



**VNS HEALTH
CORPORATE POLICY & PROCEDURE**

TITLE: Non-Retaliation and Non-Intimidation (Whistleblower) Policy

APPLIES TO: VNS Health Home Care, VNS Health Hospice Care, VNS Health Personal Care, VNS Health Behavioral Health, Inc., Medical Care at Home, P.C., VNSNY Care Management IPA, Inc., VNS Health Health Plans, and VNS Health MSO (collectively, "VNS Health")

POLICY OWNER: Corporate Compliance Department

FIRST ISSUED: October 2011

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1. PURPOSE

The purpose of this Non-Retaliation and Non-Intimidation (or Whistleblower) Policy (the "Policy") is to ensure that all Covered Persons (as defined below) understand that VNS Health expects and encourages the good faith reporting of conduct or suspected conduct by or within VNS Health that violates any federal or state law or regulation, is fraudulent, or violates any adopted VNS Health policy or the Code of Conduct of VNS Health, or any related compliance concerns ("Compliance Concerns"), without fear of retaliation or intimidation.

2. DEFINITIONS

2.1. **"Adverse Action"** means, without limitation:

- (i) termination, demotion, suspension, refusal to hire, and denial of training and/or promotion;
- (ii) actions affecting employment or contractual relationships such as threats, harassment, discrimination, unjustified negative evaluations, unjustified negative references, or increased surveillance or scrutiny; or
- (iii) any other actions that are likely to deter a reasonable individual from reporting illegal conditions, violations of law, rules, policies, or procedures, cooperating in/with an investigation, and/or otherwise participating in the Compliance Program.

However, an Adverse Action does not include any employment action(s), disciplinary action(s), and termination(s) taken because of an individual's violation(s) of laws, rules,

policies, or procedures, or negative comments in an otherwise positive or neutral evaluation, or negative comments or evaluations that are justified by the individual's substandard work performance or history.

- 2.2. **"Audit Committee"** means the Audit Committee of the Board of Directors of VNS Health.
- 2.3. **"Compliance Concern"** includes conduct or suspected conduct by, or within VNS Health, that violates federal or state laws or regulations, is fraudulent or in violation of any adopted policy or the VNS Health Code of Conduct, or any other related compliance concern, including, but not limited to, any violations of laws or policies that create and present a substantial and specific danger to the public health or safety of, or a significant threat to, one of more of VNS Health's clients.
- 2.4. **"Covered Person"** means any employee, officer, member of the Board of Directors (or Board Committee), contractor, vendor, agent, representative, or client of VNS Health. The definition of Covered Person specifically includes all First Tier, Downstream, and Related Entities ("**FDRs**") as such entities are defined by the Centers for Medicare and Medicaid Services ("**CMS**").
- 2.5. **"Good Faith"** participation or reporting includes, but is not limited to:
- (i) Reporting actual or potential issues or concerns, including, but not limited to, any action taken by, or within, VNS Health that is or is reasonably believed to be illegal, fraudulent or in violation of any adopted VNS Health policy or the Code of Conduct;
 - (ii) Cooperating or participating in the investigation of such matters;
 - (iii) Assisting with or participating in self-evaluations, audits, and/or remedial actions; and/or
 - (iv) Reporting to the appropriate Governmental Agency.
- 2.6. **"Intimidation"** generally means any action that is reasonably likely to manipulate an individual or intentionally cause feelings of fear or inadequacy. The Compliance Department investigates allegations of intimidation and determines whether intimidation has occurred, depending on the facts and circumstances of each instance.
- 2.7. **"Investigation Team"** means the Interim SVP & Chief Compliance & Privacy Officer, the VP Associate General Counsel directing investigative activities, Special Investigations Unit ("**SIU**") Director, or their designee(s).
- 2.8. **"Governmental Agency"** means any federal, state, or local governmental body, whether legislative, administrative or judicial, including, but not limited to, the Office of Inspector General of the U.S. Department of Health and Human Services ("**OIG**"), New York State Office of the Medicaid Inspector General ("**OMIG**") and CMS, or their respective contractors.

2.9. **“Retaliation”** generally means any Adverse Action against an individual because of the Covered Person’s good faith report of a compliance concern, participation in the Compliance Program, or other report of suspected improper conduct. Intimidation has occurred, depending on the facts and circumstances of each instance.

2.10. **“Chief Compliance Officer”** means the Interim SVP & Chief Compliance & Privacy Officer or designee.

2.11. **“VNS Health” or “VNS Health Entities”** means VNS Health and each of its family of organizations, including VNS Health Personal Care, VNS Health Home Care, VNS Health Hospice Care, VNS Health Personal Care, Medical Care at Home, P.C., VNSNY Care Management IPA, VNS Health Health Plans, and VNS Health MSO (collectively, “VNS Health”)

3. BACKGROUND

In furtherance of VNS Health’s Compliance Program and Code of Conduct, VNS Health is committed to adhering to all laws and regulations that apply to the conduct of its various businesses, services, and operations. Under applicable laws and regulations, which are outlined in Section 7 (Legal and Regulatory References) below, all Covered Persons, as a condition of working with VNS Health, are expected to report any actual or potential Compliance Concern in good faith and assist in the investigation and resolution of any such Compliance Concern. The failure to report, or participate in the resolution of a Compliance Concern in good faith, or the Intimidation or Retaliation against any Covered Person who reports or participates in the investigation and resolution of a Compliance Concern in good faith, is a violation of this Policy, the Code of Conduct and applicable laws and regulations, and will subject a Covered Person to disciplinary action under VNS Health’s Compliance Program Disciplinary Policy, Standards, and Procedures.

