

SAN MATEO COUNTY HEALTH SYSTEM  
BEHAVIORAL HEALTH & RECOVERY SERVICES

DATE: August 29, 2016

BHRS POLICY: 16-05

SUBJECT: Non-Retaliation and Non-Intimidation for Reporting Compliance Concerns

AUTHORITY: 42 CFR (438.608) Managed Care Regulations, Program Integrity.  
Contracts with Department of Health Care Services for: Mental Health, SUDS, and DMC.  
Center for Medicaid & Medicare (Chapter 21 - Compliance Program Guidelines and Prescription Drug Benefit Manual Chapter 9 - Compliance Program Guidelines)  
BHRS Compliance Program

SUPERSEDES: New Policy

PURPOSE:

- To establish a system through which employees and contractors can report compliance concerns including those activities thought to be illegal or which violate Behavioral Health & Recovery Services' (BHRS) Standards and Code of Conduct without fear of retaliation.
- Provide guidelines for the conduct of investigations into reported concerns.
- Affirm that BHRS does not tolerate any form of retaliation or intimidation in response to good faith reports of compliance concerns and encourages an environment in which compliance concerns are addressed promptly and appropriately.

SCOPE:

BHRS strives to establish a culture that detects and prevents fraud, waste and abuse in our administration of federal, state, and county funded health care programs. BHRS has established a process through which employees can report their concerns to management. Management must take all complaints seriously and take action in a timely manner. All reports will be handled in as confidential a manner as practicable and allowed by law. No employee will be punished for making a report in good faith. CMS (Center for Medicaid & Medicare), DMC (Drug Medi-Cal), Medi-Cal, and DHCS (Department of Health Care Services) guidelines on implementing a comprehensive compliance plan require that BHRS adopt, publicize, and enforce a zero tolerance policy for intimidation and retaliation against any employee or

contractor who participates in BHRS's Compliance Program in good faith by, including but not limited to reporting potential issues, investigating issues, conducting self-evaluations, audits and remedial actions, and reporting to appropriate officials.

#### Responsibility and Authority:

The Compliance Officer has primary responsibility for ensuring compliance with the procedures outlined below. Directors and managers are also responsible for the dissemination and application of this policy in their departments. All participants in BHRS's Compliance Program, including but not limited to BHRS employees and contractors, are also responsible to help ensure compliance.

#### Definitions:

Contractor means any vendor, FDR, or other BHRS subcontracted individual or entity.

#### POLICY:

##### Reporting and Investigation of Compliance Concerns

The Compliance Officer has the responsibility for directing all investigations. After investigation, if the allegation appears to be a criminal violation of law, the Compliance Officer in consultation with the Compliance and Delegation Oversight Committee, BHRS Director, and county counsel, others as appropriate, must determine whether there is sufficient evidence to support referral to a duly authorized law enforcement agency and/or licensing boards.

#### Responsibility to Report:

Every employee, contractor, and other member of the BHRS workforce has the responsibility to report compliance concerns to his/her immediate supervisor, manager, or division director. If an employee is uncomfortable raising a concern to their supervisor or if a concern has already been raised and not addressed the employee can use any of the following reporting options.

The Compliance Hotline: This is an anonymous way to report concerns and is available 24 hours a day 7 days a week. The number is 1-650-573-2695.

The Compliance Officer: Reports can be made to the Compliance Officer by email, by telephone, or in person: Scott Gruendl, MPA, Assistant Director, [sgruendl@smcgov.org](mailto:sgruendl@smcgov.org), (650) 573-2491.

#### Management Responsibilities:

- Supervisors shall maintain an 'open door' policy to support and encourage employee reporting of compliance related issues or concerns.
- Supervisors shall ensure that reports are handled as confidentially as possible.

- Supervisors shall provide the employee who is reporting the compliance issue with information regarding expectations of a timely response, confidentiality, non-retaliation, and progress reports.
- Supervisors should determine which reports involve compliance issues and inform the Compliance Officer who will document and track reports.
- The Compliance Officer shall coordinate the prompt review and investigation of all reports and ensure follow-up on the resolution of cases. Reports that are referred to a manager for investigation by the Compliance Officer should be placed on high priority.
- The Compliance Officer shall report findings to the Compliance and Delegation Oversight Committee which shall determine corrective and other action if reported violations are found to be true.

