MISSISSIPPI: Summary of Fraud and Abuse Statutes and Regulations

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** Note: All URL addresses for citations referencing the Mississippi Annotated Code (Miss. Code Ann.) were confirmed in August 2018 as valid links prior to publication (i.e., the link goes directly to the cited statute). If, however, the link directs you to the Lexis Advance login page, click here to access the Code’s table of contents.

1) ANTI-KICKBACK

Medicaid Fraud Control Act (Miss. Code Ann. § 43-13-201, et seq.)
The Medicaid Fraud Control Act provides that "a person shall not solicit, offer or receive a kickback or bribe in the furnishing of goods or services for which payment is or may be made in whole or in part pursuant to the Medicaid program, or make or receive any such payment, or receive a rebate of a fee or charge for referring an individual to another person for the furnishing of such goods or services." Miss. Code Ann. § 43-13-207.

There are no “safe harbors” under the Medicaid Fraud Control Act.

Both criminal penalties and civil liability may be imposed upon a violator of the Act. Violators shall be guilty of a felony, punishable by imprisonment for not more than five years, or by a fine of not more than $50,000, or both. Miss. Code Ann. § 43-13-215.
A health care provider or vendor committing any act or omission in violation of the Medicaid Fraud Control Act shall be directly liable to the state and shall forfeit and pay to the state a civil penalty equal to the full amount received, plus an additional civil penalty equal to triple the full amount received. Miss. Code. Ann § 43-13-225.

The Division of Medicaid also has the power to deny or revoke enrollment in the Medicaid program to a provider if the provider is convicted under federal or state laws for criminal offenses related to fraud or sanctioned for a violation of federal or state laws or rules relative to the Medicaid program, any other state’s Medicaid program, Medicare, or any other public health care or health insurance program. Miss. Code. Ann § 43-13-121.

In a recent case, the Court of Appeals of Mississippi held on appeal that sufficient evidence supported a defendant’s Medicaid fraud convictions under the Medicaid Fraud Control Act because a jury could have found the defendant had no reasonable basis to believe he filed proper Medicaid claims under a code carrying the highest level of reimbursement, because the claims did not involve highly complex medical decisions and the defendant could not have possibly spent the requisite time consulting. Further, the Court held there was undisputed evidence that the defendant consistently billed such codes improperly, and such claims carried the highest level of reimbursement. Azomani v. State, No. 2015-KA-00050-COA (Court of Appeals of Mississippi) (August 9, 2016).

Insurance Integrity Enforcement Bureau (Miss Code. Ann. § 7-5-301, et seq.)
Mississippi law prohibits a person or entity from knowingly paying, offering, delivering, receiving, soliciting, or accepting any remuneration, as an inducement for referring or for refraining from referring a patient, client, customer, or service in connection with an insurance plan. Miss. Code Ann. § 7-5-303 (4). "An insurance plan" means a plan or program that provides health benefits whether directly through insurance or otherwise and includes a policy of life or property and casualty insurance, a contract of a service benefit organization, workers' compensation insurance or any program or plan implemented in accordance with state law or a membership agreement with a health maintenance organization or other prepaid programs. Miss. Code Ann. § 7-5-303 (4).

Violators shall be guilty of a felony punishable by imprisonment for not more than three years, or by a fine of not more than $5,000 or double the value of the fraud, whichever is greater, or both. Miss. Code Ann. § 7-5-309(1). Organizations shall be subject to a fine of not more than $150,000 for each violation. Miss. Code Ann. § 7-5-309(2). In a proceeding for violations, the court shall also assess against the defendant convicted of such violation double those reasonable costs that are expended by the Insurance Integrity Enforcement Bureau of the Office of Attorney General or the district attorney's office in the investigation of such case, including, but not limited to, the cost of investigators, process service, court reporters, expert witnesses and attorney's fees. Miss. Code Ann. § 7-5-309(3).
Mississippi State Board of Medical Licensure Policies (Rev. Date November 2013)

A Mississippi State Board of Medical Licensure policy provides that at no time shall a physician enter into any agreement or arrangement whereby consideration or compensation is received as an inducement for the referral of patients, referral of medical services or supplies, or for admissions to any hospital. This policy further states business arrangements and actions of a physician in relation thereto cannot be contrary to or be in violation of the federal Anti-Kickback Statute.

