NEVADA: Summary of Fraud and Abuse Statutes and Regulations

Prepared by
Kelly Testolin (Kelly@kellytestolin.com)
Reno, NV

CONTENT:
1) Prohibitions Of Remuneration For Referral
2) Prohibitions On Self-Referral
3) False Claims/Fraud & Abuse
4) Unfair Business Practices
5) Deceptive Trade Practices
6) Bribery
7) False Pretenses
8) Whistleblower Protections
9) Miscellaneous Prohibitions
10) Helpful Links

1) PROHIBITIONS OF REMUNERATION FOR REFERRAL


Hospital-Specific Provisions.
Nevada Revised Statutes (Nev. Rev. Stat.), § 439B.420 prohibits a number of specific arrangements between hospitals and physicians. Rental agreements may not require referrals to the hospital. A hospital may not rent space to one physician at a rate less than 75% of what the hospital charges any other physician for comparable space. A hospital may not pay any portion of a physician’s rent in a non-hospital-owned building, unless the portion the physician still pays is no lower than the highest rent at which the hospital rents comparable space to other physicians. (None of the foregoing prohibitions apply to hospitals in counties with populations less than 55,000.) Further, where a hospital acts as a physician’s billing agent, it may not add charges to the bill beyond the cost of billing. Hospitals may not sell goods or services to a physician at less than cost. The preceding prohibitions apply to “hospitals” and their related entities, and “physicians” or entities that employ physicians. “Hospital” means a licensed medical, surgical, or obstetrical hospital. “Physician” is not defined in the chapter; it most likely

---

1 Of Nevada’s 17 counties, only four (Clark, Washoe, Lyon and Carson City) had populations greater than 55,000 in 2010. However, as of the last census, Elko, Douglas and Nye counties were close and may have exceeded 55,000 as of today.
2 The statute’s proscriptions also apply to “affiliates” and “subsidiaries” of hospitals. Nev. Rev. Stat. § 439B.430 defines an “affiliated person” as a person controlled by any combination of the hospital, the parent corporation, a subsidiary, or the principal stockholders or officers or directors of any of the foregoing. A “subsidiary” is a person of which either the hospital and the parent corporation or the hospital or the parent corporation holds practical control.
would be interpreted to mean a licensed doctor of medicine (MD), doctor of osteopathic medicine (DO), homeopathic physician, podiatrist or chiropractor.

**General Prohibition.**

In addition, the statute contains a general “anti-kickback” provision:

“A health facility shall not offer any provider of medical care any financial inducement, . . . whether in the form of immediate, delayed, direct or indirect payment . . . to induce the referral of a patient or groups of patients to the health facility. This subsection does not prohibit bona-fide gifts under $100, or reasonable promotional food or entertainment.”

(This provision also does not apply to hospitals in counties with populations less than 55,000. See footnote 2.)

Note that, in contrast to the rest of the statute, the general anti-kickback prohibition is not limited to “hospitals” and “physicians,” but applies to “health facilities” and “providers of health care.” Applicable (and possibly applicable) definitions are below:

“Health facility” is defined in the statute to mean:

“a facility in or through which health services are provided, except for the office of a practitioner used solely to provide routine services for health to his patients. The term includes any parent, affiliate, subsidiary or partner of such a facility, and any other entity which has a primary purpose of providing a benefit to such a facility.”

That definition also provides that for the purposes of the statute, “‘office of a practitioner used solely to provide routine services for health to his patients’” does not include a facility which is or will be qualified to receive reimbursement, other than for the services of a practitioner, as a health facility from any public agency.

“‘Health services’ means “the care and observation of patients, the diagnosis of human diseases, the treatment and rehabilitation of patients, or related services. The term includes treatment of patients for alcohol or drug abuse, services related to mental health and diagnostic services.”

“‘Practitioner’ means a “[MD, DO, or homeopathic physician], dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine in any form, medical laboratory director or technician, pharmacist or other person whose principal occupation is the provision of services for health.”

---

3 See Nev. Rev. Stat. 0.040
5 Id.
“Provider of medical care” is not defined in the Chapter. A similar term, “provider of health care,” is defined at Nev. Rev. Stat. § 629.031, as follows:

“‘Provider of health care’ means a [MD, DO, or homeopathic physician], physician assistant, dentist, licensed nurse, EMT, paramedic, dispensing optician, optometrist, speech-language pathologist, audiologist, practitioner of respiratory care, registered physical therapist, occupational therapist, podiatric physician, licensed psychologist, licensed marriage and family therapist, clinical professional counselor, music therapist, chiropractor, athletic trainer, doctor of Oriental medicine in any form, medical laboratory director or technician, pharmacist, licensed dietician, social worker, alcohol/drug abuse/problem gambling counselor or a medical facility as the employer of any such person.”

