NEBRASKA: Summary of Fraud and Abuse Statutes and Regulations

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1) ANTI-KICKBACK/FEE SPLITTING

As of December 31, 2017, Nebraska has not enacted a state anti-kickback statute similar to the federal Anti-Kickback Statute. Nebraska does, however, have laws and regulations that address similar issues in the context of unprofessional conduct.

A license, certificate, or registration to practice a profession may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it when the applicant, licensee, certificate holder, or registrant is guilty of, among other things, unprofessional conduct.

Unprofessional conduct is conduct likely to defraud the public, including the division of fees or agreeing to split or divide the fees received for professional services with any person for bringing or referring a consumer other than: (1) with a partner or employee of the applicant or credential holder or his or her office or clinic; (2) with a landlord of the applicant or credential holder pursuant to a written agreement that provides for payment of rent based on gross receipts; or (3) with a former partner or employee based on a retirement plan or separation agreement; or obtaining any fee for professional services by fraud, deceit, or misrepresentation.

172 Neb. Admin. Code § 88-010.02
Regulations further define unprofessional conduct as including any departure from or failure to conform to the American Medical Association’s (AMA’s) Code of Ethics and
Opinions, exercising influence on the patient in such a manner as to exploit the patient for the financial gain of the licensee or a third party, which includes the promotion or sale of services, goods, appliances, or drugs, and charging a fee for services not rendered or dividing a professional fee for patient referrals among or between health care providers or institutions, or a contractual arrangement that has the same effect.

2) PROHIBITIONS ON SELF-REFERRAL

As of December 31, 2017, Nebraska has not enacted a state Stark Law or specific law prohibiting self-referrals. Nebraska does, however, define unprofessional conduct to include, among other things, any departure from or failure to conform to the AMA’s Code of Ethics and Opinions, which includes several prohibitions on self-referrals and kickbacks, as well as a requirement that physicians disclose financial interests and other conflicts of interest to patients when making self-referrals.

3) FALSE CLAIMS/FRAUD & ABUSE

**Neb. Rev. Stat. § 68-934 through 68-947**
Establishes the False Medicaid Claims Act.

**Neb. Rev. Stat. § 68-936**
A person presenting a false Medicaid claim is subject to civil liability of not more than $10,000 and to damages in the amount of three times the amount of the false claim. A person presents a false Medicaid claim if such person: (1) knowingly presents or causes to be presented, a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim; (3) conspires to commit a violation of the False Medicaid Claims Act; (4) has possession, custody or control of property or money used or to be used, by the state and knowingly delivers, or causes to be delivered, less than all of the money or property; (5) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state and, intending to defraud the state, makes or delivers the receipt knowing that the information on the receipt is not true; (6) knowingly buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the state who may not lawfully sell or pledge such property; or (7) knowingly makes, uses, or causes to be used, a false record or statement material to an obligation to pay or transmit money or property to the state or knowingly conceals, avoids, or decreases an obligation to pay or transmit money or property to the state. If the state is the prevailing party, the defendant is liable for the state's costs and attorney's fees in addition to the above-stated penalties and damages. Liability under this section is joint and several for any act committed by two or more persons.
**Neb. Rev. Stat. § 68-937**
A person violates the False Medicaid Claims Act, and is subject to civil liability as provided in § 68-936, if such person is a beneficiary of an inadvertent submission of a false claim to the state, and subsequently discovers and, knowing the claim is false, fails to report the claim to the Nebraska Department of Health & Human Services within 60 days of such discovery. The beneficiary is not obligated to make sure a report to the Department if more than six years have passed since submission of the claim.

**Neb. Rev. Stat. § 68-938**
A person violates the False Medicaid Claims Act, and a claim submitted with regard to a good or service is deemed to be false and subjects such person to civil liability as provided in § 68-936, if he or she, acting on behalf of a provider providing such good or service to a recipient under the medical assistance program, charges, solicits, accepts, or receives anything of value in addition to the amount legally payable under the medical assistance program in connection with a provision of such good or service knowing that such charge, solicitation, acceptance, or receipt is not legally payable.

**Neb. Rev. Stat. § 68-939**
Medicaid providers must maintain records of treatments as are necessary to disclose fully the nature of all goods or services for which a claim was submitted or payment was received, or such records as are necessary to disclose fully all income and expenditures upon which rates of payment were based, for a minimum of six years. Penalties include damages in the amount of three times the amount of the claim submitted for which records were knowingly not maintained or knowingly destroyed. If the state is the prevailing party, the defendant, in addition to penalties and damages, is liable to the state for its costs and attorney’s fees for the civil action brought to recover penalties or damages under the act.

