

POLICY & PROCEDURE

Blythedale Children's Hospital

SUBJECT: WHISTLEBLOWER, NON-INTIMIDATION AND NON-RETALIATION POLICY	
DEPARTMENTS: COMPLIANCE	CODE #: POL-19-015-COM-ORG
EFFECTIVE DATE: January 2019	Page 1 of 6
REVISED DATE: N/A	APPROVED BY: DATE:
SUPERSEDES: November 2014	TITLE: Chief Compliance Officer

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.

SCOPE:

The Hospital is committed to protecting whistleblowers from retaliation and will address allegations of such retaliation. The Hospital will adhere to any applicable policies and procedures promulgated by federal or other oversight agencies in dealing with such allegations and whistleblower complaints of retaliation may be brought to Human Resources, an employee's immediate supervisor, the Compliance Officer or any other appropriate avenue with which the employee feels comfortable. There will be no retaliation against an employee for coming forward with information in a good-faith effort to prevent wrongdoing at the Hospital.

In furtherance of the Compliance Program and the requirements of Section 715-b of the New York Not-for-Profit Corporation Law, the purpose of this Policy is to ensure that all personnel understand the Hospital's commitment to prohibiting intimidation, retaliation, harassment, discrimination or other retaliation for "good faith participation in the Compliance Program" (as defined below). Intimidation and retaliatory action in any form by any individual associated with the Hospital is strictly prohibited and is itself a serious violation of the Code of Conduct and this Policy. Prohibited retaliation includes, but is not limited to, any adverse employment action and any other negative treatment, including intimidation that results from good-faith participation in the Compliance Program.

No director, officer, contractor, employee or volunteer of the Hospital who in good faith reports

any action or suspected action taken by or within the Hospital that is illegal, fraudulent, or in violation of any adopted policy of the Hospital shall suffer intimidation, harassment, discrimination or other retaliation, or in the case of employees, adverse employment consequences.

DEFINITIONS: Defined below.

PROCEDURE:

A. OVERSIGHT OF THIS POLICY

The adoption and implementation of, and compliance with, this Policy shall be overseen by the Board and by Audit and Compliance Committee of the Board. The Compliance Officer is 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 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 this 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 or meeting prior to the commencement of deliberations or voting relating thereto.

B. PARTICIPATION IN THE COMPLIANCE PROGRAM

“Good faith participation in the Compliance Program” includes, but is not limited to:

1. reporting actual or potential issues or concerns, including but not limited to, any action or suspected action taken by or within the Hospital that is illegal, fraudulent or in violation of any adopted Hospital policy;
2. cooperating with or participating in the investigation of such matters;
3. assisting with or participating in self-evaluations, audits, and/or implementation of remedial actions; or
4. reporting to appropriate regulatory officials as provided in New York State Labor Law §§ 740 and 741.¹

¹ For a brief summary of New York State Labor Law §§ 740-741, as of June 2014, please see the appendix to this Policy.

C. REPORTING AND CONFIDENTIALITY

As required by the Hospital's Compliance Program, all personnel are expected to report suspected misconduct or possible violations of the Compliance Program to the Compliance Officer at

(914) 831- 2440, or via email at aherbst@blythedale.org. Personnel may also report compliance issues or concerns to the Hospital's Compliance Hotline at 833-656-0413 or the web portal: www.blythedale.ethicspoint.com. Personnel may report compliance issues or concerns anonymously, if they wish (whether through the Compliance Hotline or web portal).

To the extent consistent with the Hospital's interests and its legal obligations, the recipient of the complaint shall maintain the confidentiality of the identity of the individual reporting suspected misconduct. In some instances, however, the Hospital may need to reveal the person's identity, if known, for example in order to comply with legal requirements and/or to facilitate an investigation.

Self-reporting is encouraged. Anyone who self-reports their own wrongdoing or violation of law will be given due consideration in potential mitigation of any disciplinary action that may be taken.

Supervisors receiving a complaint that raises a potential compliance issue shall report the complaint to the Compliance Officer. Complaints that do not raise a potential compliance issue should be referred to the appropriate department (e.g. Risk Management, Human Resources). The Compliance Officer shall report all complaints with potential compliance issues to the CEO and the Audit and Compliance Committee of the Board.

Once a report is received, an investigation will be conducted, into the allegations as to determine the nature, scope and duration of wrongdoing, if any. It is the Hospital's policy to investigate all claims of wrongdoing. If the allegations are substantiated, a plan for corrective action will be developed. Appropriate corrective action may include restitution of any overpayment amounts, notifying an appropriate governmental agency, disciplinary action or making changes to policies and procedures to prevent future occurrences.

