LOUISIANA: Summary of Fraud and Abuse Statutes and Regulations

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CONTENT:
1) Illegal Remuneration
2) Disclosure of Financial Interest
3) False Claims/ Fraud & Abuse
4) Unfair Business Practices
5) Whistleblower Protections
6) Helpful Links

1) ILLEGAL REMUNERATION

Fraudulent Remuneration (Medicaid—criminal)—La. R.S. § 14:70.5
"Fraudulent remuneration" is the intentional solicitation, receipt, offer, or payment of any remuneration, directly or indirectly, overtly or covertly, in cash or in kind, to or from a third party: (1) in return for referral of an individual to a health care provider for items or services billed to Medicaid; (2) in return for purchasing, leasing, or ordering or for arranging or recommending purchasing, etc. of any item, service, or facility billed to Medicaid; (3) for the recruitment of new patients for any item, service, or facility furnished to the recipient and billed to Medicaid. Practices exempt under the safe harbors set forth in La. R.S. § 46:438.2 (see below) are not violations. Violation can result in imprisonment of up to five years and/or a fine of up to $20,000.

Illegal Remuneration (Medicaid—civil)—La. R.S. § 46:438.2
No person shall solicit, receive, offer, or pay any remuneration, directly or indirectly, overtly or covertly, in cash or in kind: (1) in return for referring an individual to a health care provider for items or services reimbursed by Medicaid; (2) in return for purchasing, leasing, or ordering or for arranging or recommending purchasing, etc. any item, service, or facility reimbursed by Medicaid; (3) to a recipient of any item or service reimbursed by Medicaid; or (4) to obtain a recipient list, name, or other identifying information. Protection is provided under safe harbors for discounts and amounts paid to employees and safe harbors created by federal and state laws and regulations. [Note: there is no “knowing” or “willful” requirement.]

Payments for Patient Referrals—La. R.S. § 37:1745
No health care provider shall offer, make, solicit, or receive payment, directly or indirectly, overtly or covertly, in cash or in-kind, for referring or soliciting patients.
“Healthcare provider” is a person, partnership, or corporation licensed by the state to provide health care services as a physician, chiropractor, dentist, dental hygienist, podiatrist, optometrist, physical therapist, psychologist, medical psychologist, licensed professional counselor, registered or licensed practical nurse, pharmacist, and any officer, employee, or agent thereof. Return on investment and activities permitted under the Medicare laws are excepted. Violation can result in suspension or revocation of licensure.

A physician who provides services within the primary service area of a rural hospital may not refer patients for health care services to a health care facility located within the primary service area of the rural hospital if the physician (or a member of the physician’s immediate family) has a direct or indirect ownership interest in the health care facility. “Healthcare facility” includes an independent diagnostic testing facility, imaging facility, or ambulatory surgery center and excludes a rural hospital existing before April 1, 2006, a facility that replaces a rural hospital damaged by Hurricane Katrina or Rita, an entity owned or operated by the state or the United States, a physician practice, a facility under development as of April 1, 2006, a community health care clinic, or a rural health clinic. “Healthcare services” are imaging or ambulatory surgery services. The prohibition is not applicable if the rural hospital in whose primary service area the health care facility is located is offered an ownership interest on commercially reasonable terms; the price of the rural hospital’s participation is commensurate with the interest offered and is not less than a majority interest; and if the rural hospital declines the offer after being provided with certain documents to review, the rural hospital certifies to the offering party that those documents have been destroyed. Violations may result in loss of licensure for the physician and/or health care facility, a required refund with interest for any amounts collected by a health care facility in violation of the statute, and/or double damages, attorneys’ fees, and costs awarded to a person billed in violation of the statute.

The state licensing board may take action against a physician for soliciting, accepting, or receiving anything of economic value in return for referrals of patients to another person or entity or in return for prescribing medications or medical devices.

This regulation implements La. R.S. §37:1745 (see above) for physicians and podiatrists. A physician or podiatrist shall not knowingly and willfully make, offer, solicit, or receive any payment, directly or indirectly, overtly or covertly, in cash or in kind, in return for or to induce a referral. There are exceptions for proportionate return on investment and payments not prohibited or not unlawful under the federal Anti-Kickback Statute. [Note: “knowingly and willfully” is in this regulation, but not in La. R.S. § 37:1745.]
A dentist shall not divide fees or remuneration with a person not licensed to practice dentistry and shall not have an agreement to divide or share fees for dental services with a non-dentist in return for referral of patients to the dentist, whether or not the patient (or the patient’s representative) is aware of the arrangement.

Dental Hygienist Licensure—La. R.S. § 37:777(A)(15)
Disciplinary action may be taken against a dental hygienist for paying a person anything of value for the purpose of securing patients.