#### Action on Reports:

- All investigations are initiated within 3 business days of the initial report.
- All reports received by or communicated to the Compliance Officer are documented for tracking purposes.
- The Compliance Officer or the Compliance and Delegation Oversight Committee determine if the allegations have a basis in fact, what recommendations to make to the BHRS Director to discipline the violator, and what corrective action is needed to prevent similar acts or conduct.
- Managers or any employee charged with investigation of wrongdoing may have to review pertinent documents and interview other members of staff and at all times must ensure protection of the confidentiality of the sources of information to the extent permitted by law.
- BHRS management may consult and involve legal counsel as appropriate. Legal counsel will report to the Compliance and Delegation Oversight Committee or BHRS Director as appropriate unless the investigation involves the BHRS Director, in which case counsel will report to the Commission.
- BHRS staff members who are interviewed during the course of an investigation may request to have their own union representation, private attorney, or counsel present if they believe the results of the investigation may result in disciplinary action. If an employee makes such a request they will follow the guidelines set forth in their unions MOU in which to secure representation. If the employee has not secured representation and not provided a statement within this time frame, the investigation will continue without the employee's statement.
- The interviewer shall conduct themselves in accordance with this policy. The interviewer shall not provide any subjective commentary on the interviewee's story, actions or potential outcome of the investigation.
- Upon the conclusion of an interview, the interviewer organizes the facts into a written report.
- Investigations must be completed in no more than 60 days, or as stated in accordance with their MOU.
- All documents relating to reports and any actions, investigations and recommendations based on such reports are kept in a safe place by the Compliance Officer and protected from unauthorized access.

- The Compliance Officer has the responsibility to ensure that any matter requiring external reporting to regulatory or law enforcement agencies is properly disclosed. Any such issue will be brought to the attention of the Compliance and Delegation Oversight Committee by the Compliance Officer and the committee will make a recommendation to the BHRS Director.

### Non-Retaliation & Non-Intimidation

No staff member will intimidate any employee or contractor to persuade, deter or prohibit an individual from participating in BHRS's Compliance Program, nor impede or otherwise delay an individual's participation in the Compliance Program.

No staff member will retaliate against any "reporting" individual who:

- Makes a verbal or written report or complaint in relation to a compliance issue.
- Provides information to an investigation or testifies against the alleged offending individual or objects to or refuses to participate in an activity he/she believes is in violation of federal or state law.
- Is involved in any compliance review; or Discloses or threatens to disclose information about a situation he/she feels is inappropriate, or potentially illegal.

Retaliation occurs when an individual:

- Engages in a protected activity, and Suffers an adverse employment action, and
- There is a causal connection between the protected activity and the adverse employment action.
- In the absence of a causal connection between the protected activity and the adverse action, retaliation does not exist. For example, if a manager or supervisor disciplines an employee on the basis of the employee's job performance, that would not amount to retaliation. However, if a manager or supervisor disciplines an employee simply because the employee has reported compliance concerns, that discipline could be retaliatory.

The Compliance Officer, and if appropriate the Compliance and Delegation Oversight Committee, will investigate any report of alleged retaliation or intimidation. The Compliance Officer will report to the Compliance and Delegation Oversight Committee the findings of any inquiry, and if the retaliation allegations are found to be true the Committee will make recommendations of appropriate disciplinary action to the BHRS Director.

Any employee of BHRS who intimidates an individual or retaliates against a reporting individual may be subject to discipline up to and including termination.

Any employee who has been disciplined by his or her supervisor and who thereafter intimidates any other employee in connection with or as a result of that discipline will be subject to further discipline up to and including termination.

Individuals who self-report are not insulated from responsibility for their conduct. However, prompt and forthright disclosure of an error by an employee, even if the error constitutes inappropriate or inadequate performance, will be considered a mitigating factor on the part of the employee.

Approved: \_\_\_\_\_  
(Signature on File)

Scott Gruendl, MPA, Compliance Officer

Approved: \_\_\_\_\_  
(Signature on File)

Stephen Kaplan, LCSW, BHRS Director

Next Review Due: August 2017

Reviewed by: \_\_\_\_\_

Scott Gruendl, MPA, Compliance Officer (Date)