

# **THE GUILD FOR EXCEPTIONAL CHILDREN**

## **Compliance Plan**

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**By: GEC Board of Directors**

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## Definitions

Affected Individuals	Includes: <ul style="list-style-type: none"> <li>• All affected employees,</li> <li>• Affected Appointees,</li> <li>• Executives, and Governing Body members,</li> <li>• Any person or affiliate who is involved in any way with the Required Provider such that the person or affiliate contributes to the Required Provider's entitlement to payment under the Medical Assistance Program and who is not an employee, Executive, or Governing Body member of the Required Provider (e.g., independent contractors, interns, students, volunteers, and vendors). Individuals who are at least a 5 percent owner of the Required Provider shall be considered persons associated with the Required Provider.</li> </ul>
Agency	For the purpose of this document, refers to The Guild for Exceptional Children
Compliance Officer	For the purpose of this document, refers to the employee vested with responsibility for the day-to-day operation of the compliance program that is required under SSL 363-d subsection 2(b) and 18 NYCRR 5621.3(c)(2).
Contemporaneous	For the purpose of this document, <i>contemporaneous</i> is defined as "at the time the service was delivered or shortly thereafter."
Executive	An Executive is any member of senior management staff regardless of specific title.
GEC	For the purpose of this document, refers to The Guild for Exceptional Children
Governing Body	In a corporate entity, this is the board of trustees, board of directors, or similar body regardless of the name used.
<i>Qui Tam</i>	A <i>qui tam</i> action is a lawsuit brought by a private citizen (popularly called a "whistle blower") against a person or company who is believed to have violated the law in the performance of a contract with the government or in violation of a government regulation, when there is a statute which provides for a penalty for such violations. This type of action is generally based on significant violations which involve fraudulent or criminal acts, and not technical violations and/or errors.
Required Provider	See 18 NYCRR §521.2(a).

**The Guild for Exceptional Children  
CORPORATE COMPLIANCE POLICY**

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**I. Policy**

It has been and continues to be the policy of The Guild for Exception Children (also referred to as “GEC” or “Agency”) to comply with all applicable federal, state, and local laws and regulations, and payer requirements. It is also the Agency’s policy to adhere to the Code of Ethics that is adopted by the Board of Directors, the Chief Executive Officer, and the Compliance Committee.

**II. Commitment**

We have always been and remain committed to our responsibility to conduct our business affairs with integrity based on sound ethical and moral standards. We will hold our Affected Individuals to these same standards.

GEC is committed to maintaining and measuring the effectiveness of our Compliance policies and standards through monitoring and auditing systems reasonably designed to detect noncompliance by its Affected Individuals. We shall require the performance of periodic compliance audits by internal and/or external auditors who have expertise in federal and state health care statutes, regulations, and health care program requirements.

**III. Responsibility**

All Affected Individuals shall acknowledge that it is their responsibility to report any suspected instances of suspected or known noncompliance to their immediate supervisor, the Chief Executive Officer or the Compliance Officer. Reports may be made anonymously without fear of retaliation, retribution or intimidation. Failure to report known noncompliance or making reports which are not in good faith will be grounds for disciplinary action, up to and including termination. Reports related to harassment or other workplace-oriented issues will be referred to Human Resources.

**IV. Policies and Procedures**

GEC will communicate its compliance standards and policies through required training initiatives to all Affected Individuals. We are committed to these efforts through distribution of this Compliance Policy and our Code of Conduct and Philosophy.

**V. Enforcement**

This Compliance Policy will be consistently enforced through appropriate disciplinary mechanisms including, if appropriate, discipline of individuals responsible for failure to detect and/or report noncompliance up to and including termination of employment. Disciplinary policies will be fairly and firmly enforced.

**VI. Agency Response**

Detected noncompliance, through any mechanism, i.e., compliance auditing procedures and/or confidential reporting, will be responded to in an expedient manner. We are dedicated to the

resolution of such matters and will take all reasonable steps to prevent further similar violations, including any necessary modifications to the Compliance Plan.

## **VII. Due Diligence**

GEC will, at all times, exercise due diligence with regard to background and professional license investigations for all prospective Affected Individuals.