Remuneration in return for referrals to a dental health care provider is prohibited. Returns on investment and any payments not prohibited or not unlawful under the federal Anti-Kickback Statute are not prohibited.

Disciplinary action may be taken against a podiatrist who pays anything of value to a person for securing patients or who solicits, accepts or receives anything of economic value in return for and based on the referral of patients to another person, firm or corporation or in return for prescribing medications or medical devices.

Physical Therapists—La. R.S. § 37:2420(A)(8)
Disciplinary action may be taken against the license of a physical therapist who engages, directly or indirectly, in the division, transferring, assigning, rebating, or refunding of professional service fees with a referring practitioner or any relative or business associate of a referring practitioner. This statute does not prohibit physical therapists who are members of an organized legal business entity from dividing fees for professional services among themselves to defray joint operating expenses as set forth in a contract.

A licensed practical nurse shall not offer, make, solicit, or receive any form of direct or indirect remuneration for the referral or solicitation of patients. Exceptions are provided for referrals to another practitioner within the same health care provider, returns on investment, and any activity permitted under the corresponding provisions of the Medicare statutes.

A registered nurse shall not knowingly and willfully make, offer, solicit, or receive remuneration, directly or indirectly, overtly or covertly, in cash or in kind, to induce, or in return for, a referral of an individual for the furnishing of any health care item or service. Exceptions are provided for proportionate returns on investment and any...
payment or practice that is not prohibited under the federal Anti-Kickback Statute or its safe harbor regulations.

Unprofessional conduct includes violation of La. R.S. § 37:1745. A physical therapist may not exploit the physical therapy referral mechanism by providing anything of value, including rental fees in excess of fair market value or any other unearned monies or value in kind, in return for a patient referral, to a referring practitioner who does not have an ownership interest in the physical therapy practice.

A pharmacist or pharmacy shall not knowingly and willfully make, offer, solicit, receive, or accept any payment, directly or indirectly, overtly or covertly, in cash or in kind, to induce, or in return for, referrals. Exceptions are provided for proportionate returns on investment and any payment or practice that is not prohibited under the federal Anti-Kickback Statute or its safe harbor regulations.

A chiropractic physician shall not knowingly and willfully make, offer, solicit, receive, or accept any payment, directly or indirectly, overtly or covertly, in cash or in kind, to induce, or in return for, a referral of an individual for the furnishing or arranging the furnishing of any health care item or service. Exceptions are provided for amounts paid to bona fide employees, proportionate returns on investment, and payments not prohibited under the federal Anti-Kickback Statute or its safe harbor regulations.

**Prohibition of Payments for Referrals (Respiratory Therapists)—**La. R.S. § 37:3358(13)
Disciplinary action may be taken against the license of a respiratory therapist who pays or gives anything of economic value to another person, firm, or corporation to induce the referral of patients to the respiratory therapist.

**“Referrals for Imaging Services” Statement of Position of the LA State Board of Medical Examiners (June 2005)**
The Position Statement addresses the following specific arrangement: an imaging provider makes all equipment, personnel, and supplies available to a referring physician at the imaging provider’s site on a turn-key, as-needed basis for a pre-determined, per-use fee. The imaging provider bills and collects for the services from patients and/or payers (other than Medicare or Medicaid), using the physician’s provider number. The imaging company pays the physician the difference between the amount collected and the pre-determined fee. The Louisiana State Board of Medical Examiners opined that this arrangement is a violation of the Louisiana Anti-Kickback Statute (La. R.S. § 37:1745) and subjects participating physicians to disciplinary action.
2) DISCLOSURE OF FINANCIAL INTEREST

No health care provider shall make referrals outside of the same group practice to any other health care provider or facility when the referring health care provider has a financial interest served by such referral, unless in advance of the referral the referring health care provider discloses the existence of the interest to the patient in writing. “Health care provider” is any person, partnership, or corporation licensed as a physician, dentist, chiropractor, podiatrist, optometrist, physical therapist, psychologist, medical psychologist, licensed professional counselor, registered or licensed practical nurse, pharmacist, or any officer, employee, or agent thereof. A “financial interest” is a significant ownership or investment interest held by the health care provider or a member of his/her immediate family or any form of direct or indirect remuneration for referral. A health care provider who violates the statute must refund any amounts received and is subject to disciplinary action by the appropriate licensing board.

A physician or podiatrist shall not refer any patient outside of his/her group practice to another health care provider in which the physician or podiatrist has a financial interest, unless the physician or podiatrist discloses the existence and nature of the interest to the patient in writing in advance. The definition of “group practice” is set forth in § 4203. As to a physician, an ownership or investment interest is considered “significant” if it represents 5% or more of the gross assets of the health care provider or 5% or more of the voting securities of the health care provider. The required contents of the disclosure are set forth in § 4215 and an approved disclosure form is provided in § 4219.

