

Tennessee

Compliance Program: Code of Conduct

This is a supplement to Kindred's Employee Handbook for employees who work in Tennessee. 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 Tennessee Medicaid False Claims Act ("TMFCA"), the Tennessee False Claims Act ("TFCA") and other Tennessee 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 Tennessee laws apply to Medicaid reimbursement and prohibit, among other things:

- Billing Tennessee's Medicaid program for services not rendered
- Making or using a false record or statement to get a false claim paid
- Conspiring to get a false claim paid
- Making or using a false record to avoid an obligation to pay money or transmit property to the state
- Failure to promptly disclose that a benefit was obtained from inadvertent submission of a false claim

Civil Penalties for False Claims or Statements

A violation of these Tennessee laws may result in penalties of \$2,500 to \$25,000 per claim, plus three times the amount of damages sustained by the state.

Civil Lawsuits

Like the federal False Claims Act, Tennessee 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 the *qui tam plaintiff* is convicted of a crime related to the legal violation that is the subject of the civil suit, the *qui tam plaintiff* shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Additionally, if the defendant prevails in the civil suit and the court finds that the claim was clearly frivolous, vexatious or brought primarily for purposes of harassment the court shall award the defendant its reasonable attorneys' fees and expenses against the *qui tam plaintiff*.

No Retaliation

Like federal law and Kindred policy, various Tennessee laws, including the TMFCA, TFCA and Tennessee's Whistleblowers' Statute ("TWS"), 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 the law. 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.

The TFCA requires a state employee to exhaust any existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels before taking formal action under the TFCA unless the state failed to act on the information within a reasonable time.

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 Tennessee Laws

The Tennessee laws summarized above include: (1) The Tennessee Medicaid False Claims Act, Tenn. Code Ann. §§ 71-5-182 – 71-5-185; (2) The Tennessee False Claims Act, Tenn. Code Ann. §§ 4-18-101 – 4-18-105; and (2) The Tennessee Whistleblowers' Statute, Tenn. Code. Ann. § 50-1-304. 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.