

FINGER LAKES HEALTH

Whistleblower Policy/ Non-Retaliation/Non-Intimidation for Good Faith Participation in the Compliance Program

I. PURPOSE

It is the intent that Finger Lakes Health (“FLH”) adhere to all laws and regulations that apply to the organization. The purpose of this whistleblower policy (this “Policy”) is to establish a culture within FLH that promotes prevention, detection and resolution of instances of conduct that do not conform to laws and regulations that apply to FLH, ethical policies of FLH or clear mandates of public policy. This Policy is intended to supplement but not replace any laws or regulations governing whistleblowing that apply to FLH, or any existing FLH policies or documents addressing whistleblowing.

II. POLICY

It is the policy of Finger Lakes Health that no “Covered Person” (as defined below) shall suffer intimidation, harassment, discrimination, or other retaliatory action, including adverse employment consequences, for:

1. good faith participation in the FLH Compliance Program (as defined below); or
2. good faith reporting of any action or suspected action taken by or within FLH that the Covered Person reasonably believes is illegal, fraudulent, poses a substantial and specific danger to the public health or safety, or is in violation of any FLH policy.

This policy also prohibits retaliation against employees who provide health care services on behalf of FLH that (i) disclose or threaten 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 FLH or its agent, that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety; or (ii) objects to, or refuses to participate in any activity, policy or practice of FLH or its agent, that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety.

III. DEFINITIONS

A. Covered Person

“Covered Person” means all persons who are affected by FLH’s Compliance Program risk areas. This includes employees, including former employees; the Board of Directors; the Chief Executive; other senior administrators and managers; contractors, agents, subcontractors, and independent contractors (“Contractors”); and corporate officers. Covered Person also includes key persons of FLH (as defined in NY Not for Profit Corporations Law) and volunteers.

B. Good Faith Participation in the Compliance Program

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

- reporting actual or potential issues or concerns to appropriate FLH personnel, including but not limited to, any action or suspected action taken by or within FLH that is illegal, fraudulent or in violation of any adopted FLH policy;
- cooperating with or participating in the investigation of such matters;
- assisting with or participating in self-evaluations, audits, and/or implementation of remedial actions;
- reporting instances of intimidation or retaliation; or
- reporting potential fraud, waste or abuse to the appropriate State or Federal entities.¹

IV. PROCEDURES

A. Oversight of this Policy:

The adoption and implementation of, and compliance with, this Policy shall be overseen by the designated Audit & Finance Committee of the Board. The designated Audit & Finance 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 trustees, but the designated Audit Committee of the Board 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 & Finance Committee on issues related to this Policy. This Policy may be amended, modified or rescinded, in whole or in part, by the Board of Directors of FLH.

B. Reporting Procedures:

1. Contact a Supervisor or the Corporate Compliance Officer. Covered Persons 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. The Corporate Compliance Officer may request that the reporting Covered Person submit a written complaint. 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 FLH’s policies and procedures.

The Corporate Compliance Officer is Kim Coffey. She can be reached at (315) 787-4023 or kim.coffey@flhealth.org.

2. Report through FLH’s Compliance “Line.” The Compliance Line, a dedicated voice mail telephone line, is monitored by the Compliance Officer. In addition to raising questions directly with the Compliance

¹ For a summary of New York Labor Law §§ 740 and 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.

Officer, Covered Persons may call the Compliance Line to report possible violations, ask questions, or raise compliance concerns.

The Compliance Line number is (315) 789-4791.

3. Anonymity/Confidentiality. A report or question may be raised anonymously, if a Covered Person chooses by calling the Compliance Line. All reports will be treated confidentially, 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.

C. Retaliation/Intimidation is Prohibited:

Intimidation of or retaliation in any form against a Covered Person who in good faith reports possible unethical or illegal conduct or for other good faith participation in the Compliance Program is strictly prohibited and is a serious violation of the Code of Ethics and Business Conduct. If any Covered Person feels that they are being retaliated against, that individual should contact the Corporate Compliance Officer immediately. Any Covered Person who commits or condones any form of retaliation or intimidation will be subject to discipline up to, and including termination of employment, contract or affiliation.

D. Investigation of Intimidation / Retaliation Complaints:

All allegations of intimidation or retaliation resulting from good faith participation in the Compliance 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.

- 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 FLH's Code of Ethics and Business Conduct and this Policy, and that under certain circumstance, may be unlawful as well. The interviewee will also be reminded of FLH's disciplinary policy for failure to cooperate in a compliance-related investigation.
- 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 and will be disclosed only in accordance with applicable law. 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.

- If the Corporate Compliance Officer determines that a Covered Person was improperly terminated or otherwise disciplined in retaliation for good faith participation in the Compliance Program, FLH will promptly take all appropriate corrective action as to the individual who was intimidated or retaliated against. The Audit & Finance Committee of the Board will retain oversight of all such corrective action.
- If the Corporate Compliance Officer determines that any Covered Person 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 & Finance Committee of the Board.
- FLH 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 & Finance Committee of the Board.
- 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 FLH’s Human Resources Department prior to being effectuated. The Human Resources Department must be advised of the employee’s participation in the Compliance Program prior to the termination decision or other adverse employment action being made.
- 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.

E. Reporting to the Board of Directors:

The Corporate Compliance Officer will advise the designated Audit & Finance Committee of the Board as directed by the governing body, 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:

This Policy shall be distributed to all Covered Persons of FLH and is available through FLH’s DocuShare platform and on the website.

Approved:	<u>Board of Directors</u>	<u>7/23/2014</u>
Reviewed:	<u>Board of Directors</u>	<u>11/24/2015</u>
Reviewed/Revised:	<u>Board of Directors</u>	<u>12/20/2017</u>
Reviewed:	<u>Board of Directors</u>	<u>12/19/2018</u>
Reviewed/Revised:	<u>Board of Directors</u>	<u>12/22/2021</u> (Effective: January 26, 2022)
Reviewed/Revised:	<u>Board of Directors</u>	<u>4/26/2023</u>
Reviewed:	<u>Board of Directors</u>	<u>3/25/2024</u>

APPENDIX

New York Labor Law Sections 740 and 741 are laws that provide protection to “whistleblowers” in certain cases. This Appendix provides a brief summary of these laws. Full copies of Sections 740 and 741 are posted at the Human Resources offices and throughout the health system.

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 such 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 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 an employee’s suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee’s family or household member to a federal, state, or local agency.

Conditions and Exceptions Under New York Labor Law Section 740

An employee’s disclosure to a public body under Section 740 will not be protected unless the employee has made a good faith effort to notify a supervisor of the employer and affords the employer a reasonable opportunity to correct the matter.

However, such employer notification is not required where:

- a. there is an imminent and serious danger to the public health or safety;
- b. 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;

- c. such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor;
- d. the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person;
or
- e. 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 defined health care employers from taking “retaliatory action” against an employee who performs health care services for or under the control and direction of the employer 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 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.

Conditions and Exceptions Under New York Labor Law Section 741

An employee will not be protected under Section 741 unless the employee has brought the improper quality of patient care or improper quality of workplace safety to the attention of a supervisor and has afforded 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. Relief/Enforcement Under Both New York Labor Law Sections 740 and 741

Under both Sections 740 and Section 741, an employee who has been the subject of retaliatory action in violation of the law may bring a civil action within two years after the alleged retaliatory action was taken. The parties to such an action are entitled to a jury trial.

In connection with such an action, a 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; the 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 both Sections 740 and 741, it is a defense that the retaliatory action was predicated on grounds other than the employee’s exercise of the rights that these sections of the law protect.

Reviewed: 3/25/2024