Nev. Rev. Stat. § 41A.017 also defines “provider of health care” with a different list of titles. Under that statute, the term Provider of health care means “a physician licensed pursuant to chapter 630 or 633 of Nev. Rev. Stat., physician assistant, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, licensed dietitian or a licensed hospital, clinic, surgery center, physicians’ professional corporation or group practice that employs any such person.” However, Chapter 41A deals with malpractice actions.

Since chapter 629 of the Nev. Rev. Stat. governs the healing arts generally, Nev. Rev. Stat. § 629.031 is probably a persuasive definition. (It is the author’s opinion that the confusing use of “practitioner,” “physician,” and “provider of medical care” is the result of imprecise draftsmanship, and not an effort to make intentional distinctions on the part of the Legislature.) Chapter 629 defines “medical facility” by reference to Nev. Rev. Stat. § 449.0151 as a “surgical center for ambulatory patients; an obstetric center; an independent center for emergency medical care; an agency to provide nursing in the home; a facility for intermediate care; a facility for skilled nursing; a facility for hospice care; a hospital; a psychiatric hospital; a facility for the treatment of irreversible renal disease; a rural clinic; a nursing pool; a facility for modified medical detoxification; a facility for refractive surgery; a mobile unit; and a community triage center.”

Inducements to Insurers.
The statute also prohibits offering financial inducements to employees, officers, or agents of “insurers”—presumably in return for health insurance hospital service provider contracts:

“7. A hospital or related entity shall not offer any financial inducement to an officer, employee or agent of an insurer, a person acting as an insurer or self-insurer, or a related entity. A person shall not accept such offers. This subsection does not prohibit bona fide gifts of under $100 in value, or reasonable promotional food or entertainment.”

8 Nevada’s legislature is part time and meets bi-annually. As a result, statutory coordination suffers.
See Neal v. Griepentrog, discussed under Exception for PPO Agreements below.

No Regulations, Limited Case Authority.
There are no regulations or case authority interpreting the broad prohibitions of Nev. Rev. Stat. § 439B.420. No active prosecution, authoritative guidance, or litigation has developed the statute. Most Nevada practitioners believe that Nevada judges will regard the federal Anti-Kickback Law and regulations as persuasive. Precedents from other persuasive states could support this position. For example, in State v. Harden, the Florida Supreme Court upheld the dismissal of a state prosecution for conduct permitted under the federal “anti-kickback” safe harbors that was not permitted under state law, on the basis of implied conflict preemption. It should be noted, however, that Nevada courts also are known for exhibiting independence.

Exception for PPO Agreements.
Only one reported case applies the Nevada statute, which holds that the statute’s prohibition against payment to “insurers” does not apply to discounts and other concessions in “preferred provider agreements.”

Penalties.
Willful violations of the statute can be punished by a fine of $5,000 or the value of the illegal transaction, whichever is greater, in addition to the state’s reasonable expenses of enforcement. The statute does not provide for a private right of action; but see Nevada’s Deceptive Trade Practices Act—Nev. Rev. Stat. Ch. 598 below.

Procedure for Administrative Review.
Regulations at Nev. Admin. Code §§ 439B.455 et. seq. require and provide procedures for hospitals and their related entities to submit contracts with “practitioners” to the Department of Human Resources for review for compliance with the law and determinations of violations.

This statute applies to patients for which payment is made under Medicaid. It provides that a person shall not:

(a) “While acting on behalf of a provider, purchase or lease goods, services, materials or supplies. . . and solicit or accept anything of additional value in return for or in connection with the purchase or lease;

---

9 938 So. 2d 480 (Fla. May 18, 2006).
10 “Based on the differences between the federal and state statute at issue here, we conclude that Florida’s anti-kickback statute criminalizes conduct that federal law specifically intended to be lawful and shielded from prosecution.”
(b) Sell or lease to or for the use of a provider goods, services, materials or supplies for. . . and offer, transfer, or pay anything of additional value in connection with or in return for the sale or lease; or
(c) Refer a person to a provider for goods or . . . and solicit or accept anything of value in connection with the referral.”

