

Massachusetts

Compliance Program: Code of Conduct

This is a supplement to Kindred's Employee Handbook for employees who work in Massachusetts. As stated in our Employee Handbook, the federal False Claims Act and similar state laws assist the federal and state governments in combating fraud and recovering losses resulting from fraud in government programs, purchases and/or contracts. These laws are some of the most important laws that govern our business. Like the federal False Claims Act, the Massachusetts False Claims Act ("MFCA"), and other Massachusetts laws impose liability on persons or companies that make or cause to be made false or fraudulent claims to the government for payment or who knowingly make, use or cause to be made or used, a false record or statement to get a false or fraudulent claim paid by the government. These Massachusetts laws apply to Medicaid reimbursement and prohibit, among other things:

- Billing Massachusetts's Medicaid program for services not rendered
- Submitting a false claim for payment
- Conspiring to make a false claim or get one paid
- Making or using a false record to avoid payments owed to the state
- Entering into a contract with the state knowing that the information contained therein is false
- Failure to disclose the fact that a benefit was obtained from a false claim that was mistakenly submitted

Civil and Criminal Penalties for False Claims or Statements

A violation of these Massachusetts laws may result in civil penalties of \$10,000 per claim, plus three times the amount of damages sustained by the state government. In addition, a person who violates the law prohibiting the presentation of false claims to the Massachusetts Division of Medical Assistance commits a crime punishable by imprisonment for up to five years and a fine of not more than \$10,000.

Civil Lawsuits

Like the federal False Claims Act, Massachusetts law also allows civil lawsuits to be filed by the state government or by private citizens, including employees. If the private citizen (also called a *qui tam* plaintiff) is successful in the lawsuit, he/she may share a percentage of any monetary recovery and receive an award for reasonable attorney's fees and costs. However, if a *qui tam* plaintiff brings a lawsuit and the court finds in favor of the defendant, then the court may award the defendant its reasonable attorney fees and costs against the *qui tam* plaintiff.

No Retaliation

Like federal law and Kindred policy, various Massachusetts laws, including the MFCA, prohibit employers from retaliating, discriminating or harassing employees because of their lawful participation in a false claims disclosure or their refusal to assist employers in violating laws such as the MFCA. These laws also provide for certain monetary awards and equitable relief to the prevailing plaintiff including compensation for lost wages and reinstatement to a former position.

Any employee who engages in or condones any form of retaliation against another employee because that employee either (1) reported a potential violation of Kindred's Code of Conduct or regulatory violation, or (2) refused to violate Kindred's Code of Conduct or a government law or regulation, will be subject to disciplinary action up to and including separation of employment. See Kindred's Concern Resolution Procedure in the Employee Handbook for information on reporting concerns.

Copies of Massachusetts Laws

The Massachusetts laws summarized above include: (1) The Massachusetts False Claims Act, Mass. Gen. Laws Ann. Ch. 12 § 5 through 50; and (2) Mass. Gen. Laws Ann. Ch. 118E § 35 through 46. If you have questions about any of these requirements, you may contact Kindred's Compliance Hotline at 1-800-359-7412. This summary and others are also posted on Kindred's external web site, www.kindredhealthcare.com, and Kindred's intranet site (KNECT) under the Compliance home page.