



Policy: HH.3012
Title: **Non-Retaliation for Reporting Violations**
Department: Office of Compliance
Section: Regulatory Affairs & Compliance

CEO Approval: /s/ Michael Hunn 07/25/2024

Effective Date: 04/01/2003

Revised Date: 07/01/2024

Applicable to: ☒ Medi-Cal
☒ OneCare
☒ PACE
☐ Administrative

I. PURPOSE

This policy reinforces CalOptima Health's commitment to compliance with applicable laws, regulations, and policies and its policy against intimidation, harassment, discrimination, or any other retaliatory action against individuals who report, or seek guidance related to, suspected or actual non-compliance with such laws and regulations, or unethical conduct.

II. POLICY

- A. CalOptima Health, its Governing Body members, Employees, Contractors, and First Tier, Downstream, and Related Entities (FDRs) shall not threaten, intimidate, coerce, harass, discriminate, or otherwise Retaliate against individuals who report, or file complaints related to, suspected or actual non-compliance with applicable laws, regulations, or policies (including, without limitation, Health Insurance Portability and Accountability Act (HIPAA), the False Claims Act, and other laws) and/or related to unethical conduct in accordance with this policy and CalOptima Health Policy GA.8027: Harassment, Discrimination and Retaliation Prevention.
- B. CalOptima Health, its Governing Body members, Employees, Contractors, and FDRs shall not be subject to retaliatory action or discrimination by CalOptima Health for reporting, in good faith, suspected or actual non-compliance or unethical conduct, or for participating in any investigation.
- C. CalOptima Health, its Governing Body members, Employees, Contractors, and FDRs shall not Retaliate for:
 - 1. The exercise of any right under, or participating in, any process established by federal, state, or local law, regulations, or policy, including but not limited to filing a Complaint with CalOptima Health and/or the United States Department of Health and Human Services relating to privacy;
 - 2. Testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing; or
 - 3. Opposing any act or practice made unlawful by law, provided that the person has a good faith belief that the practice is unlawful, and the manner of the opposition is reasonable and does not involve a Disclosure of Protected Health Information (PHI) in violation of law and policies.

- D. CalOptima Health, its Governing Body members, Employees, Contractors, and FDRs shall immediately report any action believed to be Retaliation or discrimination against any individual for reporting suspected or actual non-compliance with laws, unethical conduct, or wrongdoing, or for participating in any investigation, in accordance with Section III.B. of this Policy.
- E. CalOptima Health shall provide guidance, in accordance with CalOptima Health Policy HH.2018: Compliance and Ethics Hotline, on how Employees, Contractors, Governing Body members, FDRs, or Members may anonymously report potential non-compliance and Fraud, Waste, and Abuse (FWA) issues to the extent permitted by applicable law and circumstances. Guidance is also provided for agents, Contractors, volunteers, job applicants and Employees through CalOptima Health Policy GA.8027: Harassment, Discrimination and Retaliation Prevention.
- F. CalOptima Health does not tolerate intimidation, coercion, harassment, discrimination, or other forms of Retaliation towards individuals who report suspected or actual non-compliance or unethical conduct. Individuals or entities determined to have violated this Policy will be subject to disciplinary and/or other corrective action, up to and including termination.

III. PROCEDURE

- A. CalOptima Health shall protect against any Retaliation toward an Employee, Contractor, Governing Body member, FDR, or Member by ensuring all verbal, or written, reports, made in good faith, remain Confidential to the extent allowable by law.
- B. CalOptima Health shall maintain Confidential methods for Employees, Contractors, Governing Body members, FDRs, or Members to report suspected violations of policy, rules, and regulations through any of the following options:
 - 1. Anonymously reporting issues twenty-four (24) hours a day, seven (7) days a week to the:
Compliance and Ethics Hotline at 1-855-507-1805;
 - 2. Reporting directly to the CalOptima Health Chief Compliance Officer;
 - 3. Sending an email to: compliance@caloptima.org;
 - 4. For Employees, completing a Regulatory Affairs & Compliance Intake Form (available on the CalOptima Health InfoNet); or
 - 5. Completing a Suspected Fraud or Abuse Referral Form (available on the CalOptima Health website).
- C. CalOptima Health and the Office of Compliance shall ensure Employees, Contractors, Governing Body members, FDRs, or Members are informed of this Policy by posting information on the CalOptima Health InfoNet and website, as well as sending periodic Member notifications.
- D. It is the responsibility of all CalOptima Health Employees, Contractors, Governing Body members, and FDRs to report, in good faith, perceived or known misconduct, in accordance with CalOptima Health Policy HH.2019: Reporting Suspected or Actual Fraud, Waste, or Abuse (FWA), Violations of Applicable Laws and Regulations, and/or CalOptima Health Policies.
- E. Knowledge of a violation, or potential violation, of this Policy shall be reported directly to the Chief Compliance Officer, or to the Compliance and Ethics Hotline.

