

Purpose

In furtherance of Unity House’s Compliance Program efforts, it is the purpose of this policy to address Unity House’s commitment to ensuring a corporate environment that promotes ethical conduct and compliance as well as its commitment to protect employees, Board members, contractors, and service recipients who are Medicaid Program beneficiaries who in good faith participate in the Compliance Program with a strict policy of Non-Intimidation & Non-Retaliation.

Applicability

The Compliance Program’s Non-Intimidation and Non-Retaliation Policy applies to Unity House’s employees, former Unity House employees, managers, executives, board members, volunteers, vendors, contractors, subrecipients, service recipients and other agents who:

- Are required to participate in Unity House’s Compliance Program (includes but is not limited to all Unity House personnel, executives, board members, and volunteers)
- Furnish or otherwise authorize the furnishing of services funded through government programs,
- Perform billing and coding functions on behalf of Unity House,
- Voucher Unity House for services and goods that will be reimbursed through government- funded programs, and
- Monitor such functions.

Individuals covered by this policy are hereafter referred to in short as “employees, contractors, service recipients, and other agents”.

Definitions

Good Faith Participation or Reporting

Good faith participation in the Compliance Program means an individual makes sincere efforts to comply with the standards and provisions set forth in the Compliance Plan, Standards of Conduct, policies, procedures, rules, regulations, and laws.

Good faith reporting of a compliance concern is made with honest intent and motive – that the employee, contractor, or other agent had a sincere and reasonable belief that a violation may have occurred. Reporting can be made in good faith but be wrong about the facts.

Good faith participation and reporting includes, but is not limited to:

- Reporting actual or potential compliance issues such as fraud, waste, abuse, or other misconduct or wrongdoing,
- Cooperating or participating in the investigation of such matters,
- Reporting instances of intimidation or retaliation,
- Assisting with or participating in self-evaluations, audits, and/or remedial actions and reporting to appropriate officials as provided in Sections 740 and 741 of the New York State Labor Law (See False Claims and Reporting Policy Appendix for a summary of applicable laws).

Intimidation and Retaliation

Intimidation is an act to manipulate another person and/or is an intentional behavior that causes a person of ordinary sensibilities to have feelings of fear or inadequacy. Generally, an act of intimidation would include a deliberate act or behavior meant to deter an individual from reporting a compliance concern or participating and cooperating with an investigation. However, whether an act is considered intimidation is determined based upon the specific facts and circumstances of the particular case.

Retaliation is an adverse action taken against an individual because the individual's good faith

report of a compliance concern or participation in a compliance investigation. An adverse action includes, without limitation:

- Termination, demotion, suspension, refusal to hire, and denial of training and/or promotion, Claims of discrimination for exercising one's rights under the Amendments,
- Actions or threats to take actions affecting current or future employment,
- Contacting or threatening to contact U.S. immigration authorities or otherwise reporting or threatening to report the suspected immigration or citizenship status of a whistleblower or a whistleblower's family or household member,
- Employers may not take action that would harm a former employee's current or future employment, such as "blackballing" within an industry,
- Actions affecting employment or contractual relationships such as threats, unjustified negative evaluations, unjustified negative references, or unjustified increased surveillance or scrutiny, or
- Any other actions that are likely to deter a reasonable individual from reporting illegal conditions or violations of laws, rules, regulations, policies or procedures, and/or from cooperating with an investigation.

Adverse actions do not include any employment action(s), disciplinary action(s), and termination(s) taken as a result of the individual's own violation(s) of laws, rules, policies, or procedures, or negative comments in an otherwise positive or neutral evaluation, or negative comments that are justified by the individual's poor work performance or history.

Policy

Unity House's Compliance Program supports a corporate culture built on ethics and compliance that is integral to the sustained success and viability of the agency. The effectiveness of the Compliance Program is dependent, in significant part, on the good faith participation of its employees, Board members, contractors, service recipients, and other agents, including their reporting of compliance concerns and their cooperation and participation in investigations and remedial action. It is, therefore, essential that Unity House provide an environment that

emphasizes its commitment to ethics and compliance and that encourages and protects good faith participation in the Compliance Program and reporting of compliance concerns, including, but not limited to:

1. Reporting or threatening to report Compliance Issues, and responding to potential Compliance Issues to appropriate personnel;
2. Reporting or threatening to report a practice of Unity House that poses a substantial danger to the public health or safety;
3. Participating in investigation of, and investigating, potential Compliance Issues;
4. Conducting or responding to audits, investigations, reviews, or compliance self-evaluations;
5. Drafting, implementing, or monitoring remedial actions;
6. Reporting compliance-related concerns to any government entity;
7. Attending or performing compliance-related training;
8. Reporting instances of intimidation or retaliation; or
9. Otherwise assisting in any activity or proceeding regarding any Compliance Issue.

