid, by use of a false statement or representation, deliberate concealment or other fraudulent scheme or device. The State has the right to recover civil damages equal to three times the amount by which the figure is falsely overstated or \$5,000, whichever is greater.

In addition, under Section 145-b, the New York State Department of Health may impose a civil monetary penalty, ranging from \$10,000 to \$30,000 per item depending on prior violations, as restitution to the Medical Assistance Program, if the person or entity knew, or had reason to know that: (i) the payment related to care, services or supplies were medically improper, unnecessary or in excess of the documented medical needs of the person to whom they were furnished; (ii) the care, services or supplies were not provided as claimed; (iii) the person who ordered or prescribed care, services or supplies

⁴ Amounts applicable to civil monetary penalties assessed after December 22, 2022; penalty amounts are subject to adjustment annually.

⁵ Amounts as adjusted to be equal to the civil penalty allowed under the federal False Claims Act, 31 U.S.C. sec. 3729, et seq., as amended, as adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note; Pub. L. No. 101-410).

which were medically improper, unnecessary or in excess of the documented medical need of the person to whom they were furnished was suspended or excluded from the Medical Assistance Program at the time the care, services or supplies were furnished; or (iv) the services or supplies for which payment was received were not, in fact, provided.

Section 145-c of the Social Services Law states that if a person applies for or receives public assistance, including Medicaid, by intentionally making or intending to make a false or misleading statement, the needs of the individual or that of his/her family shall not be taken into account for the purpose of determining his/her needs or that of his/her family for six months if a first offense, for 12 months if a second offense (or if benefits wrongfully received are at least \$1,000 but not more than \$3,900), for 18 months if a third offense (or if benefits wrongfully received are in excess of \$3,900), and five years for any subsequent occasion of any such offense.

(5) Social Service Law § 366-b, Penalties for Fraudulent Practices

Any person who, with intent to defraud, presents for allowance or payment any false or fraudulent claim for furnishing services or merchandise, knowingly over-bills or submits false information in order to obtain authorization to provide items or services shall be guilty of a Class A misdemeanor (or a violation if so prescribed by a provision of the New York Penal Code).

Any person who obtains or attempts to obtain, for himself or others, medical assistance by means of a false statement, concealment of material facts, impersonation, or other fraudulent means to which they are not entitled is guilty of a Class A misdemeanor (or a violation if so prescribed by a provision of the New York Penal Code).

(6) Penal Law Article 155, Larceny

The crime of larceny applies to a person who, with intent to deprive another person of property, obtains, takes or withholds the property by means of a trick, embezzlement, false pretense, false promise, including a scheme to defraud, or other similar behavior. This law has been applied to Medicaid fraud cases. Depending on the value of the property, the crime ranges from a Class E felony to a Class B felony.

(7) Penal Law Article 175, Written False Statements

There are several crimes in this Article that relate to filing false information or claims that have been applied in Medicaid fraud prosecutions. Actions include falsifying business records, entering false information, omitting material information, altering an entity's business records, or providing a written instrument (including a claim for payment) knowing that it contains false information. Depending upon the action and the intent, a person may be guilty of a Class A misdemeanor or a Class E felony.

(8) Penal Law Article 176, Insurance Fraud

This Article applies to claims for insurance payment, including Medicaid or other health insurance. The six crimes in this Article involve intentionally filing a false insurance claim. Under this Article, the penalties range from a Class A misdemeanor for intentionally filing a health insurance claim knowing it is false, to a Class B felony for filing a false insurance claim over \$1,000,000.

(9) Penal Law Article 177, Health Care Fraud

This Article makes it a crime to commit "health care fraud." A person commits health care fraud when, with the intent to defraud Medicaid (or other health plans, including non-governmental plans), he/she knowingly provides materially false information or omits material information for the purpose of requesting payment for a health care item or service that the person or entity is not otherwise entitled to receive. The penalty for the commission of health care fraud ranges from a Class A misdemeanor to a Class B felony, based on the amount of payment fraudulently received from a single health plan during a 1-year period.

