

Policy Dates

Issued: 2016-12

Last Reviewed: 2024-03-18

Last Revised: 2024-03-18

PURPOSE

This *Policy* is to ensure that individuals who in good faith participate in the Compliance Program are protected from intimidation or retaliation. This policy also informs affected individuals, interns, and volunteers of other statutory whistleblower protections.

APPLICABILITY

This *Policy* applies to all Circare affected individuals, interns, and volunteers.

DEFINITIONS

Affected individuals: all persons who are affected by our risk areas, including agency employees, the executive director and other senior administrators, managers, contractors, agents, subcontractors, independent contractors, and the Board of Directors and corporate officers.

Compliance Issue: actual or suspected fraud, waste, abuse; non-compliance with Medicaid requirements; violation of applicable law, regulation, or administrative guidance; violation of Circare's Compliance Policies and Procedures.

Contractor: collectively refers to contractors, agents, subcontractors, and independent contractors.

Good faith: means the individual believes the information they are sharing to be true and is not for the purpose of harming the standing or reputation of Circare, or another affected individual, intern, or volunteer.

Intimidation: to frighten or threaten someone in order to persuade them to do something.

Retaliation: to hurt or do something harmful to someone because they have done or said something harmful to you.

Risk Areas: areas of operation affected by the compliance program:

- **Clinical:** ordered services, medical necessity, quality of care;
- **Financial:** billings and payments;
- **Operational:** governance, mandatory reporting, credentialing, oversight of contractors; and
- **Other risk areas** that are or should reasonably be identified by us through our organizational experience.

Whistleblower Complaint: a report to a government entity about an organization's illegal, unsafe, or fraudulent activities.

POLICY

Circare prohibits any kind of intimidation or retaliation against any individual who in good faith participates in our Compliance Program, including, but not limited to: reporting potential compliance issues to the Compliance Officer; participating in investigations of potential compliance issues; self-evaluations; audits; remedial actions; reporting instances of intimidation or retaliation; and reporting potential fraud, waste, or abuse to the appropriate State or Federal entities.

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 Circare or another affected individual, intern, or volunteer; 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. The *Compliance Disciplinary Policy* provides more details.

Any individual who perceives they are being intimidated or retaliated against for good faith participation in the Compliance Program must immediately report the behavior to the Compliance Officer.

Affected individuals, interns, and volunteers who become aware of any actual or suspected intimidation or retaliation against an individual for their participation in the Compliance Program will immediately report the behavior to the Compliance Officer.

Affected individuals, interns, and volunteers are required to fully cooperate in all investigations, subject to the individual's right against self-incrimination. Any affected individual, intern, or volunteer who fails to cooperate may be subject to separation from Circare or termination of contract(s).

Affected individuals, interns, and volunteers are found to have engaged in intimidation or retaliation will be subject to disciplinary action up to and including separation from Circare or termination of contract(s).

Following an investigation, the Compliance Officer will work with the appropriate staff to ensure a suitable corrective action plan is developed, with recommendations on ways to prevent recurrence, and is implemented in a reasonable timeframe.

The Compliance Officer will report at least quarterly to the Compliance Committee and to the Board of Directors on the status of such investigations and corrective action plans.

This *Policy* is reviewed at least annually, to determine: if the *Policy* has been implemented, whether affected individuals, interns, and volunteers are following the *Policy*, whether the *Policy* is effective, and whether any updates to the *Policy* are required.

Each version of this *Policy* will be retained in accordance with the *Compliance Record Retention Policy*.

PROCEDURE

A. GENERAL PROCEDURES

Investigations of reports of intimidation and retaliation will follow the procedures outlined in the *Compliance Investigations Policy*.

