

P&P Number:	CC020	Original Approval Date:	4/28/2010
Title:	Reporting Instances of Non-Compliance (Whistleblower)	Policy Revision Date:	4/13/2022
P&P Area:	Corporate Compliance	Procedure Revision Date:	8/8/2023
Reviewing Committee:	Quality Committee	Committee Review Date:	4/10/2024
Approved by:	Board of Directors	Last Approval Date:	4/17/2024

POLICY:

ConnexCare is committed to providing patient care and conducting its business in a manner that complies fully with applicable law, regulation, guidance, program requirements, and ConnexCare's Standards of Conduct. To support this commitment and to protect ConnexCare's reputation, all Staff must report suspected unethical or illegal conduct, including issues related to safety or quality of patient care. No intimidation of, nor shall discriminatory or retaliatory action be taken against any individual who, in good faith, reports suspected or known instances of non-compliance.

PROCEDURE:

Review. Policy and Procedures shall be reviewed annually and updated consistent with the requirements established by the Board of Directors, ConnexCare's Senior Administration, Federal and State law and regulations, and applicable accrediting and review organizations.

Staff or Employee. Staff includes employees, contractors, agents, board members, consultants, volunteers, directors, and others who act on ConnexCare's behalf.

This policy works in tandem with policy FIN 050 False Claims and Whistleblower.

1. Affirmative Duty to Report. Staff who are aware of or suspects a violation of law, regulation, guidance, program requirements or ConnexCare's Standards of Conduct, or other policies and procedures have an affirmative duty to report this information without regard to the identity or position of the suspected offender. Staff contracts will contain a provision reflecting this duty. In general, reports should be made to the staff member's supervisor or through the normal chain of command. However, Staff, providers, patients, and community members may also report the information directly to the Compliance Officer if desired.

2. Anonymous Reporting. To make a report anonymously Staff, providers, patients, and community members may communicate information to the Compliance Officer directly by calling 315-298-6569 and asking to speak with the Compliance Officer (may leave a voicemail message), or by calling the toll-free hotline number: 1-855-252-7606. Employees may also use the Hotline Service link on ConnexCare's intranet. ConnexCare will make every effort to treat all reports confidentially and to protect the anonymity of the staff who reported the information. However, under some circumstances, the reporter's identity may need to be disclosed as part of ConnexCare's appropriate response to allegations of non-compliance.

3. Good Faith Reporting. Reports of concerns must be made "In good faith" which means that a concern must be reported without malice and without seeking personal gain by a person who has a plausible reason to believe it is based on facts.

4. Non-Retaliation, Non-Intimidation, Non-Discrimination. No intimidation, discrimination nor retaliatory action will be taken against any staff who, in good faith, reports suspected or known

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instances of non-compliance. That the individual, in good faith, believes may violate federal or state law or regulation(s).

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 Compliance Officer, the Human Resources Department, or through the Compliance Hotline for investigation.

Examples of retaliation, intimidation or discrimination include, but are not limited to:

- Employment actions such as termination,
- Differential treatment in comparison to colleges,
- Refusal to hire or denial of a promotion,
- Unjustified negative performance 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, Human Services Office of Civil Rights and other complaints may be directed to the applicable NYS agencies.

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

5. Failure to Report. Failure to report misconduct may result in disciplinary action against the Staff who failed to report the misconduct. In addition, managers and supervisors may be sanctioned for failing to detect non-compliance with applicable law or policies and procedures where reasonable diligence on the part of the manager or supervisor would have led to the discovery of a problem or violation.

6. Investigations of False Claims and Non-Compliance. ConnexCare employees and agents must cooperate with compliance investigations. Compliance Investigations include a review, and evaluation of available information, describe findings and recommend corrective actions. Investigations must commence as soon as possible following the report of an incident and conclude within 30 days whenever possible. Investigations can be divided into three categories:

Internal Investigations: These investigations are handled by the Corporate Compliance Officer or designee. The Compliance Officer (or designee) will initiate a Corporate Compliance Review or a more formal, Investigation depending on the severity of the allegation. The Compliance Officer may interview staff, other involved parties, or patients. The Compliance Officer may also perform audits of computer usage, documentation, appointments, and/or other applicable documents to complete the review.

Internal with Assistance: These investigations are completed by the Compliance Officer in conjunction with and external entity such as ConnexCare's legal counsel or a hired auditing firm. The Compliance Officer may independently seek the assistance of outside counsel, should they feel it is necessary, when members of the Board of Directors or Senior Administration are involved.

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External: These investigations are completed by an external entity such as the state or federal government.

7. Resolution of False Claims Investigations. Following investigations/reviews of non-compliant behavior with findings, ConnexCare implements the investigators recommended corrective actions to resolve the non-compliant behavior and prevent reoccurrence of the event. Corrective actions could include the return of any improperly received funds, disciplinary action, policy or procedure changes, or any other action that would prevent false claims from being submitted or otherwise prevent the non-compliant behavior from occurring.

Should the investigation reveal that external reporting of the event is required, the Corporate Compliance Officer will facilitate such reporting in compliance with the law.

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.

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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 \$13,500 to \$27,018 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.

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.

41 USC 4712: Enhancement of contractor protection from reprisal for disclosure of certain information

An employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body listed below, information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

Persons and bodies covered:

- A Member of Congress or a representative of a committee of Congress.
- An Inspector General.
- The Government Accountability Office.
- A Federal employee responsible for contract or grant oversight or management at the relevant agency.
- An authorized official of the Department of Justice or other law enforcement agency.
- A court or grand jury.
- A management official or other employee of the contractor, subcontractor, grantee, subgrantee, or personal services contractor who has the responsibility to investigate, discover, or address misconduct.