

New Hampshire

Compliance Program: Code of Conduct

This is a supplement to Kindred's Employee Handbook for employees who work in New Hampshire. 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 Hampshire Medicaid Fraud and False Claims Act ("NHMFCA"), and other New Hampshire 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 Hampshire laws apply to Medicaid reimbursement and prohibit, among other things:

- Billing New Hampshire's Medicaid program for services not rendered
- Making or using a false record or statement to get a false claim paid
- Conspiring to get a false claim paid
- Making or using a false record to avoid an obligation to pay money or transmit property to the state
- Presenting a claim for goods, services or accommodations that are not medically necessary
- Participating in kickbacks

Civil and Criminal Penalties for False Claims or Statements

A violation of these New Hampshire laws may result in penalties of \$5,000 to \$10,000 per claim, plus three times the amount of damages sustained by the state. In addition, a person who violates these laws commits a felony punishable by imprisonment for up to fifteen years and a fine of up to \$4,000 for an individual and \$100,000 for a business entity.

Civil Lawsuits

Like the federal False Claims Act, New Hampshire 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 relator) 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 relator is convicted of a crime arising from the relator's role in the defendant's violation of the NHMFCA, the relator shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. If the state does not proceed with the action but the relator does, the court may award reasonable attorneys fees and expenses to the defendant if the defendant prevails and the court finds that the claim was clearly frivolous or brought primarily for harassment purposes.

No Retaliation

Like federal law and Kindred policy, various New Hampshire laws, including the NHMFCA and New Hampshire's Private Whistleblowers' Act ("NHPWA"), prohibit employers from retaliating, discriminating or harassing employees because of their lawful participation in a false claims disclosure or their refusal to assist employers in violating laws such as the NHMFCA. 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.

The NHMFCA requires a state employee to exhaust any existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels before taking formal action under the NHMFCA. Likewise, the NHPWA requires employees of private businesses to report allegedly illegal conduct to the attention of a supervisor and then allow the employer a reasonable opportunity to correct the problem, unless the employee has specific reason to believe that reporting the violation would be futile.

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 Hampshire Laws

The New Hampshire laws summarized above include: (1) The New Hampshire Medicaid Fraud and False Claims Act, N.H. Rev. Stat. Ann. § 167.61-a to 167.61-e; and (2) The New Hampshire Whistleblowers' Act, N.H. Rev. Stat. Ann. § 275-E:1 to 275-E:9. 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.