

## Colorado

### **Compliance Program: Code of Conduct**

This is a supplement to Kindred's Employee Handbook for employees who work in Colorado. 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, Colorado false claims 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 Colorado laws apply to Medicaid reimbursement and prohibit, among other things:

- Billing Colorado's Medicaid program for services or goods not provided;
- Billing Colorado's Medicaid program for undocumented services;
- Making inaccurate, false or improper entries in medical records, cost reports and any other records used to support reimbursement;
- Billing Colorado's Medicaid program for medically unnecessary services;
- Characterizing non-covered services or costs in a way that secures reimbursement from Colorado's Medicaid program;
- Assigning an incorrect code to a service in order to obtain a higher reimbursement;
- Failing to seek payment from beneficiaries who may have other primary payment sources;
- Participating in kickbacks and rebates;
- Failing to maintain, or destroying, medical records, income and expenditure reports or any other records that support Medicaid reimbursement.

### **Civil and Criminal Penalties for False Claims or Statements**

A violation of these Colorado laws may result in restitution of any improper payment and other monetary damages directly related to pursuing reimbursement, plus penalties of up to \$10,000 for each false claim or two times the amount of the false claim, and also may result in suspension or termination from the Medicaid program. In addition, a person who violates these laws commits a crime punishable by imprisonment for two to eight years and a fine from \$3,000 to \$750,000.

### **Civil Lawsuits**

Like the federal False Claims Act, Colorado 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 or 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 defendant prevails, then the court may award the defendant its reasonable attorney fees and costs if the court finds that the lawsuit was clearly frivolous or brought primarily for harassment purposes.

## **No Retaliation**

Like federal law and Kindred policy, various Colorado laws prohibit employers from retaliating, discriminating or harassing employees because of their lawful participation in a false claims disclosure or claim. 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.

Similar to federal law and Kindred policy, Colorado law also prohibits state employers from retaliating against any state employee who discloses evidence, or testifies, about waste of public funds, state agency mismanagement or abuse of authority. Furthermore, Colorado law also protects healthcare employees who are certified, registered or licensed under certain provisions of Colorado law that make a good faith report or disclosure concerning patient care or safety. For employees who are not certified, registered or licensed under Colorado law, Kindred expects them to adhere to Federal law and to Kindred's policy prohibiting retaliation.

Colorado law also requires an employee to follow the internal reporting procedures of the health care provider before disclosing it to the appropriate government agency. The purpose of this particular requirement is to give the employer a reasonable opportunity to correct the activity, policy or practice.

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 Colorado Laws**

The Colorado laws summarized above include: (1) False claims laws, Colo. Rev. Stat. §§ 25.5-4-301; 25.5-4-304 to 25.5-4-310; and 26-1-127; (2) State Employee Protection law (public sector whistleblower statute), Colo. Rev. Stat. §§ 24-50.5-101 to 24-50.5-107; and (3) Health Care Workers Protection Law (private sector whistleblower statute), Colo. Rev. Stat. 8-2-123. 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](http://www.kindredhealthcare.com), and Kindred's intranet site (KNECT) under the Compliance home page.