1) ANTI-KICKBACK

Title 63, Oklahoma Statutes, § 1-742
It is unlawful for anyone to intentionally or knowingly pay to, or accept anything, of value from any person or business entity for securing or soliciting patients for any health care professional, health care provider, or other health care entity. Permits advertising, except advertising that is false, misleading, deceptive, advertises professional superiority, or is not readily subject to verification. Permits remuneration for advertising, marketing, and other services that are provided for the purpose of securing or soliciting patients, provided the remuneration is set in advance, consistent with fair market value, and not based on the volume or value of any patient referrals or business otherwise generated. Permits any payment or arrangement not prohibited by the federal anti-kickback statute or its implementing regulations. Not applicable to licensed insurers, including health maintenance organizations and group hospital service corporations. Violation is a misdemeanor, punished by not less than $500 and not more than $2,000.

Title 56, Oklahoma Statutes, §§ 1001-1008
Oklahoma Medicaid Program Integrity Act
Makes unlawful submission of claim known to be false. It is unlawful to make or cause to be made a statement or representation for use in obtaining or seeking authorization to provide a good or a service knowing the statement or representation to be false. It is also unlawful to make or cause to be made a false statement or representation, knowing it to be false, for use by another in obtaining goods or services under the Oklahoma Medicaid Program. Makes unlawful willful or knowing charge to any recipient of rate in excess of remuneration established by Oklahoma Medicaid Program. It is unlawful to solicit or accept a benefit, pecuniary benefit, or
kickback in connection with goods or services paid or claimed by a provider to be payable by the Oklahoma Medicaid Program. Permits any payment or arrangement not prohibited by the federal anti-kickback statute or its implementing regulations. It is a felony to willfully or knowingly submit a claim for or receive payment for goods or services under the Oklahoma Medicaid Program, and fail to maintain or destroy records pursuant to Oklahoma Health Care Authority rules for a period of at least six years. Violations resulting in illegal payments claimed or received in an amount of $2,500 or more is a felony, and results in a fine of not more than three times the amount of payments illegally claimed or received, or $10,000, whichever is greater, and/or imprisonment for not more than three years. Violations resulting in illegal payments claimed or received in an amount less than $2,500 is a misdemeanor, and results in a fine of not more than three times the amounts of payments illegally received or claimed, or $1,000, whichever is greater, and/or imprisonment for not more than one year.

In addition to the above penalties, any person violating this Act is liable for full restitution to the Oklahoma Health Care Authority, payment of interest on the amount of excess payments, and any cost of investigation, litigation, and attorney fees. Any person violating this Act must also pay additional civil penalties to the Oklahoma General Revenue Fund in an amount of two times the amount of restitution, plus interest, from the judgment date, or a civil penalty of $2,000, with interest from the date of judgment, for each false and fraudulent claim, statement, or representation. The Oklahoma Health Care Authority may also suspend the provider agreement between the Authority and the person violating this Act, and stop reimbursement for goods or services claimed for a period of up to five years.

2) SELF-REFERRALS

Oklahoma does not have a specific prohibition on referrals by physicians to entities with which they have a financial relationship.

*Title 59, Oklahoma Statutes § 725.4*

Any health care professional who refers a patient to a testing center or laboratory in which the professional has any financial interest or from which the professional receives remuneration for referrals must provide a written disclosure of this fact to the professional's patients, unless the testing center or laboratory is an extension of the professional's practice, is not separately owned or billed, and the professional personally provides or supervises services at the facility. Violation is subject to a fine of no less than $100 and no more than $1000 and provides grounds for disciplinary licensure action.
3) FALSE CLAIMS / FRAUD & ABUSE

Title 63, Oklahoma Statutes, §§ 5053-5053.7

Oklahoma Medicaid False Claims Act

Prohibits a person from knowingly (either actual knowledge of the information or an act in deliberate ignorance or reckless disregard of the truth or falsity of the information) (i) presenting, making, or using, or causing to be presented, made, or used, a false or fraudulent claim or false record or statement material to a false claim, for money or property to an officer or employee of the state of Oklahoma, or to any contractor, grantee, or other recipient if any portion of the money or property that is requested or demanded is to be spent on the state’s behalf or to advance a state program or interest and is or will be provided by the state directly or through reimbursement (with the exception of salaries paid to state employees and income subsidies); (ii) makes, 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; (iii) conceals or otherwise improperly avoids or decreases an obligation to pay or transmit money or property to the state, or (iv) conspires to do any of the above. No proof of specific intent to defraud is required. Effective November 1, 2017, liability to the state for violation results in a civil penalty in an amount consistent with the Federal False Claims Act (31 U.S.C. § 2729(a)) as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Public Law 114-74), which currently is an amount between $10,957 and $21,916, plus three times the amount of damages the state sustains. The Act provides for qui tam actions to be brought by any person. If the state prosecutes an action, the qui tam plaintiff is entitled to not less than 15% but not more than 25% of the proceeds of the action, in addition to reasonable attorney fees and costs, depending on the extent to which the plaintiff contributed to the prosecution, unless the action is based primarily on public information, including the news media, in which case the plaintiff is entitled to no more than 10% of the proceeds and then only if the state opposes dismissal of the action by the court on this basis or the plaintiff is an original source of information. If the state does not prosecute, the plaintiff is entitled to no less than 25% nor more than 30% of the proceeds, in addition to reasonable expenses necessarily incurred plus attorney fees and costs.