The Board’s policies further provide that a business arrangement and the actions of the physician in relation thereto, cannot be contrary to or be in violation of the federal Anti-Kickback Statute and related statutes, rules and regulations.


Mississippi rules and regulations provide that it is unethical for a doctor of chiropractic to receive a fee, rebate, rental payment or any other form of remuneration for the referral of a patient to a clinic, laboratory or other health service entity.

The Mississippi Board of Chiropractic Examiners (MSBCE) provides exceptions for space/equipment rental arrangements similar to the space/equipment rental safe harbors to the federal Anti-Kickback Statute. The space/equipment lease must meet comply with the following:

1. The lease agreement is in writing and signed by the parties;
2. The lease specifies the space or equipment covered by the lease;
3. If the lease is intended to provide the lessee with access to the premises or equipment for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, their periodicity, and the exact rent for such intervals;
4. The term of the lease is for not less than one year; and
5. The rental charge is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals of business between the parties.

Optometrists (30-029 Miss. Code R. § 2901.8, et seq.)

Mississippi rules and regulations provide that no optometrist shall enter into an arrangement: (i) Accepting a commission for the writing or filling of any optometric prescription. 30-029 Miss. Code R. § 2901.8.5(i).

No optometrist shall give or receive a commission or make a secret division of fees, by whatever permit may be called, or under guise or any pretext whatsoever from any unlicensed optometrist, person, firm or corporation to secure optometric patients. 30-029 Miss. Code R. § 2901.8.1.
Nursing Home Administrators (30-027 Miss. Code R. § 2703.3.1.C(2)(g))
The Board of Nursing Home Administrators is authorized to investigate suspected violations of any of the provisions of the law pertaining to the licensing of nursing home administrators, including, but not limited to, paying, giving, causing to be paid or given, or offering to pay, or giving to any person a commission or other valuable consideration for the solicitation or procurement, either directly or indirectly, of nursing home patronage, or accepting such payment.

Social Workers and Marriage/Family Therapists (30-019 Miss. Code R. § 1901.3.1)
Licensees may be subject to disciplinary sanction if the Board finds that a licensee is in violation of any of the standards of conduct, including payment of commission rebates or other forms of remuneration for referral of clients for professional services.

Dentists (30-023 Miss. Code R. § 2301.1 et seq.)
A licensee may be subject to disciplinary action by the Board for unprofessional conduct in the context of advertising, including directly or indirectly offering, giving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.

As it pertains to the corporate practice of dentistry, it is the policy of Board not to concern itself with the form or type of business arrangements entered into by a licensee. However, at no time shall a dentist enter into any agreement or arrangement whereby consideration or compensation is received as an inducement for the referral of patients or for the referral of dental services or supplies. 30-023 Miss. Code R. § 2301.1.55.5).

Hospitals – Requirements for Medical Staff Bylaws (15-016 Miss. Code R. § 41.7.17.7)
Hospital medical staff bylaws and rules and regulations, at a minimum, shall require a pledge that each practitioner will conduct his practice in accordance with high ethical traditions and will refrain from rebating a portion of a fee, or receiving other inducements in exchange for a patient referral.