The protections of this Policy do **not** apply to:

1. Allegations not based on a reasonable belief or not made in good faith;
2. Allegations whose nature or frequency indicate an intent to harass or embarrass Unity House or any employees, Board members, or contractors; or
3. 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.

To that end, there is a **strict prohibition of intimidation and/or retaliation** against anyone who in good faith participates in the Compliance Program, including but not limited to: reporting potential compliance issues and/or participating and cooperating in an investigation, self evaluations, audits, reporting instances of intimidation or retaliation, remedial actions and/or the reporting to appropriate officials as provided in sections 740 and 741 of the NYS Labor Law. Intimidating and/or retaliatory acts are themselves a violation of the Compliance Program and Standards of Conduct and are, therefore, subject to disciplinary action up to and including termination in accordance with

the Discipline Policy.

Procedure

All allegations of intimidation of and/or retaliation against anyone, who in good faith participates in the Compliance Program or who in good faith reports compliance concerns to Unity House or to the

appropriate officials as provided in Section 740 and 741 of NYS Labor Law, will be fully and completely investigated. Appropriate disciplinary and corrective action will be promptly undertaken. The Compliance Officer will oversee the investigation and will be assisted by internal personnel (including Human Resources) and external resources (including legal counsel) as necessary and appropriate. If an individual has a concern regarding the Compliance Officer or is not comfortable reporting an intimidation or retaliation concern to the Compliance Officer, the individual may raise the concern to the Director of Human Resources, who will investigate the allegation.

Investigations of alleged intimidation and/or retaliation will be conducted in accordance with the Investigation Policy.

The Compliance Officer will make reports concerning violations or alleged violations of this policy to the Chief Executive Officer, Corporate Compliance Committee and Board of Directors. Confidentiality and anonymity will be maintained in reports to the CEO and board. Anyone who investigates a Compliance Issue shall maintain the confidentiality of the individual who made the report regardless of whether the individual has requested confidentiality or reported through a confidential reporting mechanism, unless the matter is subject to a disciplinary proceeding, referred to or under investigation by MFCU, OMIG, or law enforcement, or the disclosure is required during a legal proceeding.

Employees, contractors, Board members, service recipients, and other agents who suspect a violation of the Non-Retaliation & Non- Intimidation Policy are required to notify Unity House. Employees, contractors, Board members, service recipients, or other agents can make a report by:

- **Contacting the Compliance Officer directly.**
Colleen Hanaway Seeley, Compliance Officer

2431 6th Avenue, 4th

floor Troy, NY 12180

(p) 518.687.1591

(c) 518.421-7416

(e) CSeeley@uniythouseny.org

- **Accessing Unity House’s confidential Compliance Hotline.** This option is available 24 hours/day 365 days/year. The Hotline is operated by Lighthouse Services, an impartial third party vendor, and offers comprehensive, confidential, and anonymous reporting services. When a report is made to the Compliance Hotline, Lighthouse notifies the Compliance Officer. All reports to the Compliance Hotline will be kept strictly confidential, unless the matter is turned over to law

enforcement. Confidential means the Compliance Officer is the only person who will know the identity of the reporter. If a report made to the Compliance Hotline requires an investigation, the Compliance Officer will not specifically identify the reporter during the course of the investigation.

Reporters may also choose to make an anonymous report to the Compliance Hotline. In such instances, no identifying information about the reporter is collected, and Lighthouse notifies the Compliance Officer of the content of the report only. Anonymous reports will still be investigated as warranted.

- **Lighthouse’s Toll-Free**

Hotline: (800) 401-8004

(English speaking) (800) 216-

1288 (Spanishspeaking)

- **Lighthouse’s Hotline on the Web:**

<http://www.lighthouse-services.com/unityhouseny>

- **Lighthouse’s Hotline via E-mail:**
reports@lighthouse-services.com (must include “Unity House” in the report)
- **Lighthouse’s Hotline via Fax:**
(215) 689-3885 (must include “Unity House” in the report)

If an employee, contractor, Board member, service recipient, or other agent believes the Compliance Officer is not responding within a reasonable amount of time, the employee, contractor, or other agent should contact the Chief Executive Officer or Director of HR. If the employee, contractor, or other agent feels that Unity House is not addressing his or her concerns, the individual retains the right to report his or her suspicions to the appropriate officials as provided in Section 740 and 741 of the NYS Labor Law.

Persons, including Medicaid recipients of service, who report compliance issues should have a reasonable expectation that their communication will be kept confidential, whether requested or not. Individuals who raise questions or report concerns (in good faith) are protected under the Unity House non-intimidation and non-retaliation policy.

Exceptions to confidentiality include, subject to a disciplinary proceeding, referral to, or under investigation by, Medicaid Fraud Control Unit (MFCU), New York State Office of Medicaid Inspector General (OMIG) or law enforcement or disclosure is required during a legal proceeding.