- F. Failure of a CalOptima Health Employee or Contractor, to report any such violation, or possible violation, may be grounds for disciplinary action.
- G. On an annual basis, CalOptima Health will conduct (or contract for) an anonymous survey of Employees and Contractors to assess their comfort level and understanding of reporting suspected or actual Fraud, Waste, or Abuse (FWA), potential misconduct or violations of applicable laws and regulations and CalOptima Health Policies.

IV. ATTACHMENT(S)

- A. RAC Intake Form
- B. Suspected Fraud or Abuse Referral Form

V. REFERENCE(S)

- A. CalOptima Health Compliance Plan
- B. CalOptima Health Contract with the Centers for Medicare & Medicaid Services (CMS) for Medicare Advantage
- C. CalOptima Health Contract with the Department of Health Care Services (DHCS) for Medi-Cal
- D. CalOptima Health PACE Program Agreement
- E. CalOptima Health Policy GA.8027: Harassment, Discrimination and Retaliation Prevention
- F. CalOptima Health Policy HH.2018: Compliance and Ethics Hotline
- G. CalOptima Health Policy HH.2019: Reporting Suspected or Actual Fraud, Waste, or Abuse (FWA), Violations of Applicable Laws and Regulations, and/or CalOptima Health Policies
- H. False Claims Act (31 U.S.C. §3730(h))
- I. Medicare Managed Care Manual, Chapter 21
- J. Medicare Prescription Drug Benefit Manual, Chapter 9
- K. Title 42, Code of Federal Regulations (CFR.), §455.2
- L. Title 45, Code of Federal Regulations (CFR.), §§164.530(g) and 160.316
- M. Welfare and Institutions Code, §14043.1(a)

VI. REGULATORY AGENCY APPROVAL(S)

Date	Regulatory Agency	Response
03/19/2012	Department of Managed Health Care (DMHC)	Approved as Submitted
07/02/2013	Department of Health Care Services (DHCS)	Approved as Submitted

VII. BOARD ACTION(S)

Date	Meeting
12/01/2016	Regular Meeting of the CalOptima Board of Directors
12/07/2017	Regular Meeting of the CalOptima Board of Directors
12/06/2018	Regular Meeting of the CalOptima Board of Directors
12/05/2019	Regular Meeting of the CalOptima Board of Directors
12/03/2020	Regular Meeting of the CalOptima Board of Directors
12/20/2021	Special Meeting of the CalOptima Board of Directors
09/07/2023	Regular Meeting of the CalOptima Health Board of Directors
04/04/2024	Regular Meeting of the CalOptima Health Board of Directors

VIII. REVISION HISTORY

Action	Date	Policy	Policy Title	Program(s)
Effective	04/01/2003	HH.3012	Prohibition on Retaliation on Reporting Violations to Privacy Policies and Procedures	Medi-Cal
Revised	04/01/2007	HH.3012	Prohibition on Retaliation on Reporting Violations to Privacy Policies and Procedures	Medi-Cal
Revised	02/01/2012	HH.3012	Non-Retaliation for Reporting Violations	Medi-Cal
Revised	02/01/2013	HH.3012	Non-Retaliation for Reporting Violations	Medi-Cal OneCare
Revised	09/01/2015	HH.3012	Non-Retaliation for Reporting Violations	Medi-Cal
Revised	12/01/2016	HH.3012	Non-Retaliation for Reporting Violations	Medi-Cal OneCare OneCare Connect PACE
Revised	12/07/2017	HH.3012	Non-Retaliation for Reporting Violations	Medi-Cal OneCare OneCare Connect PACE
Revised	12/06/2018	HH.3012	Non-Retaliation for Reporting Violations	Medi-Cal OneCare OneCare Connect PACE
Revised	12/05/2019	HH.3012	Non-Retaliation for Reporting Violations	Medi-Cal OneCare OneCare Connect PACE
Revised	12/03/2020	HH.3012	Non-Retaliation for Reporting Violations	Medi-Cal OneCare OneCare Connect PACE
Revised	12/20/2021	HH.3012	Non-Retaliation for Reporting Violations	Medi-Cal OneCare OneCare Connect PACE
Revised	12/31/2022	HH.3012	Non-Retaliation for Reporting Violations	Medi-Cal OneCare PACE
Revised	07/01/2023	HH.3012	Non-Retaliation for Reporting Violations	Medi-Cal OneCare PACE
Revised	04/04/2024	HH.3012	Non-Retaliation for Reporting Violations	Medi-Cal OneCare PACE
Revised	07/01/2024	HH.3012	Non-Retaliation for Reporting Violations	Medi-Cal OneCare PACE

