Catholic Health	**CATHOLIC HEALTH** **Rockville Centre, New York** **ADMINISTRATIVE** **POLICY & PROCEDURE MANUAL**	Effective Date: 03/28/2023
		Review Date: March 2023
		Supersedes Issue of: September 24, 2007; May 23, 2005, June 7, 2016, August 8, 2019
	Title: Whistleblower Protection, Non-Intimidation and Non-Retaliation Policy	
	Distribution: All Department	
	Responsible Department: All Departments	

I. Background:

Catholic Health and its affiliated entities (collectively CH) adopts this CH Whistleblower Protection, Non-Intimidation and Non-Retaliation Policy (Policy) to support and implement our stated values of integrity in all business dealings and justice for all who are encountered, to enhance our commitment to compliance with all laws and regulations applicable to our organization, including false claims laws and regulations, and to promote ethical and lawful conduct. CH requires compliance with this Policy as part of its continuing effort to encourage openness and constructive criticism, and to promote integrity and honesty throughout the organization.

Employees play a vital role in protecting patients and the integrity of CH and have an obligation to raise concerns and issues to the appropriate parties. CH understands that employees may not report concerns if they feel that they will be subject to retaliation, retribution or harassment for reporting their concern(s). This CH Whistleblower Protection, Non-Intimidation and Non-Retaliation Policy enables individuals to report without fear of intimidation or retaliation, to raise concerns regarding suspected unethical and/or illegal conduct or practices on a confidential and, if desired, anonymous basis so that CH can investigate, address and correct inappropriate conduct and actions.

This Policy provides the mechanisms through which employees, physicians, contractors, agents and others can report any potential violation in good faith to those who can assist them, confidentially and without fear of intimidation or retaliation. In addition, CH has instituted various policies and procedures to promote compliance with all applicable Federal and State laws and regulations and to assist in preventing fraud, waste and abuse in government healthcare programs.

The reporting system described in this Whistleblower Protection, Non-Intimidation and Non-Retaliation Policy summarizes and is intended to supplement and amplify the reporting responsibilities set out in the CH Compliance Policy Statement.

II. Definitions:

Affiliated Entity: The term affiliated entity includes Good Samaritan University Hospital, Mercy Hospital, St. Catherine of Siena Hospital, St. Charles Hospital, St. Francis Hospital & Heart Center®, St. Joseph Hospital, Good Samaritan Nursing and Rehabilitation, St. Catherine of Siena Nursing & Rehabilitation, Our Lady of Consolation Nursing & Rehabilitation, Catholic Health Home Care,

Good Shepherd Hospice, CHS Physician Partner, P.C., CHS Physician Partners entities (ACO, IPA) and CHS Services, Inc., as well as any related organization that is included in the consolidated financial statements of the entities listed herein.

Corrective Action: The action taken or proposed to be taken by CH in response to a potential violation. Corrective action may include refunding of overpayments, development of new policies or procedures, amendment of existing policies or procedures, employee discipline, physician discipline, additional training or education and voluntary disclosure of the violation to government or other authorities.

False Claims Acts: Laws that prohibits a person or entity, such as a healthcare provider, from knowingly presenting or causing to be presented a false or fraudulent claim for payment or approval to Federal, New York State or local governments, and from knowingly making, using or causing to be made a false record or statement to get a false or fraudulent claim paid or approved by Federal, New York State or local governments. See Section V below for a detailed description of the Federal and New York State False Claims Acts, whistleblower protection and other relevant laws, regulations and remedies.

Good Faith: A belief in the truth of an alleged potential violation that is based upon facts. Any allegation made with reckless disregard or deliberate ignorance of factual matters is not made in good faith.

Knowing and Knowingly: The terms knowing and knowingly mean that a person, with respect to information (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

Potential Violation: Reported conduct that, if true, may (i) result in a determination that CH has received an overpayment from a third party payor or payors; or (ii) constitute a violation of the CH Compliance Policy Statement, CH policy or applicable laws, regulations or rules.

