

## **Florida**

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

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

- Billing Florida's Medicaid program for services not rendered
- Billing Florida's Medicaid program for undocumented services
- Making improper entries on Florida's Medicaid cost reports
- Billing Florida's Medicaid program for medically unnecessary services
- Characterizing non-covered services or costs in a way that secures reimbursement from Florida's Medicaid program
- Failing to seek payment from beneficiaries who may have other primary payment sources; and
- Participating in kickbacks

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

A violation of these Florida laws may result in penalties of \$5,500 to \$11,000 per claim, plus three times the amount of damages sustained by the state government. In addition, a person who violates the Florida Medicaid Provider Fraud law, specifically Section 409.920, commits a felony in the third degree.

### **Civil Lawsuits**

Like the federal False Claims Act, Florida 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 state chooses not to litigate a case, and the private citizen litigates and loses, then the court will award the defendant its reasonable attorney fees and costs against the private citizen.

## **No Retaliation**

Like federal law and Kindred policy, various Florida laws, including the FFCA and Florida's Public-Sector and Private Whistle-blower Acts, 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 FFCA. 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 Private Whistle-blower Act, unlike the other laws, requires an employee to notify his/her employer in writing of any suspected illegal activity, policy or practice 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. This notice requirement under the Private Whistle-blower Act does not apply to disclosures or testimony made in response to a government inquiry, investigation, or hearing. It also does not apply to an employee's objection to or refusal to participate in any activity, policy, or practice, which violates a law, rule, or regulation.

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 Florida Laws**

The Florida laws summarized above include: (1) The Florida False Claims Act, Fla. Stat. §§ 68.081-68.09; (2) Medicaid Provider Fraud, Fla. Stat. § 409.920; (3) The Public-Sector Whistle-blower's Act, Fla. Stat. §§ 112.3187-112.31895; and (4) The Private Whistle-blower's Act, Fla. Stat. §§ 448.101-448.105. 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.