## **VIII. Whistleblower Provisions and Protections**

GEC will not take any retaliatory action against an Affected Individual if the Affected Individual discloses certain information about the Agency's policies, practices, or activities to a regulatory, law enforcement, or other similar agency or public official. GEC will not engage in any intimidation of an Affected Individual if the Affected Individual discloses certain information about the Agency's policies, practices, or activities to a regulatory, law enforcement, or other similar agency or public official. Protected disclosures are those that assert that the Agency is in violation of a law that creates a substantial and specific danger to the public health and safety or which constitutes health care fraud under the law or that assert that, in good faith, the Affected Individual believes constitute improper quality of patient care.

# Code of Ethics and Philosophy

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## I. Description

The Guild for Exceptional Children, Inc. is a not-for-profit corporation under the laws of the State of New York to provide direct and indirect services for developmentally disabled/delayed persons of all ages (exceptional children) and their families.

## II. Mission

To help children and adults living with developmental disabilities lead dignified and satisfying lives, reaching their fullest potential and assisting families in every step of their journey.

## III. Expectations

We ensure that all aspects of consumer care and business conduct are performed in compliance with our mission statement, policies and procedures, professional standards, applicable governmental laws, rules, and regulations, and other payer standards. GEC expects every Affected Individual who provides services to our consumers to adhere to the highest ethical standards and to promote ethical behavior. GEC and all Affected Individuals are expected to act in a way to meet the requirements of the mandatory compliance program law and regulation. Any person whose behavior is found to violate ethical standards or the requirements of the compliance program will be disciplined appropriately.

Affected Individuals may not engage in any conduct that conflicts – or is perceived to conflict – with the best interest of the Agency. Affected Individuals must disclose any circumstances where the employee or his or her immediate family member is an employee, consultant, owner, contractor, or investor in any entity that (i) engages in any business or maintains any relationship with Agency; (ii) provides to, or receives from, Agency any consumer referrals; or (iii) competes with Agency. Affected Individuals may not without permission of the Compliance Officer accept, solicit, or offer anything of value from anyone doing business with GEC.

Affected Individuals are expected to maintain complete, accurate, and contemporaneous records as required by The Guild for Exceptional Children. The term “records” includes all documents, both written and electronic, that relate to the provision of Agency services or provide support for the billing of Agency services.

- Records must reflect the actual service provided.
- Any records to be appropriately altered must reflect the date of the alteration, the name, signature, and title of the person altering the document, and the reason for the alteration, if not apparent.
- No person shall ever sign the name of another person to any document. Signature stamps shall not be used.
- Backdating and predating documents is unacceptable and will lead to discipline up to and including termination.

Any conduct contrary to the expectations above will be considered a violation of the compliance program, and related policies and procedures.

When any person knows or reasonably suspects that the expectations above have not been met, this must be reported to immediate supervisors, the Compliance Officer (CO) or the Chief Executive Officer, so each situation may be appropriately dealt with. The CO may be reached at (718) 833-6633 ext. 261 or via the **Compliance Hotline at (718) 833-2085** if anonymity is preferred.

# The Role of the Compliance Officer

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## I. Compliance Officer

The Board of Directors of The Guild for Exceptional Children designates Ms. Elaine A. DeBerardine as the Compliance Officer (CO). The CO has direct lines of communication to the Chief Executive Officer, the Board of Directors, and Agency counsel.

## II. Job Duties

The CO is directly obligated to serve the best interests of our agency, consumers and employees Affected Individuals. Responsibilities of the CO include but are not limited to:

- Developing and implementing compliance policies and procedures (P&P).
- Overseeing and monitoring the implementation of the compliance program.
- Directing Agency internal audits established to monitor effectiveness of compliance standards.
- Providing guidance to management, medical/clinical program personnel, and individual departments regarding P&P and governmental laws, rules, and regulations.
- Updating, periodically, the Compliance Plan as changes occur within the Agency, within the law and regulations, or governmental and third party payers.
- Overseeing efforts to communicate awareness of the existence and contents of the Compliance Plan.
- Coordinating, developing, and participating in the training program.
- Guaranteeing independent contractors (consumer care, vendors, billing services, etc.) are aware of the requirements of GEC's Compliance Plan.
- Actively seeking up-to-date material /releases regarding regulatory compliance.
- Maintaining a reporting system (hotline) and responding to concerns, complaints, and questions related to the Compliance Plan.
- Acting as a resourceful leader regarding regulatory compliance issues.
- Investigating and acting on issues related to compliance.
- Coordinating internal investigations and implementing corrective action.

