

 <p>Blythedale children's hospital</p>	Blythedale Children's Hospital and The Steven and Alexandra Cohen Pediatric Long Term Care Pavilion	
	Policy Title: 15 Whistleblower, non-intimidation and non-retaliation for good faith participation in the compliance program policy	Policy Category: Compliance
	Original Date: 11/01/2014	Revised/Effective Date: 12/26/2024
	Policy Owner: John Flanagan	Approved By: John Flanagan, Larry Levine
Applicable to: Long Term Care, Inpatient, Day Hospital, Outpatient		

POLICY:

Pursuant to its Compliance Program, Blythedale Children's Hospital (the "Hospital") is committed to maintaining compliance with all laws and regulations, including those governing quality of care, documentation, coding, billing and its relationships with other providers.

The purpose of this Policy is to ensure that all Affected Individuals understand the Hospital's commitment to prohibiting intimidation, retaliation, harassment and discrimination for "good faith participation in the Compliance Program" as defined in the Compliance Manual.

Intimidation or retaliatory action in any form by any Affected Individual is strictly prohibited and is itself a serious violation of the Code of Conduct and this Policy. This includes, but is not limited to, any adverse employment action and any other negative treatment, resulting from good faith participation in the Compliance Program by those that are Affected Individuals under Hospital's Compliance Program or by Medicaid recipients of Hospital's services.

SCOPE:

The Hospital is committed to protecting whistleblowers and all Affected Individuals from retaliation and intimidation and will address allegations of any retaliation or intimidation for good faith participation in the Compliance Program.

PROCEDURE:

A. OVERSIGHT OF THIS POLICY

The adoption and implementation of, and compliance with, this Policy shall be overseen by the Board and by the Audit and Compliance Committee of the Board. The Compliance Officer is *If there is any discrepancy noted between the on-line version and the printed version of this policy/procedure, the on-line version is the true and accurate version.*

designated to administer this Policy, and shall report to the Audit and Compliance Committee of the Board.

The Audit and Compliance Committee of the Board may, in its discretion, authorize certain functions relating to the implementation of, and compliance with, this Policy to be performed by one or more Hospital employees, officers or directors but the Audit and Compliance Committee of the Board will, at all times, retain overall responsibility for all aspects of the oversight of this Policy. Any members of the Board of the Hospital who are employees of the Hospital may not participate in any Board or committee deliberations or voting relating to the administration of this Policy.

The person who is the subject of a whistleblower complaint or the allegation of retaliation or intimidation shall not be present at or participate in deliberations or votes by the Audit and Compliance Committee of the Board on the matter relating to such complaint, provided that nothing in this subparagraph shall prohibit the Audit and Compliance Committee of Board from requesting that the person who is subject to the complaint present information as background or answer questions at a Committee meeting prior to the commencement of deliberations or voting relating thereto.

B. REPORTING AND CONFIDENTIALITY

1. Ways to Report Actual or Potential Compliance Issues. As required by the Hospital's Compliance Program, all Affected Individuals are expected to report, and Medicaid beneficiaries may report, suspected misconduct or possible violations of the Compliance Program to the Compliance Officer, at the phone number or e-mail address below. Actual or potential compliance issues or concerns may also be reported through the Compliance Hotline telephone number or Compliance Hotline's web portal, both indicated below.
2. Anonymous Reporting of Actual or Potential Compliance Issues. Affected Individuals and Medicaid recipients of Hospital's services may elect to report compliance issues or concerns anonymously if they choose (by way of the Compliance Hotline's telephone number or web portal or otherwise).
3. Confidentiality of Reports. If an actual or potential compliance issue is reported, your communication will be kept confidential, whether requested or not, unless the matter is subject to disciplinary proceedings, referred to, or under investigation by the New York State Attorney General's Office Medicaid Fraud Control Unit, the New York State Office of the Medicaid Inspector General or law enforcement, or disclosure is required during a legal proceeding.

Compliance Program Contact Information	
<u>Compliance Officer</u> John Flanagan	Ph: 914-831-2440 Email: jflanagan@blythedale.org