Material Potential Violation: A potential violation is a material potential violation if (i) over-payments, in the aggregate, total more than $1.0 million, or (ii) in the opinion of the CH Compliance Officer, an Entity Compliance Officer or the Physician Compliance Officer, the reported conduct would constitute a significant violation of the CH Compliance Policy Statement, CH policy or applicable laws, regulations or rules.

Retaliatory Actions: Any action, performed directly or through others, that is aimed at deterring a reasonable person from reporting any suspected wrongful or unlawful activity. This includes unfavorable employment actions taken as a payback or to penalize those who report a potential violation in good faith or against those who participate in the investigation of or any proceeding related to such reports. Retaliatory actions may include discharge, suspension, demotion, penalization, harassment, discrimination or other adverse employment actions in the terms and conditions of employment of the reporter or participant.

The Federal Program Fraud Civil Remedies Act: This Federal law is similar to the Federal False Claims Act and creates a penalty for submitting a false claim. Under this statute, a violation occurs when a false claim is submitted (not when it is paid), and investigations and recoveries are handled by Federal agencies, not the courts. See Section V below for a more detailed description.

Wrongdoing: Wrongful or unlawful activity that violates Federal or state law, CH policy and/or professional standards.

III. Policy:

CH prohibits intimidation or retaliatory actions against an individual or group who, in good faith, reports any actual or suspected wrongdoing that is illegal, fraudulent, in violation of any CH policy, professional standards or Federal, state, or local laws and regulations. All complaints reported will be taken seriously and investigate thoroughly.

CH will not intimidate or retaliate, or permit intimidation or retaliation, against employees, physicians, contractors, agents and others for:

- Filing a complaint or reporting a concern to CH (in keeping with the reporting procedures outlined below) or to any regulatory agency or legal authority;
- Testifying, assisting or participating in an investigation, compliance review, proceeding or hearing;
- Opposing, in good faith, any act or practice unlawful under Federal, state or local law, regulation or CH policy, provided that the manner of opposition is reasonable and does not itself violate law; or
- Exercising any right under or participating in any process established by Federal, state or local law, regulations or CH policy.

CH strictly prohibits intimidation, retaliation, discrimination, harassment or any other adverse action by management or any other person or group, either directly or indirectly, against any individual or group who reports a potential violation in good faith under the reporting system described both in this policy, other CH policies and in the CH Compliance Policy Statement. Anyone who believes that he or she or an employee, physician, contractor, agent or other person has been subjected to intimidation or retaliation for reporting a potential violation in good faith should report such conduct to anyone designated to receive reports under this CH Whistleblower Protection, Non-Intimidation and Non-Retaliation Policy.

CH also strictly prohibit intimidation, retaliation, discrimination, harassment or other adverse action against any person who participates, in any way, in the investigation of a potential violation.

Unless a judicial or other legal process compels otherwise, the identity of any person reporting a potential violation in good faith or a retaliatory action against a reporter or a participant in an investigation shall remain confidential and shall only be disclosed to those individuals with a need to know as determined by the reporting system described below. In addition, efforts to determine the

identity of an anonymous reporter may result in disciplinary action against those seeking disclosure of the information.

IV. The Reporting System:

It is the policy of CH to encourage prompt reporting, at the earliest reasonable opportunity, of any activity or conduct in violation of any CH policy or any Federal, state or local laws or regulations.

1. *Reporting Responsibility:*
   Employees, contractors, physicians, agents and others have a duty to report any actual or suspected violations or wrongdoing and to assist in investigation efforts. If you are aware of actual or suspected misconduct and you fail to report it, you will be subject to disciplinary action. However, any questions or reports made in good faith are protected activities, even if it turns out that the reported misconduct was appropriate or did not violate any law, regulation or CH policy. If an employee reports a concern regarding his or her own inappropriate or inadequate actions, reporting those concerns does not exempt him or her from the consequences of those actions.