# **The Structure, Duties, and Role of the Compliance Committee**

## **I. Reporting Structure and Purpose**

Compliance Committee (CC) members are appointed by the Compliance Officer and approved by the Chief Executive Officer (CEO) and the President of the Board of Directors. Compliance issues are reported by the CC to the CEO and Board, where appropriate. The CC purpose is to advise and assist the CO with implementation of the Compliance Plan.

## **II. Function**

The roles of the Compliance Committee include:

- Analyzing the environment where GEC does business, including legal requirements with which it must comply.
- Working with departments to develop standards and P&P that address specific risk areas and encourage compliance according to legal and ethical requirements.
- Reviewing and assessing existing P&P that address these risk areas for possible incorporation into the CP.
- Advising and monitoring appropriate departments relative to compliance matters.
- Developing internal systems and controls to carry out compliance standards and policies.
- Monitoring internal and external audits to identify potential non-compliant issues.
- Implementing corrective and preventive action plans.
- Developing a process to solicit, evaluate, and respond to complaints and problems.

## **Delegation of Substantial Discretionary Authority**

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### **I. Requirement**

Any Affected Individual or employee or prospective employee who holds, or intends to hold, a position with substantial discretionary authority for The Guild for Exceptional Children is required to disclose any name changes and any involvement in non-compliant activities including health care related crimes. In addition, GEC performs reasonable inquiries into the background of such applicants, contractors, vendors, and Members of the Board of Directors.

The following organizations may be queried with respect to potential employees, contractors, vendors and Members of the Board of Directors:

- a) General services administration: list of parties excluded from federal programs. The URL address is <https://www.sam.gov>
- b) Health and Human Services/Office of Inspector General cumulative sanction report. The URL address is <https://oig.hhs.gov/exclusions>.
- c) NYS Medicaid Fraud Database. The URL address is <https://www.omig.ny.gov/search-exclusions>.
- d) Licensure and disciplinary record with NYS Office of Professional Medical Conduct (Physicians, Physician Assistants) (the URL address is <http://www.op.nysed.gov/opsearches.htm> ) and/or New York State Department of Education (other licensed professionals) (the URL address is <http://eservices.nysed.gov/teach/certhelp/CpPersonSearchExternal.jsp> ).

## **Education and Training**

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### **I. Expectations**

Education and training are critical elements of the Compliance Plan. Every Affected Individual is expected to be familiar and knowledgeable about the Agency's Compliance Plan and have a solid working knowledge of his or her responsibilities under the plan. Compliance policies and standards will be communicated to all Affected Individuals through required participation in training programs.

### **II. Training Topics - General**

All personnel and members of the Board of Directors shall participate in training on the topics identified below:

- Government and private payer reimbursement principles;
- Government initiatives;
- History and background of Corporate Compliance;
- Legal principles regarding compliance and Board responsibilities related thereto;
- General prohibitions on paying or receiving remuneration to induce referrals and the importance of fair market value;
- Prohibitions against submitting a claim for services when documentation of the service does not exist to the extent required;
- Prohibitions against signing for the work of another employee;
- Prohibitions against alterations to medical records and appropriate methods of alteration;
- Prohibitions against rendering services without a signed physician's order or other prescription, if applicable;
- Proper documentation of services rendered; and
- Duty to report misconduct.

Upon completion of training all personnel will be required to take a written test to evaluate the effectiveness of the training and the individual's knowledge regarding compliance.

### **III. Training Topics - Targeted**

In addition to the above, targeted training will be provided to all managers and any other Affected Individuals whose job responsibilities include activities related to compliance topics. Managers shall assist the Compliance Officer in identifying areas that require specific training and are responsible for communication of the terms of this Compliance Plan to all independent contractors doing business with the Guild for Exceptional Children.

