OREGON: Summary of Fraud and Abuse Statutes and Regulations

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CONTENT:
1) Anti-Kickback
2) False Claims/Fraud & Abuse
3) Unfair Business Practices
4) General Whistleblower Protections
5) Helpful Links

1) ANTI-KICKBACK

Oregon Administrative Rules 410-120-1395—Program Integrity.
Identifies investigation of fraud or prohibited kickback relationships as one of the ways the Oregon Department of Human Services (DHS) promotes program integrity. "Prohibited kickback relationships" means remuneration or payment practices that may result in federal civil penalties or exclusion for violation of 42 CFR 1001.951.

2) FALSE CLAIMS/FRAUD & ABUSE

Oregon Revised Statutes 180.750 et seq.—False Claims Act.
Under the Oregon False Claims Act (OFCA), effective January 1, 2010, a “claim” is defined as "a request or demand made to a public agency, including a request or demand made pursuant to a contract, that seeks moneys, property, services or benefits that will be provided in whole or in part by a public body, whether directly or through reimbursement of another public agency that provides the moneys, property, services or benefits." A false claim is a claim that is based on false or fraudulent information, contains or is based on misrepresentations, or omits material information. The OFCA imposes a civil penalty of $10,000 or twice the amount of damages, whichever is greater, for each violation. There are no criminal penalties associated with the OFCA, but defendants may be held concurrently liable under other theories. Corporations as well as individuals may be assessed penalties independent of or concurrent with each other. There is no private right of action under the OFCA and the state may recover attorney’s fees, but defendants are only able to recover attorney’s fees if they can show the state had no objectively reasonable basis for the claim. When assessing penalties,
the court may mitigate an award or penalty based on any penalty assessed under the federal False Claims Act for substantially similar acts and may not award penalties if the defendant provides all relevant information to the state within 30 days of receiving the information, fully cooperates in the investigation, and provided the information before an investigation into the action was commenced.

**Oregon Revised Statutes 162.055 et seq.—Perjury and Related Offenses.**
Provides criminal penalties for knowingly making false sworn statements and false unsworn declarations generally, and for making unsworn false statements to a public servant in collection with the application for any benefit. Provides that perjury is a Class C felony, false swearing is a Class A misdemeanor, and making an unsworn false statement to a public servant is a Class B misdemeanor.

**Oregon Revised Statutes 164.015 et seq.—Theft.**
Theft is defined as taking, appropriating, obtaining, or withholding property of another with the intent to deprive such person of the property. It includes theft by extortion, deception, and receiving. There is a statutory defense if the defendant reasonably believed that the defendant was entitled to the property involved. (Oregon Revised Statute (ORS) 164.035) Theft ranges from a C misdemeanor to a B felony depending on the value of the property taken and the theory of theft.

**Oregon Revised Statutes 165.007, 165.013—Forgery.**
Forgery can be either the making of the forged document or the uttering of the document with the intent to injure or defraud the person. Forgery can be a Class A misdemeanor or a Class C felony.

**Oregon Revised Statutes 165.080—Falsifying Business Records.**
Provides that a person commits the crime of falsifying business records if, with intent to defraud, the person “[m]akes or causes a false entry in the business records of an enterprise.” Falsifying business records is a Class A misdemeanor.

**Oregon Revised Statutes 165.800—Identity Theft.**
A person who “obtains, possesses, transfers, creates, utters or converts to the person’s own use the personal identification of another person” with the intent to defraud or deceive may be guilty of identity theft. Personal identification includes any written or electronic document that provides or purports to provide nearly any personal information about a person and would include the use of another’s personal information for the purpose of receiving public health benefits. Identity theft is a Class C felony.

**Oregon Revised Statutes 165.690 to 165.698—False Claims for Health Care Payments.**
Under ORS 165.692, “[a] person commits the crime of making a false claim for health care payment when the person: (1) Knowingly makes or causes to be made a claim for health care payment that contains any false statement or false representation of a material fact in order to receive a health care payment; or (2) Knowingly conceals from or fails to disclose to a health care payor the occurrence of any event or the existence of...
any information with the intent to obtain a health care payment to which the person is not entitled, or to obtain or retain a health care payment in an amount greater than that to which the person is or was entitled." ORS 165.694 provides that “single acts of making a false claim for health care payment may be added together into aggregated counts of making false claims for health care payments if the acts were committed: (a) Against multiple health care payors by similar means within a 30-day period; or (b) Against the same health care payor, or a contractor, or contractors, of the same health care payor, within a 180-day period.” Making a false claim for health care payment is a Class C felony punishable by up to five years in prison and a fine of up to $125,000. There is a five-year statute of limitations from time of the claim. For the purpose of making a false claim for health care payment, a “‘claim for health care payment’” means “any request or demand for a health care payment, whether made in the form of a bill, claim form, cost report, invoice, electronic transmission or any other document. ‘Claim for health care payment’ does not include any statement by a person on an application for coverage under a contract or certificate of health care coverage issued by an insurer, health care service contractor, health maintenance organization or other legal entity that is self-insured and provides health care benefits to its employees.” For sentencing purposes, violations of ORS 165.692 are classified as a level 6 crime, whereas the property crimes (theft, forgery, etc.) classifications start at level 2 and do not reach a level 6 until the amount in question is $50,000 or more. Pursuant to ORS 161.625 (3)(a), a person convicted under this statute may also be required to pay up to two times the amount of money gained by the crime in lieu of the fine.