   Examples of wrongdoing may include, but are not limited to:

   - financial wrongdoing, including fraud or suspected fraud;
   - internal corporate financial concerns, such as deliberate omissions or misstatements in preparing, evaluating, reviewing or auditing of financial statements or violation of generally accepted accounting principles;
   - Federal and state healthcare programs or other third-party payor concerns, such as inaccuracies in Medicare cost reports or questionable billing or coding activities;
   - mistreatment, abuse, misappropriation of property or neglect of a patient, resident or individual;
   - any form of harassment on the basis of a protected characteristic, including sexual, age, color, disability, race, national origin, religion, genetic information and sex/gender harassment;
   - HIPAA privacy and security violations;
   - falsification of records including but are not limited to medical records, employment applications or time cards;
   - dangers to health and safety of an employee, patient, resident or client, including environmental and worker safety issues;
   - criminal conduct of any kind related to patient, resident or individual's care;
   - favoritism or bias in contractual matters;

- research misconduct;

- any form of intimidation or retaliation against employees, contractors, agents or others reporting a potential violation in good faith;

- a cover-up involving any of the above; and

- any other good faith concern.

2. *Reporting Process:*

   a. Questions, concerns or other reports of potential violations or wrongdoing may be oral or written and may be delivered either:

      - personally;
      - through an anonymous reporting system set up by CH, such as the CH Compliance Helpline;
      - by anonymous letter; to the Entity Compliance Officer, Physician Compliance Officer or CH Compliance Officer; or
      - by any other practicable method.

      When a report is made personally, it is suggested that the reporter discuss his or her concern with an immediate supervisor. However, reports may be directed to administrative or managerial personnel, the CH Compliance Officer, the Physician Compliance Officer, or an Entity Compliance Officer or to any person or body in a position to address the reporter's particular concern.

      Non-compliance related matters pertaining to human resource and HIPAA issues should be reported to the appropriate Human Resources or Entity/CH Privacy or Security Officer, administrative or managerial personnel. If non-compliance related matters are reported to the CH, Physician Compliance Officer or Entity Compliance Officer, he/she shall direct the matter to the appropriate personnel.

   b. If the identity of the reporter is known, the reporter should be confidentially given the option of receiving a written acknowledgment, which shall contain the assurance of a timely and confidential investigation carried out in accordance with applicable policies and procedures. In order to maintain the anonymity of the reporter, no such acknowledgment shall be sent without his or her request.

   c. Any report of a potential violation received by any manager, department head or other supervisory personnel is to be promptly reported to the CH Compliance Officer, Physician Compliance Officer or the respective Entity Compliance Officer. The Compliance Officer shall take every report seriously and consider it objectively, thoroughly and fairly, bearing in mind that the reporter may have found it difficult to raise the issue. The Compliance Officer will enter the report in a log, and the contents of the log, along with the results of any investigation and any corrective action will be reported quarterly to the CH Compliance and

Audit Committee and the CH Compliance Officer, who will submit the quarterly report to the CH Board of Directors Compliance and Audit Committee.

d. Any report received by an Entity Compliance Officer or Physician Compliance Officer shall be reported to the CH Compliance Officer, who will assist and advise in any investigation. The Entity/Physician Compliance Officer shall contact the CH Compliance Officer prior to contacting System Legal Counsel.

e. All reports of potential violations or wrongdoing require the Compliance Officer to commence an investigation as soon as possible, but in no event later than thirty days from the date the Compliance Officer receives the report. If the report addresses improper billing, the Entity President/Chief Administrative Office (CAO) shall determine whether billing should be temporarily suspended.

3. *Investigation Process:*

a. Any compliance related investigations shall be conducted in an objective and thorough manner and will proceed as set forth in the CH Compliance Investigational Protocol Policy, provided, however, that where there is any risk or any perception of unfairness or partiality in the internal investigatory process, the CH Office of General Counsel may engage outside compliance counsel. All information related to the investigation shall be held in strict confidence and all related parties, as defined in the CH Conflict of Interest Policy, shall sign confidentiality statements in the form shown in the CH Compliance Policy Statement. Every effort will be made to preserve the attorney-client and work product privileges in connection with any investigation conducted under the direction of the CH Office of General Counsel or outside compliance counsel. . Detailed cautions related to preserving these privileges can be found in the CH Compliance Policy Statement. For other incidents related to non-compliance with CH policy, personnel will follow the applicable department-specific policies.

b. Whether involving CH or an Affiliated Entity, if an investigation indicates that a material potential violation has occurred, the recommended corrective action shall be reviewed by the CH Compliance and Audit Committee, and then shall be sent to the CH Board of Directors for final approval at its next regularly scheduled meeting.

