

False Claims Act Whistleblower Protections (Non-Retaliation)

PURPOSE:

To establish a culture of non-retaliation and non-retribution that promotes prevention, detection, and resolution of instances of conduct that does not comply with federal and state law, including False Claims Act, regulation, organizational policy, or Great River Health (GRH) Code of Conduct and to meet the requirements of the Deficit Reduction Act of 2005.

POLICY:

In accordance with state and federal laws, policies and Whistleblower provisions, GRH has implemented a compliance reporting process and a strict non-intimidation/non-retaliation policy to protect employees and others who report problems and concerns in good faith. Any form of retaliation, intimidation or retribution is prohibited.

It is the responsibility of workforce members to comply with and to report actual or suspected violations of law, regulation, organizational policy, or GRH Code of Conduct in accordance with this policy.

A. Federal False Claims Laws

1. Under the federal False Claims Act, any person or entity that knowingly submits a false or fraudulent claim for payment of United States Government funds, or knowingly retains an overpayment of such funds more than 60 days, is liable for significant penalties including up to three times the Government's damages and fines ranging from \$12,537 to \$25,076 per false claim. The federal False Claims Act applies to any federally funded program, including claims submitted by healthcare providers to Medicare or Medicaid.
 - a. One of the unique aspects of the federal False Claims Act is the "qui tam" provision (i.e., "whistleblower" provision). This provision allows a private person with knowledge of a false claim to bring a civil action on behalf of the United States Government to recover the funds paid by the Government as a result of the false claim.

- b. The federal False Claims Act also contains a provision that protects a whistleblower from retaliation by his or her employer. This applies to any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in his or her employment as a result of the employee's lawful acts in furtherance of a false claims action. The whistleblower may bring an action in the appropriate federal district court and is entitled to reinstatement with the same seniority status, two times the amount of back pay, interest on the back pay, and compensation for any special damages as a result of the discrimination, such as litigation costs and reasonable attorney's fees.
2. A similar federal law is the Program Fraud Civil Remedies Act of 1986 (the "PFCRA") which provides administrative remedies for knowingly submitting false claims and statements. A false claim or statement includes submitting a claim or making a written statement that is for services that were not provided, or that asserts a material fact that is false, or that omits a material fact. A violation of the PFCRA results in a maximum civil penalty of \$5,000 per claim plus an assessment of up to twice the amount of each false or fraudulent claim.

B. Iowa False Claims Act

1. Iowa's False Claims Act ("IFCA") is similar to the federal False Claims Act and imposes liability on persons or corporations who:
 - a. knowingly present, or cause to be presented, a false or fraudulent claim for payment or approval;
 - b. knowingly make, use or cause to be made or used, a false record or statement material to a false or fraudulent claim
 - c. conspire to commit a violation of the IFCA;
 - d. has possession, custody, or control of property or money used, or to be used, by the state and, intending to defraud the state, make or delivers the receipt without completely knowing that the information on the receipt is true;
 - e. knowingly make, use, or cause to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state, or knowingly conceals or knowingly and improperly avoid or decrease an obligation to pay or transmit money or property to the State. A violator may be ordered to pay up to three times the actual damages to the State, plus a fine in the amount authorized under the federal False Claims Act.
2. Civil action by the State or individual may be brought against a person who has violated the IFCA.
3. The IFCA contains a whistleblower protection provision that provides that any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee, contractor, or

agent or associated others in furtherance of an action under IFCA or other efforts to stop one or more violations of the IFCA. Such relief under IFCA's whistleblower protections include, but are not limited to, the following: reinstatement with the same seniority status that the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including punitive damages, litigation costs and reasonable attorneys' fees.

C. Iowa Medicaid Fraud Statute

1. Iowa law provides that a person who knowingly makes or causes to be made a false statement or misrepresentation of material fact or knowingly fails to disclose material facts in an application or claim for payment of services or merchandise rendered or purportedly rendered by a provider participating in the Iowa medical assistance program (Medicaid) commits a fraudulent practice.

Non-Retaliation

Retaliation or retribution against any person who in good faith for reporting an actual or suspected violation of law, regulation, Code of Conduct, policy, or procedure is strictly prohibited, regardless of whether or not, upon investigation, a violation is found to have occurred. Retaliation, itself, is a violation of the GRH Compliance Program, will not be tolerated, and must be reported immediately.

