



NON-RETALIATION AND NON-INTIMIDATION POLICY

PURPOSE

The purpose of this Policy is to ensure that Jewish Home of Central New York, Inc., Menorah Park Group Residences, Inc., and Syracuse Jewish Family Services, Inc. (collectively, the “Organization”) employees, Board members, and contractors are encouraged to report Compliance Issues within the Organization. “Compliance Issues” are actual or suspected fraud, waste, abuse, or other wrongful or unethical conduct or violations of federal or state law, rule, regulations, policies, or standards, or the Organization’s Compliance Plan, Compliance Program, policies and procedures, or Standards of Conduct. Employees, Board members, contractors, and Medicaid Program beneficiary service recipients are protected from intimidation and retaliation for good faith participation in its Compliance Program, including but not limited to reporting Compliance Issues, investigating issues, conducting self-evaluations, audits and remedial actions, and reporting to appropriate officials.

APPLICABILITY

This Policy applies to all Organization employees, Board members, and contractors.¹

POLICY

1. The Organization prohibits any act of retribution, discrimination, harassment, retaliation, or intimidation against any employee, Board member, contractor, or Medicaid Program beneficiary service recipient who, in good faith, participates in the Organization’s Compliance Program activities, including, but not limited to:
 - Reporting or threatening to report Compliance Issues to appropriate personnel, and responding to potential Compliance Issues;
 - Reporting or threatening to report a practice of the Organization that poses a substantial and specific danger to the public health or safety;

¹ “Employees, contractors, and Board members” includes the Organization’s employees, Chief Executive Officer (“CEO”), senior administrators, managers, volunteers, interns, contractors, agents, subcontractors, independent contractors, corporate officers, and Board members who are affected by the Organization’s Compliance Risk Areas. “Compliance Risk Areas” are those areas of operation affected by the Organization’s Compliance Program, as set forth in Section XIII of the Organization’s Compliance Plan. For purposes of the Organization’s Compliance Program, “contractors” includes contractors, agents, subcontractors, and independent contractors who are affected by the Organization’s Compliance Risk Areas. Contractors are required to comply with the Organization’s Compliance Program to the extent that the contractor is affected by the Organization’s Compliance Risk Areas, and only within the scope of the contractor’s contracted authority and affected Compliance Risk Areas.

- Participation in investigation of, and investigating, potential Compliance Issues;
 - Conducting or responding to audits, investigations, reviews, or compliance self-evaluations;
 - Drafting, implementing, or monitoring remedial actions;
 - Reporting compliance-related concerns to any government entity;
 - Attending or performing compliance-related training;
 - Reporting instances of intimidation or retaliation; or
 - Otherwise assisting in any activity or proceeding regarding any Compliance Issue.
2. A good faith report means one where the individual believes the information reported to be true and where the report is not made for the purpose of harming the standing or reputation of the Organization, or of another employee, Board member, or contractor.
3. The protections of this Policy do **not** apply to:
- Untruthful or unfounded allegations of wrongdoing;
 - Allegations whose nature or frequency indicate an intent to harass or embarrass the Organization or any employees, Board members, or contractors; or
 - Instances where individuals report their own lapses or complicity in unacceptable conduct. In such instances, the act of reporting will not be subject to sanctions, but the underlying conduct may be subject to disciplinary action.

PROCEDURE

1. **Reporting Mechanisms**. Employees, Board members, and contractors have a duty to report actions that they believe in good faith to be an actual or suspected Compliance Issue. *See Duty to Report Policy*. Employees, Board members, and contractors have a variety of reporting options; however, they are encouraged to take advantage of internal reporting mechanisms. These include reports to the Compliance Officer or Compliance Committee member, the Organization's Compliance Hotline, the Compliance Dropbox, or in the case of an employee, reports to the employee's supervisor or any supervisor.
2. **Reporting to the Organization and Government**. While the Organization requires employees, Board members, and contractors to report Compliance Issues directly to the Organization, certain laws provide that individuals may also bring their concerns directly to the government. Any perceived retaliation or intimidation should be reported to the Compliance Officer immediately.