Key State Health Care Cases

**State v. Young, 985 P.2d 835 (Or. Ct. App. 1999).**

**Case:** Defendant submitted claims to the Oregon Health Plan for periodontal services he had not performed. The court classified the crime as a level 6 crime for purposes of the sentencing guidelines.

**Holding:** Making a false claim for health care payment is more akin to perjury, a level 6 crime, than theft, a level 2 and higher crime; therefore, the court did not abuse its discretion in assigning a level 6 for sentencing purposes.

**Mutual of Enumclaw Ins. v. McBride, 667 P2d 494 (Or. 1983).**

**Case:** After a fire, defendants made a claim for property for which no evidence was found at the scene.

**Holding:** In an action for insurance fraud or false swearing, standard of proof is preponderance of evidence.

Oregon Revised Statutes 166.715 et seq.—Racketeering.

Prohibits any person who has knowingly received any proceeds derived from a pattern of racketeering from using or investing such proceeds to acquire title or any interest in real property or an enterprise. “Pattern of racketeering activity” means “at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics, including a nexus to the same enterprise, and are not isolated incidents” that occur within five years of each other. Racketeering activity
“means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce or intimidate another person to commit” any number of specified crimes including forgery, theft, and public assistance payments. Violation is a Class A felony. In addition, if the prohibited conduct results in pecuniary gain or damage to another, the person may be fined three times the value of the loss or gain plus reasonable costs of investigation and prosecution.

**Oregon Revised Statutes 167.212—Tampering with Drug Records.**
Tampering with drug records includes altering or defacing controlled substance labels, attaching fake or forged labels, writing or uttering forged prescriptions, and making or uttering any false or forged written record for controlled substances that may include billing or ordering prescription products. Tampering with drug records is a Class C felony.

**Oregon Revised Statues 411.630—Unlawfully Obtaining Public Assistance.**
Provides that no person shall knowingly obtain or attempt to attain any public assistance or medical assistance either for his or her own benefit or the benefit of another. Prohibitions include making false representations, failing to notify DHS of a change in circumstances that would affect eligibility, or other acts intended to enable a person to meet or appear to meet eligibility requirements. Violation of ORS 411.630 is a Class C felony (ORS 411.690).

**Oregon Revised Statues 411.675—Submitting Wrongful Claim or Payment.**
ORS 411.670 covers false claims for any type of compensation or reimbursement to any public assistance or medical assistance recipient. Liability is limited to the lesser or the amount of payment accepted or the aggregate sum that exceeds the maximum amount payable. However, if the recipient contests the case and is afforded a fair hearing, the recipient may be liable for treble the amount received as a result of the violation. Violation of ORS 411.670 is a Class C felony (ORS 411.690).

**Oregon Administrative Rules 410-120-1260—Provider Enrollment.**
Provides that the Oregon Medical Assistance Program (OMAP) may refuse to enter or renew a provider’s enrollment agreement if the provider has been convicted of a criminal offense related to the person’s involvement in any program established under Medicaid, Medicare, or the Title XX service programs.

**Oregon Administrative Rules 410-120-1510—Fraud and Abuse.**
Sets forth requirements for reporting, detecting and investigating fraud and abuse. Provides authority for the Department of Human Services to investigate and respond to substantiated allegations of fraud and abuse, “including but not limited to suspending or terminating the Provider from participation in the medical assistance programs, withholding payments or seeking recovery of payments made to the Provider, or imposing other Sanctions provided under state law or regulations. Such actions by the Department may be reported to the Centers for Medicare and Medicaid Services, or other federal or state entities as appropriate.” Requires providers to promptly refer all suspected fraud and abuse, including fraud or abuse by its employees or in the Division.
of Medical Assistance Programs administration, to the Medicaid Fraud Control Unit of the U.S. Department of Justice or to the DHS Audit Unit. It further requires providers to submit to audits and allow copying without charge, as required to investigate an incident of fraud or abuse.