No dental health care provider shall refer a patient outside his/her group practice if the referring provider has a financial interest served by the referral, unless the referring provider discloses the existence of the financial interest to the patient in writing in advance of the referral. A “financial interest” is a significant ownership or investment interest held by the referring provider or a member of his/her immediate family or any form of direct or indirect remuneration for referral.

A registered nurse may not refer a patient outside of her employment practice to another health care provider in which the nurse has a financial interest unless the nurse makes a written disclosure to the patient prior to the referral. An approved form of disclosure is provided. A “financial interest” is a significant ownership or
investment interest held directly or indirectly by the registered nurse or a member of his/her immediate family or indirect remuneration for referral.

A licensed practical nurse has the responsibility to disclose to a patient any financial or ownership interest he/she may have in a health care provider when making a referral to a health care provider outside his/her health care provider. The disclosure must be in writing and in the form set forth in the regulations. The nurse must also inform the patient of the patient’s freedom to choose an alternate health care provider.

A pharmacist or pharmacy shall not make any referral of a patient outside the pharmacist’s or pharmacy’s group practice to another health care provider in which the referring pharmacist has a financial interest unless written disclosure is provided in advance of the referral. An approved form of disclosure is provided.

A chiropractic physician shall not make any referral of a patient outside the chiropractic physician’s group practice for the provision of health care items or services by another health care provider in which the referring chiropractic physician has a financial interest, unless in advance of the referral written disclosure is provided to the patient in advance of the referral. The required contents of the disclosure are set forth in the regulations.

**3) FALSE CLAIMS/FRAUD & ABUSE**

**Medicaid Fraud (criminal)**—La. R.S. § 14:70.1
Medicaid fraud is the act of any person who, with intent to defraud the state or any person or entity through the Medicaid program or any other state agency: (1) presents for payment any false or fraudulent claim for furnishing services or merchandise; (2) knowingly submits false information to obtain greater compensation than that to which he/she is entitled for furnishing services or merchandise; or (3) knowingly submits false information to obtain authorization for furnishing items or services.

**Medical Assistance Programs Integrity Law (MAPIL)—False or Fraudulent Claim; Misrepresentation (civil)**—La. R.S. § 46:438.3
No person shall: (1) knowingly present or cause to be presented a false or fraudulent claim; (2) knowingly engage in misrepresentation or make, use, or cause to be made or used, a false record or statement material to a false or fraudulent claim; (3) knowingly make, use, or cause to be made or used, a false record or statement
material to an obligation to pay or transmit money or property to Medicaid, or to knowingly conceal, avoid, or decrease an obligation to pay or transmit money or property to Medicaid; (4) conspire to defraud, or attempt to defraud, Medicaid through misrepresentation or by obtaining or attempting to obtain payment for a false or fraudulent claim; or (5) knowingly submit a claim for goods, services, or supplies that were medically unnecessary or of substandard quality or quantity. In 2007, 2009, and 2011 the Louisiana legislature amended MAPIL in an attempt to meet the requirements of Section 6031 of the Deficit Reduction Act of 2005 (DRA), which provides to states an increased percentage of recoveries in state Medicaid false claims act cases. The U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG) has heretofore found that MAPIL does not meet the requirements of the DRA. In its latest correspondence to the Louisiana Department of Justice on November 15, 2011, OIG determined that the amended MAPIL does not meet the requirements of the DRA because it does not establish liability for the same breadth of conduct as the federal False Claims Act and it is not at least as effective in rewarding and facilitating qui tam actions as the federal False Claims Act.

MAPIL—Civil Monetary Penalty—La. R.S. § 46:438.5
A civil monetary penalty may be imposed for any of several listed acts, including violating any MAPIL provision; being charged with a violation of La. R.S. § 14.70.1 (criminal Medicaid fraud), La. R.S. § 14:133 (false public records) or La. R.S. § 46:114.2 (fraud in obtaining Medicaid); or being found liable in a civil action filed in federal court pursuant to 18 U.S.C. § 1347 (health care fraud), 42 U.S.C. § 1359nn(h)(6) [sic] (assume reference is to Physician Self-Referral Prohibition at 42 U.S.C. § 1395nn(h)(6)), or 42 U.S.C. § 1320a-7(b) (Anti-Kickback statute).

MAPIL—Grounds for Denial or Revocation of Enrollment—La. R.S. § 46:437.14
The Louisiana Department of Health and Hospitals may deny or revoke enrollment in Medicaid to a health care provider for certain acts applicable to the health care provider, its agent, managing employee, or any person having an ownership interest of 5% or more of the health care provider. The acts include misrepresentation; previous or current exclusion from Medicare, Medicaid, or any other public or private health insurance program; conviction under any federal or state criminal law relating to the delivery of items or services under Medicare, Medicaid, or any other public or private health insurance program; and a sanction pursuant to a violation of federal or state laws or rules relating to Medicaid, Medicare, or any other public health care or health insurance program.

