

New Mexico

Compliance Program: Code of Conduct

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

- Billing New Mexico's Medicaid program for services not rendered
- Submitting a false claim for payment
- Conspiring to make a false claim or get one paid
- Solicit, offer or receive a kickback in connection with furnishing goods or services for Medicaid
- Making a false statement with respect to the conditions of operation in order to obtain certification as a hospital or skilled nursing facility
- Making or using a false record to conceal, avoid or decrease an obligation relative to the Medicaid program
- Obstructing an investigation under the Medicaid Fraud Act

Civil and Criminal Penalties for False Claims or Statements

A violation of these New Mexico laws may result in civil penalties equal to three times the amount of damages sustained by the state. In addition, a person who violates these laws commits a crime punishable by imprisonment for up to nine years and a fine of not more than \$10,000. An entity that commits Medicaid fraud is subject to a fine of not more than \$250,000 for each violation.

Civil Lawsuits

Like the federal False Claims Act, New Mexico 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 *qui tam* plaintiff) 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 a *qui tam* plaintiff brings a lawsuit and the court finds that the claim was filed for an improper purpose, frivolous, or not founded in fact, then the court may award the defendant its reasonable attorney fees and costs against the *qui tam* plaintiff.

No Retaliation

Like federal law and Kindred policy, various New Mexico laws, including the NMFCA, 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 NMFCA. 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.

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 Mexico Laws

The New Mexico laws summarized above include: (1) The New Mexico Medicaid False Claims Act, N.M. Stat. Ann. §§ 27-14-1; and (2) The New Mexico Medicaid Fraud Act, N.M. Stat. Ann. §§ 30-44-1. 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.