HAWAI‘I: Summary of Fraud and Abuse Statutes and Regulations

Prepared by
David A. Hatch (dhatch@health-law.com)
Brett Moodie (bmoodie@health-law.com)
Hooper Lundy & Bookman PC
Los Angeles, CA

Catherine L. Aubuchon (caubuchon@bfrhawaii.com)
Bronster Fujichaku Robbins A Law Corporation
Honolulu, HI

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1) ANTI-KICKBACK

Hawai‘i Revised Statutes § 431:10C-308.7(b) Client-patient referrals, health care provider practices prohibited under automobile insurance protection benefits
Prohibits health care providers from engaging in, or agreeing or offering to engage in, fee splitting, including the payment or acceptance of payment by a health care provider of any portion of a health care fee or commission, in return for the referral of a patient for any service or treatment under automobile insurance personal injury protection benefits.

Section 431:10C-308.7(g) defines “health care provider” as any person who is licensed to provide health care services pursuant to chapters 436E (acupuncture practitioners), 442 (chiropractic), 448 (dentistry), 452 (massage), 453 (medicine and surgery), 455 (naturopathy), 457G (occupational therapy), 459 (optometry), 461J (physical therapy), 463E (podiatry), and 465 (psychology).

Hawai‘i Revised Statutes § 458-13(5) Dispensing opticians; prohibited acts
Prohibits dispensing optician from granting, allowing, crediting, or paying, directly or indirectly, openly or secretly, any price differential, rebate, refund, discount, commission, credit, kickback or other allowance, whether in the form of money or otherwise, to any oculist, optometrist, physician, or practitioner of any other profession (A) for or on account of the referring or sending by any oculist,
optometrist, physician, or practitioner to the dispensing optician of any person for the rendition of any of the services performed or articles or appliances furnished by a dispensing optician, or (B) for or on account of the rendition of any services or the furnishing of any articles or appliances to a person so referred or sent by any oculist, optometrist, physician, or practitioner.

**Hawai‘i Revised Statutes § 453-8(a)(2)** Revocation, limitation, suspension, or denial of licenses (medicine and surgery)
Any license to practice medicine or surgery may be revoked, limited, or suspended by the board at any time in a proceeding before the board, or may be denied, for any cause, including employing any person to solicit patients for one’s self.

**Hawai‘i Revised Statutes § 463E-6(a)(1)** Revocation, suspension, or denial of podiatry license; sanctions (podiatrists)
Any license to practice podiatric medicine may be revoked or suspended at any time in a proceeding before the board, or may be denied, for employing “cappers” or “steerers” or for practicing podiatry without a license (see Hawai‘i Revised Statutes § 453-2).

**Hawai‘i Revised Statutes § 448-17(b)(5)** Refusal, revocation, suspension, and administrative penalties (dentistry)
The board may suspend or revoke any dental license and may fine a licensee for the division of fees or agreeing to split or divide the fees received for dental services with any person for bringing or referring a patient.

**Hawai‘i Revised Statutes § 459-9(5)** Refusal to permit examination or issue optometry license; revocation and suspension of optometry license; grounds for
The board of examiners in optometry may refuse to admit persons or to issue a license or may revoke or suspend a license for soliciting or receiving, directly or indirectly, any price differential, rebate, refund, discount, commission, credit, kickback, or other allowance, whether in the form of money or otherwise, from a dispensing optician for or on account of referring or sending to the dispensing optician of any intended or prospective wearer or user of any article or appliance prepared or furnished by a dispensing optician, or for or on account of any service or article furnished by the dispensing optician to any intended or prospective wearer or user.

### 2) PROHIBITIONS ON SELF-REFERRAL

**Hawai‘i Revised Statutes § 431:10C-308.7(c)** Client-patient referrals, health care provider practices prohibited under motor vehicle insurance law
No health care provider shall refer, for any service or treatment authorized under this chapter, a patient to any entity in which the referring provider has a financial interest unless the referring provider has disclosed that financial interest to the patient. The
health care provider shall make the disclosure required by this section in advance and in writing, and shall obtain the signature of the patient and retain the disclosure form for a period of two years. The health care provider shall include in the disclosure a statement indicating that the patient is free to choose a different health care provider.

Section 431:10C-308.7 also prohibits attorneys and health care providers from establishing a pattern of consistently referring clients or patients to each other as a result of any accidental harm. See the “ANTI-KICKBACK” section for additional requirements under 431:10C-308.7.

See applicable definition of “health care provider” discussed above under the “ANTI-KICKBACK” section.

