

Non-Retaliation and Non-Intimidation Policy

June 2023

PURPOSE

The purpose of this Policy is to ensure that employees, Board of Directors (“Board”) members, and contractors of AccessCNY are encouraged to report concerns about the occurrence of serious illegal, fraudulent or unethical actions within the organization (“Compliance Issues”). “Compliance Issues” are actual or suspected fraud, waste, abuse, other wrongful or unethical conduct, or violations of laws, regulations, administrative guidance, or AccessCNY’s Compliance Plan¹ and policies. Employees, Board members, and contractors are protected from intimidation and retaliation for good faith participation in AccessCNY’s Compliance Program, including but not limited to reporting Compliance Issues, investigating issues, conducting self-evaluations, audits, and remedial actions, and reporting to appropriate officials.

APPLICABILITY

This Policy applies to all AccessCNY employees, Board members, and contractors.²

POLICY

1. AccessCNY prohibits any act of retribution, discrimination, harassment, retaliation, or intimidation against any employee, Board member, or contractor who, in good faith, participates in AccessCNY’s Compliance Program activities, including, but not limited to:
 - a. Reporting and responding to potential Compliance Issues to appropriate personnel;
 - b. Participating in investigation of, and investigating, potential Compliance Issues;
 - c. Conducting or responding to audits, investigations, reviews, or compliance self-evaluations;
 - d. Drafting, implementing, or monitoring remedial actions;
 - e. Reporting compliance-related concerns to any government entity;
 - f. Attending or performing compliance-related training;
 - g. Reporting instances of intimidation or retaliation; or
 - h. Otherwise assisting in any activity or proceeding regarding any Compliance Issue.

¹ AccessCNY’s Corporate Compliance Plan (“Compliance Plan”) is the document that provides an overview of AccessCNY’s Corporate Compliance Program (“Compliance Program”). The Program is AccessCNY’s implementation of the Compliance Plan and includes all of AccessCNY’s compliance activities.

² “Employees, contractors, and Board members” includes AccessCNY’s employees, Chief Executive Officer (“CEO”), senior administrators, managers, contractors, agents, subcontractors, independent contractors, corporate officers, and Board members who are affected by AccessCNY’s Compliance Risk Areas. “Compliance Risk Areas” are those areas of operation-affected by AccessCNY’s Compliance Program, as set forth in its Compliance Plan.

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 AccessCNY, or of another employee, Board member, or contractor.
3. The protections of this Policy do **not** apply to:
 - a. Intentional untruthful allegations of wrongdoing;
 - b. Allegations whose nature or frequency indicate an intent to harass or embarrass AccessCNY or any employees, Board members, or contractors; or
 - c. 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.

Employees, Board members, and contractors have a duty to report actions that they believe in good faith to be an actual or suspected Compliance Issue. See [Self Disclosures Policy](#). Employees, Board members, and contractors have a variety of reporting options; however, they are encouraged to take advantage of internal reporting mechanisms. These include reports to the Corporate Compliance Officer or Compliance Committee member, AccessCNY's [Compliance Hotline](#), or in the case of an employee, reports to the employee's supervisor or any supervisor.

2. Reporting to the Organization and Government.

While AccessCNY requires employees, Board members, and contractors to report Compliance Issues directly to AccessCNY, certain laws provide that individuals may also bring their concerns directly to the government. Any perceived retaliation or intimidation 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 if 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 the New York State Attorney General's Medicaid Fraud Control Unit ("MFCU"), the New York State Office of the Medicaid Inspector General ("OMIG"), or law enforcement, the disclosure is required during a legal proceeding, or when otherwise required by law or contract.

4. Statutory Protections.

In addition to the protections afforded to employees, Board members, and contractors under this Policy, the following New York State laws also protect employees from retaliatory action for good faith reporting.

a. New York State Labor Law, Section 740.

An employer may not take any retaliatory action against an employee if the employee discloses, or threatens to disclose, information about the employer's policies, practices, or activities to a regulatory, law enforcement, or other similar AccessCNY or public official.

Protected disclosures are those that assert that the employer is in violation of a law that creates a substantial and specific danger to the public health and safety, or which constitutes health care fraud under Penal Law § 177³ or Social Services Law § 145-b.⁴ The employee's disclosure

³ New York State Penal Law § 177 criminalizes knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions.

⁴ New York State Social Services Law § 145-b criminalizes submission of false statements or deliberate concealment

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. Employees are also protected from retaliatory action if the employee objects to, or refuses to participate in, any activity that is in violation of a law that creates a substantial and specific danger to the public health and safety or which constitutes health care fraud under Penal Law § 177 or Social Services Law § 145-b.

If an employer takes retaliatory action against the employee, the employee may sue in State court for reinstatement to the same, or an equivalent position, any back wages and benefits, and attorneys' fees. If the employer is a health care provider and the court finds that the employer's retaliatory action was in bad faith, the court may impose a civil penalty of \$10,000 on the employer.

b. New York State Labor Law, Section 741.

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

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

If an employer takes retaliatory action against the employee, the employee may sue in State court for reinstatement to the same, or an equivalent position, any back wages and benefits, and attorneys' fees. If the employer is a health care provider and the court finds that the employer's retaliatory action was in bad faith, the court may impose a civil penalty of \$10,000 on the employer.

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of material information in order to obtain public assistance, including Medicaid.