IX. GLOSSARY

Term	Definition
Abuse	Actions that may, directly or indirectly, result in: unnecessary costs to a CalOptima Health Program, improper payment, payment for services that fail to meet professionally recognized standards of care, or services that are medically unnecessary. Abuse involves payment for items or services when there is no legal entitlement to that payment and the provider has not knowingly and/or intentionally misrepresented facts to obtain payment. Abuse cannot be differentiated categorically from fraud, because the distinction between “fraud” and “abuse” depends on specific facts and circumstances, intent and prior knowledge, and available evidence, among other factors.
Confidential	Entrusted with private or personal information that is confined to a person or group as opposed to the public.
Contractor	For the purposes of this policy, this includes applicable contracted temporary employees.
Disclosure	Has the meaning in in 45, Code of Federal Regulations Section 160.103 including the following: the release, transfer, provision of access to, or divulging in any manner of information outside of the entity holding the information.
Downstream Entity	Any party that enters into a written arrangement, acceptable to DHCS and/or CMS, with persons or entities involved with a CalOptima Health program benefit, below the level of the arrangement between CalOptima Health and a first-tier entity. These written arrangements continue down to the level of the ultimate provider of both health and administrative services.
Employee	For the purposes of this policy, any and all employees of CalOptima Health, including all senior management, officers, managers, supervisors and other employed personnel, as well as temporary (contract) employees and volunteers.
First Tier, Downstream, and Related Entities (FDR)	First Tier, Downstream or Related Entity, as separately defined herein. For the purposes of this policy, the term FDR includes delegated entities, contracted providers, Health Networks, Physician Medical Groups, Physician Hospital Consortia, and Health Maintenance Organizations.
First Tier Entity	Any party that enters into a written arrangement, acceptable to DHCS and/or CMS, with CalOptima Health to provide administrative services or health care services to a member under a CalOptima Health program.
Fraud	Artifice to defraud any health care benefit program or to obtain (by means of false or fraudulent pretenses, representations, or promises) any of the money or property owned by, or under the custody or control of, any health care benefit program. (18 U.S.C Section 1347).
Governing Body	The Board of Directors of CalOptima Health.
Member	A beneficiary enrolled in a CalOptima Health Program.

Term	Definition
Protected Health Information (PHI)	<p>Has the meaning in 45, Code of Federal Regulations Section 160.103, including the following: individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium.</p> <p>This information identifies the individual or there is reasonable basis to believe the information can be used to identify the individual. The information was created or received by CalOptima Health or Business Associates and relates to:</p> <ol style="list-style-type: none"> 1. The past, present, or future physical or mental health or condition of a Member; 2. The provision of health care to a Member; or 3. Past, present, or future Payment for the provision of health care to a Member.
Related Entity	Any entity that is related to CalOptima Health by common ownership or control and that: performs some of CalOptima Health's management functions under contract or delegation; furnishes services to Members under an oral or written agreement; or leases real property or sells materials to CalOptima Health at a cost of more than \$2,500 during a contract period.
Retaliation (or Retaliate)	Includes, but is not limited to, coercion, threats, harassment, intimidation, discrimination, and other forms of retaliatory action against individuals.
Waste	<p><u>Medi-Cal</u>: The overutilization or inappropriate utilization of services and misuse of resources, and typically is not a criminal or intentional act, as stated in CMS' Fraud, Waste, and Abuse Toolkit.</p> <p><u>OneCare</u>: The overutilization of services, or other practices that, directly or indirectly, result in unnecessary costs to a CalOptima Health Program. Waste is generally not considered to be caused by criminally negligent actions but rather the misuse of resources.</p>