The prohibitions in (a) and (b) do not apply “if the additional value transferred is: (1) a refund or discount made in the ordinary course of business; (2) reflected by the books and records of the person transferring or receiving it; and (3) reflected in the billings submitted. . .” to the Medicaid program.

The statute further provides that: “A person shall not, while acting on behalf of a provider providing goods or services to a recipient. . . charge, solicit, accept or receive anything of additional value in addition to the amount legally payable [by Medicaid] . . . in connection with the provision of the goods or services.”

A violation is punishable as a gross misdemeanor if the value is less than $650 and as a Category D felony if the value is more. A Category D felony carries a minimum term of one year and a maximum term of not more than four years, plus a fine of not more than $5,000.

Additionally, under Nev. Rev. Stat. § 422.580, a provider who receives payment (even unknowingly) to which he is not entitled due to a violation of Nev. Rev. Stat. § 422.560 is liable for (i) three times the amount unlawfully obtained, (ii) $5,000 for each false claim and (iii) three times the expenses of the state in enforcement against the provider. However, the fines do not apply if a provider who unknowingly accepts such payment attempts to return it in a reasonable time. (The statute does not address how an unknowing recipient knows a return of an overpayment is due.)

**Workers Compensation—Nev. Rev. Stat. § 616D.390**

Nev. Rev. Stat. § 616D makes provisions with respect to service for which payment is made under Nevada’s industrial insurance system. It provides that a person shall not:

(a) “While acting on behalf of a provider of health care, purchase or lease goods, services, materials or supplies. . . and solicit or accept anything of additional value in return for or in connection with the purchase or lease;
(b) Sell or lease to or for the use of a provider of health care goods, services, materials or supplies. . . and offer, transfer or pay anything of additional value in connection with or in return for the sale or lease; or
(c) Refer a person to a provider of health care for accident benefits, and solicit or accept anything of value in connection with the referral.”

It further provides that:
(d) “a provider of health care shall not offer, transfer or pay anything of value in connection with or in return for the referral to the provider of a patient; and
(e) a person shall not, while acting on behalf of a provider of health care. . .
charge, solicit, accept or receive anything of value in addition to the amount
legally payable pursuant to . . . the accident benefits.”

The prohibitions in (a) and (b) do not apply if the additional value transferred is: “(1) a refund or discount made in the ordinary course of business; (2) reflected by the books and records of the person transferring or receiving it; and (3) reflected in the charges submitted . . .” to the insurer.

A violation is punishable as a gross misdemeanor if the value is less than $650 and as a Category D felony if the value is more. A Category D felony carries a minimum term of one year and a maximum term of not more than four years, plus a fine of not more than $5,000.

**Unprofessional Conduct, Physicians — Nev. Rev. Stat. §§ 633.131(c), 630.305 1(a).**
It is unprofessional conduct for an MD to directly or indirectly receive “from any person, corporation or other business organization any fee, commission, rebate or other form of compensation which is intended or tends to influence the physician’s objective evaluation or treatment of a patient.” Additionally, it is unprofessional conduct for an MD to: “divide a fee between licensees except where the patient is informed of the division of fees and the division of fees is made in proportion to the services personally performed and the responsibility assumed by each licensee.” Similar prohibitions apply to Homeopathic Physicians (Nev. Rev. Stat. §§ 630A.360.1 and 630A.360.2); Dentists (Nev. Rev. Stat. § 631.3465.1); and Optometrists (Nev. Rev. Stat. § 636.301).

Additionally, it is unprofessional conduct for a DO to directly or indirectly give to or receive from “any person, corporation or other business organization any fee, commission, rebate or other form of compensation for sending, referring or otherwise inducing a person to communicate with an osteopathic physician in his professional capacity or for any professional services not actually and personally rendered.” The fee-splitting prohibition for DOs is similar to that for MDs.


13 Id.
15 See license revocation of Obteen Nassiri, DC, License No. B847—Effective February 16, 2011, Chiropractic Physicians Board of Nevada.
Under Nev. Rev. Stat. § 630.305, it is also unprofessional conduct for MDs to refer a patient to a health facility, medical laboratory or commercial establishment in which the licensee has a financial interest (except as permitted under Nev. Rev. Stat. § 439B.425), and to fail to disclose a financial or other conflict of interest.

**Physician License Suspension – Nev. Rev. Stat. § 630.3675**

Nev. Rev. Stat. 630.3675 provides that if a medical doctor is convicted of a felony for a violation of any federal or state law or regulation relating to the holder’s practice, the conviction operates as an immediate suspension of the license.