#### **IV. Orientation**

As part of their orientation, each employee and contractor shall receive a written copy of the Compliance Plan, policies, and specific standards of conduct that affect their position. Compliance Orientation will be held the fourth (4<sup>th</sup>) Tuesday of each month, unless otherwise scheduled (substitute training date will be disseminated at least two weeks prior to the scheduled replacement date), to facilitate training for newly hired, appointed, or elected Affected Individuals.

#### **V. Attendance**

All education and training relating to the Compliance Plan will be verified by attendance and a signed acknowledgement of receipt of the Compliance Plan and standards. Attendance at compliance training sessions is mandatory and is a condition of continued employment.

## **Effective Confidential Communication**

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### **I. Expectations**

Open lines of communication between the Compliance Officer and Affected Individuals subject to this Plan are essential to the success of our Compliance Program. Every Affected Individual has an obligation to refuse to participate in any wrongful course of action and to report the actions according to the procedure listed below.

### **II. Reporting Procedure**

If an Affected Individual witnesses, learns of, or is asked to participate in any activities that are potentially in violation of this Compliance Plan, he or she should contact his or her immediate supervisor, the Compliance Officer, or the Chief Executive Officer. Reports may be made in person, by calling the **Compliance Hotline at (718) 833-2085** to leave an anonymous message, by calling the CO directly at 718-833-6633 Ext. 261, by email to [EDeBerardine@GECBklyn.org](mailto:EDeBerardine@GECBklyn.org) or [GECCompliance@GECBklyn.org](mailto:GECCompliance@GECBklyn.org), or by mailing information to Elaine A. DeBerardine (Compliance Officer) c/o GEC 260 68<sup>th</sup> Street, Brooklyn NY 11220.

Upon receipt of a question or concern, any supervisor, officer, or director shall document the issue at hand and report to the Compliance Officer. Any questions or concerns relating to potential non-compliance by the CO should be reported immediately to the Chief Executive Officer.

The Compliance Officer or designee shall record the information necessary to conduct an appropriate investigation of all complaints. If the Affected Individual was seeking information concerning the Code of Ethics or its application, the CO or designee shall record the facts of the call and the nature of the information sought and respond as appropriate. GEC shall, as much as is possible, protect the anonymity of the Affected Individual who reports any complaint or question.

### **III. Protections**

The identity of reporters will be safeguarded to the fullest extent possible and will be protected against retribution, retaliation or intimidation. Report of any suspected violation of this Plan by following the above shall not result in any retribution, retaliation or intimidation. Any threat of reprisal against a person who acts in good faith pursuant to his or her responsibilities under the Plan is acting against the Agency's compliance policy. Discipline, up to and including termination of employment will result if such reprisal is proven.

### **IV. Guidance**

Any Affected Individual may seek guidance with respect to the Compliance Plan or Code of Conduct at any time by following the reporting mechanisms outlined above.

## **Enforcement of Compliance Standards**

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### **I. Background Investigations**

For all Affected Individuals who have authority to make decisions that may involve compliance issues, The Guild for Exceptional Children Human Resources Department will conduct a reasonable and prudent background investigation, including a reference check, as part of every employment application.

### **II. Disciplinary Action - General**

Affected Individuals who fail to comply with GEC's compliance policy and standards, or who have engaged in conduct that has the potential of impairing the Agency's status as a reliable, honest, and trustworthy service provider, will be subject to disciplinary action, up to and including termination. Disciplinary policies will be fairly and firmly enforced. Any discipline will be appropriately documented in the employee's personnel file, along with a written statement of reason(s) for imposing such discipline. The Human Resources Department shall maintain a record of all disciplinary actions involving the Compliance Plan. The Compliance Officer will report periodically and/or as needed to the Board of Directors regarding such actions.