Title 56, Oklahoma Statutes, § 1003

Establishes in the Office of the Attorney General the Medicaid Fraud Unit. All cases of suspected Medicaid fraud will be referred to the Medicaid Fraud Unit for the purposes of investigation, civil action, criminal action, or referral to the district attorney. The Attorney General has all powers necessary to comply with federal laws and regulations relative to the operation of the Medicaid Fraud Unit, including the power to cross-designate assistant U.S. attorneys as assistant attorneys general, the power to investigate cases of patient abuse, the power to issue or cause to be issued subpoenas or other process to aid investigations and prosecution, and the power to serve and execute search warrants. The Attorney General shall also have all powers of a district attorney.
Title 56, Oklahoma Statutes, § 1005.1
Prohibits fraudulent attempts to obtain Medicaid benefits. It is unlawful for an individual by false impersonation, fraudulent purchase, or use of medical identification cards, fictitious transfer, conveyance, or encumbrance of property, by knowing or willful failure to report or omit income or assets to the Department of Human Services or Oklahoma Health Care Authority when applying for or receiving Medicaid assistance, or by other fraudulent device to obtain or attempt to obtain, or aid, abet, or assist any individual to obtain, assistance to which an applicant is not entitled or greater than that to which the applicant is entitled. Attempts to obtain Medicaid and other state insurance by omission of income or other material eligibility factors is a misdemeanor punishable by either a fine of three times the amount of assistance obtained, or up to three months in county jail, and administrative sanctions regarding Medicaid benefits may be imposed. For all other fraudulent attempts to obtain Medicaid, if the violating act causes the Oklahoma Health Care Authority to determine eligibility, then if assistance less than $5,000 has been paid, the act is a misdemeanor punishable by fine or imprisonment for three months, or both, or an administrative sanction regarding Medicare benefits. For aggregate assistance greater than $5,000, the act is a felony punishable by fine or imprisonment for no more than five years, or an administrative sanction regarding Medicaid benefits.

Key State Health Care Cases
State v. Thomason, 2001 OK CR 27, 33 P.3d 930
Case: Defendant nursing home director was charged with caretaker neglect, obstructing an officer, and attempted subornation of perjury.
Holding: A nursing home receiving Medicaid funds could not assert physician-patient confidentiality to prevent the Medicaid Fraud Unit from accessing medical records of non-Medicaid private pay patients, in connection with a criminal investigation of nursing home employees for caretaker neglect.

4) UNFAIR BUSINESS PRACTICES

Title 15, Oklahoma Statutes, §§ 751-764.1
Consumer Protection Act.
Prohibits immoral, unethical, oppressive, unscrupulous practices. Makes unlawful a misrepresentation, omission, or other practice that has deceived or could deceive a person to his or her detriment. Specifically, makes unlawful "bait and switch" advertising, unauthorized billing, and false or misleading representations or advertising. It is also unlawful to make a false or misleading representation as to the affiliation, connection, association with, or certification by another. It is unlawful to make a false representation as to the sponsorship, approval, status, affiliation, or connection of a person with the subject of a consumer transaction. It is unlawful to advertise the subject of a consumer transaction with intent not to sell it as advertised, as well as to advertise the same with intent not to supply reasonably expected public demand (unless a limitation of quantity is disclosed). Violations subject the business
entity to civil penalties in the amount of actual damages, including attorney’s fees. Non-prevailing party may be liable for an amount not to exceed $10,000 for prevailing party’s costs and fees if it asserts a claim or defense in bad faith. An unconscionable violation may result in a civil penalty of not more than $2,000. In addition to other penalties, any person convicted in a criminal proceeding of violating the Oklahoma Consumer Protection Act is guilty of a misdemeanor, and upon conviction is subject to a fine of not more than $1,000 or one year in jail, or both. Willful violations of injunctions or court orders issued pursuant to this Act may result in a civil penalty of not more than $10,000 per violation.

5) GENERAL WHISTLEBLOWER PROTECTIONS

**Title 63, Oklahoma Statutes, § 5053.5**
Any employee, contractor or agent who is discharged, demoted, suspended, threatened harassed, or in any other manner discriminated against because of his or her actions in furtherance of the Oklahoma Medicaid False Claims Act is entitled to all relief which will make him or her whole, including reinstatement with the same seniority that he or she would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and any special damages, including litigation costs and attorney fees. The employee, contractor or agent must bring an action for damages no more than 3 years after the date the retaliation occurred.

**Title 74, Oklahoma Statutes, § 840-2.5**
The Oklahoma Whistleblower Act prohibits retaliation against state employees for reporting wrongful governmental activities. No officer or employee of any state agency may prohibit or take disciplinary action against any employee of such agency for: (1) disclosing public information to correct what the employee reasonably believes evidences a violation of law; or (2) reporting a violation of law, mismanagement, gross waste of public funds, abuse of authority, or a substantial and specific danger to public health or safety.

**Shephard v. Compsource Oklahoma, 2009 OK 25, 209 P.3d 288**
*Case*: At-will state employee brought tort claim pursuant to *Burk v. K-Mart*, 1989 OK 22, 770 P.2d 24, which allowed an actionable tort claim for an at-will employee discharged for refusing to act in violation of an established and well-defined public policy or for performing an act consistent with a clear and compelling public policy, for being discharged for actions allegedly protected by the Oklahoma Whistleblower Act.

*Holding*: Discharge of an at-will state employee in violation of the Oklahoma Whistleblower Act does not give rise to a *Burk* tort because the Act provides adequate remedies to the wrongfully discharged employee that sufficiently protected Oklahoma’s public policy goals of protecting employees who report wrongful governmental activities.
6) HELPFUL LINKS

- Oklahoma Department of Health
- Oklahoma HealthCare Authority
- Oklahoma Attorney General