**Unprofessional Conduct – Chiropractor – Nev. Admin. Code § 634.430**

This regulation bootstraps violations of the federal anti-kickback statute into “unprofessional conduct”; even where the patient is not in a federal health care program. It provides that “Paying or receiving any remuneration in such a manner and amount as would constitute a violation of 42 U.S.C. § 1320a-7b(b), regardless of whether the patient for whom the remuneration is paid or received is a patient under a federal health care program “is unprofessional conduct.”

**Unprofessional Conduct – Podiatrist – Nev. Admin. Code § 635.390**

This regulation provides that “the receipt of remuneration of any kind, directly or indirectly, from any: (a) Hospital for admitting a patient to the hospital; or (b) Person furnishing medical services to a patient, including services of a laboratory, radiology and physiotherapy services, services of a pharmacy or services of a company which supplies surgical and medical merchandise is unprofessional conduct.”

**2) PROHIBITIONS ON SELF-REFERRAL**


Nev. Rev. Stat. § 439B.420, discussed in Health Care Services in General—Nev. Rev. Stat., § 439B.420, is primarily aimed at remuneration for referral. However, the statute also requires “practitioners” to disclose financial interests in health facilities to patients they refer to that health facility. However, this disclosure requirement does not apply to arrangements permitted by Nev. Rev. Stat. § 439B.425, discussed in General Prohibition: Nev. Rev. Stat., § 439B.425 below. “Practitioner” is defined to mean an M.D., D.O. or homeopathic physician, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine in any form, medical laboratory director or technician, pharmacist or other person whose principal occupation is the provision of services for health.

---

This narrower, but overlapping statute provides as follows: “If a provider of health care refers a patient to or recommends that a patient receive physical therapy at a specific facility in which the provider of health care has a financial interest, the provider of health care shall disclose that interest in a conspicuous manner.” “Financial interest” is broadly defined as including, without limitation, “any share in the ownership or profit from a facility . . . and any form of compensation from a facility. . . .” The statutory term “provider of health care” means a:
“physician, physician assistant, dentist, licensed nurse, dispensing optician, optometrist, practitioner of respiratory care, registered physical therapist, podiatric physician, licensed psychologist, licensed marriage and family therapist, licensed clinical professional counselor, chiropractor, athletic trainer, doctor of Oriental medicine in any form, medical laboratory director or technician, pharmacist or a licensed hospital as the employer of any such person.”

This regulation provides that a health facility shall not refer a patient to a health facility or service in which the referring party has a financial interest unless the health facility first provides the patient with a written statement disclosing that interest. “Health facility” means a facility in or through which health services are provided, except for the office of a practitioner used solely to provide routine services for health to the practitioner’s patients. The term includes any parent, affiliate, subsidiary or partner of such a facility and any other entity which has a primary purpose of providing a benefit to such a facility. For the purposes of this section, “office of a practitioner used solely to provide routine services for health to the practitioner’s patients” does not include a facility which is or will be qualified to receive reimbursement, other than for the services of a practitioner, as a health facility from any public agency.

This regulation provides that if a pharmacist or any member of the pharmacist’s family within the third degree of consanguinity holds an interest in a corporation which (1) has any of its shares registered under the Securities Exchange Act of 1934, and (2) holds 10 percent or more of the ownership interest in a pharmacy, the pharmacist shall disclose that interest in the corporation and pharmacy to each patient whom he or she refers to that pharmacy.

Prohibition.
Nevada’s own version of a Stark-type prohibition on referrals was enacted in 1993, and amended in 1995 and 2001. Regulations, at Nev. Admin. Code §§ 439B.5205–5408, were last amended in 1994. The statute is poorly developed. There are no reported cases, little authoritative interpretation, and no enforcement history to illustrate its application.
The statute’s prohibition reads: “a practitioner shall not refer a patient, for a service or for goods related to health care, to a health facility, medical laboratory, diagnostic imaging or radiation oncology center or commercial establishment in which the practitioner has a financial interest.” The statute applies to all patients, regardless of payer. The statute applies to “practitioners”, and regulations extend the prohibition to “any agent, employee or independent contractor of a practitioner.” The definition of “financial interest” provides that interests held by a practitioner’s family members are implicated.