4. *Supervisors/Managers:*
Supervisors, managers and above should:

- Promote an "open –door" attitude about work related issues and concerns.
- Review all concerns and problems.

5. *Violation Consequences:*
Anyone found to have intimidated or retaliated against any an individual will be subject to disciplinary action up to and including termination.

V. Federal and New York State False Claims Laws, Regulations and Remedies:

The following is a summary of the Federal and New York State False Claims Acts, the Federal Program Fraud Civil Remedies Act, and other relevant State laws.

1. *Federal and New York State False Claims Acts* (31 USC §§ 3729 – 3733; NY State Finance Law §§ 187 - 194)*:*

   Federal and New York State False Claims Acts provide, in pertinent part, that any person who (1) knowingly presents, or causes to be presented, to an officer or employee of the Federal, New York State and local governments or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Federal, New York State or local governments; (3) conspires to defraud the Federal, New York State or local governments by getting a false or fraudulent claim paid or approved by the Federal, New York State or local governments; or (4) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Federal, New York State or local governments, is liable to the Federal, New York State or local governments for a civil penalty of:

   Federal Government: not less than $13,508 and not more than $27,018, plus three times the amount of damages the Federal government sustained because of the act of that person. These amounts are adjusted annually for inflation.[1]

   New York State Government: not less than $6,000 and not more than $12,000, plus three times the amount of damages which the New York State government sustained because of the act of that person. In addition, the individual who filed the false claim may have to pay the government's legal fees.

   Local Government: three times the amount of damages which the local government sustained because of the act of that person.

   While both the Federal and New York State False Claims Acts impose liability only when the claimant acts knowingly, they do not require that the person submitting the claim have actual knowledge that the claim is false. A person who acts in reckless disregard or in deliberate ignorance of the truth or falsity of the information also can be found liable under these acts. An example may be a physician who submits a bill to a government healthcare program for medical services he/she knows have not been performed or provided.

   The False Claims Act also imposes liability on an individual who knowingly submits a false record in order to obtain payment from the government. An example of this includes a government contractor who submits records that he knows (or should know) are false and that indicate compliance with certain contractual or regulatory requirements.

   The third area of liability includes those instances in which someone obtains money from the government to which he may not be entitled, and then uses false statements or records in order to retain the money. An example of this so-called "reverse false claim" includes a hospital that

[1] *See* 88 Fed. Reg. 5776 (Jan. 30, 2023), Final Rule, "Civil Monetary Penalties Inflation Adjustments for 2023," at p. 5778, at Table 1 regarding DOJ penalties assessed under 31 USC § 3729(a) (False Claims Act Violations).

obtains interim payments from Medicare throughout the year, and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare program.

In addition to its substantive provisions, the Federal and New York State False Claims Acts provide that private parties may bring an action on behalf of the Federal, New York State or local governments. These private parties, known as '*qui tam* relators,' may share in a percentage of the proceeds from a False Claims Act action or settlement.

The Federal and New York State False Claims Act provide, with some exceptions, that when the government has intervened in the lawsuit, a *qui tam* relator shall receive at least 15 percent but not more than 25 percent of the proceeds of the False Claims Act action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the government does not intervene, the relator shall receive an amount that the court decides is reasonable which shall be not less than 25 percent or more than 30 percent of such amount.

Both the Federal and New York State False Claims Acts provide protection to *qui tam* relators who are discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the False Claims Act. Remedies include reinstatement with comparable seniority as the *qui tam* relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

2. *The Federal Program Fraud Civil Remedies Act of 1986 (31 USC* §§ 3801-3812, as amended and updated by the Federal Civil Penalties Inflation Adjustment Act of 2015 (28 USC § 2461) (collectively, PFCRA)*:*
   This Federal law makes it illegal for a person or entity to make, present or submit (or cause to be made, presented or submitted) a claim (*i.e.*, a request, demand or submission) for property, services, or money to an authority (*i.e.*, an executive department of the Federal Government such as the U.S. Department of Health and Human Services, which oversees Medicare and Medicaid programs) when the person or entity knows or has reason to know that the claim: (i) is false, fictitious or fraudulent; or (ii) includes or is supported by any written statement which asserts a material fact which is false, fictitious or fraudulent; or (iii) includes or is supported by any written statement which omits a material fact, is false, fictitious or fraudulent because of the omission and is a statement in which the person or entity has a duty to include such material fact; or (iv) is for the provision of items or services which the person or entity has not provided as claimed.