Home Health Agencies – Ethical Practice Standards (15-016 Miss. Code R. § 46.30.1)
The governing body of each home health agency (“HHA”) shall adopt written standards of ethical practice that shall be posted in each HHA office. Among other items, every HHA shall include the in the HHA's standards of ethical practice that the HHA shall accept patient referrals in a professional manner with no remuneration provided to the referring party.
PROHIBITIONS ON FEE SPLITTING

**Mississippi Medical Practice Act (Miss. Code. Ann § 73-25-1, et seq.)**
Mississippi has not adopted a “fee-splitting statute”; however, physicians are prohibited by the Mississippi Medical Practice Act from engaging in “unprofessional conduct,” which includes “being guilty of any dishonorable or unethical conduct likely to deceive, defraud or harm the public.” Miss. Code Ann. § 73-25-29(8)(d). Penalties for noncompliance include the non-issuance, suspension, revocation, or restriction of a license or the denial of reinstatement or renewal of a license. Miss. Code Ann. § 73-25-29. The issue of fee splitting as potentially “unprofessional conduct” under Mississippi professional licensure laws has not been addressed by Mississippi courts.

**Optometrists (30-029 Miss. Code R. § 2901.8.1)**
No optometrist or therapeutic optometrist shall divide, share, split, or allocate, either directly or indirectly, any fee for optometric or therapeutic optometric services or materials with any lay person, firm or corporation, provided that this rule shall not be interpreted to prevent an optometrist or therapeutic optometrist from paying an employee in the regular course of employment, and provided further, that it shall be construed as a violation of this rule for any optometrist or therapeutic optometrist to lease space from an establishment, or to pay for franchise fees or other services, on a percentage or gross receipts basis.

PROHIBITIONS ON SELF-REFERRAL

**Mississippi Medical Practice Act (Miss. Code. Ann § 73-25-1, et seq.)**
Mississippi does not have a statute prohibiting physician referrals to health care providers with which the physician has a financial relationship. As noted above, physicians are prohibited by the Mississippi Medical Practice Act from engaging in “unprofessional conduct.” Miss. Code Ann. § 73-25-29(8)(d). The issue of self-referral as potentially “unprofessional conduct” under Mississippi professional licensure laws has not been addressed by Mississippi courts.

While there is no statutory provision prohibiting physician self-referrals, the Board of Medical Licensure’s Administrative Code provides that a physician shall not be influenced in the prescribing of drugs, devices or appliances by a direct or indirect financial interest in a pharmaceutical firm, pharmacy or other supplier. A physician may own or operate a pharmacy if there is no resulting exploitation of patients. Patients are entitled to the same freedom of choice in selecting who will fill their prescription needs as they are in the choice of a physician. The prescription is a written direction for a therapeutic or corrective agent. A patient is entitled to a copy of the physician’s prescription for drugs or other devices as required by the principles of medical ethics. The patient has a right to have the prescription filled wherever the patient wishes. Where medication is to be dispensed or a prescription, excluding refills, called in to a pharmacist for
medication, a physician shall inform each patient of that patient’s right to a written prescription and the right to have the prescription filled wherever the patient wishes. 30-026 Miss. Code R. § 2640.1.12.

Further, Mississippi State Board of Medical Licensure Policies contain a section addressing “the sale of goods from physician offices,” which provides:

1. Due to the potential for patient exploitation in the sale of goods, physicians should be mindful of appropriate boundaries with patients, should avoid coercion in the sale of goods in their offices, and should not engage in exclusive distributorship and/or personal branding;
2. Physicians should make available disclosure information with the sale of any goods in order to inform patients of their financial interests;
3. Physicians may distribute goods free of charge or at cost in order to make such goods readily available; and
4. Physicians may make available for sale in their offices durable medical goods essential to the patient’s care and non-health related goods associated with a charitable organization.

**Acupuncturists (30-026 Miss. Code R. § 2625.1.16)**

Acupuncturists should make available disclosure information with the sale of any goods in order to inform patients of their financial interests.

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

Mississippi law has two provisions directed at prosecuting health care fraud: (1) the Medicaid Fraud Control Act; and (2) the Insurance Integrity Enforcement Bureau provisions.

**Medicaid Fraud Control Act (Miss. Code. Ann § 43-13-201, et seq.)**

A person shall not make, present, or cause to be made or presented a claim for Medicaid benefits, knowing the claim to be false, fictitious, or fraudulent. Miss. Code. Ann. § 43-13-213.

