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References CORP-012

## Non-Retaliation and Non-Intimidation

### I. Policy Purpose

- a. It is the belief of ECMCC that positive Individual relations and morale can be best achieved and maintained in a working environment that promotes ongoing open communication between supervisors and employees. This includes open and candid discussions of Individual's problems and concerns. ECMCC further recognizes that one of the requirements of the US Sentencing Commission, "Guidelines for Organizations", is that an organization evidences a policy of non-retaliation/non-intimidation for employees, contractors, and agents who report violations of law, regulations, policies, ethics and the Code of Conduct. Additionally, the NYS Office of Medicaid Inspector General (OMIG) stipulates that every organization have a policy of non-retaliation and non-intimidation for the reporting of code of conduct, ethical violations or compliance matters.
- b. Accordingly, the purpose of this policy is to provide guidance to and protection for Individuals to express problems, concerns, and opinions without fear of Retaliation, Intimidation or reprisal. It affords certain protections to Individuals who participate in good faith in the ECMCC Compliance Program and report in good faith to appropriate leadership, an actual or suspected ethical or compliance concern, participate in an investigation, report instances of intimidation or retaliation, or report potential fraud, waste or abuse to the appropriate State or Federal entities. Such Individuals will not be subject to retaliation or intimidation by ECMCC. It also provides supervisors with appropriate guidelines for addressing problems and concerns raised by Individuals.
  - 1. *Note: Human Resources provide a similar procedure that also allows employees to express problems, concerns or opinions about conduct or performance issues (Harassment-8164644).*

## II. Definitions

- a. **Good Faith:** Information concerning potential wrongdoing is disclosed in "good faith" when the Individual making the disclosure reasonably believes such information to be true and reasonably believes that it constitutes potential wrongdoing. It also includes when an Individual reasonably believes activity is in violation of any law, rule or regulation or poses a substantial and specific danger to the public health or safety.
- b. **Individual:** Any current or former employees, without any explicit limitation in time, as well as vendors, Board Members, independent contractors or other agents or officers of ECMCC.
- c. **Intimidation:** Any act to manipulate an Individual or intentionally cause feelings of fear or inadequacy.
- d. **Retaliation:** Any adverse action against an Individual because of the Individual's good faith report of a compliance concern or participation in a compliance investigation. This also includes actions or threats to take actions that would discriminate against an employee or former employee or adversely impact a former employee's current or future employment; and contacting or threatening to contact immigration authorities.
- e. **Whistleblower:** Any Individual who in good faith discloses information concerning wrongdoing by another employee or concerning the business of ECMCC itself.
- f. **Wrongdoing:** Any unlawful activity, policy, or practice including but not limited to-alleged corruption, fraud, criminal or unethical activity, misconduct, waste, conflict of interest, sexual harassment, tax evasion, intentional reporting of false or misleading information, or abuse of authority engaged in by any employee, agent, officer or contractor that relates to ECMCC.

## III. Policy Statement

- a. It is ECMCC policy to take all necessary steps to refrain from intimidating, threatening, coercing, discriminating against or taking any other retaliatory action against any Individual for the exercise of any right under, or for participation in any process established by applicable law, regulation, or existing policies and procedures. (See also *Harassment Policy*.)
- b. Specifically, ECMCC shall not permit retaliation against Individuals for:
  - 1. Exercising any right under, or participating in, any process established by federal, state, Public Authority or local law, regulations, or policy;
    - a. In accordance with OSHA COVID-19 ETS, this includes an Individual's right to participate in the mitigation of the spread of COVID-19 in the workplace;
  - 2. Filing a complaint with ECMCC and/or the Department of Health and Human Services or other government agency relating to Wrongdoing;
  - 3. Testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing;
  - 4. Opposing in good faith any act or practice made unlawful by federal, state or local law, regulation, or policy, provided that the manner of the opposition is reasonable and does not itself violate law.
  - 5. Disclosing or threatening to disclose to a supervisor or public body an activity, policy

or practice that:

