

## Non-retaliation and Non-intimidation Whistleblower Protection Policy

Policy Number: A030414073  
Effective Date: 4/14/2003  
Sponsoring Department: Compliance, HR  
Impacted Department(s): All Independent Health, and its affiliated organizations  
(Nova, Reliance Rx, PBD)

**Type of Policy:** ☒ Internal ☒ External

**Data Classification:** ☐ Confidential ☒ Restricted ☐ Public

### Applies to (Line of Business):

- ☒ Corporate (All)  
☐ State Products, if yes which plan(s): ☐ MediSource; ☐ MediSource Connect; ☐ Child Health Plus; ☐ Essential Plan  
☐ Medicare, if yes, which plan(s): ☐ MAPD; ☐ PDP; ☐ ISNP; ☐ CSNP  
☐ Commercial, if yes, which type: ☐ Large Group; ☐ Small Group; ☐ Individual  
☐ Self-Funded Services (*Refer to specific Summary Plan Descriptions (SPDs) to determine any pre-authorization or pre-certification requirements and coverage limitations. In the event of any conflict between this policy and the SPD of a Self-Funded Plan, the SPD shall supersede the policy.*)

### Excluded Products within the Selected Lines of Business (LOB)

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N/A

**Applicable to Vendors?** Yes ☒ No ☐

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### Purpose and Applicability:

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To prohibit **retaliatory** or intimidating acts against workforce members of Independent Health or its family of companies, who reasonably believe and in **good faith** fulfill their obligation to report known or suspected incidents of **wrong-doing** or **noncompliance** or participate in an organizational investigation pertaining to alleged violations of federal, state, or local laws, rules, regulations, executive orders, judicial or administrative decisions, or internal policies or procedures. The term “**Independent Health**” as used in this policy shall mean Independent Health Association, Inc., its affiliates, and subsidiaries (family of companies).

## Policy:

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It is the policy of Independent Health to foster an environment of open communication so that **workforce members** understand their obligations to report compliance concerns and understand that they are protected when they do so.

### **Non-Retaliation and Non-Intimidation:**

Independent Health will not retaliate, or engage in intimidation tactics, against any workforce member who reasonably believes and in good faith reports or discloses suspected wrong-doing or noncompliance or participates in/with an organizational investigation pertaining to alleged wrong-doing or noncompliance, or who assists appropriate authorities in investigating possible wrong-doing or noncompliance.

Independent Health will not retaliate against, or intimidate by threatening to retaliate against, any workforce member for disclosing or threatening to disclose to a supervisor or a public body any activity, policy or practice of Independent Health that violates a law and presents a substantial and specific danger to public health or safety or which constitutes healthcare fraud. Independent Health will not retaliate against, or intimidate by threatening to retaliate against, any workforce member who provides information to or testifies before any public body conducting an investigation, hearing, or inquiry. Independent Health will not retaliate against, or intimidate by threatening to retaliate against, any workforce member who objects to, or refuses to participate in, any such activity, policy, or practice in violation of a law, rule, or regulation.

Individuals are protected against **retaliation** for performing lawful acts under Federal, State, and local laws, including, but not limited to, the Health Insurance Portability and Accountability Act (HIPAA), the Federal False Claims Act, and the New York State False Claims Act. Federal and State law provide remedies for individuals who are retaliated against for reasonable good faith reporting of suspected wrongdoing or noncompliance as outlined below in the [‘Whistleblower Protections’](#) section of this policy.

### **Whistleblower Protections:**

Whistleblower protections apply if the workforce member has brought the issue to the attention of his or her supervisor, Human Resources or Compliance and has given the employer a reasonable opportunity to correct the activity, policy, or practice. However, a workforce member’s good faith effort to notify Independent Health is not required if there is:

- imminent and/or serious danger to the public health or safety;
- the workforce member reasonably believes reporting would result in a destruction of evidence or other concealment of the activity, policy, or practice;
- such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor;
- the workforce member reasonably believes that reporting would result in physical harm to themselves or any other person; or
- The workforce member reasonably believes Independent Health is already aware of the activity, policy or practice and will not correct such activity, policy, or practice.

Whistleblower protections are extended to workforce members whether or not they were acting within the scope of their job duties when the activity or incident was identified. Workforce members who actually or threaten to make a report, as outlined [above](#), based in good faith or a reasonable belief there has been a violation of law, rule, or regulation or that there is a potential for substantial and specific danger to the public health or safety are protected.

## **Reporting and Investigating Allegations of Wrongdoing:**

Independent Health workforce members are required to report/disclose known or suspected incidents of wrong-doing, **misconduct**, **ineligible persons** status, and noncompliance, with laws, rules, regulations, executive orders, judicial or administrative decisions, Independent Health policies, business processes, or Independent Health's Code of Conduct and Ethics. Incidents must be immediately reported/disclosed to the compliance officer, the third party facilitated anonymous and confidential Compliance Helpline (1-877-229-4916 or <https://reportit.net>), your manager and/or Human Resources Business Partner as appropriate, for a full investigation. See the Mechanisms for Reporting/Disclosing Noncompliance and Corrective Action Policy #A990801007 for more information on how to make a report. The report must be:

- Made in good faith with reasonable belief;
- Expressed in a manner that is not malicious; and
- Not made in violation of applicable law.