A person shall not enter into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another to obtain the payment or allowance of a false, fictitious, or fraudulent claim for Medicaid benefits. Miss. Code. Ann. § 43-13-211.

A person shall not knowingly and willfully make, induce, or seek to induce the making of a false statement or false representation of a material fact with respect to the conditions or operation of an institution or facility in order that the institution or facility may qualify, upon initial certification or upon recertification, to receive Medicaid benefits as a hospital, skilled nursing facility, intermediate care facility, or home health agency. Miss. Code. Ann. § 43-13-209.
A person shall not knowingly and willfully make, induce or seek to induce the making of a false statement or false representation of a material fact with respect to the conditions or operation of an institution or facility in order that the institution or facility may qualify, upon initial certification or upon recertification, to receive Medicaid benefits as a hospital, skilled nursing facility, intermediate care facility or home health agency. Miss. Code. Ann. § 43-13-209.

For purposes of the Medicaid Fraud Control Act sections above, "knowing" and "knowingly" mean that a person is aware of the nature of his conduct and that such conduct is substantially certain to cause the intended result. Miss. Code. Ann. § 43-13-203(c).

A person who violates any provision of Sections 43-13-205 through 43-13-213 shall be guilty of a felony, punishable by imprisonment for not more than five years, or by a fine of not more than $50,000, or both. Miss. Code Ann § 43-13-215. A health care provider or vendor committing any act or omission in violation of the Medicaid Fraud Control Act shall be directly liable to the state and shall forfeit and pay to the state a civil penalty equal to the full amount received, plus an additional civil penalty equal to triple the full amount received. Miss. Code. Ann § 43-13-225. The Division of Medicaid also has the power to deny or revoke enrollment in the Medicaid program to a provider, if the provider, his or her agent, a managing employee, or any person with a 5% or greater ownership interest in the provider, is convicted under federal or state laws for criminal offenses related to fraud or sanctioned for a violation of federal or state laws or rules relative to the Medicaid program, any other state’s Medicaid program, Medicare, or any other public health care or health insurance program. Miss. Code. Ann § 43-13-121.

See Azomani v. State, No. 2015-KA-00050-COA (Court of Appeals of Mississippi) (August 9, 2016) (above).

The Supreme Court of Mississippi recently held that the Medicaid Fraud Controls Act’s civil liability provision does not provide for recovery beyond the amount the defendant improperly received from the State. Despite submitting false data related to drug costs, since the defendant never received any direct payment from the State, the Court properly dismissed the Medicaid Fraud Control Act claims. Sandoz, Inc. v. State (In re Miss. Medicaid Pharm. Average Wholesale Price Litig.), 190 So. 3d 829 (October 29, 2015).

Insurance Integrity Enforcement Bureau Provisions (Miss Code. Ann. § 7-5-301, et seq.)

The Insurance Integrity Enforcement Bureau has the duty to investigate and prosecute claims of insurance abuses and crimes involving insurance. Miss. Code Ann § 7-5-301. An “insurance plan” is defined as a plan or program that provides health benefits, whether directly through insurance or otherwise, and includes a policy of life or property and casualty insurance, a contract of a service benefit organization, workers’ compensation insurance, or any program or plan
implemented in accordance with state law or a membership agreement with a health maintenance organization or other prepaid programs.  Miss. Code Ann § 7-5-303 (1).

A person or entity shall not, with the intent to appropriate to himself or to another any benefit, knowingly execute, collude, or conspire to execute or attempt to execute a scheme or artifice:
- To defraud any insurance plan in connection with the delivery of, or payment for, insurance benefits, items, services, or claims; or
- To obtain by means of false or fraudulent pretense, representation, statement, or promise money, or anything of value, in connection with the delivery of or payment for insurance claims under any plan or program or state law, items, or services that are in whole or in part paid for, reimbursed, subsidized by, or are a required benefit of an insurance plan or an insurance company or any other provider.  Miss. Code Ann § 7-5-303 (2).

