

ELIZABETH SETON CHILDREN'S CENTER

POLICY AND PROCEDURE

MANUAL: Corporate Compliance {Human Resources}	SUBJECT: Whistleblower and Non-Retaliation/Non-Intimidation Policy for Good Faith Participation in the Compliance and Ethics Program
Effective Date: 1/04	Revision Date(s): 3/06, 12/06, 2/20, 2/23

I. POLICY:

Pursuant to its Compliance and Ethics Program, the Elizabeth Seton Children's Center (the "Children's Center") is committed to preventing and detecting fraud, waste and/or abuse, and maintaining compliance with all applicable laws and regulations, including those governing federal health care programs (e.g., Medicaid). This includes quality of care, documentation, coding, and billing and relationships with other providers.

A key element of the Children's Center's Compliance and Ethics Program is the ability of all affected individuals (as that term is defined below) to express problems, concerns or opinions without fear of retaliation or reprisal. At the same time, affected individuals 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 of employment, contract or affiliation with the Children's Center.

In furtherance of the Compliance and Ethics Program, the purpose of this Policy is to ensure that all affected individuals understand the Children's Center's commitment to prohibiting intimidation, retaliation, harassment, discrimination and adverse employment actions for the reporting in good faith of any action or suspected action taken by or within the Children's Center that is illegal, fraudulent or in violation of any adopted policy of the Children's Center.

Intimidation or retaliatory action in any form by any individual associated with the Children's Center against any affected individual who in good faith raises a compliance concern or for other good faith participation in the Compliance and Ethics Program is strictly prohibited and is itself a serious violation of the Code of Conduct and this Policy.

II. OVERSIGHT OF THIS POLICY

The adoption and implementation of, and compliance with, this Policy shall be overseen by the designated Audit and Compliance Committee of the Board of Directors. 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 employees, officers or directors, but the Audit and Compliance Committee will, at all times, retain overall responsibility for all aspects of the oversight of this Policy. The Corporate Compliance Officer has been designated by the Board to administer this Policy and report to the Audit and Compliance Committee on issues related to this Policy.

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III. DEFINITIONS

- A. **Affected Individuals**. “Affected individuals” means all persons who are affected by the Children’s Center’s compliance risk areas, including employees, the Chief Executive Officer, senior administrators, managers, contractors, agents, subcontractors, independent contractors, volunteers, the Board of Directors and corporate officers.
- B. **Good Faith Participation in the Compliance and Ethics Program**. “Good faith participation in the Compliance and Ethics Program” includes, but is not limited to:
- reporting potential compliance issues to appropriate personnel;
 - cooperating with/participating in investigations of potential compliance issues;
 - assisting the Children’s Center with self-evaluations and audits;
 - assisting the Children’s Center with implementing remedial actions;
 - reporting instances of intimidation or retaliation; and
 - reporting potential fraud, waste or abuse to the appropriate State or Federal entities.¹

IV. REPORTING PROCEDURES

- A. **Overview**. Communication is critical to the success of the Children’s Center’s Compliance and Ethics Program. Thus, we maintain open lines of communication between the Corporate Compliance Officer and affected individuals. It is the duty and obligation of all affected individuals to report any good faith belief of suspected or actual Compliance Program violations. Affected individuals are encouraged to freely seek clarification and interpretation of applicable laws, regulations, policies or procedures to which the Children’s Center is subject.
- B. **How to Report**. Affected individuals are required to report or raise questions they may have about compliance issues either orally or in writing to a supervisor or the Corporate 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 Children’s Center’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 appropriate disposition of the matter, the

¹ For a summary of New York Labor Law §§ 740-741, which provide protection for such reporting, 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.