Individuals reporting/disclosing allegations of noncompliance and wrong-doing are expected to be truthful and cooperative in organizational investigations of the allegations. Although reports may be made anonymously and confidentially, Independent Health's ability to act on anonymous reports may be limited. When an individual wishes to provide their identity, individuals may be required to testify, assist, or participate in an investigation, compliance review, proceeding, or hearing related to a report of non-compliance or wrong-doing.

An individual who is determined to have knowingly made false accusations or given false information during an organizational investigation may be subject to disciplinary action, up to and including termination, in accordance with the Compliance, Privacy and Security Event Scoring Policy #A20140303001 and Corrective Action-Progressive Discipline Policy # A040628200.

Managers and Human Resource Business Partners shall provide information regarding reports of retaliation and intimidation to the Chief Compliance Officer for tracking and reporting to the board of directors.

## **Open-Door Standard:**

Independent Health's Compliance Department, Special Investigations Unit, Information Risk Office, Human Resources Department, and all managers/supervisors maintain an "open-door policy" to allow workforce members to report issues and concerns. Any person who receives a report of perceived wrong-doing or violation must notify the Chief Compliance Officer, the Compliance Hotline and/or Human Resources as appropriate, for a full investigation. Reports may also be made anonymously and confidentially, if so desired, by reporting to the third-party 24/7 anonymous and confidential Compliance Helpline: ReportIT (1-877-229-4916 or <https://reportit.net>).

## **Investigation of Retaliation or Intimidation Claims:**

Claims of retaliation or intimidation shall be investigated by the Compliance Department, with the assistance of Legal and Human Resources. Delayed reporting of retaliation or intimidation claims may impact Independent Health's ability to investigate such claims.

If after the investigation of a retaliation or intimidation claim a determination is made that the workforce member has experienced retaliation or intimidation, Independent Health will take appropriate corrective action at the direction of the Chief Compliance Officer and Executive Vice President of Human Resources.

Any workforce member who was retaliated against by an employer in violation of New York Labor Law Section 740 and 741 may bring a civil lawsuit in a New York State court against his/her employer within two years after the alleged retaliatory conduct. If the employee wins the lawsuit, a court may require the employer to: (1) stop the alleged violation of law, policy, or practice; (2) reinstate the employee to his or her prior employment position, an equivalent position, or front pay in lieu thereof; (3) reinstate the employee's benefits and seniority rights; (4) offer the employee full compensation for lost wages, benefits, and other remunerations; (5) pay the employee's reasonable costs, disbursements and attorney's fees; (6) pay a civil money penalty of an amount not to exceed \$10,000; and, or (7) the payment by the employer of punitive damages, if the violation was willful, malicious or wanton.

### **Enforcement:**

Any Independent Health workforce member who violates this policy is subject to disciplinary action, up to and including immediate termination of employment.

## **Definitions**

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**Associates:** includes all people employed or previously employed by Independent Health, its subsidiaries, or affiliated organizations (family of companies) in either a full-time, part-time or per diem status. ("Workers" in Workday)

**Adverse Action** is an action taken by an employer or their agent against a **workforce member** who makes a **good faith** report or who participates in an organization investigation. Adverse action(s) do not include disciplinary action(s) taken against a workforce member as a result of the workforce member's own violation(s) of laws, rules, regulations, executive orders, judicial or administrative decisions, or internal policies or procedures or negative comments in an otherwise positive or neutral evaluation or negative comments that are justified by a workforce member's poor work performance or history. These include actions or threats to take action that would adversely impact an employee's current or future employment and contracting or threats to contact immigration authorities. Examples of adverse actions include but are not limited to the threat of or actual execution of:

- Employment actions such as termination, demotion, suspension, refusal to hire, and denial of training and/or promotion;
- Actions affecting employment such as threats, unjustified negative performance appraisals, unjustified negative references, or increased surveillance;
- Discrimination or harassment;
- Bullying by intimidation or social isolation, which can occur directly or indirectly (e.g., email);
- Creating a hostile and/or intimidating or offensive work environment; and
- Any other actions that are likely to deter a reasonable workforce member from reporting illegal conditions, violations of laws, rules, regulations or policies, procedures and/or cooperating in/with an organizational investigation.

**Contingent workers:** are external resources, not employed by Independent Health Association, its subsidiaries or affiliated organizations (family of companies) which include: Temporaries (including interns), Consultants, independent Contractors, Vendors and Board Members.

**Good faith** means having a belief in the truth of one's allegation or testimony that a reasonable **workforce member** in the same position could have had, based on the information known to the workforce member at the time.

**Independent Health** means Independent Health Association, Inc., its affiliates, and subsidiaries (family of companies).