   In addition, it is illegal to make, present or submit (or cause to be made, presented, or submitted) a written statement (*i.e.*, a representation, certification, affirmation, document, record, or accounting or bookkeeping entry made with respect to a claim or to obtain the approval or payment of a claim) if the person or entity knows or has reason to know such statement: (i) asserts a material fact which is false, fictitious or fraudulent or (ii) omits a material fact making the statement false, fictitious or fraudulent because of the omission. Similar to the Federal False Claims Act, PFCRA broadly defines the terms knows or has reason to know as (1) having actual knowledge that the claim or statement is false, fictitious, or fraudulent; (2) acting in deliberate ignorance of the truth or falsity of the claim or statement; or (3) acting in reckless disregard of

the truth or falsity of the claim or statement. The law specifically provides that a specific intent to defraud is not required to prove that the law has been violated. PFCRA provides for civil penalties of $13,508[2] for each false claim paid by the government, and, in certain circumstances, an assessment of twice the amount of each claim.

In addition, if a written statement omits a material fact and is false, fictitious or fraudulent because of the omission and is a statement in which the person or entity has a duty to include such material fact and the statement contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, PFCRA provides for a penalty of $13,508[3]to be imposed for each such statement.

3. *Other Relevant New York State Laws:*
New York's false claims laws fall into two categories: civil and administrative; and criminal laws. Some apply to recipient false claims and some apply to provider false claims (both of which are described above). While most are specific to healthcare or Medicaid, some of the common law crimes apply to areas of interaction with the government. These are described below:

A. *Social Services Laws:*

1. §145-b - False Statements:
It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any Social Services program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device. The State or the local Social Services district may recover three times the amount incorrectly paid. In addition, the Department of Health may impose a civil penalty of up to $10,000 per violation. If repeat violations occur within five (5) years, a penalty up to $30,000 per violation may be imposed if they involve more serious violations of Medicaid rules, billing for services not rendered or providing excessive services.

2. §145-c - Sanctions:
If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the person's, the person's family's needs are not taken into account for six (6) months if a first offense, twelve (12) months if a second (or once if benefits received are between $1,000 and no more than $3,900) eighteen (18) months if a third (or once if a benefits received are over $3,900) and five years for four (4) or more offenses.

3. §145 - Penalties:
Any person, who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor.

---

[2] *See* 88 Fed. Reg. 5776 (Jan. 30, 2023), Final Rule, "Civil Monetary Penalties Inflation Adjustments for 2023," at p. 5778, Table 1, regarding DOJ penalties assessed under 31 USC §§ 3802(a)(1) and (2) (Program Fraud Civil Remedies Act, Violations involving False Claims (per claim)).

[3] *See* footnote 2 above.

4. § 366-b - Penalties for Fraudulent Practices:
   Any person who obtains or attempts to obtain, for himself or others, Medicaid, medical assistance by means of a false statement, concealment of material facts, impersonation or other fraudulent means is guilty of a Class A misdemeanor.

   Any person who, with intent to defraud, presents for payment any false or fraudulent claim for furnishing services, knowingly submits false information to obtain greater Medicaid compensation or knowingly submits false information in order to obtain authorization to provide items or services is guilty of a Class A misdemeanor.

B. Penal Laws:

1. Article 155 - Larceny:
   The crime of larceny applies to a person who, with intent to deprive another of his property, obtains, takes or withholds the property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud, or other similar behavior. It has been applied to Medicaid fraud cases.

   - § 155.30 -Fourth degree grand larceny involves property valued over $1,000. It is a Class E felony.

