

North Carolina

Compliance Program: Code of Conduct

This is a supplement to Kindred's Employee Handbook for employees who work in North Carolina. 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 North Carolina False Claims Act, the North Carolina Medical Assistance Provider False Claims Act and other North Carolina 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 North Carolina laws apply to Medicaid reimbursement and prohibit, among other things:

- Billing North Carolina's Medicaid program for services or goods not provided;
- Billing North Carolina'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 North Carolina's Medicaid program for medically unnecessary services;
- Characterizing non-covered services or costs in a way that secures reimbursement from North Carolina'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;
- Altering, falsifying, destroying, or concealing 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 North Carolina laws may result in civil monetary penalties of \$5,500 to \$11,000 for each false claim, plus at least two times the amount of damages plus interest, payment of the government's expenses to pursue reimbursement, and exclusion from the Medicaid program. Any individual or entity who violates these laws commits a crime punishable by imprisonment for up to 10 years and/or a fine in an amount to be set by the court within its discretion.

Civil Lawsuits

Like the federal False Claims Act, North Carolina 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 that the claim was frivolous, then the court may award the defendant reasonable attorney fees and costs against the qui tam plaintiff.

No Retaliation

Similar to federal law and Kindred policy, North Carolina law prohibits employers from retaliating or discriminating against employees because of their lawful initiation of, or participation in, any action filed or to be filed under the North Carolina Medical Assistance False Claims Act. 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 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 North Carolina Laws

The North Carolina laws summarized above include: (1) False Claims Act, N.C. Gen. Stat. §§ 1-605 to 1-618; (2) Medical Assistance Provider False Claims Act, N.C. Gen. Stat. §§ 108A-70.10 to 108A-70.15; (3) Criminal penalties, N.C. Gen. Stat. § 108A-39 (public assistance program fraud) and §108A-63 (medical assistance provider fraud); and (4) Whistleblower protections, § 108A-70.15 (public and private employees); § 126-85 (public employees). 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.