

New Jersey

Compliance Program: Code of Conduct

This is a supplement to Kindred's Employee Handbook for employees who work in New Jersey. 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 Jersey healthcare fraud 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 New Jersey laws apply to Medicaid reimbursement and prohibit, among other things:

- Billing New Jersey's Medicaid program for services or goods not provided;
- Billing New Jersey'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 New Jersey's Medicaid program for services that are medically unnecessary;
- Characterizing non-covered services or costs in a way that secures reimbursement from New Jersey'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 or rebates;
- Charging in excess of the allowable Medicaid rate, including accepting a gift, money, donation or other compensation as a condition of admission or continued stay in the facility;
- 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 laws may result in a civil penalty up to the civil penalty allowed under the federal False Claims Act (\$11,000 in 2011) for each false claim, and three times the amount of the wrongful payment, plus interest, and suspension or termination from the Medicaid program. In addition, any person who violates these laws may be guilty of crimes punishable by imprisonment for up to 10 years and a fine in an amount up to \$150,000 or an amount double the amount of money gained from the crime, whichever is greater, for each act of health care claims fraud.

Civil Lawsuits

Like the federal False Claims Act, New Jersey law also allows civil lawsuits to be filed by the state government or by private citizens, including employees. If the private citizen 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 private plaintiff is convicted of a crime related to the legal violation that is the subject of the civil suit, the plaintiff shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. If the state chooses not to join the civil suit, the private plaintiff may proceed with the action without the state's participation.

No Retaliation

Similar to Federal law and Kindred policy, the New Jersey Conscientious Employee Protection Act prohibits public and private employers from retaliating, discriminating or harassing employees who disclose, threaten to disclose, or object or refuse to participate in, an activity, policy or practice of the employer that the employee reasonably believes is a violation of any law, rule or regulation, or that is fraudulent or criminal, or that constitutes improper quality of patient care. This protection extends to disclosures or testimony made in response to a government inquiry, investigation, or hearing. These laws also provide for certain monetary awards and equitable relief to the prevailing plaintiff which may include compensation for lost wages or reinstatement to a former position, plus a civil fine and punitive damages against the employer.

This New Jersey 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 does not apply to disclosures that the employee reasonably fears will result in immediate, physical harm.

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 Jersey Laws

The New Jersey laws summarized above include: (1) Medical assistance program fraud (civil and criminal), N.J. Stat. Ann. §§ 30:4D-17 and 30:4D-17.3; (2) Health care fraud (criminal), N.J. Stat. Ann. §§ 2C:21-4.2 and 2C:21-4.3; (3) Conscientious Employee Protection Act (public and private employees), N.J. Stat. Ann. §§ 34:19-1 to 34:19-8; and (4) False Claims Act, N.J. Stat. Ann. §§ 2A:32C-1 to 2A:32C-17. 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.