While the term “services for health” as used in Nev. Rev. Stat. § 439B is not defined, Nev. Rev. Stat. § 439A offers a definition of “health services” that may be persuasive: “Health Services’ mean the care and observation of patients, the diagnosis of human diseases, the treatment and rehabilitation of patients, or related services. The term includes treatment of patients for alcohol or drug abuse, services related to mental health and diagnostic services.” “Practitioner” and “health facilities” carry the same definitions as the general Anti-Kickback Statute, Nev. Rev. Stat. 439B.420, discussed above in Health Care Services in General—Nev. Rev. Stat., § 439B.420. However, § 439B.425 also applies to any “commercial establishment,” defined as: “any business entity that provides goods or services other than a medical laboratory or health facility.” “Refer” is defined as: “sending or directing any person to another person or business entity for the purpose of obtaining, consuming, or purchasing, for consideration, goods or services related to health care.”

One definition that may be key in limiting the statute’s reach in future interpretations is the regulatory definition of “financial interest.” Nev. Admin. Code § 439B.530 defines a financial interest as:

> “an ownership or other interest that provides compensation based, in whole or in part, upon the volume or value of goods or services provided as a result of referrals and which a practitioner or a person related to a practitioner within two degrees of consanguinity or affinity owns, in whole or in part; or holds as a beneficiary of a trust.” [Emphasis supplied.]

This definition provides that the term “includes, but is not limited to a financial kickback, referral fee or finder’s fee, an income-sharing agreement, debt instrument, or lease or rental agreement that provides compensation based, in whole or in part, upon the volume of goods or services provided as a result of referrals.” [Emphasis supplied.] It is notable that the definition refers to compensation “based” on the volume of referrals, which significantly differs from the “varies with (or takes into account) the volume of

---

23 Emphasis added.
value of referrals” language used in the Physician Self-Referral Law (Stark law). The passage of the Stark law motivated the statute and its regulations, and in several instances, the statute includes language “lifted” from the Stark Law. (See, for example, the regulatory definition of “group practice” below.) In that light, this peculiar-to-Nevada, not-conforming-to-Stark definition of “financial interest” allows a fair argument that “financial interests” under the statute include only those interests or arrangements that result in remuneration that has some direct computational linkage to (is “based on”) referral volume.

**Exceptions**
There are numerous specific exceptions to the statute:

**Underserved Areas**
The prohibition of the statute does not apply if the services or goods required by the patient are not otherwise available within a 30-mile radius of the practitioner’s office.

**Health Maintenance Organization Patients**
The statute excepts referrals of health maintenance organization patients within the participating provider network.

**In-Office Ancillary Services**
The statute provides: “The provisions of this section do not prohibit a practitioner from owning and using equipment in his office solely to provide for his patients, services or goods related to health care.” The in-office ancillary services (IOAS) exception received some further definition in the regulatory exceptions for “intra-business entity” referrals, discussed below.

**Group Practice**
The statute categorically exempts referrals where “the practitioner is a member of a group practice and the referral is made to that group practice.” “Group Practice” means two or more practitioners organized as a business entity in accordance with Nevada laws to provide services related to health care, if:

1. Each member of the group provides substantially all the services related to health care that he routinely provides, including without limitation, medical care, consultations, diagnoses, and treatment;
2. Through the shared use of offices and facilities, equipment, and personnel located at any site of the group practice;
3. Substantially all of the services related to health care that are provided by members of the group practice are provided through the group practice; and
4. No member of the group practice receives compensation based directly on the volume of any services or goods related to health care that are referred to the group practice by that member.

Nevada law does not include any of the detailed definitional guidelines set out in the Stark regulations (e.g., detailed delineation of the “substantially all services” tests).
However, except where they directly conflict with statutory language, the Stark regulations should be regarded as persuasive.

Because Nevada’s law does not include Stark’s regulatory definitions or exceptions, the requirement that no member receive compensation based on the member’s referrals to the group would seem to prohibit bonus or productivity compensation, as there is no Stark-like exception. However, the statute’s definition of “refer” (“sending or directing any person to another person or business entity”) could be argued to except IOAS referrals. Further, a construction of the “group practice” exception that negated productivity or bonus compensation based on IOAS revenues generated would seem to fly in the face of the statute’s clear IOAS exception, discussed above, and the first intra-business entity exception, discussed below.

“Intra-Business Entity” Referrals
These exceptions, set out in Nev. Admin. Code § 439B.5402, were intended to encompass referrals within the offices of a medical or group practice. They are vague enough to cover many additional types of carefully structured arrangements.