**Ineligible Person** means an individual or entity who: (a) is currently excluded from participation in any Federal health care program or (b) has been convicted of a criminal offense that falls within the scope of 42 U.S.C. § 1320a-7(a) (mandatory exclusion) but has not yet been excluded from participation in any Federal health care program

**Misconduct** means conduct evidencing a disregard of the employer's interest as is found in deliberate violations or disregard of the standards of behavior which the employer has the right to expect from his employees.

**Noncompliance** means the failure or refusal to comply, to conform or adapt one's actions to a law, rule, regulation, or policy or procedure.

**Retaliatory action/retaliation** means any **adverse action** or threat to take adverse action taken against **workforce members** who perform services on behalf of **Independent Health** and its family of companies because the individual has, in **good faith**, reported **wrong-doing**, or has in good faith, cooperated in/with an organizational investigation.

**Workforce Member** means Independent Health's **associate and contingent workers**, as defined above, including temporaries, consultants, officers, directors, vendors, volunteers, subcontractors, business partners, business associates, board members, trainees and any other individuals contracted to perform services on behalf of Independent Health, its subsidiaries or affiliates or whose work is under Independent Health's direct control, whether or not they are paid.

**Wrong-doing** means the departure from what is ethically acceptable. Examples of wrong-doing include but are not limited to:

- Illegal or fraudulent activity;
- Financial misstatements, or accounting or auditing irregularities;
- Conflicts of interest, or dishonest or unethical conduct;
- Violation of the Code of Conduct and Ethics; and
- Violations of federal or state laws, rules, regulations and/or policies or procedures.

## References

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### Related Policies, Processes and Other Documents

- Mechanisms for Reporting/Disclosing Noncompliance and Corrective Action Policy #A990801007
- Compliance Privacy and Security Event Scoring Policy #A20140303001
- Corrective Action-Progressive Discipline Policy # A040628200
- Reporting of Privacy and Security Complaints, Observations or Events Policy #A030414115
- Fraud Laws and Deficit Reduction Act Notice Policy # M111103166
- Fraud Prevention and Reporting Policy #A990901029
- Conflict of Interest Reporting Policy #A991018002
- Compliance Program Evaluation Policy #A060301229
- Associate Status Policy #A20150407023
- Independent Health's Code of Conduct and Ethics
- Independent Health's Associate Handbook
- Ethics Committee Charter
- Associate Attestation
- Contingent Attestation

### Regulatory References

- 42 U.S.C. §§ 1320a-7, 1320a-7a, 1320a-7b(b)
- 45 C.F.R. §164.530 (g)
- 45 C.F.R. §164.501
- 42 C.F.R. § 422.326
- 42 C.F.R. § 423.360
- [42 C.F.R. §§ 422.503\(b\)\(4\)\(vi\)\(A\)\(7\)](#)
- [42 C.F.R. §§ 423.504 \(b\)\(4\)\(vi\)\(A\)\(7\)](#)
- NY Insurance Law Section 409

- NY Labor Law Section 740
- NY Labor Law Section 741
- NYS Senate Bill S4394A
- NYS Social Services Law § 363-d
- 11 NYCRR 86 (Regulation 95)
- [United States Federal Sentencing Commission Guidelines, Manual, Chapter 8, §B2.1\(b\)\(5\)\(c\)](#)
- 18 NYCRR 521.3(c)(8)
- NPCL § 715-b
- Medicare Prescription Drug Manual Chapter 9, Section 50.1
- Medicare Managed Care Manual Chapter 21, Section 50.1
- [NYS 2020 Budget - S7506B Part QQ §2.2\(h\) and \(h\)\(7\)](#)

## Version Control

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Sponsored By:

Name sponsor: Nicole Britton

Title of sponsor: VP-Chief Compliance Officer

Signature of sponsor:



Revision Date	Owner	Notes
9/19/2002	Compliance	Reviewed, not revised
8/5/2004	Compliance	Reviewed
6/5/2006	Compliance	Reviewed
6/22/2007	Compliance	Reviewed
11/18/2008	Compliance	Reviewed
3/6/2010	Compliance	Reviewed
12/21/2010	Compliance	Reviewed
4/1/2013	Compliance	Reviewed
3/3/2015	D. Odrzywolski	Revised, Title Updated
3/1/2016	D. Odrzywolski	Reviewed
1/1/2017	D. Odrzywolski	Reviewed, Minor Changes
1/1/2018	D. Odrzywolski	Reviewed, Minor Changes
1/1/2019	N. Britton	Reviewed, updated who a Whistleblower may report to
1/1/2020	N. Britton	Updated definition of workforce members
1/1/2021	N. Britton	Reviewed, Minor Formatting Changes
1/1/2022	N. Britton	Reviewed, Minor Revisions
2/1/2022	N. Britton	Updated for new NYS Labor Law Amendment.
1/1/2023	N. Britton	Reviewed, Minor Revisions
1/1/2024	N. Britton	Reviewed, Minor language updates to reporting section and definitions.

1/1/2025	N. Britton	Reviewed
3/1/2025	N. Britton	Added disclosure and ineligible person language and updated policy sponsor