

West Virginia

Compliance Program: Code of Conduct

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

- Billing Medicaid for services, supplies or equipment not provided;
- Billing Medicaid for services, supplies or equipment that are clearly unsuitable for the patient's needs or are so lacking in quality or sufficiency for the purpose as to be virtually worthless;
- Misrepresenting the dates and descriptions of services rendered, or the identity of the patient or individual who rendered the services;
- Using inaccurate, false or improper entries in medical records, cost reports and any other records in order to secure or support reimbursement;
- Billing Medicaid twice for the same services or items;
- Characterizing non-covered services or costs in a way to secure reimbursement from Medicaid;
- Assigning an incorrect code to a service contrary to the payer's specific billing or coding requirements in order to obtain a higher reimbursement;
- Failing to seek payment from Medicaid beneficiaries who may have other primary payment sources or failing to report or perform offsetting adjustments on Medicaid claims to reflect payment by other payers;
- Participating in kickbacks or rebates;
- Accepting a gift, money, donation or other compensation as a condition of admission or continued stay in the facility; and
- 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 \$10,000 for each false claim and three times the amount of the wrongful payment, plus interest, payment of attorneys' fees and costs of litigation, 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 \$10,000 for each act of health care claims fraud.

Civil Lawsuits

Currently, unlike the federal False Claims Act, West Virginia 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

Similar to federal law and Kindred policy, West Virginia law prohibits certain public bodies and publicly funded organizations from retaliating, discriminating or threatening employees because they have made, or may make, a good faith report about an abuse of resources or a violation of laws to their employer or appropriate authority. West Virginia law also provides for certain monetary awards and equitable relief to the prevailing plaintiff including compensation for lost wages and reinstatement to a former position. West Virginia law does not contain a similar protection for employees who are not employed by a public body. Nevertheless, Kindred expects employees to adhere to Federal law and to Kindred's policy prohibiting retaliation.

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 West Virginia Laws

The West Virginia laws summarized above include: (1) Fraud and Abuse in the Medicaid Program, W.Va. Code Ann, § 9-7-1 *et seq.*; and (2) Public Sector Retaliation laws, W.Va. Code Ann. § 6C-1-1 *et seq.* 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.