
Policy Number: **CC 16-30**
Original Date: 10/09
Revised: 3/13, 4/18, 9/18, 2/24/21
Reviewed: 3/13, 4/18, 9/18

Subject/Title: Progressive Disciplinary and Sanction Policy for Compliance Program

Policy:

Oneida Health Hospital (OHH) requires all Affected Persons (see definition below) performing services for OHH to report suspected compliance issues, concerns or violations. This means reporting any conduct or activity that a reasonable person might suspect is a violation of OHH’s Corporate Compliance Plan, Code of Conduct and/or policy or procedure, or federal or state law. Any violation of law or OHH policy or procedures related to the Corporate Compliance Plan will result in disciplinary action and appropriate sanctions in accordance with the disciplinary process as outlined in this policy and OHH’s Human Resources Disciplinary Policy HR-11.

Purpose:

The purpose of this policy is to encourage good faith participation in OHH’s Corporate Compliance Plan by all Affected Persons, and to provide department heads, the Corporate Compliance Director and Corporate Compliance Officer with guidelines to consistently enforce the policies, procedures and standards of OHH’s Corporate Compliance Plan through appropriate disciplinary mechanisms with the objective of correcting any problems in a just and constructive way to reduce the likelihood of reoccurrence.

OHH must have the ability to impose sanctions on Affected Persons as a way for individuals to have accountability to the Corporate Compliance Plan in accordance with the Office of Medicaid Inspector General’s Mandated Provider Compliance Program¹.

Scope:

This policy applies to all Board members, officers, managers, and other workforce members including, but not limited to, employees, trainees, volunteers, providers, consultants, independent contractors, students and temporary workers (“Affected Persons”) of 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, P.C., and Genesee Physician Practice, PLLC), 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 Corporate Compliance Director (CCD) is responsible for maintaining this policy and communicating this policy to Affected Persons.

¹ Title 18 Code, Rules and Regulations of the State of New York, Part 521, Section 521.3(5)
{H3418598.2}

Compliance:

Failure to comply with this or any other compliance policy may result in disciplinary actions as per OHH policy, *Human Resources Disciplinary Policy HR-11*. Legal action also may be taken for violations of applicable regulations and standards.

Procedure(s):

A. Expectations to Report

All Affected Persons are expected to assist in the investigation and resolution of compliance issues. Accordingly, OHH has specific policies that articulate expectations of all Affected Persons for reporting compliance issues and problem resolution. Those policies are titled:

- CC 16-1 Compliance Reporting System
- CC 16-2 Internal Investigations and Response
- CC 16-3 Search Warrant & On-Site Investigation from a Government Agency

In addition, the OHH Compliance Plan also summarizes the expectations of Affected Persons for reporting compliance concerns, specifically, the following sections:

- Where to Go for Assistance
- What to Expect When You Make a Compliance Report
- Non-Intimidation and Non-Retaliation
- Disciplinary Actions & Sanctions
- What to Do in Case of an On-Site Government Investigation or Search Warrant

B. Examples of Behavior Leading to Disciplinary Action

Affected Persons may be subject to disciplinary action, including sanctions, for:

- Failure to report, disclose, and/or assist in an investigation of suspected non-compliance;
- Participation in non-compliant behavior:
 - Accessing or reviewing patient clinical information for any reason *not* related to an individual's specific job responsibility;
 - Discussing or revealing to any individual (employee or non-employee) clinical information about a patient to a person who is not related to the patient care or treatment;
- Intentionally breaching protected health information (PHI) of patients:
 - Leaving medical records out in open view of patients and /or visitors;
 - Failure to follow OHH policy regarding shredding of hard copy medical records;
- Failure to report discovered breaches of PHI to OHH's Privacy Officer (who is also the CCD);
- Violating OHH's privacy practice policy and allowing the unauthorized disclosure of PHI;
- Encouraging, directing, facilitating or permitting *active* non-compliant behavior:
 - Preparation or submission of a false claim or report:
 - Placing an incorrect diagnosis code on an outpatient claim to get the claim to pass through the Medicare edit for payment);
 - Entering clinical documentation (either in computer or hard copy record) that did NOT happen (such as turning, positioning, toileting, activities completed for the day);
 - Determining the type of care a patient receives based on the payer source and financial information of the patient;
- Encouraging, directing, facilitating or permitting *passive* non-compliant behavior, such as:
 - Observing blatant violations of the code of conduct:
 - two co-workers arguing in a patient care area and failing to intervene or bringing it to the attention of a supervisor or the CCD);
 - Observing an individual violate OHH's compliance plan and not reporting it to a direct supervisor or the CCD;

- Failure to follow applicable departmental policies and procedures;
- Not conducting due diligence (the extra effort needed) to read all memos, newsletters and regulatory changes that your Manager/Supervisor provides to you (the employee) and expects you to read;
- Failure to comply with OHH’s Compliance Plan or applicable laws, rules and regulations that govern an individual’s position and job responsibilities;
- Failure to detect non-compliance when reasonable due diligence would have led to the discovery of such issue;
- Failure to comply with OHH’s policies and procedures, federal regulations, Medicare regulations, New York State and Medicaid rules and regulations; and
- Retaliation, retribution, or harassment against an individual who reports suspected violations.