Key State Healthcare Case:

Unreported federal district court decision held that the required disclosures for self-referrals in Section 431:10C-308.7 are limited only to the context of motor vehicle insurance and not to claims under other forms of insurance, such as a claim that physicians were engaged in unfair competition by using hospital privileges to divert patients to facilities in which they had a financial interest. The court found that it “defies logic to believe that the legislature would have placed a disclosure requirement in the article titled Motor Vehicle Insurance if it intended the requirement to apply to all treatment and services by health care providers under the Insurance Code.”

3) FALSE CLAIMS/FRAUD & ABUSE

Hawaii Revised Statutes § 661-21 et seq. Hawaii False Claims Act
Prohibits a person from knowingly making claims for money, property, or services to any state or state employee, or to any contractor, grantee, or other recipient. Requires inadvertent recipient of government funds to return the funds. Knowingly means (1) actual knowledge, (2) deliberate ignorance of the truth or falsity of the information, or (3) reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required. Damages for violation is for mandatory treble damages, and mandatory civil penalties of $5,500 to $11,000 per false claim (legislation proposed in January 2018 would automatically increase this range to match the civil penalties imposed by the federal False Claims Act, 31 U.S.C. sec. 3729, et seq.), investigative costs, and attorneys’ fees. Penalties may be reduced if the person cooperates with the fraud investigation. Does not apply to any controversy involving an amount of less than $500 in value. Allows private parties to pursue actions on behalf of the state and share in a portion of the proceeds.
**Hawaii Revised Statutes § 46-171 et seq. County False Claims Act**
Prohibits a person from knowingly making claims for money, property, or services to any county or county employee, or to any contractor, grantee, or other recipient. Requires inadvertent recipient of government funds to return the funds. Knowingly means (1) actual knowledge, (2) deliberate ignorance of the truth or falsity of the information, or (3) reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required. Damages for violation is for mandatory treble damages, mandatory civil penalties of $5,500 to $11,000 per false claim, investigative costs, and attorneys’ fees. Penalties may be reduced if the person cooperates with the fraud investigation. Does not apply to any controversy involving an amount of less than $500 in value. Allows private parties to pursue actions on behalf of the county and share in a portion of the proceeds.

**Hawaii Revised Statutes § 28-91 Medicaid Fraud Unit**
Establishes in the Office of the Attorney General the Medicaid Fraud Unit authorized to conduct a statewide program for the investigation and prosecution of Medicaid fraud cases and violations of all applicable state laws relating to the providing of medical assistance and the activities of providers of such assistance. The Medicaid fraud unit also may review and take appropriate action on complaints of abuse and neglect of patients of health care facilities receiving payments under the state plan for medical assistance and may provide for collection or referral for collection of overpayments made under the state plan for medical assistance that are discovered by the unit in carrying out its activities.

**Key State Healthcare Case:**

The Hawaii False Claims Act, Hawaii Revised Statutes § 661–21, is nearly identical to the federal False Claims Act (FCA); thus, the court applies the same analysis for liability under the federal and state FCA. There also may be additional liability under the Hawaii FCA in circumstances not covered by the federal FCA, as Hawaii Revised Statutes § 661–21 extends liability to someone who “is a beneficiary of an inadvertent submission of a false claim to the State, who subsequently discovers the falsity of the claim, and fails to disclose the claim to the State within a reasonable time after discovery of the false claim.”

**4) UNFAIR AND DECEPTIVE ACTS AND PRACTICES; UNFAIR COMPETITION; ANTI-TRUST**

**Hawaii Revised Statutes § 480-1 et seq. Monopolies; restraint of trade**
Hawaii Revised Statutes chapter 480 is an amalgam of three separate causes of action: (a) unfair and deceptive acts and practices (UDAP) claims that may be brought by a consumer against a business; (b) unfair competition claims that may be
brought by any person against any other person; and (c) antitrust violations that may be brought by any person, including direct and indirect purchasers, against any other person. It imposes mandatory treble damages and attorneys’ fees for violations and includes enhanced damages for unfair acts directed against seniors.

**Hawai‘i Revised Statutes § 431:14G-108** Managed care plans; prohibited activity
Prohibits managed care plans from attempting to monopolize, combine, or conspire with any other person to monopolize an insurance market or to boycott an insurance market or to restrain trade or lessen competition in the business of insurance.

