

<b>Topic:</b> Whistleblowers, Non-intimidation and Non-retaliation	<b>Department:</b> Entire agency
<b>Original effective date:</b> 7/1/14	<b>Last revision date:</b> 10/23/24
<b>Owner:</b> VP for Quality and Compliance	<b>Frequency of reviews:</b> Annual
<b>Internal/Regulatory Reference(s) (all that apply):</b> 18 NYCRR 521.3(c)(8); NYS SSL 636-D(2)(h); NYS Labor Law (LL) 740; 18 NYCRR 521-1.4 (a)(2)(vii)	
<b>Related documents/Links:</b> Please see references within the document	

**Policy:** It is the policy of The Arc of Monroe that business, administrative and support functions promote personal and organizational outcomes

**Additional Information:** This policy applies to all persons who are affected by the agency’s risk areas (to the degree that they are so affected) including our employees, the CEO and other senior management, managers, contractors, agents, subcontractors, independent contractors, students, interns, volunteers, vendors consistent with the “Vendor Management Policy,” the Board of Directors, and Board committees; as outlined in this policy, hereafter referred to as “affected parties.” Where indicated, this policy also applies to the people we support specific to them reporting concerns.

Each affected party has a responsibility to report any activity by any employee, former employee, officer, Board member, colleague, clinician, independent contractor, volunteer, student or intern that appears to be illegal, fraudulent, or in violation of any:

- Federal, state or local statute or ordinance
- Executive order
- Rule or regulation promulgated pursuant to the above
- Judicial or administrative decision, ruling or orders; OR
- Activity, policy or practice of The Arc of Monroe.

We encourage a culture in which all individuals feel free to report behaviors or actions which they believe should be reported in good faith.

The Arc has an open door policy. Reports may be made anonymously or confidentially by any affected party or person we support without fear of retaliation or retribution, regardless of whom they are reported to. Please cross reference the policy, “Non-compliance detection and response, and confidential communications” for more information. The Arc will take all necessary steps, to the extent possible within the law, to preserve the confidentiality of the reporter’s identity. The confidentiality of persons reporting compliance issues shall be maintained unless the matter is subject to a disciplinary proceeding, referred to, or under investigation by the NYS Medicaid Fraud Control Unit (MFCU), the NYS Office of Medicaid Inspector General (OMIG) or law enforcement, or disclosure is required during a legal proceeding. In these circumstances, such persons shall be protected under this policy (meaning they cannot be intimidated or retaliated against as outlined in this policy).

Federal and state regulations make it a crime to intimidate, discharge, demote, suspend, threaten, harass, or in any other manner discriminate or take retaliatory action against an employee, former employee, officer, Board member, Board committee member, volunteer, contractor, whether or not it is within the scope of the staff’s job duties, who in good faith has:

- Reported something, including a compliance concern that they reasonably believe is really happening, to any appropriate personnel, parties or officials
- Investigated, participated in or cooperated with an agency investigation
- Conducted audits, self-evaluations, or remedial actions – regardless of the findings
- Reported instances of intimidation or retaliation; or
- Reported potential fraud, waste or abuse to the appropriate state or federal entities.

In addition, The Arc of Monroe may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any individual for the exercise of HIPAA Privacy rights or the filing of a HIPAA-related complaint.

“Retaliatory action” is defined as an adverse action taken by an employer or their agent to discharge, threaten, penalize, or in any other manner discriminate against any employee or former employee exercising his/her/their rights under NYS LL 740, including:

- adverse employment actions or threats to take such adverse employment actions against an employee in the terms of conditions of employment including but not limited to discharge, suspension, or demotion;
- (ii) actions or threats to take such actions that would adversely impact a former employee's current or future employment; or
- (iii) threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member, as defined in subdivision 2 of section 459-a of the social services law, to a federal, state, or local agency.

In addition to reporting internally, any affected party or person we support has the right to report their concerns to any government (public) entity or agency including, but not limited to: NYS Office of Medicaid Inspector General (OMIG), NYS Attorney General (AG), NYS Medicaid Fraud Control Unit (MFCU), NYS Department of Health (DOH), The Office for People with Developmental Disabilities (OPWDD), the Federal or State Department of Labor (DOL), The Office of Inspector General (OIG), or the US Attorney's office.

Apart from the exceptions listed below, it is an expectation that staff first share concerns with The Arc of Monroe and afford it the opportunity to correct the activity, policy or practice before reporting to a governmental agency. Failure to do so may result in the agency taking supervisory or disciplinary actions.

- (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.