B. 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. Retaliatory Action by Employers; Prohibition

1. Definitions. For purposes of this section, unless the context specifically indicates otherwise:

- (a) "Employee" means an individual who performs services for and under the control and direction of an employer for wages or other remuneration, including former employees, or natural persons employed as independent contractors to carry out work in furtherance of an employer's business enterprise who are not themselves employers.
- (b) "Employer" means any person, firm, partnership, institution, corporation, or association that employs one or more employees.
- (c) "Law, rule or regulation" includes: (i) any duly enacted federal, state or local statute or ordinance or executive order; (ii) any rule or regulation promulgated pursuant to such statute or ordinance or executive order; or (iii) any judicial or administrative decision, ruling or order.
- (d) "Public body" includes the following:
 - (i) the United States Congress, any state legislature, or any elected local governmental body, or any member or employee thereof;
 - (ii) any federal, state, or local court, or any member or employee thereof, or any grand or petit jury;
 - (iii) any federal, state, or local regulatory, administrative, or public agency or authority, or instrumentality thereof;
 - (iv) any federal, state, or local law enforcement agency, prosecutorial office, or police or peace officer;
 - (v) any federal, state or local department of an executive branch of government; or
 - (vi) any division, board, bureau, office, committee, or commission of any of the public bodies described in subparagraphs (i) through (v) of this paragraph.
- (e) "Retaliatory action" means an adverse action taken by an employer or his or her agent to discharge, threaten, penalize, or in any other manner discriminate against any employee or former employee exercising his or her rights under this section, including (i) adverse employment actions or threats to take such adverse employment actions against an employee in the terms of conditions of employment including but not limited to discharge, suspension or demotion; (ii) actions or threats to take such actions that would adversely impact a former employee's current or future employment; or (iii) threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, to a federal, state, or local agency.
- (f) "Supervisor" means any individual within an employer's organization who has the authority to direct and control the work performance of the affected employee; or who has managerial authority to take

corrective action regarding the violation of the law, rule or regulation of which the employee complains.

2. Prohibitions. An employer shall not take any retaliatory personnel action against an employee, whether or not within the scope of the employee's job duties, because such employee does any of the following:
 - (a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that the employee reasonably believes is in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety;
 - (b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such activity, policy or practice by such employer; or
 - (c) objects to, or refuses to participate in any such activity, policy or practice.

3. Application. The protection against retaliatory personnel action provided by paragraph (a) of subdivision two of this section pertaining to disclosure to a public body shall not apply to an employee who makes such disclosure to a public body unless the employee has made a good faith effort to notify his or her employer by bringing the activity, policy or practice to the attention of a supervisor of the employer and has afforded such employer a reasonable opportunity to correct such activity, policy or practice. Such employer notification shall not be required where: (a) there is an imminent and serious danger to the public health or safety; (b) the employee reasonably believes that reporting to the supervisor would result in a destruction of evidence or other concealment of the activity, policy or practice; (c) such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor; (d) the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or (e) the employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct such activity, policy or practice.

4. Violation; remedy.
 - (a) An employee who has been the subject of a retaliatory action in violation of this section may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this section within two years after the alleged retaliatory action was taken.
 - (b) Any action authorized by this section may be brought in the county in which the alleged retaliatory action occurred, in the county in which the complainant resides, or in the county in which the employer has its principal place of business. In any such action, the parties shall be entitled to a jury trial.
 - (c) It shall be a defense to any action brought pursuant to this section that the retaliatory action was predicated upon grounds other than the employee's exercise of any rights protected by this section.

5. Relief. In any action brought pursuant to subdivision four of this section, the court may order relief as follows:
 - (a) an injunction to restrain continued violation of this section;
 - (b) the reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position, or front pay in lieu thereof;
 - (c) the reinstatement of full fringe benefits and seniority rights;
 - (d) the compensation for lost wages, benefits and other remuneration;
 - (e) the payment by the employer of reasonable costs, disbursements, and attorney's fees
 - (f) a civil penalty of an amount not to exceed ten thousand dollars; and/or
 - (g) the payment by the employer of punitive damages, if the violation was willful, malicious or wanton.

