

HILLSIDE MANOR REHABILITATION AND EXTENDED CARE CENTER

Compliance & Ethics Program Policy and Procedure

Appendix T

REPORTING COMPLIANCE ISSUES: WHISTLEBLOWER AND NON-RETALIATION/NON-INTIMIDATION POLICY

I. POLICY

Hillside Manor Rehabilitation and Extended Care Center (the “Facility”) has instituted a Compliance and Ethics Program (the “Program”) to ensure that all of our business practices are in line with our commitment to providing high quality skilled nursing services to our residents in compliance with Federal health care program requirements and applicable civil and criminal laws, rules and regulations.

A key element of the Program is the ability of all Personnel (as defined below) to express problems, concerns or opinions without fear of retaliation or reprisal. At the same time, employees have an affirmative duty to report issues or concerns that come to their attention through the appropriate channels. Failure to do so can result in disciplinary action up to and including termination or employment, contract or affiliation with the Facility.

In furtherance of the Program, the purpose of this Policy is to ensure that Personnel understand the Facility’s commitment to prohibiting intimidation and retaliation for “good faith participation in the Compliance Program” (as defined below). Intimidation and other retaliatory action in any form by any individual associated with the Facility 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.

II. APPLICABILITY

This Policy applies to all Personnel.

Managers should maintain an environment within their units whereby Personnel feel comfortable raising issues or asking questions. Managers should also take appropriate steps to address concerns that are raised and communicate the results of corrective action whenever possible or appropriate.

Personnel must understand that intimidation or retaliation in response to reporting an issue or concern or otherwise participating in the Compliance and Ethics Program will not be tolerated. Reports of intimidation and retaliation will be investigated thoroughly and addressed expeditiously with implementation of appropriate disciplinary action, up to and including termination of employment.

Personnel will be advised of this Policy at the time of employment, and during Corporate Compliance and other employee training.

III. DEFINITIONS

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

1. reporting potential compliance issues to appropriate personnel;
2. cooperating with/participating in investigations of potential compliance issues;
3. assisting the Facility with self-evaluations and audits;
4. assisting the Facility with implementing remedial actions;
5. reporting instances of intimidation or retaliation; and
6. reporting potential fraud, waste or abuse to the appropriate State or Federal entities.¹

“Personnel” means all persons who are affected by the Facility’s compliance risk areas, including employees, the Chief Executive Officer, the Administrator, senior managers, contractors, agents, subcontractors, independent contractors, the Governing Body and corporate officers.

IV. PROCEDURES

A. Reporting and Confidentiality

Communication is critical to the success of the Compliance and Ethics Program. Thus, we maintain open lines of communication between the Compliance Officer and the Compliance Committee, and Personnel, and between the Compliance Officer, Administrator, Compliance Committee and the Governing Body. It is the duty and obligation of all Personnel to report any good faith belief of suspected or actual Compliance and Ethics Program violations. Personnel are also encouraged to freely seek clarification and interpretation of applicable laws, regulations, policies or procedures to which the Facility is subject.

1. ***How to Report.*** Personnel are required to report or raise questions they may have about compliance issues either orally or in writing to a supervisor or the Compliance Officer. All reports of suspected or actual non-compliance should contain as much detail as possible, including names, dates, times, location and the specific conduct the individual feels may violate the law or the Facility’s policies and procedures. If the individual who has reported an instance of suspected or actual non-compliance believes that his/her disclosure has not resulted, or will not result, in a timely and

¹ For a summary of New York Labor Law §§ 740-741, please see the Appendix to this Policy. For a summary of additional federal and state whistleblower protection laws, please see the policy entitled: Compliance with Federal and State False Claims Laws: Overview of the Laws Regarding False Claims and Whistleblower Protections.

appropriate disposition of the matter, the individual should disclose the matter to a supervisory person who the individual believes will take appropriate action.

Compliance Helpline. The Helpline, a dedicated voice mail telephone line, is monitored by the Compliance Officer. In addition to raising questions directly with the Compliance Officer, Personnel may call the Helpline to report possible violations, ask questions, or raise compliance concerns. The Helpline number is **718-291-2872**.