4. POLICY

4.1. **Personal Obligation to Report Compliance Concerns:** Each Covered Person, as a condition of employment or ongoing working relationship with VNS Health, has a responsibility to report all Compliance Concerns, including, but not limited to, potential Fraud, Waste, or Abuse (“FWA”) under the Policy and Procedure on Reporting Non-Compliance and FWA and the Special Investigations Unit and FWA Policy, and to participate in the investigation and resolution of any reported Compliance Concerns.

4.2. **Intimidation and Retaliation are Expressly Prohibited:** Intimidation of, and/or Retaliation against, any Covered Person who in good faith reports actual or potential Compliance Concerns and participates in the investigation and resolution of Compliance Concerns is strictly prohibited and is itself a violation of this Policy, the Compliance Program and the VNS Health Code of Conduct. Any Covered Person who engages in, or condones, Retaliation or Intimidation in violation of this Policy will be subject to disciplinary action that may include termination of the Covered Person’s employment or ongoing

relationship with VNS Health.

4.3. **Monitoring and Oversight:** The adoption and implementation of, and compliance with, this Policy will be overseen by the Audit Committee. The Audit Committee has authorized certain functions relating to the implementation of, and compliance with, this Policy to the Chief Compliance Officer. However, the Audit Committee will retain overall responsibility for the oversight of this Policy.

4.4. **Distribution and Training:** This Policy shall be distributed to all Covered Persons who are employed by or provide substantial services to VNS Health. VNS Health may require Covered Persons to acknowledge and attest to receipt of this Policy. Moreover, this Policy will be incorporated into VNS Health's Code of Conduct, appear on the Compliance Department's intranet site, and, contained in other informational materials related to VNS Health's Compliance Program.

5. **PROCEDURES**

5.1. **Reporting Compliance Issues.**

5.1.1. In accordance with the Policy and Procedure on Reporting Non-Compliance and FWA and the Compliance Hotlines Policy, a Covered Person may report Compliance Concerns, or suspected Intimidation or Retaliation as a resulting of reporting a Compliance Concern by taking one or more of the following actions:

5.1.1.1. Contacting any member of the Compliance or Legal Department;

5.1.1.2. Submitting a report to the VNS Health Compliance Hotline. Anonymous reporting is available through the Hotline. Reports are accepted by phone at (888) 634-1558 or via the web at www.vnshealth.ethicspoint.com;

5.1.1.3. Contacting Human Resources;

5.1.1.4. Contacting Audit Committee of the Board; or

5.1.1.5. Contacting an applicable Governmental Agency, including the OMIG, the OIG or CMS.

5.1.2. Consistent with the VNS Health Compliance policies, specifically *CCD.7 Reporting Non-Compliance, Fraud, Waste and Abuse* and *Criminal Activity* and *CCD.6 Compliance Hotline*, VNS Health will maintain the confidentiality of any reports of Compliance Concerns, including the information contained in the report and identity of the Covered Person making the report of any misconduct, to the maximum extent possible.

5.2. **Full and Complete Investigation.**

5.2.1. All Compliance Concerns will be fully and completely investigated pursuant to

VNS Health Policy *CCD.8 Investigating Compliance Issues* .

- 5.2.1.1. If a Covered Person reports a Compliance Concern to the Investigation Team that appears exclusively related to employment- related issues, the matter will be referred to Human Resources for investigation and resolution. If a Covered Person reports a Compliance Concern to the Investigation Team that appears exclusively related to FWA by an FDR or other third-party performing services for VNS Health Health Plans, the matter will be referred to VNS Health Health Plans' Special Investigations Unit for investigation and resolution.
- 5.2.2. All allegations of Intimidation and/or Retaliation against anyone who, in good faith, reports a Compliance Concern (including, but not limited to, potential FWA) in accordance with this Policy, or participates in the investigation and resolution of a Compliance Concern, will be fully and completely investigated by the Investigation Team.
- 5.2.3. Appropriate disciplinary and corrective action will be promptly undertaken pursuant to VNS Health Policy CCD.10 Corrective Action Plans ("CAPS") and Disciplinary Guidelines.
- 5.2.4. The Investigation Team will oversee the investigation, and will be assisted by internal and external personnel, as determined by the Investigation Team.
- 5.2.5. For each allegation, investigative steps and actions may include, but need not be limited to, the following:
 - 5.2.5.1. **Interviews:** Conduct interviews of Covered Persons who may have relevant knowledge. At the outset of the interview process, the interviewee will be reminded that Intimidation of, and/or Retaliation against, those who in good faith report Compliance Concerns, or participate in the investigation and resolution of Compliance Concerns, is a violation of this Policy, the Compliance Program, and the Code of Conduct, as well as federal and state laws and regulations. The interviewee will also be reminded of VNS Health's Compliance Program Disciplinary Policy, Standards and Procedures.
 - 5.2.5.2. **Confidentiality:** Consistent with Section 5.1.2, keep all reported information confidential and consistent with the need to investigate the issue(s) raised.
 - 5.2.5.3. **Document Review:** Review hard copy and electronic materials that may include relevant information.
 - 5.2.5.4. **Document Retention:** Treat all documentation related to the