(1) Exception I. The first exception covers referrals:
“within one or more locations of a business entity if the goods or services provided as a result of the referral are routinely provided to all patients of the referring practitioner based on their needs, the referring practitioner has the right to see regular patients for personal medical care, consultations, diagnosis and treatment at the same site and general location where the goods or services will be provided as a result of the referral; the goods and services provided as a result of the referral are not provided at a facility operating under a different name; and the referral is not a referral by a licensed physician to a medical laboratory (i) in which the physician has a financial interest and (ii) that is not operated solely in connection with the diagnosis or treatment of the physician’s patients.”

(2) Exception II. This exception covers referrals:
“within one or more locations of a business entity if the goods and services provided as a result of the referral are not provided at a facility operating under a different name; and the referral does not result in any revenue for the referring practitioner, except in the form of additional net profits of a business that is based upon a formula reflective of the referring practitioner’s percentage of ownership and that is incidentally increased by the referral.”

Capitated Patient
Nev. Admin. Code § 439B.5404 also provides an exception for the referral of a patient covered under a capitated insurance program, if the referral does not result in any additional revenue for either the referring practitioner or the business entity to which the patient is referred.
Renal Dialysis
*Nev. Admin. Code § 439B.5404.3* also excepts a referral made to a renal dialysis center for the treatment of end-stage renal disease.

Large Investment Entity
The statute exempts financial interests that represent “an investment in a corporation that has shareholder equity of more than $100,000,000, regardless of whether the securities are publicly traded.”

Ambulatory Surgery Center
The statute excepts referrals to a Nevada-licensed ambulatory surgery center.

Certain Referrals
The statute excepts referrals by urologists for lithotripsy services and referrals by nephrologists for renal dialysis services and supplies.

Surgical Hospital in Small Counties
This exception was the result of special legislation enacted on behalf of a particular hospital, and it has limited, if any, applicability to any other situation.

Unprofessional conduct for an MD includes referring, in violation of Nev. Rev. Stat. § 439B.425. It is unprofessional conduct for a chiropractor to refer, in violation of Nev. Rev. Stat. § 439B.425. See also Nev. Rev. Stat. § 441A.580.1, which provides that a certificate authorizing the isolation and quarantine of persons with communicable disease may not be issued if the requestor has a relationship with an involved provider of services to the quarantined individual(s) that would implicate Nev. Rev. Stat. § 439B.425.

3) FALSE CLAIMS/FRAUD & ABUSE

False Claims Against a State or Political Subdivision—Nev. Rev. Stat. § 357.010–250.

Prohibition
Nevada’s False Claims Statute provides that a person who, with or without specific intent to defraud, commits any of the following acts is liable for three times the amount of damages sustained, the costs of a civil action, and for a civil penalty of not less than $2,000 or more than $10,000 for each act:

(a) Knowingly presents or causes to be presented a false claim for payment or approval.
(b) Knowingly makes or uses, or causes to be made or used, a false record or statement to obtain payment or approval of a false claim.
(c) Conspires to defraud by obtaining allowance or payment of a false claim.
(d) Has possession, custody, or control of public property or money and knowingly delivers or causes to be delivered to the state or a political subdivision less money or property than the amount for which he receives a receipt.

(e) Is authorized to prepare or deliver a receipt for money or property to be used by the state or a political subdivision and knowingly prepares or delivers a receipt that falsely represents the money or property.

(f) Knowingly buys, or receives as security for an obligation, public property from a person who is not authorized to sell or pledge the property.

(g) Knowingly makes or uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state or a political subdivision.

(h) Is a beneficiary of an inadvertent submission of a false claim and, after discovering the falsity of the claim, fails to disclose the falsity to the state or political subdivision within a reasonable time.

Mitigation for Voluntary Disclosure
The court may give judgment for not less than twice or more than three times the amount of damages sustained, and no civil penalty, if it finds that the person who committed the act voluntarily informed the Attorney General within 30 days after becoming aware of the violation, and fully cooperated with any investigation of the act. This is only available if, at the time the person furnished the information, no criminal prosecution or civil or administrative proceeding has commenced with respect to the act, and the person has no knowledge of the existence of any investigation with respect to the act.