### **III. Performance Evaluation - Supervisory**

GEC's Compliance Program requires that the promotion of, and adherence to, the elements of the Compliance Program be a factor in evaluating the performance of Agency Affected Individuals. They will be periodically trained in new compliance policies and procedures. In addition, all managers and supervisors will:

- a. Discuss with all supervised Affected Individuals the compliance policies and legal requirements applicable to their function.
- b. Inform all supervised Affected Individuals that strict compliance with these policies and requirements is a condition of employment.
- c. Disclose to all supervised Affected Individuals that GEC will take disciplinary action up to and including termination or revocation of privileges for violation of these policies and requirements.

### **IV. Disciplinary Action - Supervisory**

Managers and supervisors will be sanctioned for failure to adequately instruct their subordinates or failure to detect noncompliance with applicable policies and legal requirements where reasonable diligence on the part of the manager or supervisor would have led to the earlier discovery of any problems or violations and would have provided the Agency with the opportunity to correct them.

## **Auditing and Monitoring of Compliance Activities**

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### **I. Internal Audits**

Ongoing evaluation is critical in detecting non-compliance and will help ensure the success of The Guild for Exceptional Children's Compliance Program. An ongoing auditing and monitoring system, implemented by the Compliance Officer and in consultation with the Compliance Committee, is an integral component of our auditing and monitoring systems. This ongoing evaluation shall include the following:

Review of relationships with third-party contractors, specifically those with substantive exposure to government enforcement actions;

- Compliance audits of compliance policies and standards; and Compliance Effectiveness Reviews measuring the effectiveness of the agency's compliance program, performed annually and/or as needed.
- Review of documentation and billing samples relating to claims made to federal, state, and private payers for reimbursement, performed internally or by an external consultant as determined by the Compliance Officer and Compliance Committee.

The audits and reviews will examine the Agency's compliance with specific rules and policies through on-site visits, personnel interviews, and consumer record documentation reviews.

### **II. Plan Integrity**

Additional steps to ensure the integrity of the CP will include:

- As needed review with legal counsel of all records of communications and reports by all Affected Individuals kept in accordance with this Plan.
- The Compliance Officer will be notified immediately in the event of any visits, audits, investigations, or surveys by any federal or state agency or authority, and shall immediately receive a photocopy of any correspondence from any regulatory agency charged with licensing the Agency and/or administering a federally or state-funded program with which GEC participates.
- Establishment of a process detailing ongoing notification by the Compliance Officer to all appropriate personnel of any changes in laws, regulations, or policies, as well as appropriate training to assure continuous compliance.

## Detection and Response

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### I. Violation Detection

The Compliance Officer, Chief Executive Officer, and the Compliance Committee shall determine whether there is any basis to suspect that a violation of the Compliance Plan has occurred.

Affected Individuals who report non-compliance related issues or concerns to the Compliance Officer or the Compliance Hotline will be politely redirected to the appropriate department or individual. In instances where the employee seeks confidentiality or reports anonymously, the Compliance Officer shall redirect the report to the appropriate department or individual while maintaining the request for confidentiality/anonymity.

### II. Investigation Procedures

GEC will respond to reports or reasonable indications of suspected non-compliance by commencing a prompt and thorough investigation of the allegations to determine whether a violation has occurred.

1. The Compliance Officer will conduct or oversee the conduct of all internal investigations involving compliance-related issues.
2. Before conducting an investigation of any compliance-related issue, the Compliance Officer shall ensure a full understanding of the relevant laws, regulations, and government issuances.
3. Upon report or notice of alleged non-compliance, the Compliance Officer will conduct an initial inquiry into the alleged situation. The purpose of the initial inquiry is to determine whether there is sufficient evidence of possible non-compliance to warrant further investigation. The initial inquiry may include documentation review, interviews, audit or other investigative techniques. The Compliance Officer should:
  - a. Conduct a fair impartial review of all relevant facts;
  - b. Restrict the inquiry to those necessary to resolve the issues; and
  - c. Conduct the inquiry with as little visibility as possible while gathering pertinent facts relating to the issue.
4. If deemed appropriate, then the Compliance Officer will recommend the cessation of internal activities that may be the cause of, or contribute to the alleged non-compliance.
5. If, during the initial inquiry, the Compliance Officer determines that there is sufficient evidence of possible noncompliance or any criminal, civil or administrative law further investigation will be instituted, and the matter shall be referred to legal counsel, who will assist the Compliance Officer in conducting a more detailed investigation. This investigation may include, but is not limited to, the following:
  - a. Interviews with individuals having knowledge of the facts alleged;
  - b. A review of documents; and

