

Oregon

Compliance Program: Code of Conduct

This is a supplement to Kindred's Employee Handbook for employees who work in Oregon. 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, Oregon's False Claims for Health Care Payments law and other laws and regulations, 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 Oregon laws apply to Medicaid reimbursement and prohibit, among other things:

- Billing Oregon's Medicaid program for services or goods not provided;
- Billing Oregon'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 Oregon's Medicaid program for services that are medically unnecessary or that fail to meet professionally recognized standards for health care;
- Characterizing non-covered services or costs in a way that secures reimbursement from Oregon'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 Oregon laws may result in repayment of the excess payments and a civil penalty up to three times the payment amount, plus the state's costs and disbursements to recover the payments and suspension or termination from the Medicaid program. In addition, any person who violates these laws may be guilty of a Class C felony punishable by imprisonment for up to five years and a fine up to \$125,000.

Civil Lawsuits

Currently, unlike the Federal False Claims Act, Oregon law allows civil lawsuits to recover monetary damages to be filed only by the state government and not by private citizens or employees. There is no provision for a private citizen to share a percentage of any monetary recoveries.

No Retaliation

Like federal law and Kindred policy, various Oregon laws prohibit public employers and private health care employers from retaliating, discriminating or harassing employees because of their good faith disclosure of information about a violation of a law or rule or a violation that poses a risk to public or patient health, safety or welfare, or their refusal to assist employers in activity that the employee reasonably believes is in violation of a law or rule such as Oregon's False Claims for Health Care Payments law. Oregon law also prohibits employers (public or private) from discriminating against any employee who in good faith reports criminal activity or who cooperates with law enforcement in an investigation or at trial. These Oregon employee protection laws provide for both administrative and civil remedies which may include monetary awards for actual damages and punitive damages.

The Oregon Hospital Anti-Retaliation Law, unlike the other laws, requires any nursing staff 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 does not apply to disclosures that the employee reasonably believes to be a crime or where the employee reasonably fears physical harm as a result of the disclosure or where an emergency exists.

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 Oregon Laws

The Oregon laws summarized above include: (1) False Claims for Healthcare Payments law, Or. Rev. Stat. (ORS) §§ 165-690 to 165-698, and 165-990(4); and (2) Whistleblower Law, ORS §§ 659A.199 to 659A.224 (public employers), Hospital Anti-Retaliation Law, ORS §§ 441.174 to 441.182 (nursing staff employees only), § 441.057 (health care employers generally), and § 659A.230 (all employers respecting aiding in criminal or civil proceedings). 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.