
Policy Number: **CC 16-33**
Original Date: May 1, 2014
Revised: June, 2017, 8/18, 2/20/21, 2/20/22,
3/5/22
Reviewed: 7/16; 6/17, 8/18

Subject/Title: Whistleblower Protection Policy

Policy:

It is Oneida Health Hospital's (OHH) policy that Board members, officers, managers, and other workforce members, including employees¹, trainees, volunteers, providers, consultants, independent contractors, students and temporary workers ("Affected Persons"), as appropriate, 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 who makes a good faith report of any actual or suspected non-compliance with any duly enacted federal, state or local laws, rules, regulations, executive orders, any judicial or administrative decision, ruling or order (collectively, "Laws"), or OHH policies, 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, will not experience any form of retaliation, intimidation or retribution.

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 he or she reasonably believes is illegal, fraudulent or in violation of any Laws or adopted policy of OHH or poses a substantial and specific danger to the public health and safety 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, including employees' protections, rights and obligations thereunder, 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.

¹ For purposes of this policy, "employees" includes former employees of Oneida Health, as such term is defined in NYS Labor Law § 740.
{H4671532.2}

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 011 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 any activity, policy or practice that he or she reasonably believes to be an actual or potential violation of Laws and/or OHH policies and procedures, including 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 Laws or 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 he or she reasonably believes to be true and are submitted in good faith and, in the case of employees of OHH, subject to an adverse employment consequence or threats to take an adverse employment consequence, including but not limited to termination, demotion, suspension, or actions affecting employment or contractual relationships, or contacting U.S. Immigration authorities regarding citizenship or immigration status. 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 the Corporate Compliance Committee and the Board of Trustees.
10. Any person who is the subject of a whistleblower complaint under this policy may not be present at or participate in Board or committee deliberations on the matter relating to such complaint; provided, however, the Board or committee may request that the person who is subject to the complaint present information as background or answer questions at a committee or Board meeting prior to the commencement of deliberations or voting relating thereto.
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 § 740, § 741
Nonprofit Revitalization Act of 2013 (NRA), Not-For-Profit Corporation Law § 715-B
18 NYCRR 521.3(c)

Forms: N/A

Approval: Corporate Compliance Committee 3/22

Special Notes: Please consult OHH Compliance Policy [CC16-10 Health Care Waste, Fraud and Abuse](#) 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) 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.

4) Labor Law § 740. Retaliatory personnel 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 personnel 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;

{H4671532.2}

- (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.

5) Labor Law § 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
{H4671532.2}

(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.