- c. Legal research and contact with governmental agencies for the purpose of clarification. If advice is sought from a governmental agency, the request and any written or oral response shall be fully documented.
6. The Compliance Officer will maintain all notes of the interviews and review of documents as part of the investigation file.
7. The Compliance Officer should ensure that the following objectives are accomplished:
  - a. Fully debrief complainant;
  - b. Notify appropriate internal parties;
  - c. Identify cause of problem, desired outcome, affected parties, applicable guideline, and possible regulatory or financial impact;
  - d. Provide a complete list of findings and recommendations
  - e. Determine the necessary corrective action measures (e.g., policy changes, operational changes, system changes, personnel changes, training/education); and
  - f. Document the investigation.
8. Corrective action will be implemented within a reasonable time following the completion of an investigation substantiating that a compliance problem exists. Plans of correction, action plans, or strategic initiatives as well as evidence of any follow up to confirm the corrective action was effective will be made part of the final investigative record. The plans of corrections, action plans, or strategic initiatives shall also address implementing procedures, policies, and systems as necessary to reduce the potential for recurrence.

### **III. Reporting**

At the conclusion of an investigation, the Compliance Officer shall issue a report to the Chief Executive Officer and Compliance Committee summarizing his or her findings, conclusions, and recommendations and will render an opinion as to whether a violation of the law has occurred.

The Compliance Officer shall report to the Compliance Committee regarding each investigation conducted. The Compliance Officer and the Compliance Committee will determine: (a) the results of the investigation and the adequacy of recommendations for corrective actions; (b) the completeness, objectivity, and adequacy of recommendations for corrective actions; and/or (c) further actions to be taken as necessary and appropriate.

The report will be reviewed with legal counsel. Any additional action will be on the advice of counsel.

The Compliance Officer or Program Director will inform the reporter, if known, of the conclusion of the investigation and the outcome, if appropriate.

Compliance Officer, with advice from legal counsel, will report identified compliance violations directly to Office of Medicaid Inspector General (“OMIG”) utilizing the reporting system implemented on the official OMIG website.

#### **IV. Rectification**

If GEC identifies that an overpayment was received from any third party payer, the amount of the overpayment will be promptly refunded. It is our policy to not retain any funds which are received as a result of overpayments. In instances where it appears an affirmative fraud may have occurred, or a pattern of systemic errors is discerned, appropriate amounts shall be returned after consultation with legal counsel and approval by involved regulatory and/or prosecutorial authorities. Systems shall also be put in place to prevent such overpayments in the future.

#### **V. Record Keeping**

Regardless of whether a report is made to a governmental agency, the Compliance Officer shall maintain a record of the investigation, including copies of all pertinent documentation. This record will be considered confidential and privileged and will not be released without the approval of the Chief Executive Officer or legal counsel.

## **Whistleblower Provisions and Protections**

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### **I. Provisions**

The False Claims Act provides protection to *qui tam* relators who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the False Claims Act.

The Guild for Exceptional Children will not take any retaliatory action against an Affected Individual if the Affected Individual discloses information about Agency's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. The Guild for Exceptional Children will not engage in any intimidation of an Affected Individual if the Affected Individual discloses certain information about the Agency's policies, practices, or activities to a regulatory, law enforcement, or other similar agency or public official. Protected disclosures are those that assert that the Agency is in violation of a law that creates a substantial and specific danger to the public health and safety or which constitutes health care fraud under the law or that assert that, in good faith, the Affected Individual believes constitute improper quality of patient care.

### **II. Protections**

The Affected Individual's disclosure is protected only if the Affected Individual first brought up the matter with a supervisor and gave GEC a reasonable opportunity to correct the alleged violation, unless the danger is imminent to the public or patient and the Affected Individual believes in good faith that reporting to a supervisor would not result in corrective action.

If GEC takes a retaliatory action against the *qui tam* relator (Affected Individual), the Affected Individual may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees.