MINNESOTA: Summary of Fraud and Abuse Statutes and Regulations

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1) ANTI-KICKBACK

Provider Conflict of Interest Law—Minnesota Statutes Section 62J.23
Under Minnesota’s Provider Conflict of Interest Law (Law), the Minnesota Commissioner of Health (Health Commissioner) is required to adopt rules restricting financial relationships or payment arrangements involving health care providers under which a person benefits financially by: (1) referring a patient to another person; (2) recommending another person; or (3) furnishing or recommending an item or service. The rules adopted by the Health Commissioner must be compatible with, and no less restrictive than, the federal Medicare Anti-Kickback Statute (42 U.S.C. 1320a-7b(b)), and regulations adopted under it. However, the Health Commissioner’s rules may be more restrictive than the federal law and regulations and may apply to additional provider groups and business and professional arrangements. If any of the Health Commissioner’s rules restrict an arrangement or relationship otherwise permissible under federal laws and regulations, including an arrangement or relationship expressly permitted under the federal Medicare Anti-Kickback Statute Safe Harbor Regulations, the rule must clearly state that the state requirement is more restrictive than federal requirements.

The Health Commissioner may assess a fine for violation of the Law in the amount of $1,000 or 110% of the estimated financial benefit realized as a result of the prohibited financial arrangement or payment relationship, whichever is greater. To date, however, the only rules adopted by the Health Commissioner under the Law relate to the state workers’ compensation program. The Law provides that, until the Health Commissioner adopts rules relating to restricting financial relationships or payment arrangements involving health care providers, the restrictions in the federal Medicare Anti-Kickback Statute (42 USC 1320a-7b(b)), and rules adopted under the federal statutes (i.e., safe harbors), shall “apply to all persons in the state, regardless
of whether the person participates in any state health care program.” The most plausible interpretation of the quoted phrase appears to be that all financial relationships, payment-for-service arrangements, or other business arrangements involving health care providers are subject to the Anti-Kickback Statute and safe harbors (at least as that law stood at the time of enactment of the state legislation in question), even if a government payment program is not the source of payments for the services provided to patients through such arrangements. The Anti-Kickback Statute and its regulations are not applicable to all payer arrangements.

While state regulators have used the Law as their authority to investigate provider activities in Minnesota, there has been no published enforcement activity with respect to the Law. In October 2013, Illinois Farmers Insurance and its subsidiaries filed a $1.9 million lawsuit against Mobile Diagnostic Imaging Inc., its owner, and 46 chiropractors alleging various false claims and kickback violations, including violation of the Law. Illinois Farmers Ins. Co. v. Mobile Diagnostic Imaging, Inc., No. 13-CV-2820 PJS/TNL, 2014 WL 4104789 (D. Minn. Aug. 19, 2014). However, the Minnesota District Court dismissed the claim brought under Minn. Stat. Section 62J.23. First, the court held that there is no private right of action under Minn. Stat. Section 62J.23. Second, the court rejected Illinois Farmers’ claim that a contract that violates Minnesota’s anti-kickback statute is void under Minnesota common law.

The court held that, even if Mobile Diagnostic Imaging, Inc. did receive illegal kickbacks, Illinois Farmers failed to allege how the payment of kickbacks caused Illinois Farmers to pay any insurance claim that it was not obligated to pay under Minnesota’s No-Fault Act and under its contracts with its insureds. In other words, Illinois Farmers was obligated to pay medically necessary and reasonably priced insurance claims; and Illinois Farmers failed to prove how the presence of a kickback scheme eliminates this obligation.

**Workers’ Compensation—Minnesota Rules Sections 5221.0700**

Rather than drafting and updating specific anti-kickback rules regarding providers who provide and receive reimbursement for workers’ compensation services, the Health Commissioner used the same approach used under the Law by promulgating the rule that such health care providers also are “bound by the federal Medicare anti-kickback statute in section 1128B(b) of the Social Security Act (Act), United States Code, title 42, section 1320a-7b(b), and regulations adopted under it, pursuant to Minnesota Statutes, section 62J.23. Any medical services or supplies provided in violation of these provisions are not compensable under Minnesota Statutes, chapter 176.

**Board of Medical Practice—Minnesota Statutes Section 147.091**

The Board of Medical Practice (Board) may refuse to grant a license, may refuse to grant registration to perform interstate telemedicine services, or may impose disciplinary action against any physician. One type of conduct that is prohibited and is grounds for disciplinary action is fee splitting. Fee splitting includes, without limitation:

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(1) Paying, offering to pay, receiving, or agreeing to receive, a commission, rebate, or remuneration, directly or indirectly, primarily for the referral of patients or the prescription of drugs or devices;
(2) Dividing fees with another physician or a professional corporation, unless the division is in proportion to the services provided and the responsibility assumed by each professional, and the physician has disclosed the terms of the division;
(3) Referring a patient to any health care provider as defined in Minn. Stat. §§ 144.291–144.298 in which the referring physician has a “financial or economic interest,” unless the physician has disclosed the physician’s financial or economic interest in accordance with Minn. Stat. § 144.6521; and
(4) DISPENSING FOR PROFIT ANY DRUG OR DEVICE, UNLESS THE PHYSICIAN HAS DISCLOSED THE PHYSICIAN’S OWN PROFIT INTEREST.

The physician must make the disclosures required under clause (4) in advance and in writing to the patient and must include in the disclosure a statement that the patient is free to choose a different health care provider. Clause (4) does not apply to the distribution of revenues from a partnership, group practice, nonprofit corporation, or professional corporation to its partners, shareholders, members, or employees if the revenues consist only of fees for services performed by the physician or under a physician’s direct supervision, or to the division or distribution of prepaid or capitated health care premiums, or fee-for-service withhold amounts paid under contracts established under other state law. Minn. R. § 5620.0130 provides guidance on the type and format of the disclosure required under Minn. Stat. § 147.091.

Practitioner State Requirements
In addition to the Board of Medical Practice requirements listed above, Minnesota statutes and regulations also have similar grounds for disciplinary actions for other licensed practitioners in the state. Grounds for disciplinary action include behavior such as submitting false claims, receipt or payment of kickbacks, fee splitting, or engaging in unfair business practices, such as false or misleading advertising. The following is a list of statutes and regulations addressing such impermissible conduct for various practitioners.

- Physician Assistants Minn. Stat. §147A.13
- Unlicensed complementary and alternative health care practitioner Minn. Stat. §146A.08
- Chiropractors Minn. Stat. §148.10
- Professional, advanced practice registered, or practical nurses Minn. Stat. §148.261
- Speech-language pathologists or audiologists Minn. Stat. §148.5195
- Occupational therapists or occupational therapy assistants Minn. Stat. §148.6448
- Psychologists Minn. Stat. §148.941
- Social Workers Minn. Stat. §148E.260
- Marriage and family therapists Minn. Stat. §148B.175
- Licensed professional counselors Minn. Stat. §148B.59
- Alcohol and drug counselors Minn. Stat. §148F.09
- Dentists or dental surgeons Minn. Stat. §150A.11, Minn. R. §§ 3100.6200, Minn. Stat. § 3100.6900
- Dispensers of hearing instruments Minn. Stat. §153A.15
- Doctors of podiatric medicine Minn. Stat. §153.19
- Physical therapists Minn. Stat. §148.75
- Optometrists Minn. Stat. §148.57
- Pharmacies and pharmacists Minn. R. §6800.2250

2) PROHIBITIONS ON SELF-REFERRAL
While Minnesota does not have a specific prohibition on provider self-referrals, the Minnesota Legislature has enacted the following legislation aimed at self-referral behavior.

Audits of Exempt Providers—Minnesota Statutes Section 62J.23 Subdivision 5
The Health Commissioner has the authority to access provider records for the purpose of auditing the referral patterns of providers that qualify for exceptions under the federal Stark Law, United States Code, title 42, section 1395nn. The Health Commissioner is obligated to report to the state legislature any “audit results that reveal a pattern of referrals by a provider for the furnishing of health services to an entity with which the provider has a direct or indirect financial relationship.

Disclosure of Financial Interest—Minnesota Statutes Section 144.6521
No health care provider with a financial or economic interest in, or an employment or contractual arrangement that limits referral options with, a hospital, outpatient surgical center, or diagnostic imaging facility, or an affiliate of one of these entities, shall refer a patient to that hospital, center, or facility, or an affiliate of one of these entities, unless the health care provider discloses in writing to the patient, in advance of the referral, the existence of such an interest, employment, or arrangement. The written disclosure form must be printed in letters of at least 12-point boldface type and must read as follows: “Your health care provider is referring you to a facility or service in which your health care provider has a financial or economic interest.” Hospitals, outpatient surgical centers, and diagnostic imaging facilities shall promptly report to the Health Commissioner any suspected violations of this section by a health care provider who has made a referral to such hospital, outpatient surgical center, or diagnostic imaging facility without providing the written notice. In addition, each health care provider who makes referrals to a hospital, outpatient surgical center, or diagnostic imaging facility, or an affiliate of one of these entities in which the health care provider has a financial or economic interest, or has an employment or contractual arrangement with one of these entities that limits referral options, shall post a notice of this interest, employment, or arrangement in a patient reception area, waiting room, or other conspicuous public location within the provider’s facility.
Board of Medical Practice—Minnesota Statutes Section 147.091
The Board may refuse to grant a license, may refuse to grant registration to perform interstate telemedicine services, or may impose disciplinary action against any physician. Physician fee splitting is prohibited and is grounds for disciplinary action. Fee splitting includes referring a patient to any health care provider in which the referring physician has a “financial or economic interest,” unless the physician has disclosed the physician’s financial or economic interest in accordance with Minn. Stat. §144.6521; and dispensing for profit any drug or device, unless the physician has disclosed the physician’s own profit interest.
See also other Minnesota licensed professional requirements discussed under Anti-Kickback section.

3) FALSE CLAIMS/FRAUD & ABUSE

False Claims Against the State—Minnesota Statutes Chapter 15C
In 2009 the Minnesota Legislature passed the False Claims Against the State legislation, also known as the Minnesota False Claims Act (“MFCA”). The 2013 Minnesota Legislature modified the MFCA to bring it into conformance with federal standards. The MFCA imposes liability on persons who knowingly present false or fraudulent claims for payment to the state, misappropriate state property, or deceptively conceal or avoid binding obligations to pay the state, among other violations. A defendant may be ordered to pay up to three times the actual harm to the state, plus a fine of between $5,500 and $11,000 for each violation of the MFCA. A whistleblower filing a MFCA case may receive between 15% and 30% of amounts recovered by the state depending on factors such as whether and when the state or the whistleblower prosecutes the matter.

Definitions
Some of the important defined terms in the MFCA include:

Claim includes a request or demand, whether under a contract or otherwise, for money or property and whether or not the state or a political subdivision has title to the money or property, that:
(i) is presented to an officer, employee, or agent of the state or a political subdivision; or
(ii) is made to a contractor, grantee, or other recipient if the money or property is to be spent or used on behalf of the state or the political subdivision or to advance the state’s or political subdivision’s program or interest, and if the state or political subdivision provides or has provided a portion of the money or property requested or demanded, or if the state or the political subdivision has reimbursed or will reimburse the contractor, grantee, or other recipient for a portion of the money or property requested or demanded.

Claim does not include requests or demands for money or property that the state or a political subdivision has paid to an individual as compensation for state or political
subdivision employment, or as an income subsidy with no restrictions on that individual's use of the money or property.

Knowing and knowingly mean that a person, with respect to information:
(i) Has actual knowledge of the information;
(ii) Acts in deliberate ignorance of the truth or falsity of the information; or
(iii) Acts in reckless disregard of the truth or falsity of the information.
No proof of specific intent to defraud is required, but in no case is a person who acts merely negligently, inadvertently, or mistakenly, with respect to information, deemed to have acted knowingly.

Material means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

Obligation means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.

Original source means a person who either:
(i) Prior to a public disclosure under section 15C.05 of the MFCA, has voluntarily disclosed to the state or a political subdivision the information on which allegations or transactions in a claim are based; or
(ii) Has knowledge independent of and materially adding to the publicly disclosed allegations or transactions, and has voluntarily provided the information to the state or a political subdivision before filing an action under the MFCA.

Liability for Certain Acts
(a) A person who commits any act described in clauses (1)–(7) is liable to the state or the political subdivision for a civil penalty of not less than $5,500 and not more than $11,000 per false or fraudulent claim, plus three times the amount of damages that the state or the political subdivision sustains because of the act of that person, except as otherwise provided in paragraph (b):
(1) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
(2) Knowingly makes or uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
(3) Knowingly conspires to commit a violation of clause (1), (2), (4), (5), (6), or (7);
(4) Has possession, custody, or control of property or money used, or to be used, by the state or a political subdivision and knowingly delivers or causes to be delivered less than all of that money or property;
(5) Is authorized to make or deliver a document certifying receipt for money or property used, or to be used, by the state or a political subdivision and, intending to defraud the state or a political subdivision, makes or delivers the receipt without completely knowing that the information on the receipt is true;
(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state or a political subdivision who lawfully may not sell or pledge the property; or
(7) Knowingly makes or uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state or a political subdivision, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state or a political subdivision.

(b) Notwithstanding paragraph (a), the court may assess not less than two times the amount of damages that the state or the political subdivision sustains because of the act of the person if:

(1) The person committing a violation under paragraph (a) furnished an officer or employee of the state or the political subdivision responsible for investigating the false or fraudulent claim violation with all information known to the person about the violation within 30 days after the date on which the person first obtained the information;
(2) The person fully cooperated with any investigation by the state or the political subdivision of the violation; and
(3) At the time the person furnished the state or the political subdivision with information about the violation, no criminal prosecution, civil action, or administrative action had commenced under the MFCA with respect to the violation, and the person did not have actual knowledge of an investigation into the violation.

(c) A person violating this section also is liable to the state or the political subdivision for the costs of a civil action brought to recover any penalty or damages.
(d) A person is not liable under this section for mere negligence, inadvertence, or mistake with respect to activities involving a false or fraudulent claim.

Private Remedies; Complaint Under Seal; Copy of Complaint and Written Disclosure of Evidence to Be Sent to Prosecuting Attorney

(a) Except as otherwise provided in this section, a person may maintain an action under the MFCA on the person's own account and that of the state; the person's own account and that of a political subdivision; or on the person's own account and that of both the state and a political subdivision. After an action is commenced, it may be voluntarily dismissed only if the court and the prosecuting attorney give written consent to the dismissal and their reasons for consenting.
(b) If an action is brought under this section, no other person may bring another action under this section based on the same facts of the pending action.
(c) An action may not be maintained under this section:
(1) Against the state, the legislature, the judiciary, the executive branch, or a political subdivision, or respective officers, members, or employees if the action is based on evidence or information known to the state or political subdivision when the action was brought; or
(2) If the action is based on allegations or transactions that are the subject of a civil action or an administrative proceeding for a monetary penalty to which the state or a political subdivision is already a party.
(d) A complaint in an action under this section must be commenced by filing the complaint with the court in chambers, and the court must place it under seal for at least 60 days. No service may be made upon the defendant until the complaint is unsealed.

(e) If a complaint is filed under this section, the plaintiff shall serve a copy of the complaint on the prosecuting attorney in accordance with the Minnesota Rules of Civil Procedure and at the same time shall serve a written disclosure of all material evidence and information the plaintiff possesses.

(f) A court must dismiss an action or claim under this section, unless opposed by the prosecuting attorney, if substantially the same allegations or transactions, as alleged in the action or claim, were publicly disclosed:

1. In a criminal, civil, or administrative hearing in which the state or a political subdivision or its agent is a party;
2. In a report, hearing, audit, or investigation of the legislature, the governing body of a political subdivision, the legislative auditor, or the state auditor; or
3. By the news media.

This paragraph does not apply if the prosecuting attorney brings the action or claim, or the person bringing the action or claim is an original source of the information.

Prosecuting Attorney Intervention; Motion to Extend Time; Unsealing of Complaint

(a) Within 60 days after receiving a complaint and disclosure under section 15C.05 of the MFCA, the prosecuting attorney shall intervene or decline intervention or, for good cause shown, move the court to extend the time for doing so. Affidavits or other submissions in chambers may support the motion.

(b) The complaint must be unsealed after the prosecuting attorney decides whether or not to intervene.

(c) Notwithstanding the prosecuting attorney’s decision regarding intervention in an action brought by a plaintiff under section 15C.05, the prosecuting attorney may pursue the claim through any alternate remedy available to the state, including an administrative proceeding to determine a civil monetary penalty. If the prosecuting attorney pursues an alternate remedy in another proceeding, the person initiating the action has the same rights in that proceeding as if the action had continued under section 15C.05 of the MFCA. A finding of fact or conclusion of law made in the other proceeding that has become final is conclusive on all parties to an action under section 15C.05 of the MFCA. For purposes of this paragraph, a finding or conclusion is final if it has been finally determined on appeal to the appropriate state court, if the time for filing an appeal has expired, or if the finding or conclusion is not subject to judicial review.

Service of Unsealed Complaint and Response by Defendant

When unsealed, the complaint must be served on the defendant pursuant to Rule 3 of the Minnesota Rules of Civil Procedure. The defendant must respond to the complaint within 20 days after it is served on the defendant.
Prosecuting Attorney and Private Party Roles

(a) Except as otherwise provided by this section, if the prosecuting attorney does not intervene at the outset in an action brought by a person under section 15C.05 of the MFCA, the person has the same rights the prosecuting attorney would have in conducting the action. The person must mail to the prosecuting attorney a copy of each pleading or other paper filed in the action and a copy of the transcript of each deposition taken if the prosecuting attorney so requests and pays the cost of doing so.

(b) If the prosecuting attorney elects not to intervene at the outset of the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the prosecuting attorney to intervene at a later date, upon a showing of good cause. If the prosecuting attorney so intervenes, the prosecuting attorney subsequently has primary responsibility for conducting the action.

(c) If the prosecuting attorney elects at the outset of the action to intervene, the prosecuting attorney has the primary responsibility for prosecuting the action. The person who initially brought the action remains a party, but the person's acts do not bind the prosecuting attorney.

(d) If the prosecuting attorney elects to intervene, either at the outset or subsequently, the prosecuting attorney may file the prosecuting attorney's own complaint or amend the complaint of the person who initially brought the action to clarify or add details to the claims in which the prosecuting attorney is intervening and to add any additional claims with respect to which the prosecuting attorney contends the prosecuting attorney is entitled to relief. For statute of limitations purposes, any prosecuting attorney pleading relates back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the prosecuting attorney arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(e) Whether or not the prosecuting attorney intervenes in the action, the prosecuting attorney may move to dismiss the action for good cause. The person who brought the action must be notified of the filing of the motion and may oppose it and present evidence at the hearing. The prosecuting attorney also may settle the action. If the prosecuting attorney intends to settle the action, the prosecuting attorney shall notify the person who brought the action. The state or the political subdivision may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in chambers.

Stay of Discovery; Extension

(a) The court may stay discovery by a person who brought an action under section 15C.05 of the MFCA for not more than 60 days if the prosecuting attorney shows that the proposed discovery would interfere with the investigation or prosecution of a civil or criminal matter arising out of the same facts, whether or not the prosecuting attorney participates in the action.

(b) The court may extend the stay upon a further showing that the prosecuting attorney has pursued the civil or criminal investigation or proceeding with reasonable
diligence and that the proposed discovery would interfere with its continuation. Discovery may not be stayed for a total of more than six months over the objection of the person who brought the action, except for good cause shown by the prosecuting attorney.

(c) A showing must be made in chambers.

**Court-Imposed Limitation upon Participation of Private Plaintiff in Action**
Upon a showing by the prosecuting attorney in an action in which the prosecuting attorney has intervened that unrestricted participation by a person under the MFCA would interfere with or unduly delay the conduct of the action, or would be repetitious, irrelevant, or solely for harassment, the court may limit the person’s participation by limiting the number of witnesses, the length of witnesses’ testimonies, the cross-examination of witnesses by the person, or by other measures.

**Limitation of Actions; Remedies**
(a) An action under the MFCA may not be commenced more than three years after the date of discovery of the fraudulent activity by the prosecuting attorney or more than six years after the fraudulent activity occurred, whichever occurs later, but in no event more than ten years after the date on which the violation is committed.
(b) A finding of guilt in a criminal proceeding charging a false statement or fraud, whether upon a verdict of guilty, a plea of guilty, or nolo contendere, stops the person found guilty from denying an essential element of that offense in an action under the MFCA based on the same transaction as the criminal proceeding.
(c) In an action under the MFCA, the state or the political subdivision and any plaintiff under section 15C.05 of the MFCA must prove the essential elements of the cause of action, including damages, by a preponderance of the evidence.

**Award of Expenses and Attorney Fees**
If the prosecuting attorney or a person who brought an action under section 15C.05 prevails in or settles an action under the MFCA, the court shall award the prosecuting attorney or person reasonable costs, reasonable attorney fees, and the reasonable fees of expert consultants and expert witnesses. The court must award these expenses against the defendant, and these expenses are not allowed against the state or a political subdivision. If the prosecuting attorney does not intervene in the action and the person bringing the action conducts the action and the defendant prevails in the action, the court shall award to the defendant reasonable expenses and attorney fees against the person bringing the action if the court finds that the action was clearly frivolous, vexatious, or brought in substantial part for harassment. The state or a political subdivision is not liable for expenses, attorney fees, or other costs incurred by a person in bringing or defending an action under the MFCA.

**Distribution to Private Plaintiff in Certain Actions**
If the prosecuting attorney intervenes at the outset in an action brought by a person under section 15C.05 of the MFCA, the person is entitled to receive not less than 15% or more than 25% of any recovery of the civil penalty and damages or
settlement, depending on the extent to which the person substantially contributed to the conduct of the action. If the prosecuting attorney does not intervene in the action at any time, the person is entitled to receive not less than 25% or more than 30% of any recovery of the civil penalty and damages, or settlement, as the court determines is reasonable. If the prosecuting attorney does not intervene in the action at the outset but subsequently intervenes, the person is entitled to receive not less than 15% or more than 30% of any recovery of the civil penalty and damages or settlement, as the court determines, depending on the extent to which the person substantially contributed to the prosecution of the action. For recoveries whose distribution is governed by federal code or rule, the basis for calculating the portion of the recovery the person is entitled to receive shall not include amounts reserved for distribution to the federal government or designated in their use by federal code or rule.

Relief from Retaliatory Actions
(a) An employee, contractor, or agent is entitled to all relief necessary to make that employee, contractor, or agent whole if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under the MFCA or other efforts to stop one or more violations of the MFCA.
(b) Relief under paragraph (a) shall include reinstatement with the same seniority status that the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees.
(c) A civil action under this section may not be brought more than three years after the date when the retaliation occurred.

Medical Assistance Fraud—Minnesota Statutes Section 609.466
Any person who, with the intent to defraud, presents a claim for reimbursement, a cost report, or a rate application, relating to the payment of medical assistance ("MA") funds pursuant to the state MA program, to the state agency, which is false in whole or in part, is guilty of an attempt to commit theft of public funds and may be sentenced accordingly.

Medical Assistance: Sanctions; Monetary Recovery—Minnesota Statutes Section 256B.064
Terminating Payments to Ineligible Vendors
The Minnesota Commissioner of the Department of Human Services ("DHS Commissioner") may terminate payments under the state’s MA program to any person or facility that, under applicable federal law or regulation, has been determined ineligible for payments under Title XIX of the Social Security Act.
**Grounds for Sanctions Against Vendors**

The DHS Commissioner may impose sanctions against a vendor of medical care for any of the following: (1) fraud, theft, or abuse in connection with the provision of medical care to recipients of public assistance; (2) a pattern of presentation of false or duplicate claims or claims for services not medically necessary; (3) a pattern of making false statements of material facts for the purpose of obtaining greater compensation than that to which the vendor is legally entitled; (4) suspension or termination as a Medicare vendor; (5) refusal to grant the DHS Commissioner access during regular business hours to examine all records necessary to disclose the extent of services provided to MA program recipients and appropriateness of claims for payment; (6) failure to repay an overpayment finally established under this section; (7) failure to correct errors in the maintenance of health service or financial records for which a fine was imposed or after issuance of a warning by the DHS Commissioner; and (8) any reason for which a vendor could be excluded from participation in the Medicare program under sections 1128, 1128A, or 1866(b)(2) of the Act.

**Sanctions Available**

The DHS Commissioner may suspend or withhold payments to a vendor, suspend or terminate participation in the program, or impose a fine. When imposing sanctions, the DHS Commissioner is required to consider the nature, chronicity, or severity of the conduct and the effect of the conduct on the health and safety of persons served by the vendor. Regardless of imposition of sanctions, the DHS Commissioner may make a referral to the appropriate state licensing board.

**Grounds for and Methods of Monetary Recovery**

(a) The DHS Commissioner may obtain monetary recovery from a vendor improperly paid either as a result of conduct described in this statute or as a result of a vendor or department error, regardless of whether the error was intentional. Patterns need not be proven as a precondition to monetary recovery of erroneous or false claims, duplicate claims, claims for services not medically necessary, or claims based on false statements.

(b) The DHS Commissioner may obtain monetary recovery using methods, including, but not limited to, the following: assessing and recovering money improperly paid and debiting from future payments any money improperly paid. The DHS Commissioner shall charge interest on money to be recovered if the recovery is to be made by installment payments or debits, except when the monetary recovery is of an overpayment that resulted from a department error. The interest charged shall be the rate established by the commissioner of revenue under section 270C.40.

**Investigative Costs**

The DHS Commissioner may seek recovery of investigative costs from any vendor of medical care or services who willfully submits a claim for reimbursement for services that the vendor knows, or reasonably should have known, is a false representation and that results in the payment of public funds for which the vendor is
ineligible. Billing errors that result in unintentional overcharges shall not be grounds for investigative cost recoupment.

**Imposition of Monetary Recovery and Sanctions**

(a) The DHS Commissioner shall determine any monetary amounts to be recovered and sanctions to be imposed upon a vendor of medical care under this section. Except as provided in paragraphs (b) and (d), the DHS Commissioner will not impose a monetary recovery or a sanction without prior notice and an opportunity for a hearing, on the DHS Commissioner’s proposed action, provided that the DHS Commissioner may suspend or reduce payment to a vendor of medical care, except a nursing home or convalescent care facility, after notice and prior to the hearing if in the DHS Commissioner’s opinion that action is necessary to protect the public welfare and the interests of the MA program.

(b) Except for a nursing home or convalescent care facility, the DHS Commissioner may withhold or reduce payments to a vendor of medical care without providing advance notice of such withholding or reduction if either of the following occurs:

1. The vendor is convicted of a crime involving the following conduct: (1) fraud, theft, or abuse in connection with the provision of medical care to recipients of public assistance; (2) a pattern of presentment of false or duplicate claims or claims for services not medically necessary; (3) a pattern of making false statements of material facts for the purpose of obtaining greater compensation than that to which the vendor is legally entitled; (4) suspension or termination as a Medicare vendor; (5) refusal to grant the DHS Commissioner access during regular business hours to examine all records necessary to disclose the extent of services provided to MA program recipients and appropriateness of claims for payment; (6) failure to repay an overpayment finally established under this section; (7) failure to correct errors in the maintenance of health service or financial records for which a fine was imposed or after issuance of a warning by the DHS Commissioner; and (8) any reason for which a vendor could be excluded from participation in the Medicare program; or

2. The DHS Commissioner determines there is a credible allegation of fraud for which an investigation is pending under the program. A credible allegation of fraud is an allegation which has been verified by the state, from any source, including but not limited to: Fraud hotline complaints; Claims data mining; and Patterns identified through provider audits, civil false claims cases, and law enforcement investigations. Allegations are considered credible when they have indicia of reliability, and the state agency has reviewed all allegations, facts, and evidence carefully and acts judiciously on a case-by-case basis.

(c) The DHS Commissioner must send notice of the withholding or reduction of payments under paragraph (b) within five days of taking such action unless requested in writing by a law enforcement agency to temporarily withhold the notice. The notice must:

1. State that payments are being withheld according to paragraph (b);
2. Set forth the general allegations as to the nature of the withholding action, but need not disclose any specific information concerning an ongoing investigation;
(3) Except in the case of a conviction for conduct described in paragraph (b)(1), above, state that the withholding is for a temporary period, and cite the circumstances under which withholding will be terminated;
(4) Identify the types of claims to which the withholding applies; and
(5) Inform the vendor of the right to submit written evidence for consideration by the DHS Commissioner.

The withholding or reduction of payments will not continue after the DHS Commissioner determines insufficient evidence of fraud or willful misrepresentation by the vendor, or after legal proceedings relating to the alleged fraud or willful misrepresentation are completed unless the commissioner has sent notice of intention to impose monetary recovery or sanctions under paragraph (a).

(d) The DHS Commissioner may suspend or terminate a vendor's participation in the MA program without providing advance notice and an opportunity for a hearing when the suspension or termination is required because of the vendor's exclusion from participation in Medicare. Within five days of taking such action, the DHS Commissioner must send notice of the suspension or termination. The notice must:
(1) State that suspension or termination is the result of the vendor's exclusion from Medicare;
(2) Identify the effective date of the suspension or termination; and
(3) Inform the vendor of the need to be reinstated to Medicare before reapplying for participation in the program.

(e) Upon receipt of a notice under paragraph (a) that a monetary recovery or sanction is to be imposed, a vendor may request a contested case, as defined in Minn. Stat. §14.02, subdivision 3, by filing with the DHS Commissioner a written request of appeal. The DHS Commissioner must receive the appeal request no later than 30 days after the date the notification of monetary recovery or sanction was mailed to the vendor. The appeal request must specify:
(1) Each disputed item, the reason for the dispute, and an estimate of the dollar amount involved for each disputed item;
(2) The computation that the vendor believes is correct;
(3) The authority in statute or rule upon which the vendor relies for each disputed item;
(4) The name and address of the person or entity with whom contacts may be made regarding the appeal; and
(5) Other information required by the DHS Commissioner.

(f) The DHS Commissioner may order a vendor to forfeit a fine for failure to fully document services according to standards in this chapter and Minnesota Rules, Chapter 9505. The DHS Commissioner may assess fines if specific required components of documentation are missing. The fine for incomplete documentation shall equal 20% of the amount paid on the claims for reimbursement submitted by the vendor, or up to $5,000, whichever is less.

(g) The vendor shall pay the fine assessed on or before the payment date specified. If the vendor fails to pay the fine, the DHS Commissioner may withhold or reduce payments and recover the amount of the fine. A timely appeal shall stay payment of the fine until the DHS Commissioner issues a final order.
Minnesota DHS has provided additional information on its procedures for identifying and investigating fraud and abuse through Minnesota Regulations §§ 9505.2160–9505.2245. These regulations apply to local agencies, vendors participating in a program, and recipients of health services through a program as defined in Minn. R. 9505.2165, subpart 8, that is administered by Minnesota DHS, and for the imposition of sanctions against vendors and recipients of health services. To the extent that provisions of a contract between Minnesota DHS and prepaid health plans have functionally equivalent requirements, Minnesota DHS shall exempt the prepaid health plans from the specific requirements found in Minn. R. 9505.2160 to Minn. R. 9505.2245.

Recovery of Medical Assistance Overpayments—Minnesota Statutes Section 256B.0641

Recovery Procedures; Sources
When the DHS Commissioner or the federal government determines that the state has made an overpayment to any MA vendor, the DHS Commissioner shall recover the overpayment as follows:

1. If the federal share of the overpayment amount is due and owing to the federal government under federal law and regulations, the DHS Commissioner shall recover from the MA vendor the federal share of the determined overpayment amount paid to that provider using the schedule of payments required by the federal government;

2. If the overpayment to an MA vendor is due to a retroactive adjustment made because the MA vendor's temporary payment rate exceeded the established desk-audit payment rate or because of a DHS error in calculating a payment rate, the DHS Commissioner shall recover from the MA vendor the total amount of the overpayment within 120 days after the date on which written notice of the adjustment is sent to the MA vendor or according to a schedule of payments approved by the DHS Commissioner; and

3. An MA vendor is liable for the overpayment amount owed by a long term care provider if the vendors or their owners are under common control or ownership; and

4. To collect past due obligations to the department, the DHS Commissioner shall make any necessary adjustments to payments to a provider or vendor that has the same tax identification number assigned to a provider or vendor with past due obligations.

Overpayments to Prior Owners
The current owner of a nursing home, boarding care home, or intermediate care facility for persons with developmental disabilities is liable for the overpayment amount owed by a former owner for any facility sold, transferred, or reorganized. Within 12 months of a written request by the current owner, the DHS Commissioner shall conduct a field audit of the facility for the auditable rate years during which the former owner owned the facility and issue a report of the field audit within 15 months of the written request. This subdivision does not apply to the change of ownership of a facility to a nonrelated organization while the facility to be sold, transferred, or reorganized is in receivership under section 144A.15, 245A.12, or 245A.13, and during the receivership the DHS Commissioner has not determined the need to
place residents of the facility into a newly constructed or newly established facility. Nothing in this subdivision limits the liability of a former owner.

**Board of Medical Practice—Minnesota Statutes Section 147.091**
The Board may refuse to grant a license, may refuse to grant registration to perform interstate telemedicine services, or may impose disciplinary action against any physician. Engaging in abusive or fraudulent billing practices, including violations of federal Medicare and Medicaid laws or state MA laws is prohibited and is grounds for disciplinary action. See also other Minnesota licensed professional requirements discussed under Anti-Kickback section.

4) UNFAIR BUSINESS PRACTICES

**Health Care Cost Containment—Prohibited Provider Contract—Minnesota Statutes Section 62J.71**

*Prohibited Agreements and Directives*

This statute provides that the following types of agreements and directives are contrary to state public policy, are prohibited, and are null and void, and health plan companies, health care network cooperatives, and health care providers are prohibited from entering into such agreements:

1. Any agreement or directive that prohibits a health care provider from communicating with an enrollee with respect to the enrollee’s health status, health care, or treatment options, if the health care provider is acting in good faith and within the provider's scope of practice as defined by law;
2. Any agreement or directive that prohibits a health care provider from making a recommendation regarding the suitability or desirability of a health plan company, health insurer, or health coverage plan for an enrollee, unless the provider has a financial conflict of interest in the enrollee’s choice of health plan company, health insurer, or health coverage plan;
3. Any agreement or directive that prohibits a provider from providing testimony, supporting or opposing legislation, or making any other contact with state or federal legislators, legislative staff, or with state and federal executive branch officers or staff;
4. Any agreement or directive that prohibits a health care provider from disclosing accurate information about whether a patient's health plan company, health insurer, or health coverage plan will pay for services or treatment; and
5. Any agreement or directive that prohibits a health care provider from informing an enrollee about the nature of the reimbursement methodology used by an enrollee’s health plan company, health insurer, or health coverage plan to pay the provider.

*Persons and Entities Affected*
The following persons and entities shall not enter into any agreement or directive prohibited under this section:

1. A health plan company;
(2) A health care network cooperative as defined under section 62R.04, subdivision 3; or
(3) A health care provider as defined in section 62J.70, subdivision 2.

Retaliation Prohibited
No person, health plan company, or other organization may take retaliatory action against a health care provider solely on the grounds that the provider:
(1) Refused to enter into an agreement or provide services or information in a manner prohibited under this section or took any of the actions listed in subdivision 1;
(2) Disclosed accurate information about whether an enrollee’s health plan company, health insurer, or health coverage plan covers a health care service or treatment;
(3) Discussed diagnostic, treatment, or referral options not covered or limited by the enrollee’s health plan company, health insurer, or health coverage plan;
(4) Criticized coverage of the enrollee’s health plan company, health insurer, or health coverage plan; or
(5) Expressed personal disagreement with a decision made by a person, organization, or health care provider regarding treatment or coverage provided to a patient of the provider, or assisted or advocated for the patient in seeking reconsideration of such a decision, provided the health care provider makes it clear that the provider is acting in a personal capacity and not as a representative of or on behalf of the entity that made the decision.

Exclusion
(a) Nothing in this statute prohibits an entity subject to this section from taking action against a provider if the entity has evidence that the provider’s actions are illegal, constitute medical malpractice, or are contrary to accepted medical practices.
(b) Nothing in this statute prohibits a contract provision or directive that requires any contracting party to keep confidential or to not use or disclose the specific amounts paid to a provider, provider fee schedules, provider salaries, and other proprietary information of a specific entity subject to this section.

Health Care Cost Containment—Disclosure of Payments for Health Care Services—Minnesota Statutes Section 62J.81 (Note: This section has been affected by law enacted during the 2018 legislative season).

Required Disclosure of Estimated Payment
(a) A health care provider, as defined in Minn. Stat. §62J.03, subdivision 8, or the provider’s designee as agreed to by that designee, shall, at the request of a consumer, and at no cost to the consumer or the consumer’s employer, provide that consumer with a good faith estimate of the allowable payment the provider has agreed to accept from the consumer’s health plan company for the services specified by the consumer, specifying the amount of the allowable payment due from the health plan company. Health plan companies must allow contracted providers, or their designee, to release this information. If a consumer has no applicable public or private coverage, the health care provider must give the consumer, and at no cost to
the consumer, a good faith estimate of the average allowable reimbursement the provider accepts as payment from private third-party payers for the services specified by the consumer and the estimated amount the non-covered consumer will be required to pay. Payment information provided by a provider, or by the provider's designee as agreed to by that designee, to a patient, pursuant to this subdivision, does not constitute a legally binding estimate of the allowable charge for or cost to the consumer of services.

(b) A health plan company, as defined in section 62J.03, subdivision 10, shall, at the request of an enrollee intending to receive specific health care services or the enrollee's designee, provide that enrollee with a good faith estimate of the allowable amount the health plan company has contracted for with a specified provider within the network as total payment for a health care service specified by the enrollee and the portion of the allowable amount due from the enrollee and the enrollee's out-of-pocket costs. An estimate provided to an enrollee under this paragraph is not a legally binding estimate of the allowable amount or enrollee's out-of-pocket cost. For purposes of this section, “consumer” does not include an MA or MinnesotaCare enrollee, for services covered under those programs. See also other Minnesota licensed professional requirements discussed under Anti-Kickback section.

5) GENERAL WHISTLEBLOWER PROTECTIONS

Disclosure of Information by Employees—Minnesota Statutes Section 181.932
An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because:
(1) The employee, or a person acting on behalf of the employee, in good faith, reports a violation, suspected violation, or planned violation of any federal or state law, common law, or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official;
(2) A public body or office requests the employee participate in an investigation, hearing, or inquiry;
(3) The employee refuses an employer's order to perform an action that the employee has an objective basis in fact to believe violates any state or federal law, rule, or regulation adopted pursuant to law, and the employee informs the employer that the employee refuses the order for that reason; or
(4) The employee, in good faith, reports a situation in which the quality of health care services provided by a health care facility, organization, or health care provider violates a standard established by federal or state law, a professionally recognized national clinical, or ethical standard and potentially places the public at risk of harm;
(5) A public employee communicates the findings of a scientific or technical study that the employee, in good faith, believes to be truthful and accurate, including reports to a governmental body or law enforcement official; or
(6) An employee in the classified service of state government communicates information that the employee, in good faith, believes to be truthful and accurate, and that relates to state services, including the financing of state services, to:
   (i) A legislator or the legislative auditor; or
   (ii) A constitutional officer.

The disclosures protected pursuant to Minnesota Statutes Section 181.932 do not authorize the disclosure of data otherwise protected by law.

Disclosure of Identity
The identity of any employee making a report to a governmental body or law enforcement official under Minnesota Statutes section 181.932, subdivision 1, clause (1) or (4), is private data on individuals as defined in Minnesota Statutes Section 13.02. The identity of an employee providing information under Minnesota Statutes section 181.932, subdivision 1, clause (2), is private data on individuals if:
(1) The employee would not have provided the information without an assurance that the employee's identity would remain private, because of a concern that the employer would commit an action prohibited under subdivision 1 or that the employee would be subject to some other form of retaliation; or
(2) The state agency, statewide system, or political subdivision reasonably believes that the employee would not have provided the data because of that concern.

If the disclosure is necessary for prosecution, the identity of the employee may be disclosed, but the employee shall be informed prior to the disclosure.

False Disclosures
This section does not permit an employee to make statements or disclosures knowing that they are false or that they are in reckless disregard of the truth.

Collective Bargaining Rights
This section does not diminish or impair the rights of a person under any collective bargaining agreement.

Confidential Information
This section does not permit disclosures that would violate federal or state law or diminish or impair the rights of any person to the continued protection of confidentiality of communications provided by common law.

Individual Remedies; Penalty Section 181.935
In addition to any remedies otherwise provided by law, an employee injured by a violation of Minn. Stat. §181.932 may bring a civil action to recover any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney’s fees, and may receive such injunctive and other equitable relief as determined by the court.

If the district court determines that a violation of Minn. Stat. § 181.932 occurred, the court may order any appropriate relief, including but not limited to reinstatement, back pay, restoration of lost service credit, if appropriate, compensatory damages,
and the expungement of any adverse records of an employee who was the subject of the alleged acts of misconduct.

Health Care Cost Containment—Retaliation—Minnesota Statutes Section 62J.80

A health plan company or health care provider shall not retaliate or take adverse action against an enrollee or patient who, in good faith, makes a complaint against a health plan company or health care provider. If retaliation is suspected, the Executive Director may report it to the appropriate regulatory authority.

6) HELPFUL LINKS

- Minnesota Department of Human Services (Medical Assistance)
- Minnesota Attorney General
- Minnesota Department of Health
- Minnesota Statutes and Rules