5) **WHISTLEBLOWER PROTECTION**

**Hawai‘i Revised Statutes § 378-61 et seq. Whistleblower Protection Act**
The Hawai‘i “Whistleblower Protection Act” prohibits an employer from discharging, threatening, or otherwise discriminating against an employee regarding the employee’s compensation, terms, conditions, location, or privileges of employment because: (1) The employee, or a person acting on behalf of the employee, reports or is about to report to the employer, or reports or is about to report to a public body, verbally or in writing, a violation or a suspected violation of: (A) a law, rule, ordinance, or regulation, adopted pursuant to a law of this state, a political subdivision of this state, or the United States; or (B) a contract executed by the state, a political subdivision of the state, or the United States, unless the employee knows that the report is false; or (2) An employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

6) **CORPORATE PRACTICE OF MEDICINE**

**Hawai‘i Revised Statutes § 415A-3 and 453-1** Purposes and practice of medicine defined
Professional organizations may be organized only for the purpose of rendering professional services and services ancillary within a single profession. A professional corporation may be incorporated for the purpose of rendering professional services within two or more professions, to the extent that any combination of professional purposes is permitted by the licensing laws applicable to the professions. The practice of medicine by a physician or an osteopathic physician includes the use of drugs and medicines, water, electricity, hypnotism, osteopathic medicine, or any means or method, or any agent, either tangible or intangible, for the treatment of disease in the human subject.

**Hawai‘i Revised Statutes § 453-2** License required; exceptions
No person shall practice medicine or surgery, either gratuitously or for pay, or offer to practice medicine or surgery, without having a valid unrevoked license or a limited
and temporary license obtained from the Hawaii Medical Board. This prohibition does not apply to out-of-state practitioners of medicine and surgery when in actual consultation with a licensed physician, including via telehealth consultation, which encompasses store and forward technologies, remote monitoring, live consultation, and mobile health.

**Hawai'i Revised Statutes § 448-15** No corporation to practice dentistry; penalty
No corporation shall practice dentistry or engage therein, or hold itself out as being entitled to practice dentistry, or furnish dental services or dentists, or advertise under or assume the title of dentist or dental surgeon or equivalent title, or furnish dental advice for any compensation, or advertise or hold itself out with any other person or alone, that it has or owns a dental office or can furnish dental service, dentists, or dental surgeons, or solicit through itself, or its agents, officers, employees, directors, or trustees, dental patronage for any dentist or dental surgeon employed by any corporation. Corporations that violate the prohibition can be fined $200-$500 for each offense, with each day’s violation considered a separate offense.

**Hawai'i Revised Statutes § 448-14.5** Prohibition on ownership and interference
Dentists cannot permit an unlicensed person or entity to directly or indirectly own, direct, control, or interfere with the licensee’s practice of dentistry. A non-dentist cannot (A) direct or interfere with a dentist’s clinical judgment, (B) select a course of treatment, the procedures or materials to be used, or the manner of treatment for a patient, (C) exercise control of the patient’s records or (D) prohibit or limit access to the dental office, facilities, and equipment necessary to provide services to patients. Violation of these provisions can result in criminal penalties and, for dentists, professional discipline.

**Hawai'i Revised Statutes § 423-1** Dental service corporation, formation
Subject to certain restrictions, a nonprofit dental service corporation may be formed for the purposes of contracting with individuals and corporations for defraying or assuming the costs of services of dentists and dental surgeons, and the contracting on behalf of dentists and dental surgeons to furnish such services.

**Hawai'i Revised Statutes § 424-1** Optometric service corporation, general provisions
Subject to certain restrictions, a nonprofit optometric service corporation may be formed for the purposes of contracting with individuals and corporations for defraying or assuming the costs of services of optometrists, and the contracting on behalf of optometrists to furnish such services.

The Hawai'i Attorney General's Office issued Opinion No. 80-5 in 1980 stating that foreign professional corporations cannot be licensed in Hawai'i. Hawai'i Revised Statutes chapter 415A (formerly codified as chapter 416) allows for the formation of professional corporations; however, professional corporations may provide services only through individuals licensed in Hawai'i and must obtain a certificate of authority by the appropriate state regulatory board of the profession. Furthermore, Hawai'i Revised Statutes 415A only applies to domestic corporations. The statute related to
foreign corporations is Hawai‘i Revised Statutes chapter 414, part XVI (formerly codified as chapter 418) and it does not include the same language about professional corporations. The Hawai‘i statutes allow professionals to organize their practice by incorporating as domestic professional corporations but not as foreign professional corporations.

7) HELPFUL LINKS

- State of Hawai‘i Department of Human Services
- Hawai‘i Medicaid Program
- State of Hawai‘i Medicaid Fraud Control Unit
- Senior Medicare Patrol Hawai‘i