

New York

Compliance Program: Code of Conduct

This is a supplement to Kindred's Employee Handbook for employees who work in New York. 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 New York False Claims Act, certain provisions of the New York Social Services Law (the "Social Services Law"), and certain New York criminal 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. The New York laws referenced above apply to New York Medicaid reimbursement and prohibit, among other things:

- Billing the Medicaid program for services or goods not provided;
- Knowingly making inaccurate, false or improper entries in medical records, cost reports and any other records used to support reimbursement from Medicaid;
- Knowingly using a document that contains materially false or fraudulent information to bill Medicaid;
- Characterizing non-covered services or costs in a way that secures reimbursement from Medicaid and is contrary to specific billing or coding requirements;
- Assigning a code to a service or item contrary to specific billing or coding requirements in order to obtain a higher reimbursement;
- Conspiring to commit a violation of the New York False Claims Act; and
- Concealing a material fact in order to secure reimbursement from Medicaid.

Civil and Criminal Penalties for a Violation of Applicable New York Law

A violation of the New York False Claims Act may result in a civil penalty between \$6,000 and \$12,000, plus an additional penalty that is two to three times the amount of all damages, including consequential damages, that the state or local government sustains because of the act of the person. Any person who violates the New York False Claims Act also will be responsible for the costs of a civil action that is brought to recover any penalties or damages.

A violation of the Social Services Law may result in a civil penalty of not more than \$10,000 for each violation, except that the civil penalty may be increased to not more than \$30,000 per violation in the event a person violates the Social Services Law within 5 years of a previous violation. The agency involved also may recover up to three times the amount incorrectly paid to the person. In addition, a person who violates the applicable provisions of the Social Services Law may be found criminally guilty of a misdemeanor, punishable by imprisonment for up to one year and a fine of up to \$1,000.

Finally, the filing of false claims may result in criminal liability under the following New York laws: (i) the Health Insurance Fraud Statute, punishable by imprisonment for up to 25 years and a fine of up to the higher of \$5,000 or the amount the defendant gained from committing the crime; (ii) the Insurance Fraud Statute, punishable by imprisonment for up to 25 years and a fine of up to the higher of \$5,000 or the amount the defendant gained from committing the crime; or (iii) the Penal Law related to False Written Statements, punishable by imprisonment for up to four years and a fine of up to the higher of \$5,000 or the amount the defendant gained from committing the crime.

Civil Lawsuits

Like the federal False Claims Act, the New York False Claims Act 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, a portion of which will be used to cover reasonable attorney's fees and costs.

No Retaliation

Like federal law and Kindred policy, New York Labor Law prohibits employers from retaliating, discriminating against or harassing employees because of their lawful participation in a false claims disclosure or claim. Specifically, New York law protects employees who disclose information about the employer's activities to law enforcement or public officials, including violations that constitute health care fraud. In addition, New York law prohibits health care employers from taking retaliatory action against an employee who discloses the employer's practices to law enforcement or public officials, including actions related to the quality of patient care. New York law provides 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 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 New York Laws

The New York laws summarized above include: (1) New York False Claims Act, N.Y. State Finance Law §§ 187-194; (2) New York Social Services Law § 145 and § 366-b; (3) New York Labor Law § 740-741; and (4) New York Penal Law §§ 175-177. 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.