Compliance Hotline

Ph: 833-656-0413

Web Portal: www.blythedale.ethicspoint.com

C. INVESTIGATION OF INTIMIDATION / RETALIATION COMPLAINTS

1. All allegations of intimidation or retaliation for good faith participation in the Compliance Program will be promptly investigated. The Compliance Officer, or designee, will oversee the investigation and take all necessary and appropriate actions. The Compliance Officer, or designee, will be assisted by internal staff and/or may solicit the support of external resources (including counsel), as necessary and appropriate.
2. All individuals who may have relevant information will be promptly interviewed. At the outset of the interview process, the interviewee will be reminded that retaliation and intimidation is unlawful and a violation of Hospital's Code of Conduct. The interviewee will also be reminded of Hospital's disciplinary policy regarding failure to cooperate (see **Protocols for Conducting Internal Investigations and Implementing Corrective Action, Including Discipline Policy POL-24-009**).
3. All documentation related to the investigation will be kept secured in a central location under the control of the Compliance Officer or designee. Such investigative files will be kept separate from personnel files.
4. If the Compliance Officer determines that an individual was intimidated or retaliated against for good faith participation in the Compliance Program, Hospital will, in accordance with Hospital's Compliance Program, take all appropriate corrective action as to the individual who was subjected to intimidation or retaliation.
5. In addition, if the Compliance Officer determines that an individual was intimidated or retaliated against for good faith participation in the Compliance Program, appropriate disciplinary action will be taken against the offending person, in accordance with Hospital's Compliance Program.
6. Hospital may terminate contracts and affiliations as a result of retaliation or intimidation.

D. REPORTING TO THE GOVERNING BODY

The Compliance Officer will advise the Audit and Compliance Committee of the Board regarding the frequency and types of alleged acts of retaliation or intimidation and of changes in frequency of such allegations over time.

E. DOCUMENTATION

The Compliance Officer will maintain documentation necessary to support that Hospital has protected any individual making a report under this Policy from intimidation and retaliation. This will include a description of how Hospital ensured persons reporting compliance issues were protected under this Policy.

F. DISTRIBUTION OF POLICY

A copy of this Policy shall be distributed or made available to all Affected Individuals which include, but may not be limited to all Board members, directors, officers and employees of the Hospital, and to volunteers who provide substantial services to the Hospital. For purposes of this requirement, posting the Policy on the Hospital’s website or at the Hospital’s offices in a conspicuous location accessible to employees and volunteers are among the methods the Hospital may use to satisfy this distribution requirement. The Compliance Manual including all compliance policies is on the Hospital’s intranet under “Policies/Procedures/Compliance”.

REFERENCES:

Refer to the Compliance Manual at Addendum A for many of the governing laws, regulations, and Medicaid program policies and procedures applicable to BCH’s risk areas and/or categories of service. Addendum A also includes references to other authorities applicable to the BCH Compliance Program.

G. RESPONSIBILITY:

Compliance Officer and the Compliance Steering Committee will review this policy every two years or when deemed necessary.

Adopted: [_____] Date: [/ /]

Revised: [_____] Date: [/ /]

APPENDIX:

A BRIEF SUMMARY OF NEW YORK LABOR LAW SECTIONS 740 & 741¹

New York Labor Law Sections 740 and 741 are laws that provide protection to "whistleblowers" in certain cases. This Appendix provides a brief summary of these laws. Full copies of Sections 740 and 741 are posted prominently in the hospital.

New York Labor Law Section 740

Section 740 prohibits the taking of "retaliatory action" by an employer against an employee (including former employees and natural persons working as independent contractors), whether or not the employee is acting within the scope of his or her job duties, because the 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.

Under Section 740, "retaliatory action" is defined to mean 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 Section 740. This includes: (i) adverse employment actions or threats to take such adverse employment actions against an employee in the terms or 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 to a federal, state, or local agency.

Conditions and Exceptions Under New York Labor Law Section 740

An employee's disclosure to a public body of 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 will not be protected under Section 740 unless the employee has made a good faith effort to notify his or her employer. Specifically, when such notice is required, the employee is required to bring the activity, policy or practice to the attention of a supervisor of the employer and to afford the employer a reasonable opportunity to correct it.

However, such employer notification is not required where:

¹ This Appendix is not intended to be a comprehensive description of the law, a legal interpretation or legal advice.

- 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 it.

New York Labor Law Section 741

Section 741 prohibits certain defined health care employers from taking "retaliatory action" against an 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.

Section 741 defines "retaliatory action" to mean 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.

Conditions and Exceptions Under New York Labor Law Section 741

An employee will not be protected under Section 741 unless he or she 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 the activity, policy or practice.

However, such notice and opportunity to correct is not required in connection with disclosures or threats to disclose 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 where it 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.

Relief/Enforcement Under Both New York Labor Law Sections 740 and 741

Under both Sections 740 and Section 741, an employee who has been the subject of retaliatory action in violation of the law may bring a civil action within two years after the alleged retaliatory action was taken. The parties to such an action are entitled to a jury trial.

In connection with such an action, a court may order: an injunction to restrain continued violation of the law; the reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position, or "front pay"; the reinstatement of full fringe benefits and seniority rights; the compensation for lost wages, benefits and other remuneration; the payment by the employer of reasonable costs, disbursements and attorneys' fees; a civil penalty not to exceed \$10,000; and/or the payment by the employer of punitive damages, if the violation was willful, malicious or wanton.

Under both Sections 740 and 741, it is a defense that the retaliatory action was predicated on grounds other than the employee's exercise of the rights that these sections of the law protect.²

² Under Section 740, a court may also order that reasonable attorneys' fees and court costs and disbursements be awarded to an employer if the action the employee brings is without basis in law or fact.