1) FRAUD & ABUSE

Other than in the Medicaid laws provided below, Alabama does not have fraud and abuse statutes specifically related to health care.

**Ala. Code § 22-1-11(c)** — *Making false statement or representation of material fact in claim or application for payments on medical benefits from Medicaid Agency generally; kickbacks, bribes, etc.; exceptions; multiple offenses.*

Under Alabama’s Medicaid law, any person who knowingly solicits, receives, offers, or pays any remuneration of any kind in exchange for the referral of any person for services or in return for “purchasing, leasing or ordering any good, facility, service, or item [or for recommending one of the aforementioned acts] for which payment may be made in whole or in part by the Medicaid Agency, or its agents,” shall be guilty of a Class C felony.

Act No. 2017-066 amended this statute to include the “knowingly” scienter, whereas before no such intent was required to violate the statute. This Act also updated the statute to incorporate the federal anti-kickback safe harbors found in 42 CFR § 1001.952. The previous version of the statute contained no such safe harbors.

**Ala. Admin. Code r. 545-x-3-.08**—*Conduct of Hearings in Contested Cases; Appointment and Authority of Hearing Officer; Grounds for Suspension or Revocation of License.*
In addition to the above fines and penalties, the Medical Licensure Commission has the authority to suspend, revoke, or restrict any license to practice medicine or osteopathy in the state of Alabama or to impose probation or fines upon any person practicing medicine or osteopathy in the state of Alabama upon conviction of a felony, any crime or offense related to the practice of medicine, or Medicare and/or Medicaid fraud.

**Alabama does not have a Stark-like provision at this time.**

**Ala. Admin. Code r. 560-x-4-04**—Fraud and Abuse by Providers.
Fraud is defined as “an intentional deception or intentional misrepresentation made by a person with the knowledge that the deception could result in some unauthorized personal benefit or unauthorized benefit to some other person.” Providers participating in the Medicaid program must provide the attorney general and/or Medicaid-appointed investigator with any and all records or information necessary to conduct an investigation regarding potential fraud, abuse, or misuse of the Medicaid program. This rule provides a listing of examples of program abuse and potential administrative sanctions for fraudulent acts. The Medicaid Fraud Control Unit of the Attorney General’s Office assists Medicaid in investigating fraud and abuse claims and refers providers to Medicaid when they determine fraud or abuse is involved but that an act is not of a nature to warrant criminal charges.

This rule adopts by reference all regulations provided by Title 42 of the *Code of Federal Regulations* relating to the Medicaid program generally.

**Ala. Admin. Code r. 560-x-33-.01**—General.
“Federal regulations require that the state make provisions for handling of recoupments and recoveries. The Alabama Medicaid Agency will actively seek recovery of all misspent Medicaid funds and correctly paid benefits recovered under federal law.”

**Ala. Admin. Code r. 560-x-33-.03**—Methods -- REPEALED.
In 2016, this section, which previously set out the methods to be used by the Alabama Medicaid Agency for recoupment of misspent Medicaid funds, was repealed. The substance of this section has been subsumed into the amended and expanded r. 560-x-33-.04 covered below.

**Ala. Admin. Code r. 560-x-33-.04**—Recoupments.
The above section addresses procedures for recoupment and securing liens. Procedures are in place for obtaining direct reimbursement, arranging time payment plans, recouping from fiscal agents, and pursuing recovery through civil actions. The rule no longer provides for recoupment through criminal actions.
**Ala. Admin. Code r. 560-x-33-.06** – Liens.

This rule contains details on the use of liens for recoupment of misspent Medicaid dollars, a topic formerly covered in less detail in the old r. 560-x-33-.04. The rule allows the Alabama Medicaid Agency to place a lien on and, if needed, foreclose on real property. However, the rule does not allow a lien to be placed on property where dwells: (1) the recipient’s spouse; (2) the recipient's child who is under 21 years of age; (3) the recipient's child, of any age, who is blind or disabled; or (4) the recipient's sibling who has an equity interest in the home and has been living there continually for at least 1 year.

**2) FALSE CLAIMS**

**Ala. Code § 22-1-11(a)**—Making false statement or representation of material fact in claim or application for payments on medical benefits from Medicaid Agency generally; kickbacks, bribes, etc.; exceptions; multiple offenses.

“Any person who, with intent to defraud or deceive, makes, or causes to be made or assists in the preparation of any false statement, representation, or omission of a material fact in any claim or application for any payment, regardless of amount, from the Medicaid Agency, knowing the same to be false; or with intent to defraud or deceive, makes, or causes to be made, or assists in the preparation of any false statement, representation, or omission of a material fact in any claim or application for medical benefits from the Medicaid Agency, knowing the same to be false; shall be guilty of a Class C felony. The offense set out herein shall not be complete until the claim or application is received by the Medicaid Agency or the contractor with the Medicaid Agency or its successor.”

As with Alabama’s Medicaid anti-kickback statute, this statute was amended by Act 2017-066 to make a violation a Class C felony.

**3) WHISTLEBLOWER PROTECTION**

**Ala. Code § 36-25-24**—Supervisor prohibited from discharging or discriminating against employee where employee reports violation.

Whistleblower protection under Alabama law is limited to public employees.

A public employee is defined as “any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person
employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee’s income.” Ala. Code § 36-25-1(23).

4) FEE SPLITTING

Ala. Code § 34-24-360(10)—Restrictions, etc., on license; grounds.

A physician’s license to practice medicine or osteopathy in the state of Alabama can be suspended, revoked, or restricted, or such physician can be placed on probation for the “division of fees or agreement to split or divide fees received for professional services with any person for bringing or referring a patient.”

There are similar fee-splitting prohibitions applicable to dentists and dental hygienists (Ala. Code § 34-9-18(9)); optometrists (Ala. Code § 34-22-23(16)); chiropractors (Ala. Code § 34-24-166(8)); and podiatrists (Ala. Code § 34-24-276(2)).

5) HELPFUL LINKS

- Alabama Code
- Alabama Administrative Code
- Alabama Board of Medical Examiners
- Medical Association of the State of Alabama
- State of Alabama Attorney General
- Alabama Medicaid Agency Resources