A report or question made through the Helpline may be raised anonymously, if a person chooses.

2. **Confidentiality.** The identity of the individuals reporting will be kept confidential, whether requested or not, unless the matter is subject to a disciplinary proceeding, referred to or under investigation by the NY State Medicaid Fraud Control Unit (MFCU), the Office of Medicaid Inspector General (OMIG) or law enforcement or if disclosure is a requirement in connection with a legal proceeding.
3. **Non-Retaliation/Non-Intimidation.** Intimidation of or retaliation in any form against an individual who in good faith reports possible unethical or illegal conduct is strictly prohibited and is a serious violation of the Code of Conduct. If an employee or contractor feels that he or she is being retaliated against, that individual should contact the Compliance Officer immediately. Any employee who commits or condones any form of retaliation will be subject to discipline up to, and including termination.

B. Investigation

Personnel should inform the Administrator or the Compliance Officer regarding any incidents of retaliation or intimidation related to their participation related to their participation in the Compliance and Ethics Program.

- All allegations of intimidation or retaliation resulting from good faith participation in the Compliance Program will be promptly and thoroughly investigated. The Compliance Officer, or designee, will oversee any investigation and take all necessary and appropriate actions in connection with any such investigation. The Compliance Officer, or designee, will be assisted by internal staff and/or may solicit the support of external resources, as needed.
- If legal, fraud or abuse issues arise, the Officer will determine if outside legal counsel should be consulted.
- 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 the Facility's Code of Conduct. The interviewee will also be reminded of the Facility's disciplinary policy for failure to cooperate.

- 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 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 therefrom, or for such longer period of time as may be required by applicable law.

C. Corrective Action

Any resulting disciplinary action will be done in conjunction with the Administrator.

1. If the Compliance Officer determines that an individual was improperly terminated in retaliation for participating in the Compliance and Ethics Program, the Facility will promptly take all appropriate corrective action as to the individual who was intimidated or retaliated against. The Compliance Committee will retain oversight of all such corrective action.

2. If the Compliance Officer determines that an individual was improperly intimidated or retaliated against for participating in the Compliance and Ethics Program, appropriate disciplinary action will be taken against the offending person.

3. The Facility may terminate contracts and affiliations as a result of retaliation or intimidation.

4. In order to deter retaliation or intimidation against employees who participate in the Compliance and Ethics Program, the Facility will take the following preventative steps:

a. All terminations of employment must be approved by the Administrator, after discussion with appropriate staff, prior to being effectuated.

b. The Administrator must be advised of the employee's participation in the Compliance and Ethics Program prior to the termination decision being made.

D. Reporting Requirements

The Compliance Officer will provide periodic reports on retaliatory acts to the Compliance Committee, Chief Executive Officer and Governing Body.

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

New York State Labor Law Sections 740 and 741 are laws that provide protection to “whistleblowers” in certain cases. **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 employer does any of the following:

1. 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;
2. 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
3. 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 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 actions that would adversely impact a former employee’s current or future employment; or (iii) threatening to contact or contacting U.S. immigration authorities or otherwise reporting or threatening to report an employee’s suspected citizenship or that of an employee’s family or household member to a federal, state, or local agency.

An employee’s disclosure to a public body under this law will not be protected unless the employee has made a good faith effort to notify the employer by bringing the activity, policy or practice to the attention of a supervisor and giving the employer a reasonable opportunity to correct the matter. However, such employer notification is not required where:

- there is an imminent and serious danger to the public health or safety;
- 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;
 - such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor; the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or
- the employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct it.

E. New York Labor Law Section 741

Section 741 prohibits certain health care employers from taking “retaliatory action” against an employee because the employee does any of the following:

1. discloses or threatens to disclose to a supervisor, 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 employer’s agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care, or improper quality of workplace safety; or

2. 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.

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.

F. Employees May File Civil Actions Under Both New York Labor Law Sections 740 and 741

An employee who has been subject to retaliatory action in violation of either Section 740 and Section 741 may bring a civil lawsuit against the employer, but must do so within two years after the alleged retaliatory action occurred.

If the court rules in the employee’s favor, the 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; 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 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.

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