Private Plaintiff Actions
A private plaintiff may maintain an action pursuant to the Nevada False Claims Statute. The mechanics are similar to the federal False Claims Act’s (FCA’s) system. No action may be maintained based on information discovered by a present or former employee of the state or a political subdivision during the plaintiff’s employment, unless the plaintiff, first in good faith, exhausts internal procedures for reporting and seeking recovery of the proceeds of the fraudulent activity through official channels, and the state or political subdivision fails to act on the information provided for at least six months. The private plaintiff is entitled to between 15% and 50% of the recovery, depending on the circumstances.

False Claims Against the Medicaid Program—Nev. Rev. Stat. § 422.540-560
A person who makes a claim or causes it to be made, knowing the claim to be false, in whole or in part, by commission or omission for use in obtaining or seeking to obtain authorization to provide specific goods or services, or for use in qualifying as a provider, is guilty of a Category D felony if the amount of the claim or the value of the goods or services obtained or sought to be obtained was greater than or equal to $650. Additional felonies include: (a) While acting on behalf of a provider, purchase or lease goods, services, materials or supplies for which payment may be made by Medicaid, to solicit or accept anything of additional value in return for or in connection with the
purchase or lease; (b) to sell or lease to or for the use of a provider goods, services, materials or supplies for which payment may be made, in whole or in part by Medicaid, and offer, transfer or pay anything of additional value in connection with or in return for the sale or lease; (c) to refer a person to a provider for goods or services for which payment may be made, in whole or in part, pursuant to the Medicaid, and solicit or accept anything of value in connection with the referral or (d) while acting on behalf of a provider providing goods or services to a recipient paid for by Medicaid, to charge, solicit, accept or receive anything of additional value in addition to the amount legally payable by Medicaid in connection with the provision of the goods or services. There are exceptions where the additional value transferred is a refund or discount made in the ordinary course of business; reflected by the books and records of the person transferring or receiving it; and reflected in the billings submitted to Medicaid.

A Category D felony carries a minimum term of one year and a maximum term of not more than four years, plus a fine of not more than $5,000. In addition, the provider is liable in a civil action for an amount equal to three times the amount unlawfully obtained; not less than $5,000 for each false claim; an amount equal to three times the total of the reasonable expenses incurred by the state in bringing suit; and interest. The statute specifically provides: (1) that a provider who unknowingly accepts a payment in excess of the amount to which the provider is entitled is only liable for the repayment of the excess amount; and (2) that it is a defense to an action that the provider returned or attempted to return the amount in excess of that to which the provider was entitled within a reasonable time after receiving it.

**Pharmacist Excess Claims – Nev. Rev. Stat. § 639.2815**
Nev. Rev. Stat. § 639.2815 provides that a pharmacist that submits a claim in excess of the Medicaid fee schedule allocated amount commits a felony.

This statute defines “insurance fraud” as meaning to “knowingly and willfully presenting a claim for payment that conceals or omits facts, or contains false or misleading information concerning any fact material to that claim.” Additionally, assisting, abetting, soliciting or conspiring with another person to cause such a claim to be presented, and accepting the proceeds with knowledge of the offense, constitutes insurance fraud under the statute. The statute also prohibits the employment (or aiding and abetting) the use of “cappers” and “steerers”.

### 4) UNFAIR BUSINESS PRACTICES

Nevada’s Unfair Trade Practices Act is limited on its face to traditional antitrust-type violations, such as price fixing, bid rigging, tying, market allocation, and so forth. It has not been judicially extended to provide a remedy for a competitor damaged by another competitor’s "fraud and abuse" violations.
In 2015, a new law, not encoded at time of publication, provided that is not an unfair business practice of deceptive trade practice for a “patient centered medical home” to accept incentive payments from insurers. ([Senate Bill No. 6, 2015 Session](#)).

5) DECEPTIVE TRADE PRACTICES

Nev. Rev. Stat. § 598.0923 provides that “A person engages in a ‘deceptive trade practice’ when in the course of his or her business or occupation he or she knowingly: . . . . Violates a state or federal statute or regulation relating to the sale or lease of goods or services.” This statute might serve as a platform to “bootstrap” violations of the federal and Nevada health care “fraud and abuse” laws, but there is no current precedent for that extension.

The statute allows a private party damaged by the alleged deceptive trade practice to bring an action to recover treble damages. Additionally, if an elderly person (60 or older) or a person with a disability has been damaged by the practice, that person may bring a private action for recovery of $12,500 per occurrence plus reasonable attorney’s fees. Nev. Rev. Stat. § 598.0953 provides that evidence that a person has engaged in a deceptive trade practice is prima facie evidence of intent to injure competitors.