- A. Reports of retaliation or retribution will be investigated thoroughly and expeditiously. Any staff member who commits or condones any form of retaliation will be subject to discipline up to, and including, termination of employment, contract or medical staff privileges in alignment with GRH policies and Medical Staff bylaws.
- B. An employee who reports a matter involving his or her own misconduct or a violation of a law, regulation or policy will not be immune or otherwise protected from discipline. However, discipline shall not be increased because a party reported his or her own violation or misconduct. Prompt and complete disclosure of a violation may be considered as a mitigating factor in determining disciplinary action.
- C. A reporting party will not be afforded the protection of this non-retaliation/ non-retribution policy if his or her allegation of a violation was knowingly fabricated or was knowingly exaggerated or otherwise distorted to adversely affect another person or to protect the reporting party.

OPERATIONAL DEFINITIONS:

Adverse Action: Any action taken or threatened by a GRH workforce member that would negatively impact the terms and conditions of the Whistleblower's employment including but not limited to: continued employment, promotion, demotion, loss of status, or negative change in day-to-day responsibilities.

Good Faith Disclosure: Allegation of actual or suspected misconduct made with the belief in the truth of the disclosure based upon the known facts. Any allegations that prove not to be substantiated and have been made maliciously or with knowledge that they were false will be treated as a serious disciplinary offense.

Interference: Any attempt by a GRH workforce member to prevent an individual from reporting an allegation of misconduct or to influence the nature of the report.

Misconduct: Activity in violation of federal or state law or regulations, including the False Claims Act, the GRHS Code of Conduct, or other GRH policies or procedures.

Retaliation: Any adverse action or credible threat of an adverse action taken in response to a Whistleblower's good faith allegation of misconduct.

Workforce: Employees, medical staff members, students, volunteers, trainees, third party consultants, vendors, service providers, or other contractors whose conduct, in the performance of work for GRH is under the control of GRH, whether or not they are paid by GRH.

Whistleblower: Any person who in good faith reports actual or suspected misconduct.

PROCEDURE:

A. Reporting Process

1. All suspected or alleged cases of retaliation, retribution and/or harassment will be referred to the Chief Compliance Officer (CCO), who is responsible for the investigation of such matters. If the investigation shows that an adverse action has been taken against a GRH workforce member in retaliation for a good faith disclosure of information to GRH management or an appropriate government agency, the adverse action will be reversed and any individual involved in the prohibited behavior will be disciplined in accordance with GRH policies and procedures.
2. Filing a Report: Workforce members who want to report a problem under this policy should use the established procedures under the Reporting of Suspected Compliance Violations policy.

- a. In the event the alleged retaliatory action involves the CCO or the CCO has a conflict of interest, the complaint should be filed with General Counsel.
3. Initial report review and acknowledgement to Whistleblower: The CCO will investigate and respond to the Whistleblower within 10 business days. This initial review will only assess the nature and seriousness of the retaliatory action.

B. Resolving Allegations of Retaliation or Interference

1. Credible allegations will be investigated according to the following process:
 - a. The Chief Compliance Officer will initiate the investigative process and be responsible for coordinating the investigation.
 - b. All investigations of Whistleblower retaliation must be timely and in no case take longer than 180 days unless the Whistleblower agrees to an extension.
 - c. Confidentiality will be maintained to the extent possible.
 - d. The findings and conclusions of the investigation will be documented in a written report. The report will include a description of the investigative process, findings of fact, a list of individuals interviewed, an analysis of the evidence and recommendations. The report will be maintained by the Compliance Department according to the Record Retention policy.
 - e. The final determination as to whether or not retaliation or interference has occurred will be made by the Chief Compliance Officer in consultation with General Counsel and other executives as appropriate.

C. Sanctions for Retaliation or Interference in the Reporting Process

1. A workforce member may not use this policy as a defense against a disciplinary action if that action has been taken for legitimate reasons and in a manner that is consistent with GRH policies and procedures. Disciplinary action against an employee or medical staff member whose conduct or performance warrants such action will not be deemed a violation of this policy. Additionally, an individual who knowingly and intentionally makes false allegations of non-compliance will be subject to disciplinary measures, up to and including discharge, in accordance with GRH policies and procedures.
2. If it is determined that retaliation or interference has occurred, the CCO will recommend to the appropriate executive, remedies and sanctions to satisfy GRH's obligation to protect the Whistleblower. Remedies and sanctions will include disciplining and sanctioning the retaliator and may include dismissal if the retaliator's actions are considered serious in nature.