   - § 155.35 -Third degree grand larceny involves property valued over $3,000. It is a Class D felony.

   - §155.40 - Second degree grand larceny involves property valued over $50,000. It is a Class C felony.

   - § 155.42 - First degree grand larceny involves property valued over $1 million. It is a Cass B felony.

2. Article 175 - False Written Statements:
   Four crimes in this Article relate to filing false information or claims and have been applied in Medicaid fraud prosecutions:

   - §175.05 - Falsifying business records involves entering false information, omitting material information, obliterating, deleting or altering an enterprise's business records with the intent to defraud. It is a Class A misdemeanor.

   - §175.10 - Falsifying business records in the first degree includes the elements of the §175.05 offense and includes the intent to commit another crime or conceal its commission. It is a Class E felony.

- §175.30 - Offering a false instrument for filing in the second degree involves presenting a written instrument (including a claim for payment) to a public office knowing that it contains false information. It is a Class A misdemeanor.

- §175.35 - Offering a false instrument for filing in the first degree includes the elements of the second degree offense and must include an intent to defraud the state or a political subdivision. It is a Class E felony.

3. Penal Law Article 176, Insurance Fraud:
   Applies to claims for insurance payment, including Medicaid or other health insurance and contains six crimes.

   - § 176.10 - Insurance Fraud in the 5th degree involves intentionally filing a health insurance claim knowing that it is false. It is a Class A misdemeanor.

   - § 176.15 - Insurance fraud in the 4th degree is filing a false insurance claim for over $1,000. It is a Class E felony.

   - § 176.20 - Insurance fraud in the 3rd degree is filing a false insurance claim for over $3,000. It is a Class D felony.

   - § 176.25 - Insurance fraud in the 2nd degree is filing a false insurance claim for over $50,000. It is a Class C felony.

   - § 176.30 - Insurance fraud in the 1st degree is filing a false insurance claim for over $1 million. It is a Class B felony.

   - § 176.35 - Aggravated insurance fraud is committing insurance fraud more than once. It is a Class D felony.

4. Article 177 - Healthcare Fraud:
   Applies to claims for health insurance payment, including Medicaid, and contains five crimes:

   - § 177.05 - Healthcare fraud in the 5th degree is knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions. It is a Class A misdemeanor.

   - § 177.10 - Healthcare fraud in the 4th degree is filing false claims and annually receiving over $3,000 in aggregate. It is a Class E felony.

   - § 177.15 - Healthcare fraud in the 3rd degree is filing false claims and annually receiving over $10,000 in the aggregate. It is a Class D felony.

   - § 177.20 - Healthcare fraud in the 2nd degree is filing false claims and annually receiving over $50,000 in the aggregate. It is a Class C felony.

- § 177.25 - Healthcare fraud in the 1st degree is filing false claims and annually receiving over $1 million in the aggregate. It is a Class B felony.

C. *New York Labor Laws:*

1. Section 740:

An employer may not take any retaliatory action against an employee if the employee discloses or threatens to disclose to a supervisor information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official, that the employee reasonably believes is in violation of any law, rule or regulation; or the employee reasonably believes poses a substantial and specific danger to the public health or safety. 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 §177 (knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions). The protection against retaliatory action 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]

If an employer takes a retaliatory action against the employee, 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.[5]

---

[4] *See* New York State Department of Labor (NYSDOL) "Notice of Employee Rights, Protections, and Obligations" Under Labor Law Section 740," at p. 2, Section 3 (Application), accessed at Notice of Employee Rights, Protections, and Obligations LS740 (ny.gov).

[5] *See* NYSDOL, "Notice of Employee Rights, Protections, and Obligations Under Labor Law Section 740," at pp. 2-3, Section 5 (Relief), accessed at Notice of Employee Rights, Protections, and Obligations LS740 (ny.gov)

2. Section 741:
   A healthcare employer may not take any retaliatory action against an employee if the employee discloses certain information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that, in good faith, the employee believes constitute improper quality of patient care. The employee's disclosure is protected only if the employee first brought up 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 patient and the employee believes in good faith that reporting to a supervisor would not result in corrective action. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of $10,000 on the employer.