D. INVESTIGATION OF INTIMIDATION / RETALIATION COMPLAINTS

- 1.** Retaliation of any form against anyone who makes a good faith report of wrong doing or cooperates in an investigation is strictly prohibited.
- 2.** All allegations of intimidation or retaliation resulting from good faith participation in the Compliance Program will be fully and completely investigated. The Compliance Officer, or his/her designee, will oversee any investigations and take all necessary and appropriate actions in connection with any investigation. The Compliance Officer, or his/her designee, will be assisted by internal staff and/or may solicit the support of external resources, as needed.
- 3.** All individuals who may have relevant information will be interviewed. At the outset of the

interview process, the interviewee will be reminded that retaliation and intimidation is a violation of the Hospital's Code of Conduct and this Policy, and that under certain circumstance, may be unlawful as well.

4. All documentation related to the investigation will be kept confidential, to the extent consistent with the Hospital's interests and its legal obligations, including, among other things, as consistent with the need to investigate the issue(s) raised. Investigative files will be kept secured in a central location under the control of the Compliance Officer or designated staff. Such investigative files will be kept separate from personnel files and will be maintained for no fewer than ten years from the date of the conclusion of the investigation, or the imposition of disciplinary sanctions or corrective actions resulting there from, or for such longer period of time as may be required by applicable law.
5. If the Compliance Officer determines that an employee was improperly terminated or otherwise disciplined in retaliation for good faith participation in the Compliance Program, the Hospital will promptly seek to re-employ that individual or otherwise remedy the retaliatory disciplinary action. The Audit and Compliance Committee of the Board will retain oversight of all such corrective action.
6. If the Compliance Officer determines that an individual was retaliated against for good faith participation in the Compliance Program, appropriate disciplinary action may be taken against the offending person subject to the oversight of the Audit and Compliance Committee of the Board.
7. The Hospital may terminate contracts and affiliations based on retaliation or intimidation for good faith participation in the Compliance Program, subject to the oversight of the Audit and Compliance Committee of the Board.
8. In order to prevent retaliation or intimidation against employees who in good faith participate in the Compliance Program, all terminations of employment must be approved by CEO prior to being effectuated. The Chief Human Resources Officer must be advised of the employee's participation in the Compliance Program prior to the termination decision or other adverse employment action being made.

E. 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.

F. DISTRIBUTION OF POLICY

A copy of this Policy shall be distributed 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:

U.S. Department of Justice

New York State Labor Law

New York Office of the Medicaid Inspector General

Office of Inspector General, U.S. Department of Health and Human

RESPONSIBILITY:

Chief Compliance Officer will review this policy every two years or when deemed necessary.

APPENDIX: A BRIEF SUMMARY OF NEW YORK STATE LABOR LAW §§ 740 & 741

New York State Labor Law §§ 740 and 741 are laws that provide protection to “whistleblowers” in certain cases. In general terms:

§ 740 prohibits retaliatory action, including discharge, suspension, demotion or other adverse employment action, by an employer against an employee if the employee: (a) discloses or threatens to disclose to a supervisor or to a public body (broadly defined in the law to include various legislative, judicial, regulatory, administrative, public and law enforcement bodies, members, employees and officials) an activity, policy or practice of the employer that is in violation of a law, rule or regulation which creates and presents a substantial and specific danger to the public health or safety, or which constitutes “health care fraud” (as defined under the New York Penal Law), (b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by the employer, or (c) objects to, or refuses to participate in, any such activity, policy or practice.

§ 741 prohibits a health care employer from taking retaliatory action, including discharge, suspension, demotion, penalization, discrimination or other adverse employment action, against any employee if the employee: (a) discloses or threatens to disclose to a supervisor or to a public body (broadly defined in the law to include various legislative, judicial, regulatory, administrative, public and law enforcement bodies, members, employees and officials, as well as executive branch departments and any division, board, bureau, office, committee or commission of such bodies) 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 (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.

Under both laws, an employee is protected only if he/she first brings the matter to the attention of a supervisor and gives the employer a reasonable opportunity to correct the activity, policy or practice. However, prior disclosure to a supervisor is not required if the matter involves a disclosure or threat 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 that presents an imminent threat to public health or safety or to the health of a specific patient, and the employee reasonably believes, in good faith, that reporting to a supervisor would not result in corrective action.

If retaliatory action is taken by an employer, the employee may sue in accordance with the respective laws’ requirements. The employee may sue for, among other things, an injunction, reinstatement to the same or an equivalent position, reinstatement of full fringe benefits and seniority rights, lost wages, benefits and other remuneration, and reasonable costs, disbursements and attorneys’ fees. Civil penalties may also be imposed on health care employers that act in bad faith in taking retaliatory action in certain cases.