A person or entity shall not, in any matter related to any insurance plan, knowingly and willfully falsify, conceal or omit by any trick, scheme, artifice or device a material fact, make any false, fictitious or fraudulent statement or representation or make or use any false writing or document, knowing or having reason to know that the writing or document contains any false or fraudulent statement or entry in connection with the provision of insurance programs.  Miss. Code Ann § 7-5-301(5).

Penalties for violations of any provision of Section 7-3-303 include felony conviction with imprisonment for not more than three years, or a fine of not more than $5,000 or double the value of the fraud, whichever is greater, or both.  If the defendant found to have violated any provision of Section 7-3-303 is an organization, then the penalty shall be a fine of not more than $150,000 for each violation.  Miss. Code Ann § 7-5-309.

5) UNFAIR BUSINESS PRACTICES

The Attorney General's Office of Consumer Protection investigates allegations of consumer fraud or illegal practices by a Mississippi business.

The insurance statutes prohibit unfair methods of competition and unfair and deceptive acts or practices in the business of insurance as defined by Miss. Code § 83-5-35.

Regulation of Business for Consumer Protection (Miss. Code Ann. § 75-24-1, et seq.)
Mississippi law broadly prohibits unfair methods of competition affecting commerce and unfair or deceptive trade practices in or affecting commerce. "Trade" and "commerce" mean the advertising, offering for sale, or distribution of
any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated, and shall include without limitation, both domestic and foreign persons, irrespective of their having qualified to do business within the state and any trade or commerce directly or indirectly affecting the people of this state.

6) GENERAL WHISTLEBLOWER PROTECTIONS

There are no whistleblower protections specifically relating to health care fraud.

The Insurance Integrity Enforcement Bureau provisions provide that any workers’ compensation provider, health insurance provider, employee of the Workers’ Compensation Commission, or other person or entity who has a belief or has any information that a false or misleading statement or representation or fraud or fraudulent denial has been made in connection with or relating to a workers’ compensation claim or in connection with or relating to any insurance claim in relation to an insurance plan may report such belief to the Insurance Integrity Enforcement Bureau, but do not provide any whistleblower protections. Miss. Code Ann. § 7-5-307.

Mississippi’s Whistleblower Law provides protection to government employees who, in good faith, allege or are believed to have alleged improper governmental action to a state investigative body. Miss. Code Ann. § 25-9-171 et seq.

The Mississippi Supreme Court has recognized the narrow public policy exceptions to employment at-will, allowing an at-will employee to bring an action in tort for damages against his or her employer when the employee is discharged in retaliation for: (1) refusing to participate in an illegal act, or (2) reporting illegal acts of his employer to the employer or anyone else. McArn v. Allied Bruce-Terminix Co., 626 So. 2d 603 (Miss. 1993).

Similarly, the Mississippi Supreme Court recognized that an employee who is discharged for reporting illegal acts of his employer is not barred by the employment at-will doctrine from bringing action in tort for damages against his employer, and that this rule also applies to written employment contracts. Applicability of the exception does not require that a crime has already been committed, but it does require that the acts complained of warrant the imposition of criminal penalties, as opposed to mere civil penalties. Roop v. Southern Pharmaceuticals Corporation, 188 So. 3d 1179.
7) HELPFUL LINKS

- Mississippi Code
- Mississippi State Board of Medical Licensure Administrative Code
- Mississippi State Board of Medical Licensure Policies
- Mississippi State Board of Chiropractic Examiners Administrative Code
- Mississippi State Board of Optometry
- Mississippi Board of Examiners for Social Workers and Marriage & Family Therapists
- Mississippi Board of Nursing Home Administrators
- Minimum Standards of Operation for Home Health Agencies
- Minimum Standards of Operation for Mississippi Hospitals