

PURPOSE

The purpose of this Policy is to ensure that Circare's workforce and contractors are encouraged to report Compliance Issues within Circare. Circare's workforce and contractors are protected from intimidation and retaliation for good faith participation in its Compliance Program, including but not limited to reporting Compliance Issues, investigating issues, conducting self-evaluations, audits, and remedial actions, and reporting to appropriate officials.

This policy also informs Circare's workforce and independent contractors of other statutory whistleblower protections.

DEFINITIONS

Compliance Issue: actual or suspected fraud, waste, abuse and other wrongful conduct, violation of law, regulation, administrative guidance, or Circare's Compliance Plan or policies.

Independent Contractor: a natural person employed to carry out work in furtherance of Circare's business enterprise who is not themselves an employer.

Medicaid Contractor: third-party individuals or entities who furnish Medicaid health care items or services, perform billing and coding functions, or are involved in monitoring health care provided by Circare.

Workforce: agency, embedded state, and temporary employees, Board of Directors, interns, and volunteers.

APPLICABILITY

This Policy applies to Circare's workforce and contractors.

POLICY

1. Circare prohibits any act of retribution, discrimination, harassment, intimidation, or retaliation, against any member of its workforce or contractor who, in good faith, participates in Circare's Compliance Program activities, including, but not limited to:
 - Reporting or responding to Compliance Issues;
 - Investigating Compliance Issues;
 - Conducting or responding to audits, investigations, reviews, or compliance self-evaluations;
 - Drafting, implementing, or monitoring remedial actions;
 - Reporting compliance-related concerns to any government entity;
 - Attending or performing compliance-related training;
 - Otherwise assisting in any activity or proceeding regarding any Compliance Issue.
2. A good faith report means one where the individual believes the information reported to be true and where the report is not made for the purpose of harming the standing or reputation of Circare, or a member of its workforce, or a contractor.
3. 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, a member of its workforce, or a contractor; 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.

PROCEDURE

1. Reporting Mechanisms. Circare's workforce and contractors have a duty to report actions that they believe in good faith to be an actual or suspected Compliance Issue. *See also Duty to Report Policy*. Circare's workforce and contractors have a variety of reporting options; however, they are encouraged to take advantage of

internal reporting mechanisms. These include reports to the Compliance Officer, any Compliance Committee member, the Circare's Compliance Hotline, any Circare supervisor, or any other appropriate individual at Circare in a higher position of authority, up to and including the Executive Director and the President of the Board of Directors.

2. Reporting to Circare and Government. While Circare requires its workforce and contractors to report Compliance Issues directly to Circare, certain laws provide that individuals may also bring their concerns directly to the government. Any perceived intimidation or retaliation should be reported to the Compliance Officer immediately.
3. Confidentiality. Anyone who investigates a Compliance Issue shall maintain the confidentiality of the individual who made the report, unless the matter is referred to law enforcement or disclosure is required by law.
4. 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.
5. Statutory Protections. In addition to the protections afforded to Circare's workforce and contractors 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.