**Oregon Administrative Rules 411-031-0040(14)—Consumer-Employed Provider Program.**
For the purpose of the Client-Employed Provider Program, fraud is defined as “taking actions that could result in receiving a benefit in excess of the correct amount, whether by intentional deception, misrepresentation or failure to account for payments or money received[,]” “spending payments or money the provider was not entitled to and any act that constitutes fraud under applicable federal or state law (including 42 CFR 455.2).” The Seniors and People with Disabilities Division (SPD) of the DHS determines, by a preponderance of the evidence, when fraud has occurred and the “Department of Justice, Medicaid Fraud Unit determines when to pursue a Medicaid fraud allegation for prosecution.”

**Oregon Administrative Rules 410-120-1460—Medical Assistance Programs.**
Provides authority for the Department of Human Resources to impose mandatory and discretionary sanctions on health care providers. Mandatory sanctions are imposed when a provider is convicted of a crime related to the Social Security Act or related state laws, has been excluded from participation in federal health care programs by the Centers for Medicare & Medicaid Services (CMS) Office of Inspector General, or failed to disclose or report material changes to ownership and control. Discretionary sanctions can be imposed for a wide variety of reasons, including but not limited to billing excessive charges, furnishing unnecessary services, or failing to provide medically necessary services. Sanctions include termination or suspension from participation in the Medicaid program, potentially including a longer suspension than imposed by CMS, withholding of payments, collection of investigation and legal expenses, and collection of up to three times the amount of money wrongfully collected from patients.

**3) UNFAIR BUSINESS PRACTICES**

**Oregon Revised Statutes 646.605 et seq.—Unlawful Trade Practices Act.**
Oregon’s unlawful trade practice act, among other things, prohibits anyone from creating the likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods, or services or as to affiliation, connection, or association with, or certification by, another. Includes representing “that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.” Prohibits making false or misleading representations of fact concerning the price of, or the person’s cost for real estate, goods, or services and any other unfair or deceptive conduct in trade or commerce.
providing that the Attorney General has established a rule declaring the conduct to be unfair or deceptive in trade or commerce.

4) GENERAL WHISTLEBLOWER PROTECTIONS

Oregon Revised Statutes 659A.200 to 659A.224—Disclosures by Public Employees.
The Whistleblower Protection Law defined in ORS 659A.200 to 659A.224 protects public employees or employees or board members of a nonprofit organization who disclose fraud in good faith. More specifically, the Whistleblowers Protection Law prohibits a public employer from preventing an employee from discussing with the legislature the activities of a public agency or those authorized to act on behalf of a public agency. Employers also may not take or threaten to take action against an employee who discloses any information the employee reasonably believes is a violation of law or evidence of mismanagement, gross waste of funds, or abuse of authority. Employers may not require an employee to give notice prior to making any disclosure except that an employer may require the employee to give advanced notice of any testimony given as part of a legislative request to the agency. Provides affirmative defense against civil or criminal charges related to certain disclosures.

Oregon Revised Statutes 441.057—Rules concerning complaints about care; reporting by employee.
Under ORS 441.057, the Oregon DHS is to adopt procedures for filing of complaints regarding the standard of care in any health care facility. The statute also prevents health care facilities people acting in their interest from taking any disciplinary or adverse action against employees who, in good faith, report violations of the law or rules. However, unless the violation presents an immediate threat, the employee can be required to utilize established reporting procedures to notify the administration before notifying DHS or law enforcement. Employees suffering a loss or damage under this section may sue for damages in addition to any other appropriate remedy. ORS 441.057 does not apply to nursing staff when aggrieved by a hospital.

Oregon Revised Statutes 441.179 to 441.186—Nursing Staff in a Hospital.
Hospitals may not take retaliatory action against a nursing staff if the staff discloses, including testifying during an investigation, a practice or policy of the hospital that the staff reasonably believes is a violation of rule, law, or professional standards that “poses a risk to the health, safety or welfare of a patient or the public.” In addition, under the statute, staff may refuse to participate in any activity he or she feels would violate the law, professional standards, or pose a risk. Unless the staff is reasonably certain that management already knows of the practice, policy, or violation and it is an emergency situation or staff fears physical harm as a result of the disclosure, the staff is required to give written notice to the hospital of the activity, policy, practice, or violation and give the hospital a reasonable opportunity to correct the issue. ORS 441.183 provides that all remedies available in common law tort action are available to a nursing staff in an action brought under ORS 441.181. In addition, the court may issue a
restraining order or injunction, reinstate the employee if he or she had been discharged, order attorney’s fees, lost wages, and punitive damages. However, if the court finds that the staff did not have a reasonable basis for bringing the claim and the staff does not voluntarily dismiss the claim, the hospital may be awarded attorney’s fees and costs.

5) HELPFUL LINKS
- Oregon DHS
- Oregon Health Plan
- Oregon Health Plan—Tools for Providers