3. Confidentiality. Anyone who investigates a Compliance Issue shall maintain the confidentiality of the individual who made the report regardless of whether the individual has requested confidentiality or reported through a confidential reporting mechanism, unless the matter is subject to a disciplinary proceeding, referred to or under investigation by the New York State Attorney General Medicaid Fraud Control Unit (“MFCU”), New York State Office of the Medicaid Inspector General (“OMIG”), or law enforcement, or the disclosure is required during a legal proceeding.
4. Statutory Protections. In addition to the protections afforded to employees, Board members, contractors, and Medicaid Program beneficiaries who receive services from the Organization under this Policy, the following New York State laws also protect employees from retaliatory action for good-faith reporting. In addition to the information below, the Organization will inform employees of their protections, rights, and obligations under the New York State Labor Law by posting a notice of the same. The notices will be posted conspicuously in easily accessible and well-lighted places that are customarily frequented by employees and applicants for employment.

- a. New York State Labor Law, Section 740

An employer may not take any retaliatory action against an employee (including former employees) if the employee discloses, or threatens to disclose, information about the employer’s policies, practices, or activities to a regulatory, law enforcement, or another similar agency or public official.

Protected disclosures include disclosures of an activity, policy, or practice of the employer that the employee reasonably believes are in violation of law, rule, or regulation (including health care fraud under Penal Law § 177² or Social Services Law § 145-b³), or that the employee reasonably believes pose a substantial and specific danger to the public health or safety. The employee’s disclosure is protected only if the employee first raised the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation. However, employer notification is not required where:

- i. There is an imminent and serious danger to the public health or safety;
- ii. The employee reasonably believes that reporting to the supervisor would result in destruction of evidence or other concealment of the activity, policy, or practice;
- iii. The activity, policy, or practice could reasonably be expected to lead to endangering the welfare of a minor;
- iv. The employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or

² Penal Law § 177 criminalizes knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions.

³ Social Services Law § 145-b criminalizes submission of false statements or deliberate concealment of material information in order to obtain public assistance, including Medicaid.

- v. The employee reasonably believes that the supervisor is already aware of the activity, policy, or practice and will not correct it.

Employees are also protected from retaliatory action if the employee objects to, or refuses to participate in, any activity that 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. Additionally, employees are protected when the employee provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into an employer's activity, policy, or practice.

If an employer takes retaliatory action against the employee, the employee may sue in state court for reinstatement to the same position held before the retaliatory action, or to an equivalent position, any back wages and benefits, and attorneys' fees, among other remedies. If the employer's violation was willful, malicious, or wanton, punitive damages may be imposed.

b. New York State Labor Law, Section 741

A health care employer may not take any retaliatory action against a health care employee⁴ if the health care employee discloses, or threatens to disclose, certain information about the health care employer's policies, practices, or activities to a regulatory, law enforcement, or other similar agency or public official, to a news media outlet, or to a social media forum available to the public at large.

Protected disclosures include disclosures of an activity, policy, or practice of the health care employer that the health care employee, in good faith, believes constitute improper quality of patient care or improper quality of workplace safety. Health care employees are also protected from retaliatory action if the health care employee objects to, or refuses to participate in, any activity, policy, or practice of the health care employer that the health care employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety.

The health care employee's disclosure is protected only if the health care employee first raised the matter with a supervisor and gave the employer a reasonable opportunity to correct the activity, policy, or practice. However, the employer notification is not required where the improper quality of patient care or workplace safety presents an imminent threat to public health or safety, to the health of a specific patient, or to the health of a specific health care employee and the health care employee reasonably believes, in good faith, that reporting to a supervisor would not result in corrective action.

If a health care employer takes retaliatory action against the health care employee, the health care employee may sue in state court for reinstatement

⁴ A "health care employee" is any person who performs health care services for and under the control and direction of any public or private employer that provides health care services for wages or other remuneration. See N.Y. LAB. LAW § 741(1)(a).

to the same position held before the retaliatory action, or to an equivalent position, any back wages and benefits, and attorneys' fees, among other remedies. If the health care employer's violation was willful, malicious, or wanton, punitive damages may be imposed.

Adopted: May 18, 2021

Revised & Adopted: March 21, 2023; _____, 2023