**Non-Retaliation and Whistleblower Protection:**

Sample Policy and Procedure[[1]](#footnote-1)

**Purpose.**

The purpose of this policy is to set forth [*Health Center Name*]’s prohibition against retaliation against any individual who, in good faith, reports a possible violation of federal or state law or regulation or [*Health Center Name*]’s Standards of Conduct, Corporate Compliance Plan or policies and procedures.

# Policy.

# It is the policy of [*Health Center Name*] to promote and maintain a culture of open communication, compliance, and responsible behavior. In order to protect this culture, [*Health Center Name*] does not tolerate retaliation including intimidation, threats, coercion, discrimination, and any other form of retaliation of any individual who raises questions or concerns, in good faith, about [*Health Center Name*]’s compliance with federal or state law or regulation or [*Health Center Name*]’s Standards of Conduct, Corporate Compliance Plan or policies and procedures.

In addition, individuals have the right to be protected against retaliation under certain federal and state laws such as the Health Insurance Portability and Accountability Act (HIPAA), the federal False Claims Act, the [*state False Claims Act*] and any other applicable law. Certain remedies are available under these laws for individuals who are retaliated against for reporting.

# This policy applies to all employees, volunteers, vendors/contractors, grantees, and agents of [*Health Center Name*].

**Procedure.**[[2]](#footnote-2)

1. If an individual becomes aware of a particular activity or situation that the individual, in good faith, believes may violate federal or state law or regulation or [*Health Center Name*]’s Standards of Conduct, Corporate Compliance Plan or policies and procedures, then the individual has a duty to report that question or concern in accordance with [*Health Center Name*]’s [*Reporting instances of non-compliance policy*].

2. [*Health Center Name*]will not take any retaliatory actions against any individual who, in good faith, raises questions or concerns about Health Center’s compliance with federal or state law or regulation or [*Health Center Name*]’s Standards of Conduct, Corporate Compliance Plan or policies and procedures.

3. If an individual believes that he/she has been subject to any retaliation that violates this policy, he/she may file a complaint with the Office of Corporate Compliance, the Human Resources Department, or through the Compliance Hotline for investigation [*or through the established reporting structure*]. Examples of retaliation include, but are not limited to, employment actions such as termination, refusal to hire or denial of a promotion, unjustified negative evaluations, unjustified negative references, threats, harassment or intimidation. Individuals also have the right to submit the complaint to the U.S. Department of Health and Human Services Office of the Inspector General or, in the case of HIPAA-related retaliation, to the U.S. Department of Health and Human Services Office of Civil Rights.

4. If, after an investigation of a retaliation claim, [*Health Center Name*] determines that an individual has been the subject of retaliation, [*Health Center Name*] will take the appropriate corrective action which may include disciplinary action up to and including termination.

**References.**

U.S. Federal False Claims Act (31 USC § 3730(h))

The Federal Civil False Claims Act (FCA) provides that any employee who is subject to retaliation or discrimination by an employer in the terms and conditions of employment because the employee lawfully sought to take action or assist in taking action under this Act shall be entitled to all relief necessary to make the employee whole. This includes reinstatement with seniority restored to what it would have been without the retaliation or discrimination, double the amount of back pay, interest on back pay, and compensation for any special damages sustained as a result of the employer’s actions, including litigation costs and reasonable attorney’s fees.

The Federal Civil False Claims Act (“FCA”) is a set of federal statutes that, among other things, forbid “knowingly:”

* Presenting or causing the presentation of, a false claim for reimbursement by a Federal health care program, including Medicare or Medicaid;
* Making, using or causing to be made or used, a false record or statement material to a false or fraudulent claim;
* Repaying less than what is owed to the government;
* Making, using or causing to be made or used, a false record or statement material to reducing or avoiding repayment to the government;
* Avoiding or decreasing an obligation to pay or transmit money or property to the government and/or;
* Conspiring to defraud the federal government through one of the actions listed above.

The U.S. Attorney General may bring an action under this law. In addition, the law provides that any “whistleblower” may bring an action under this act on his or her own behalf and for the United States Government.

These actions, which must be filed in U.S. District Court, are known as “qui tam” actions. The Federal Government, after reviewing the complaint and supporting evidence, may decide either to take over the action, or decline to do so, in which case the whistleblower may conduct the action. If either the Federal Government or the whistleblower is successful, the whistleblower is entitled to receive a percentage of the recovery. If prosecuted by the Federal Government, these qui tam actions are generally handled by various U.S. Attorney’s Offices or by the U.S. Justice Department.

Penalties for violations of the FCA include fines from $5,500 to $11,000 per false claim, payment of treble damages (*i.e.*, three times the amount of damages sustained by the government due to the violation), and exclusion from participation in federal health care programs such as Medicare or Medicaid.

[*Insert similar language re: state’s civil False Claims Act, if applicable*]

Health Insurance Portability and Accountability Act (HIPAA) (45 CFR Parts 160 and 164)

Employees may not be intimidated, threatened, coerced, discriminated or retaliated against for (1) filing a HIPAA-related complaint with HHS; (2) testifying, assisting, or participating in an investigation, compliance review, proceeding, or HIPAA-related hearing; or (3) opposing any unlawful act or practice, provided the individual or person has a good faith belief that the practice opposed is unlawful, and the manner of opposition is reasonable and does not involve a disclosure of protected health information in violation of HIPAA.

Pilot Program for Enhancement of Contractor Employee Whistleblower Protections (41 USC § 4712)[[3]](#footnote-3)

Employees may not be discharged, demoted, or otherwise discriminated against as a reprisal for whistleblowing. Whistleblowing involves an employee making a report that he or she reasonably believes is evidence of any of the following:

* + Gross mismanagement of a federal grant or contract;
  + A gross waste of federal funds;
  + An abuse of authority relating to a federal grant or contract;
  + A substantial and specific danger to public health or safety; or
  + A violation of law, rule, or regulation related to a federal grant or contract (including the competition for, or negotiation of, a grant or contract).

**This policy is not a contract of employment and does not create any rights or expectations regarding continued employment with any [*Health Center Name*]** **employees who are employees at-will.**

**This policy and procedure shall be periodically reviewed and updated consistent with the requirements and standards established by the Board of Directors and management, federal and state laws and regulations, and applicable accrediting and review organizations.**

**Responsible parties:**

Signature Date

Executive Director

Signature Date

1. The Authors of these materials include attorneys at the law firm of Feldesman Tucker Leifer Fidell LLP. The sample documents offer general guidance based on federal law and regulations and do not necessarily apply to all health centers under all facts and circumstances. Further, these materials do not replace, and are not a substitute for, legal advice from qualified legal counsel. [↑](#footnote-ref-1)
2. Authors’ note: Using the following sample as a guide, health centers should tailor the procedure to reflect their own processes and operations. [↑](#footnote-ref-2)
3. Authors’ note: The “Pilot Program for Enhancement of Contractor Employee Whistleblower Protections” is scheduled to end in 2017. [↑](#footnote-ref-3)