6) BRIBERY

**Nev. Rev. Stat. § 207.295** defines “commercial bribery” as occurring when a person with corrupt intent,

1. Offers, confers or agrees to confer any benefit upon any employee, agent or fiduciary without the consent of the employer or principal of that employee, agent or fiduciary in order to influence adversely that person’s conduct in relation to the commercial affairs of his or her employer or principal; or

2. While an employee, agent or fiduciary, solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that the benefit will influence adversely his or her conduct in relation to the commercial affairs of his or her employer or principal.

Both offenses 1 and 2 require that the physician employee or agent’s action be “adverse to the commercial interests” of the employer.

The statute has not been used to date to prosecute “remuneration for referral” type offenses.

---

24 [See Nev. Rev. Stat. § 589.0999.](#)
25 [See Nev. Rev. Stat. § 598.0977.](#)
7) FALSE PRETENSES


8) WHISTLEBLOWER PROTECTIONS

Under Nevada’s False Claims Statute, _Nev. Rev. Stat. § 357_, discussed in _False Claims Against a State or Political Subdivision—Nev. Rev. Stat. § 357.010–250_, if an employer discharges, demotes, suspends, threatens, harasses, denies promotion to, or otherwise discriminates against an employee in the terms or conditions of the individual’s employment because of a disclosure or statement regarding a violation of the statute, the affected employee may bring a civil action for reinstatement with the same seniority as if the discrimination had not occurred, or damages in lieu of reinstatement if appropriate, twice the amount of lost compensation, interest on the lost compensation, and any special damage sustained as a result of the discrimination. The employer also is liable for litigation expenses, costs, and attorney’s fees.

9) MISCELLANEOUS PROHIBITIONS


Under this statute, it is a misdemeanor for a “medical facility” to “waive a deductible or copayment if: (1) the medical facility is not a preferred provider of health care; and (2) the waiver would reduce the financial effect of a preferred provider’s incentive or disincentive to its insureds.” The term “medical facility” includes a surgical center for ambulatory patients; an obstetric center; an independent center for emergency medical care; an agency to provide nursing in the home; a facility for intermediate care; a facility for skilled nursing; a facility for hospice care; a hospital; a psychiatric hospital; a facility for the treatment of irreversible renal disease; a rural clinic; a nursing pool; a facility for modified medical detoxification; a facility for refractive surgery; a mobile unit; and a community triage center.

In a somewhat similar vein, it is unprofessional conduct for a chiropractor to “engage in the practice of waiving, abrogating or rebating the deductible or copayment required to be paid by a policy of insurance or a third party if the practice is used as a device for advertising or marketing, or both.”26


This regulation provides that “unprofessional conduct” includes “engaging in a practice of waiving, abrogating or rebating the deductible or copayment required to be paid by a

26 See _Nev. Admin. Code § 634.430(g)_.
policy of insurance or a third party if the practice is used as a device for advertising or marketing, or both."

**Prohibited Hospital-Affiliate Acts**

**Nev. Rev. Stat. § 439B.430 Prohibited acts of hospitals; examination by Director; administrative fine; injunctive relief**

1. For the purposes of this section:
   (a) An “affiliated person” is a person controlled by any combination of the hospital, the parent corporation, a subsidiary or the principal stockholders or officers or directors of any of the foregoing.
   (b) A “subsidiary” is a person of which either the hospital and the parent corporation or the hospital or the parent corporation holds practical control.

2. No hospital may engage in any transaction or agreement with its parent corporation, or with any subsidiary or affiliated person which will result or has resulted in:
   (a) Substitution contrary to the interest of the hospital and through any method of any asset of the hospital with an asset or assets of inferior quality or lower fair market value;
   (b) Deception as to the true operating results of the hospital;
   (c) Deception as to the true financial condition of the hospital;
   (d) Allocation to the hospital of a proportion of the expense of combined facilities or operations which is unfavorable to the hospital;
   (e) Unfair or excessive charges against the hospital for services, facilities or supplies;
   (f) Unfair and inadequate charges by the hospital for services, facilities or supplies furnished by the hospital to others; or
   (g) Payment by the hospital for services, facilities or supplies not reasonably needed by the hospital.

A person who does intentionally not maintain records supporting a claim for five years after the date of payment is guilty of gross misdemeanor. Intentional destruction is a felony.

10) **HELPFUL LINKS**

- Nevada Revised Statutes
- Nevada Administrative Code
- Nevada Attorney General Opinions