6. Employer relief. A court, in its discretion, may also order that reasonable attorneys' fees and court costs and disbursements be awarded to an employer if the court determines that an action brought by an employee under this section was without basis in law or in fact.

7. Existing rights. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any other law or regulation or under any collective bargaining agreement or employment contract.
8. Publication. Every employer shall inform employees of their protections, rights and obligations under this section, by posting a notice thereof. Such notices shall be posted conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment.

(4) New York State Labor Law, Section 741. Prohibition; Health Care Employer who Penalizes Employees because of Complaints of Employer Violations

1. Definitions. As used in this section, the following terms shall have the following meanings:
 - (a) “Employee” means any person who performs health care services for and under the control and direction of any public or private employer which provides health care services for wages or other remuneration.
 - (b) “Employer” means any partnership, association, corporation, the state, or any political subdivision of the state which: (i) provides health care services in a facility licensed pursuant to article twenty-eight or thirty-six of the public health law; (ii) provides health care services within a primary or secondary public or private school or public or private university setting; (iii) operates and provides health care services under the mental hygiene law or the correction law; or (iv) is registered with the department of education pursuant to section sixty-eight hundred eight of the education law.
 - (c) “Agent” means any individual, partnership, association, corporation, or group of persons acting on behalf of an employer.
 - (d) “Improper quality of patient care” means, with respect to patient care, any practice, procedure, action or failure to act of an employer which violates any law, rule, regulation or declaratory ruling adopted pursuant to law, where such violation relates to matters which may present a substantial and specific danger to public health or safety or a significant threat to the health of a specific patient.
 - (e) “Improper quality of workplace safety” means, with respect to employees, any practice, procedure, action or failure to act of an employer which violates any law, rule, regulation, or declaratory ruling adopted pursuant to law where such violation relates to matters which may present an unsafe workplace environment or risk of employee safety or a significant threat to the health of a specific employee.
 - (f) “Public body” means:
 - (1) the United States Congress, any state legislature, or any elected local governmental body, or any member or employee thereof;
 - (2) any federal, state or local court, or any member or employee thereof, any grand or petit jury;
 - (3) any federal, state or local regulatory, administrative or public agency or authority, or instrumentality thereof;
 - (4) any federal, state or local law enforcement agency, prosecutorial office, or police or peace officer;
 - (5) any federal, state or local department of an executive branch of government; or
 - (6) any division, board, bureau, office, committee or commission of any of the public bodies described in subparagraph one, two, three, four or five of this paragraph.
 - (g) “Retaliatory action” means the discharge, suspension, demotion, penalization or discrimination against an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.
 - (h) “Supervisor” means any person within an employer's organization who has the authority to direct and control the work performance of an employee, or who has the authority to take corrective action regarding the violation of a law, rule or regulation to which an employee submits a complaint.
2. Retaliatory action prohibited. Notwithstanding any other provision of law, no employer shall take retaliatory action against any employee because the employee does any of the following:

- (a) discloses or threatens to disclose to a supervisor, to a public body, to a news media outlet, or to a social media forum available to the public at large, an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety; or
 - (b) objects to, or refuses to participate in any activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety.
3. Application. The protection against retaliatory personnel action provided by subdivision two of this section shall not apply unless the employee has brought the improper quality of patient care or improper quality of workplace safety to the attention of a supervisor and has afforded the employer a reasonable opportunity to correct such activity, policy or practice. This subdivision shall not apply to an action or failure to act described in paragraph (a) of subdivision two of this section where the improper quality of patient care or improper quality of workplace safety described therein presents an imminent threat to public health or safety or to the health of a specific patient or specific health care employee and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.
4. Enforcement. A health care employee may seek enforcement of this section pursuant to subdivisions four and five of section seven hundred forty of this article.
5. Relief. In any court action brought pursuant to this section it shall be a defense that the personnel action was predicated upon grounds other than the employee's exercise of any rights protected by this section.
6. Publication. Every employer shall inform employees of their protections, rights and obligations under this section, by posting a notice thereof. Such notices shall be posted conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment.

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

No director, officer, employee or volunteer of OHH who, in good faith, reports any action or suspected action taken by or within the OHH organization 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.