This subpart of the Medicaid Surveillance and Utilization Review Systems regulations sets forth in detail the types of conduct that violate the Louisiana Medicaid laws and regulations, the scope of violations, the types of violations, and elements of violations.
Disciplinary action may be taken against a physician who makes or submits false, deceptive, or unfounded claims, reports, or opinions to a patient, insurance company, company, individual, or governmental authority to obtain anything of economic value.

Dental Practice Act—La. R.S. § 37:776(A)(21) & (26)
Disciplinary action may be taken against a dentist who makes or submits false or deceptive claims to any patient, insurance company, company, individual, or governmental authority for the purpose of obtaining compensation for services rendered or who fails to disclose waivers of co-payments to any third party payer.

Chiropractor Licensure—La. R.S. § 37:2816(A)(6)
Disciplinary action may be taken against a chiropractor who obtains or attempts to obtain payment for chiropractic services by fraud, deceit, or perjury.

Pharmacist Licensure—La. R.S. § 37:1241(A)(11)
Disciplinary action may be taken against a pharmacist who commits fraud in connection with the practice of pharmacy, including but not limited to Medicare, Medicaid, or insurance fraud.

Podiatrist Licensure—La. R.S. § 37:624(A)(18)
Disciplinary action may be taken against a podiatrist who makes or submits a false, deceptive, or unfounded claim, report, or opinion to any patient, insurance company, company, individual, or governmental authority for the purpose of obtaining anything of economic value.

Psychologist Licensure—La. R.S. § 37:2359(B)(7)
Disciplinary action may be taken against a psychologist who is convicted of fraud in filing Medicare, Medicaid, or any third-party payer claims.

Respiratory Therapist Licensure—La. R.S. § 37:3358(A)(9)
Disciplinary action may be taken against a respiratory therapist who makes or submits a false, deceptive, or unfounded claim, report, or opinion to any patient, insurance company, company, individual, or governmental authority for the purpose of obtaining anything of economic value.

A “fraudulent insurance act” includes any act or omission committed by a person who, knowingly and with intent to defraud, presents or causes to be presented, or prepares with the knowledge or belief that it will be presented, to a self-insured governmental entity any oral or written statement that the person knows to contain materially false information as part of, in support of, denial of, or concerning any fact material to, or conceals any information concerning any fact material to, any claim for payment under such self-insured governmental entity’s loss fund or risk pool. A “self-insured governmental agency” is an agency of the state or political subdivision.
of the state, or an agency thereof, or a consortium of governmental entities that maintains a self-insured loss fund or risk pool. In addition to fraudulent insurance acts, the following acts are punishable as felonies: (1) presenting or causing to be presented any written or oral statement in support or denial of a claim for payment or other benefit pursuant to an insurance policy with knowledge that the statement contains false, incomplete, or fraudulent information concerning any fact or thing material to the claim or insurance policy; (2) assisting, abetting, soliciting, or conspiring to prepare or make any written or oral statement intended to be presented to an insurance company, insured, the Louisiana Department of Insurance, or other party in interest in connection with a claim for payment or other benefit pursuant to an insurance policy with knowledge that the statement contains false, incomplete, or fraudulent information concerning any fact or thing material to such claim or insurance policy; or (3) knowingly and willfully committing health care fraud. “Knowingly and willfully” under (3) means to continue with a practice, after written notice to cease such practice from a health care benefit program by certified mail, return receipt requested, except when the health care provider reasonably believes that such practice materially complies with coding and billing standards issued by the American Medical Association, HHS, the Centers for Medicare & Medicaid Services, or the Louisiana Medicaid program.

4) UNFAIR BUSINESS PRACTICES


Fraudulent insurance acts are included in the list of unfair methods of competition and unfair or deceptive acts or practices in the insurance business. A fraudulent insurance act is an act committed by a person who knowingly and with intent to defraud presents, or causes to be presented, or prepares with knowledge or belief that it will be presented, a written statement as part of or in support of a claim for payment that the person knows to contain materially false information concerning any material fact. Concealment for the purpose of misleading information concerning any material fact is also a fraudulent insurance act.

5) WHISTLEBLOWER PROTECTIONS


An employee, contractor, or agent shall be entitled to all relief necessary if he/she is discharged, demoted, suspended, threatened, harassed, or discriminated against in his/her employment because of his/her lawful acts in furtherance of a qui tam action or other efforts to stop violations of MAPIL.
6) HELPFUL LINKS
- LA Department of Health and Hospitals
- LA Medicaid Fraud Control Unit
- LA State Board of Medical Examiners