**Neb. Rev. Stat. § 68-941**
Civil actions under the Act must be brought within six years of the date that the claim is discovered or should have been discovered by exercise of reasonable due diligence and, in any event, no more than ten years after the date on which the violation of the Act was committed. The state has the burden to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

**Neb. Rev. Stat. § 68-1017**
Any person, including vendors and providers of medical assistance, who, by means of a willfully false statement or representation, obtains or attempts to obtain, or aids or abets any person to obtain or to attempt to obtain (a) an assistance certificate of award to which he or she is not entitled, (b) any commodity, any foodstuff, any food instrument, any Supplemental Nutrition Assistance Program benefit or electronic benefit card, or any payment to which such individual is not entitled or a larger payment than that to which he or she is entitled, (c) any payment made on behalf of
a recipient of medical assistance or social services, or (d) any other benefit administered by the Nebraska Department of Health and Human Services (“NDHHS”), or who violates any statutory provision relating to assistance to the aged, blind, or disabled, aid to dependent children, social services, or medical assistance, commits an offense. Upon conviction, such person, if the aggregate value of all funds or other benefits obtained or attempted to be obtained is: (a) less than $500, shall be guilty of a Class IV misdemeanor; (b) $500 or more but less than $1500, shall be guilty of a Class III misdemeanor; or (c) $1500 or more, shall be guilty of a Class IV felony.

Any person who by means of a willfully false statement or representation obtains or attempts to obtain, or who aids or abets any person in obtaining, support under the Disabled Persons and Family Support Act shall, upon conviction, be punished pursuant to § 68-1017.

Neb. Rev. Stat. § 71-2478
Any person who knowingly or intentionally possesses, acquires, obtains, or attempts to acquire or obtain possession, by means of misrepresentation, fraud, forgery, deception, or subterfuge, any drug substance not classified as a controlled substance under the Uniform Controlled Substances Act that can only be lawfully dispensed upon the written or oral prescription of a practitioner authorized to prescribe such substances commits a Class III misdemeanor.

Neb. Rev. Stat. § 28-403
Any physician or other person prescribes any drug or medicine to another person, the true nature and composition of which he does not, if inquired of, truly make known, but avow the same to be a secret medicine or composition, thereby endangering the life of such other person, he shall be guilty of a Class III misdemeanor.

Neb. Rev. Stat. § 38-1,117
Any person who (1) presents to the NDHHS a document which is false or of which he or she is not the rightful owner for the purpose of procuring a credential, (2) falsely impersonates anyone to whom a credential has been issued by the NDHHS, (3) falsely holds himself or herself out to be a person credentialed by the NDHHS, (4) aids and abets another who is not credentialed to practice a profession that requires a credential, or (5) files or attempts to file with the NDHHS any false or forged diploma, certificate, or affidavit of identification or qualification shall be guilty of a Class IV felony.
4) UNFAIR BUSINESS PRACTICES

**Neb. Rev. Stat. § 59-801**
Contracts or conspiracy in restraint of trade or commerce are illegal and any person who makes any such contract or engages in any such combination or conspiracy shall be deemed guilty of a Class IV felony.

**Neb. Rev. Stat. § 59-802**
Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person(s) to monopolize any part of the trade or commerce within this state shall be deemed guilty of a Class IV felony.

**Neb. Rev. Stat. § 59-803**
Any property owned under any contract or by any combination, or pursuant to any conspiracy, and being the subject thereof, mentioned in Sections 59-801 and 59-802, shall be forfeited to the state.

**Neb. Rev. Stat. § 59-804**
The Attorney General may require of any corporation or other association engaged in business within the state any statement he or she may think fit in regard to the conduct of its business. He or she may especially require such corporation, joint-stock company, limited liability company, or other association to give a list of all contracts or transactions entered into within the 12 months preceding such requisition in which it has sold any article or product or carried any article or product within this state at a rate less than the ordinary market price if such article or product has been sold or carried by any person other than the party to such transaction. He or she may further require the reasons for such distinction and the circumstances attending the same.

5) MANDATORY REPORTING OBLIGATIONS

**Neb. Rev. Stat. § 38-140**
A business credentialed under the Uniform Credentialing Act shall report to the NDHHS every person without a credential that he or she has reason to believe is engaged in practicing any profession or operating any business for which a credential is required by the Uniform Credentialing Act. Practice of such profession or operation of such business without a credential after receiving a cease-and-desist order is a Class III felony.

**Neb. Rev. Stat. § 38-1,124**
A credential holder shall report to the NDHHS every person without a credential that he or she has reason to believe is engaged in practicing any profession or operating any business for which a credential is required by the Uniform Credentialing Act. Practice of such profession or operation of such business without a credential after receiving a cease-and-desist order is a Class III felony.
**Neb. Rev. Stat. § 38-1,125**
A credential holder is required to report to the NDHHS, within 30 days, when he or she has first-hand knowledge of facts giving him or her reason to believe that: (1) a person in his or her profession has (a) acted with gross incompetence, (b) engaged in a pattern of incompetent or negligent conduct, (c) engaged in unprofessional conduct, (d) been practicing while impaired by alcohol, controlled substances, narcotic drugs, or physical, mental, or emotional disability, or (e) otherwise violated regulatory provisions governing the practice of the profession, or (2) a person in another profession has (a) acted with gross incompetence or (b) been practicing while impaired. This section also sets forth self-reporting obligations for credentialed professionals (e.g., loss of privileges).