We would hope that the people we support would also voice their concerns to us first before going to an outside entity.

For the purposes of this policy, “good faith” means that the person reporting the concern believes it to be true and accurate, to the best of their knowledge.

Please cross reference the policy, “Non-compliance detection and response, and confidential communications” for additional information and guidance on how to report concerns.

<b>Procedure</b>	
<b>Task:</b>	<b>Responsible party:</b>
<b>General Guidelines:</b>	
1. All affected parties have an obligation to refuse to participate in any wrongful course of action and to report any such actions observed, witnessed, or discovered. This includes illegal or non-compliant activity, or activity that is contrary to agency policy or its code of conduct. If they feel that they are being pressured or coerced to do so, they should report this as soon as possible.	Affected parties
2. Affected parties may share their concerns with their supervisor (or primary agency contact for outside parties) or any agency director, senior director, vice presidents, the VP for Quality and Compliance, CEO, COO, CFO, or CHRO, consistent with existing policy.	Affected parties
3. Internally, the people we support may share their concerns with the staff that support them, the manager, director or senior director in their program(s), any agency vice president including the VP for Quality and Compliance, the CEO, COO, CFO or CHRO.	People we support
4. Concerns may also be reported to any government (public) agency or entity as noted consistent with the guidance in the “Additional Information” section above.	Affected parties; People we support
5. Except as indicated above, affected parties are protected from intimidation or retaliation if, in good faith, they: *Report something they reasonably believe is really happening to any appropriate parties or officials *Investigate, participate in or cooperate with an agency investigation *Conduct audits, self-evaluations, or remedial actions – regardless of the findings  This includes intimidation or retaliation between coworkers.	Affected parties
6. If intimidation or retaliation is proven, disciplinary actions up to and including termination of employment or separation from the agency will result.	HR, Management
7. If a staff person reports illegal or non-compliant behavior that they were a part of, they may receive discipline for their participation in the behavior but not for reporting the concern. For affected parties, there may be consequences for their participation in the behavior, but not for reporting the concern.	HR, Management

8. Making a false report with the purpose of harming, intimidating or retaliating against a colleague (as in a quid pro quo) will not be tolerated. If proven, the person(s) responsible will be subject to disciplinary actions up to and including termination of employment or separation from the agency.	HR, Management
<b>Manager Responsibilities:</b>	
1. Managers have a responsibility to support, within their programs and the agency as a whole, a culture of openness and safety where affected parties and the people we support can raise concerns without perceived fear of retaliation or intimidation.	Managers
2. Managers are obligated to actively respond to reported concerns, including any that allege retaliation or intimidation as defined in this policy, seeking support from HR, their leadership or the VP for Quality and Compliance as appropriate.	Managers
<b>VP for Quality and Compliance:</b>	
1. The VP for Quality and Compliance acts as the agency's Compliance Officer, as required by NYS law.	VP for Quality and Compliance
2. Has primary responsibility for administering the agency's compliance program, and related policies and procedures.	VP for Quality and Compliance
3. Acts as a resource for agency staff, managers, and leadership, supporting an environment and culture conducive to staff feeling free to report concerns.	VP for Quality and Compliance

**Document revision record:**

Revision Date	Release Date	Reason for change	Approver
2/11/20	2/11/20	Transferred to new procedural format and updated titles	VPQC
9/29/21	10/8/21	Specifically stated that complaints can be made to any government entity; added "in good faith" to additional information	ICC
2/3/22	3/4/22	Added recent revisions to NYS Labor Law 740	ICC
9/27/22	10/13/22	Stated clearly expectation to report internally and consequences for not doing so; made clearer reference to reporting to governmental agencies in general guidelines #3	ICC
3/15/23	3/15/23	Added language specific to exceptions where confidentiality may not be maintained and clarified that reporters could not be intimidated or retaliated against as outlined in this policy; added specific language related to non-retaliation/non-intimidation instances per 18 NYCRR 521; specified whom this policy applies to	ICC
3/22/23	3/23/23	Added specific language in regards to the people we support and how this policy applies to them; added "non-intimidation and non-retaliation" to the policy title; added link to non-compliance detection and response policy	ICC
4/12/23	4/28/23	Added a statement regarding non-retaliation related to HIPAA	ICC

The Arc of Monroe

10/30/23	10/30/23	Spelled out acronyms; Added clause to report if feeling pressured or coerced; added "separation from the agency" as possible disciplinary action for non-employees; corrected typos	ICC
9/26/24	10/23/24	Added references to Board committees where appropriate and some clarifying language	ICC