- B. Board of Directors Deliberations and Voting. The person who is the subject of a whistleblower complaint shall not be present at or participate in Board or Committee deliberations or vote on the matter relating to such complaint. Nothing shall prohibit the Board or Committee from requesting that the person who is subject to the complaint present information as background or answer questions at a Committee or Board meeting prior to the commencement of deliberations or voting relating to the complaint.
- C. Statutory Protections. In addition to the protections afforded to Circare affected individuals, interns, and volunteers under this Policy, the following New York State laws also afford protections from retaliatory action:
 - a. New York State Not-For-Profit Corporation Law, Section 715-b
Provides that no director, officer, key person, employee, or volunteer of a corporation who in good faith reports any action or suspected action taken by or within the corporation that is illegal, fraudulent or in violation of any adopted policy of the corporation shall suffer intimidation, harassment, discrimination, or other retaliation or, in the case of employees, adverse employment consequence.
 - b. New York State Labor Law, Section 740
 - (1) Definitions
 - Employee: an individual who performs services for and under the control and direction of an employer for wages or other remuneration, including former employees, or natural persons employed as independent contractors to carry out work in furtherance of an employer's business enterprise who are not themselves employers.
 - Employer: any person, firm, partnership, institution, corporation, or association that employs one or more employees.
 - Law, rule or regulation: includes
 - (i) any duly enacted federal, state, or local statute or ordinance or executive order;
 - (ii) any rule or regulation promulgated pursuant to such statute or ordinance or executive order;
 - (iii) any judicial or administrative decision, ruling, or order.

Public body: includes

- (i) the United States Congress, any state legislature, or any elected local governmental body, or any member, or employee thereof;
- (ii) any federal, state, or local court, or any member or employee thereof, or any grand or petit jury;
- (iii) any federal, state, or local regulatory, administrative, or public agency or authority, or instrumentality thereof;
- (iv) any federal, state, or local law enforcement agency, prosecutorial office, or police or peace officer;
- (v) any federal, state or local department of any executive branch of government; or
- (vi) any division, board, bureau, office, committee, or commission of any of the public bodies described above.

Retaliatory action: 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 including

- (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) action 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 any employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of any employee's family or household member, as defined in subdivision two of section 459-a of the social services law, to a federal, state, or local agency.

Supervisor: any individual within an employer's organization who has the authority to direct and control the work performance of the affected employee; or who has managerial authority to take corrective action regarding the violation of the law, rule, or regulation of which the employee complains.

(2) Prohibitions, Remedies and Relief

An employer may not take any retaliatory action against an employee if the employee discloses or threatens to disclose illegal or improper actions by the employer to a supervisor or public body.

Employees will be protected if they:

- disclose, or threaten to disclose to a supervisor or public body an activity, policy or practice of the employer that the employee reasonably believes is in violation of law, rule or regulation or reasonably believes poses a substantial and specific danger to public health or safety;
- provide information to, or testify before, any public body conducting an investigation, hearing or inquiry into any such activity, policy or practice by their employer; or
- object to, or refuse to participate in any such activity, policy, or practice.

The employee's disclosure to a public body is protected only if the employee has made a good faith effort to notify his or her employer by bringing the activity, policy, or practice to the attention of a supervisor of the employer and has afforded such employer a reasonable opportunity to correct such activity, policy, or practice. Such employer notification shall not be 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 such activity, policy, or practice.

(3) Remedies and Relief

If an employer takes retaliatory action against the employee, the employee may institute a civil action for injunctive relief; reinstatement to the same or an equivalent position, or front pay in lieu thereof; any back wages and benefits; attorneys' fees; a civil penalty not to exceed \$10,000; and punitive damages, if the violation was willful, malicious, or wanton.

c. New York State Labor Law, Section 741

A health care employer may not take any retaliatory action against an employee if the employee discloses certain information about the employer's policies, practices, or activities to a regulatory, law enforcement, or other similar agency or public official.

Employees will be protected if they:

- disclose, or threaten to disclose to a supervisor or public body an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper patient care; or
- object to, or refuse 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.

Protected disclosures are those that the employee, in good faith, believes constitute improper quality of patient care. 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, unless the danger is imminent to the public or a patient, and the employee has a good faith belief that reporting to a supervisor would not result in corrective action.

If an employer takes retaliatory action against the employee, the employee may institute a civil action for injunctive relief; reinstatement to the same or an equivalent position, or front pay in lieu thereof; any back wages and benefits; attorneys' fees; a civil penalty not to exceed \$10,000; and punitive damages, if the violation was willful, malicious, or wanton.

Disclosure Statement

Printed copies of the document are uncontrolled. In the case of conflict between printed and electronic versions of this document, the controlled version published online prevails.

Related Information

Compliance Disciplinary Policy

Compliance Investigations Policy

Compliance Record Retention Policy

References

New York State Office of the Medicaid Inspector General Title 18 NYCRR § 521 Regulations, December 28, 2022.