C. Form of Discipline or Sanction

1. The form of discipline or sanction to be applied will vary in relation to the severity of the compliance violation. OHH may impose sanctions for intentional or unintentional violation of an OHH policy, procedure, or federal or state regulation. Sanctions are penalties imposed and it should be understood there is potential that a sanction may be assessed for every confirmed act of non-compliance.

2. Specific sanctions may include the following, but are not limited to:
- Verbal or written warning – these will include the reason for the action, performance expectations and consequences of failure to meet the expectations.
 - Demotion from current position while individual receives additional focused training by designated (internal or external) trainer that addresses errors/mistakes.
 - May include additional focused training as approved by the CCD and/or a decrease in salary or hourly wage as determined by the CCD, Human Resource Director and the (applicable) Director, including temporary pay changes and suspensions of pay.
 - Suspension or termination from employment
 - If an investigation of a violation is undertaken and the CCD believes the integrity of the investigation may be at stake because of the presence of an individual under investigation, the individual may be removed from their current work activity or prohibited from providing services for OHH until the investigation is completed.
 - Cases of gross negligence or misconduct or other serious intentional non-compliance/violation may result in immediate suspension or immediate termination. All suspensions and terminations will be approved by the Director of Human Resources.
 - There is no pre-determined sequence of type or number of actions prior to termination of employment.
 - Revocation of privileges for nurse practitioners, physician assistants and medical doctors
 - If the activities or professional conduct of any practitioner with clinical privileges at OHH is considered to be detrimental to patient safety, lower than applicable standards of care, disruptive to operations of OHH, or in violation of OHH policy and procedures, as set forth in the Medical Staff Bylaws, Rules and Regulations, and Bylaws of OHH, corrective action against such practitioner may be requested in accordance with the Medical Staff Bylaws, Article VIII.
 - Financial penalties
 - Any person who knowingly violates the law may be required to pay significant civil damages and/or criminal fines and penalties

- Referral to law enforcement for potential criminal prosecution
 - Referrals to law enforcement (for civil and criminal matters) can be made at the local level, NYS Department of Health, NYS Office of Medicaid Inspector General, NYS Medicaid Fraud Unit, Office of Inspector General, NYS Professional Misconduct and Professional Discipline, Drug Enforcement Administration, NYS Attorney General’s Office, US Attorney General’s Office, Department of Justice and Federal Bureau of Investigations.
 - If any such referrals are necessary, OHH will consult with external legal counsel for assistance and guidance for the organization’s protection. In addition, guidance will be sought on the appropriateness of reporting a licensed individual to the applicable licensing board if prosecution is necessary or if it is found that an individual committed a crime.

D. Enforcement

1. OHH is not required to follow progressive discipline in disciplining and/or discharging an individual. All relevant factors will be considered as part of the disciplinary and sanction process. Individuals who commit violations which are negligent or reckless in nature shall be subject to more severe sanctions. Factors include, but are not limited to:

- The number and nature of the program violations;
- The nature and extent of any adverse impact the violations had on the patients;
- The nature and extent of any adverse impact the violations had on OHH;
- Mitigating circumstances;
- Other facts related to the nature and seriousness of the violation; and
- The previous performance record of the individual.

2. This discipline policy will be enforced firmly and fairly and will apply equally to all Affected Persons and implemented in accordance with federal and state equal employment opportunity (EEO) laws.

3. In accordance with OHH’s Whistleblower Protection Non-Retaliation and Non-Intimidation Policy CC 16-33 and applicable law, OHH strictly prohibits intimidation or retaliation against any employee or others who, in good faith, participate in OHH’s Compliance Plan and/or bring forth claims of fraud, waste, abuse or other suspected acts of misconduct or wrongdoing. Any employee who commits or condones any form of intimidation or retaliation will be subject to disciplinary action up to and including termination.

Other Related Policies and Procedures: Human Resources Disciplinary Policy HR-11
 Whistleblower Protection Policy CC 16-33
 All Corporate Compliance Policies on Intranet

Previous Policy #: NA

References: ¹ Title 18 Code, Rules and Regulations of the State of New York, Part 521, Section 521.3(5)

Standards:

Forms:

Approved by: Corporate Compliance Committee 4/18, 9/18, 3/21