Statutory Protections

In addition to the protections afforded to employees, Board members, contractors, and Medicaid Program beneficiaries who receive services from Unity House under this Policy, the following New York State laws also protect employees from retaliatory action for good faith reporting. In addition to the information below, Unity House will inform employees, Board members, managers, contractors, agents, and Medicaid service recipients of their protections, rights, and obligations under the New York State Labor Law by posting a notice of the same. The notices will be posted conspicuously in easily accessible and well-lighted places that are customarily frequented by employees and applicants for employment. This notice is also posted on the Unity House of Troy, Inc. website and the Compliance SharePoint page.

a. § 740. Retaliatory action by employers; prohibition.

1. Definitions.

For purposes of this section, unless the context specifically indicates otherwise:

(a) "Employee" means 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.

(b) "Employer" means any person, firm, partnership, institution, corporation, or association that employs one or more employees.

(c) "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; or (iii) any judicial or administrative decision, ruling or order.

(d) "Public body" includes the following:

(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 an executive branch of government; or

(vi) any division, board, bureau, office, committee, or commission of any of the public bodies described in subparagraphs (i) through (v) of this paragraph.

(e) "Retaliatory action" means 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 this section, including (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, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, to a federal, state, or local agency.

(f) "Supervisor" means 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. An employer shall not take any retaliatory action against an employee, whether or not within the scope of the employee's job duties, because such employee does any of the following:

(a) 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;

(b) 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

(c) objects to, or refuses to participate in any such activity, policy or practice.

3. Application. The protection against retaliatory action provided by paragraph (a) of subdivision two of this section pertaining to disclosure to a public body shall not apply to an employee who makes such disclosure to a public body unless 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: (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 such activity, policy or practice.

4. Violation; remedy. (a) An employee who has been the subject of a retaliatory action in violation of this section may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this section within two years after the alleged retaliatory action was taken.

(b) Any action authorized by this section may be brought in the county in which the alleged retaliatory action occurred, in the county in which the complainant resides, or in the county in which the employer has its principal place of business. In any such action, the parties shall be entitled to a jury trial.

(c) It shall be a defense to any action brought pursuant to this section that the retaliatory action was predicated upon grounds other than the employee's exercise of any rights protected by this section.

5. Relief. In any action brought pursuant to subdivision four of this section, the court may order relief as follows:

(a) an injunction to restrain continued violation of this section;

(b) the reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position, or front pay in lieu thereof;

(c) the reinstatement of full fringe benefits and seniority rights;

(d) the compensation for lost wages, benefits and other remuneration;

(e) the payment by the employer of reasonable costs, disbursements, and attorney's fees;

(f) a civil penalty of an amount not to exceed ten thousand dollars; and/or

(g) the payment by the employer of punitive damages, if the violation was willful, malicious or wanton.

6. Employer relief. A court, in its discretion, may also order that reasonable attorneys' fees and court costs and disbursements be awarded to an employer if the court determines that an action brought by an employee under this section was without basis in law or in fact.

7. Existing rights. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any

other law or regulation or under any collective bargaining agreement or employment contract.

8. Publication. Every employer shall inform employees of their protections, rights and obligations under this section, by posting a notice thereof. Such notices shall be posted conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment. New York State Labor Law, Section 740.

b. New York State Labor Law, Section 741.

A health care employer may not take any retaliatory action against a health care employee¹ if the health care employee discloses, or threatens to disclose, certain information about the health care employer's policies, practices, or activities to a regulatory, law enforcement, or other similar agency or public official, to a news media outlet, or to a social media forum available to the public at large.

Protected disclosures include disclosures of an activity, policy, or practice of the health care employer that the health care employee, in good faith, reasonably believes constitute improper quality of patient care or improper quality of workplace safety. Health care employees are also protected from retaliatory action if the health care employee objects to, or refuses to participate in, any activity, policy, or practice of the health care employer that the health care employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety.

The health care employee's disclosure is protected only if the health care employee first raised the matter with a supervisor and gave the health care employer a reasonable opportunity to correct the activity, policy, or practice. However, employer notification is not required where the improper quality of patient care or workplace safety presents an imminent threat to public health or safety, to the health of a specific patient, or to the health of a specific health care employee and the health care employee reasonably believes, in good faith, that reporting to a supervisor would not result in corrective action.

If a health care employer takes retaliatory action against the health care employee, the health care employee may sue in State court for reinstatement to the same position held before the retaliatory action, or to an equivalent position, any back wages and benefits, and attorneys' fees, among other remedies. If the health care employer's violation was willful, malicious, or wanton, punitive damages may be imposed.

¹A "health care employee" is any person who performs health care services for and under the control and direction of any public or private employer, that provides health care services for wages or other remuneration. See N.Y. LAB. LAW § 741(1)(a).