6. The Individual reasonably believes is in violation of any law, rule, or regulation, or
  7. The Individual reasonably believes poses a substantial and specific danger to the public health or safety.
- c. All ECMCC Individuals have the affirmative duty for promptly reporting actual, or potential wrongdoing, including an actual or potential violation of law, regulation, policy, procedure or the Code of Conduct.
  - d. An "open-door policy" shall be maintained at all levels of management for employees to report problems and concerns and shall be acted upon in an appropriate manner. If the problem is not satisfactorily resolved, the employee may proceed up the supervisory chain or higher level.
  - e. The "Compliance and HIPAA Hotline" is designed to permit any Individual to call, anonymously or in confidence, to report problems and concerns or to seek clarification of compliance related issues.
  - f. Individuals who, in good faith, report a potential violation of law, regulation, policy, procedure, Public Authority's Code of Ethics, the Code of Conduct, OSHA COVID-19 Emergency Temporary Standards (ETS) or other instances of potential Wrongdoing within ECMCC will not be subjected to Retaliation, retribution or Intimidation. No supervisor, manager or employee is permitted to engage in Retaliation, retribution or any form of Intimidation against an employee for reporting a compliance related concern, including, but not limited to reporting COVID-19 related hazard. Any supervisor, manager or employee who conducts or condones retribution, Retaliation, or Intimidation in any way will be subject to discipline, up to and including discharge. Individuals who, in good faith, report a potential violation of the above laws are protected by this policy, the Federal False Claims Act, the Whistleblower Protection Act, and numerous other various state and federal laws.
  - g. All necessary procedures will be followed to protect against any Retaliation toward any Individual for Whistleblowing and exercising their rights or participating in any process pursuant to internal policies, applicable law, and/or regulation.
  - h. Individuals cannot exempt themselves from the consequences of wrongdoing by reporting their own wrongdoing, although self-reporting may be taken into account in determining the appropriate course of action.

## IV. Procedure

- a. All managers and employees must understand that any incident where Retaliation or reprisal can be related to an Individual raising/reporting a problem, either at the organization level or through the Compliance program, will not be tolerated. Reports of this nature must be investigated thoroughly and expeditiously, with appropriate disciplinary actions taken, up to and including termination of employment.
- b. Responsibilities of employees:
  - i. Knowledge of misconduct, wrongdoing, unethical activities including actual or potential violations of law, regulation, policy, procedure, or the Code of Conduct must be immediately reported by workforce members to:
    1. Immediate supervisor,

2. Department manager,
  3. Corporate Compliance officer (716-898-6439),
  4. Compliance/HIPAA Anonymous hotline (1-855-222-0758), or
  5. Case Call.
- ii. Failure to report or concealing knowledge of a potential violation may result in administrative actions being taken, up to, and including termination.
  - iii. Report instances of Intimidation or Retaliation to the Compliance Officer.
- c. Supervisor/Manager Responsibilities
- i. All managers and supervisors must take aggressive measures to assure their staff that the organization truly encourages the reporting of problems and that employees will not "get into trouble" for doing so.
  - ii. All supervisors and managers must promote an "open door" attitude about employee problems and concerns at all times and receive all employee concerns, problems and opinions and explore with the employee suggestions for resolving the issue.
  - iii. Compliance must be informed of all concerns and problems raised by employees that fall within their area of responsibility.
  - iv. The confidentiality of employee concerns and problems must be respected and protected at all times, insofar as legal and practical, informing only those personnel who have a need to know.
- d. Compliance Responsibilities
- i. The AVP of Compliance will be responsible for the investigation and follow-up of any reported retaliation against an Individual, working closely with Human Resources.
  - ii. The AVP of Compliance will report the results of an investigation into suspected retaliation to the Senior Leadership, Compliance Committee, Board of Directors Compliance Committee, or, if deemed appropriate, COELIG or other applicable state or federal authorities.
  - iii. Compliance will be responsible to report potential fraud, waste or abuse to the appropriate State or Federal entities.

## Reference:

**NYS Labor Law § 741**

**NYS Labor Law § 740 updated 1/26/2022**

**ECMCC Compliance Program**

**Health Care Fraud Under Article 177 of the New York Penal Law**

**New York State Social Services Law § 145-b: False Statements**

**Federal False Claims Act, 31 USC § 3729 -3733**

**New York State False Claims Act, State Finance Law, Article 13 State Finance Law § 191**

**Part 521, Title 18 NYCRR**

**Civil Service Law Reform Act**

**Whistleblower Protection Enhancement Act-November 2012  
Executive Law §55(1)**

18 NYCRR §521-1.4(2)(vii)

**Occupational Safety and Health Act (OSH Act), Section 11(c) 29 U.S.C. §660(c)**

**Public Authorities Law §2986**

**29 CFR 1910, Subpart U**

ECMCC has developed these policies and procedures in conjunction with administrative and clinical departments. These documents were designed to aid the qualified health care team in making clinical decisions about patient care. These policies and procedures should not be construed as dictating exclusive courses of treatment and/or procedures. No health care team member should view these documents and their bibliographic references as a final authority on patient care. Variations from these policies and procedures may be warranted in actual practice based upon individual patient characteristics and clinical judgment in unique care circumstances.

**Approval Signatures**



Step Description	Approver	Date
	Sam Cloud: Chief Medical Officer	09/2023
	Lindy Nesbitt: Assistant VP Compliance & Senior Counsel	08/2023
	Lindy Nesbitt: Assistant VP Compliance & Senior Counsel	08/2023