**172 Neb. Admin. Code § 5-003**
Regulations similarly require all credentialed professionals to report such incidents.

**Neb. Rev. Stat. § 28-435.01**
A health care facility licensed under the Health Care Facility Licensure Act or a peer review organization or professional association relating to a profession regulated under the Uniform Controlled Substances Act shall report to the NDHHS, on a form and in the manner specified by the NDHHS, when the facility, organization, or association: (a) has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a licensee, including settlements made prior to suit, arising out of the acts or omissions of the licensee; or (b) takes action adversely affecting the privileges or membership of a licensee in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment. The report shall be made within 30 days after the action or event. Reports made under this section shall be confidential. The facility, association, or person making the report shall be completely immune from criminal or civil liability for filing a report. Failing or neglecting to make such report is an offense punishable by a civil penalty of $500 for the first offense and $1000 for a subsequent offense.

**Neb. Rev. Stat. § 38-1,127**
A health care facility licensed under the Health Care Facility Licensure Act or a peer review organization or professional association relating to a profession regulated under the Uniform Credentialing Act shall report to the NDHHS, on a form and in the manner specified by the NDHHS, when the facility, organization, or association: (a) has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a licensee, including settlements made prior to suit, arising out of the acts or omissions of the licensee; or (b) takes action adversely affecting the privileges or membership of a licensee in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment. The report shall be made within 30 days after the action or event. Reports made under this section shall be confidential. The facility, association, or person making the report shall be completely immune from criminal or civil liability for filing a report. Failing or
neglecting to make such report is an offense punishable by a civil penalty of $500 for the first offense and $1000 for a subsequent offense.

**Neb. Rev. Stat. § 68-937**
A person violates the False Medicaid Claims Act and is subject to liability as provided in § 68-936 if such person is a beneficiary of an inadvertent submission of a false claim to the state and subsequently discovers and, knowing the claim is false, fails to report the claim to the NDHHS within 60 days of such discovery. The beneficiary is not obligated to make sure a report if more than six years have passed since submission of the claim.

**Neb. Rev. Stat. § 71-503**
Attending physicians must report to the local health department or the NDHHS promptly upon the discovery of the existence of any contagious or infectious diseases and such other disease, illness, or poisoning as the NDHHS may specify. Any attending physician who fails to do so commits a Class V misdemeanor.

6) **GENERAL WHISTLEBLOWER PROTECTIONS**

**Neb. Rev. Stat. § 48-1114**
It is unlawful for an employer to discriminate against any of its employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member or applicant for membership, because he or she: (1) has opposed any practice that is an unlawful employment practice under the Nebraska Fair Employment Practice Act; (2) has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under such Act; or (3) has opposed any practice or refused to carry out any action unlawful under federal law or the laws of this state.

Section 48-1114 has been interpreted to apply only to whistleblowing of the employer’s unlawful acts; reporting unlawful acts of co-workers or other third parties is arguably not protected. See *Wolfe v. Becton Dickinson & Co.*, 662 Neb. 53 (2003).

Nebraska recognizes a limited public policy exception to at-will employment that has been extended to include forms of retaliation in addition to termination. Arguably, if the subject of the whistleblowing is sufficiently related to a public policy objective of the State, this exception may protect a whistleblower from retaliation of any kind.

**Neb. Rev. Stat. § 38-1,126**
Any person making a report to the NDHHS under this section, except those self-reporting, shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the NDHHS under this section.
**172 Neb. Admin. Code § 5-003**
Health care professionals, except those self-reporting, that file reports under these regulations, as well as those who submit voluntary complaints, are immune from criminal or civil liability of any nature, whether direct or derivative, for filing reports or complaints with, or disclosing documents, records, and information to, the NDHHS.

A health care facility or health care service shall not discriminate or retaliate against a person residing in, served by, or employed at such facility or service who has initiated or participated in any proceeding authorized by the Health Care Facility Licensure Act or who has presented a complaint or provided information to the administrator of such facility or service or the NDHHS. A health care facility licensed under the Health Care Facility Licensure Act shall not discriminate or retaliate against any person who has initiated or participated in the making of a report under the Uniform Credentialing Act.

7) **HELPFUL LINKS**
- Nebraska Department of Health and Human Services (NDHHS)
- NDHHS Division of Public Health
- Nebraska Attorney General’s Website
- AMA’s Code of Medical Ethics
- Nebraska Revised Statutes