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

- C. Compliance Hotline.** The Hotline, a dedicated voice mail telephone line, is monitored by the Corporate Compliance Officer. In addition to raising questions directly with the Corporate Compliance Officer, all affected individuals may call the Helpline to report possible violations, ask questions, or raise compliance concerns.
- D. Anonymity/Confidentiality.** A report or question may be raised anonymously, if a person chooses. The identity of individuals reporting through the Hotline 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. However, individuals are encouraged to identify themselves when making such reports so that an investigation can be conducted with full factual background and without undue delay.
- E. 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 any affected individual feels that they are being retaliated against, that individual should contact the Corporate Compliance Officer immediately. Anyone who commits or condones any form of retaliation will be subject to discipline up to, and including termination of employment, contract or affiliation.

Contact Information	
Corporate Compliance Officer Lisa Poskanzer	Telephone: (914) 294-6400 Fax: (914) 294-6183 Email: LPoskanzer@setonchildrens.org 300 Corporate Boulevard South Yonkers, NY 10701
Compliance Hotline	Senior Crimestoppers: (800) 590-5850

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V. INVESTIGATION OF INTIMIDATION / RETALIATION COMPLAINTS

All allegations of intimidation or retaliation resulting from good faith participation in the Compliance and Ethics Program will be fully and completely investigated. The Corporate Compliance Officer, or a designee, will oversee any investigations and take all necessary and appropriate actions in connection with any investigation. The Corporate Compliance Officer, or designee, will be assisted by internal staff and/or may solicit the support of external resources, as needed.

- A.** 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 a violation of the Children's Centers' Code of Conduct and this Policy, and that under certain circumstance, may be unlawful as well. The interviewee will also be reminded of the Children's Centers' disciplinary policy for failure to cooperate in a compliance-related investigation.
- B.** All documentation related to the investigation will be kept confidential, 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 Corporate 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 therefrom, or for such longer period of time as may be required by applicable law.
- C.** If the Corporate Compliance Officer determines that an employee was improperly terminated or otherwise disciplined in retaliation for good faith participation in the Compliance and Ethics Program, the Children's Center will promptly take all appropriate corrective action as to the individual who was intimidated or retaliated against. The designated Audit and Compliance Committee of the Board will retain oversight of all such corrective action.
- D.** If the Corporate Compliance Officer determines that any affected individual was retaliated against for good faith participation in the Compliance and Ethics Program, appropriate disciplinary action may be taken against the offending person, subject to the oversight of the designated Audit and Compliance Committee of the Board.
- E.** The Children's Center may terminate contracts and affiliations based on retaliation or intimidation for good faith participation in the Compliance and Ethics Program, subject to the oversight of the designated Audit and Compliance Committee of the Board.
- F.** In order to prevent retaliation or intimidation against employees who in good faith participate in the Compliance and Ethics Program, all terminations of employment must be approved by the Children's Center's Human Resources Department prior to being effectuated. The Human Resources Department must be advised of the employee's participation in the Compliance and Ethics Program prior to the termination decision or other adverse employment action being made.

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- G.** A person that is subject of a whistleblower complaint may not be present at or participate in Board or Committee deliberations or vote on the matter relating to such complaint. The Board or designated Committee, in its discretion, may request that a person who is subject of a whistleblower complaint present information as background or answer questions at a Board or Committee meeting prior to the commencement of deliberations or related voting.

VI. REPORTING TO THE GOVERNING BODY

The Corporate Compliance Officer will advise the designated 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.

VII. DISTRIBUTION OF POLICY

This Policy shall be distributed to all affected individuals.

References:

**New York Not-for-Profit Corporation Law § 715-b
New York Social Services Law 363-d
18 NYCRR § 521-1.4**

Reviewed Date(s):	Reviewer Name:	Title:
9/29/2021	Lisa Poskanzer	Corporate Compliance Officer
2/ 28 /2023	Lisa Poskanzer	Corporate Compliance Officer

APPENDIX A

A SUMMARY OF NEW YORK LABOR LAW SECTIONS 740 AND 741

New York Labor Law Sections 740 and 741 are laws that provide protection to “whistleblowers” in certain cases.

A. 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:

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.

B. 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, 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 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.

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 given 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.

C. 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.