investigation as confidential to the extent possible. Such investigative files will be kept separately from personnel files. All investigative files (including files relating to the imposition of disciplinary sanctions and/or corrective actions) will be maintained for no fewer than ten (10) years from the date of the conclusion of the investigation or the imposition of disciplinary sanctions or corrective actions resulting therefrom, or for such longer period as may be required by applicable law.

- 5.2.5.5. **Disciplinary Action:** Impose disciplinary sanctions promptly against the offender(s), without regard to their title or position at VNS Health if, as a result of the investigation, VNS Health determines that there was Intimidation of, and/or Retaliation against, any Covered Person who in good faith reported a Compliance Concern or participated in the investigation and resolution of a Compliance Concern. Such disciplinary sanctions will be imposed following consultation with Human Resources and following the Human Resources Guidelines for Disciplinary Action and VNS Health Policy *CCD.10 Corrective Action Plans ("CAPs") and Disciplinary Guidelines*
- 5.2.5.6. **Corrective Action:** Take appropriate corrective action promptly if, as a result of the investigation, VNS Health determines that there has been Intimidation of, and/or Retaliation against, any Covered Person who in good faith reported a Compliance Concern or participated in the investigation and resolution of a Compliance Concern.
 - 5.2.5.6.1. In the case of a Covered Person who is an employee of VNS Health, such corrective action may include, but is not necessarily limited to, removal of a negative evaluation from an employee's personnel record; promotion to a position to which the employee sought and was entitled; reinstatement of the individual to the same or an equivalent position; reinstatement of full fringe benefits and seniority; and/or repayment of lost wages and benefits.
 - 5.2.5.6.2. In a case involving a Covered Person who is an independent contractor or FDR, or other person or entity who has been Intimidated or Retaliated against, such corrective action may include, but is not necessarily limited to, reinstating contracts or other affiliations or relationships with VNS Health.
- 5.2.5.7. **Additional or Different Steps:** Additional or different investigative steps and resulting actions may be taken, as necessary, appropriate, and permissible, depending on the facts and circumstances of the

matter involved and/or the results of an investigation.

5.3. Chief Compliance Officer: Oversight and Responsibilities.

5.3.1. The Chief Compliance Officer or designee will report to the Chief Executive Officer and the Audit Committee, and periodically to each of the VNS Health Boards, on matters concerning violations and alleged violations of this Policy, both on a periodic and as- needed basis.

5.3.2. The Chief Compliance Officer or designee will take those actions necessary to conduct audits and reviews of compliance with this Policy and any related policies as it relates to Non-Intimidation and Non-Retaliation for Reporting Compliance Concerns. Such acts may include a periodic review of personnel records and other information to ensure those who report Compliance Concerns are not the victims of Retaliation and/or Intimidation.

5.4. Distribution. This Policy shall be made available to all Covered Persons.

6. LEGAL AND REGULATORY REFERENCES

The current versions of the following laws, regulations, and guidance documents are incorporated into this Policy by reference:

- Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a(a);
- Federal False Claims Act, 31 U.S.C. § 3730(h);
- Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information, 41 U.S.C. § 4712;
- Federal Sentencing Guidelines for Organizations, Guidelines Manual Section 8B2.1(b)(5)(C);
- HIPAA Administrative Simplification: Enforcement; Final Rule, 45 C.F.R. § 160.316;
- 42 C.F.R. §§ 422.503(b)(4)(vi)(A) & 423.504(b)(4)(vi)(A); CMS, Compliance Program Guidelines, Medicare Managed Care Manual, Ch. 21
- Prescription Drug Benefit Manual, Ch. 9, §§ 50.1, 50.3.1 & 50.4.2;
- Mandatory Compliance Program Requirements, New York Soc. Serv. Law § 363-d(2)(h);
- New York State False Claims Act, New York State Finance Law § 191;
- New York Lab. Law §§ 740 & 741;

- New York Not-For-Profit Corp. Law § 715-b; and
- 18 N.Y.C.R.R. § 521.3(c)(8).

7. REFERENCES TO RELATED POLICIES

- Compliance Program, Structure and Guidelines
- CCD.1 Compliance Program Code of Conduct
- CCD.2 Federal Deficit Reduction Act of 2005: Policy Regarding the Detection and Prevention of Fraud, Waste & Abuse and Applicable Federal and State Law
- CCD.6 Compliance Hotline
- CCD.7 Reporting Non-Compliance, Fraud, Waste and Abuse, and Criminal Activity
- CCD.8 Investigating Compliance Issues
- CCD.10 Corrective Action Plans (“CAPs”) and Disciplinary Guidelines

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