ILLINOIS: Summary of Fraud and Abuse Statutes and Regulations

Prepared by
Sumaya M. Noush (Sumaya.Noush@dbr.com)

Drinker Biddle & Reath LLP
Chicago, Illinois

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1) ANTI-KICKBACK

Insurance Claims Fraud Prevention Act—740 ILCS 92/1
The Illinois Insurance Claims Fraud Prevention Act (ICFPA) makes it unlawful to knowingly offer or pay remuneration to induce a person to procure clients or patients to obtain services or benefits under a contract of insurance or that will be the basis for a claim against an insured person or the person’s insurer. As an “any payor” statute, it is not limited to state health care program payors and applies to claims submitted to any private insurance companies or self-insured entities. In addition to other penalties that may be prescribed by law, violation of this statute can result in a civil penalty between $5,000 and $10,000, plus up to three times the amount of each claim for compensation under an insurance contract.

Modeled after the federal Anti-Kickback Statute, Section 5/8A-3 of the Illinois Public Assistance Fraud Statute provides that a person shall be guilty of a violation of this article if he or she solicits, receives, offers, or pays any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any item or service reimbursed, in whole or in part, under the Illinois Medicaid program. Section 5/8A-6 classifies violations of this provision in the following way:

<table>
<thead>
<tr>
<th>Total amount of Money Involved</th>
<th>Classification of Violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $150</td>
<td>Class A misdemeanor</td>
</tr>
<tr>
<td>$150 or more, but less than $1,000</td>
<td>Class 4 felony</td>
</tr>
<tr>
<td>$1,000 or more, but less than $5,000</td>
<td>Class 3 felony</td>
</tr>
<tr>
<td>$5,000 or more, but less than $10,000</td>
<td>Class 2 felony</td>
</tr>
<tr>
<td>$10,000 or more</td>
<td>Class 1 felony</td>
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</tbody>
</table>
For any subsequent violation of Section 5/8A-3:

<table>
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</tr>
</tbody>
</table>

Section 5/8A-16 further makes it a Class A misdemeanor to engage in any unfair or deceptive marketing practice in connection with proposing, offering, selling, soliciting, or providing any health care service or health plan, which includes offering any kickback, bribe, reward, or benefit to any person as an inducement to select or to refrain from selecting any health care service, health plan, or health care provider, unless the benefit offered is medically necessary health care or is permitted by the Illinois Department.

**Pharmacy Practice Act—225 ILCS 85/23**
The Illinois Pharmacy Practice Act prohibits pharmacies and pharmacists from offering any kickback to hospitals, physicians, and others authorized to prescribe drugs for the purpose of steering the prescription business to that pharmacy or pharmacist.

Specifically, “[i]t is unlawful for a pharmacist or pharmacy to pay or promise to pay to any person who owns, operates, manages or is an employee of a hospital, nursing home or other health care facility or to any person authorized by law to prescribe drugs or to any entity in which a person authorized by law to prescribe drugs holds an interest, any rebate, refund, discount, commission or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by any such pharmacy of drugs or devices, prescriptions or any other service to patients of the above specified persons, organizations or facilities." Unless continued by the Illinois legislature, the section is scheduled to be repealed on January 1, 2020.

**2) PROHIBITIONS ON FEE-SPLITTING**

**Medical Practice Act of 1987—225 ILCS 60/22.2**
Section 22.2 of the Illinois Medical Practice Act (the “Act”) prohibits a licensee from sharing or splitting any professional fees or other form of compensation in exchange for a referral, unless an exception under the Act applies. Illinois House Bill No. 2975 aims to clarify the scope of Section 22.2 of the Act by specifically prohibiting physician licensees from fee splitting.

The Act currently authorizes fee splitting under the following exceptions to the prohibition:
- With another licensed health care worker (as defined in the Illinois Health Care
Worker Self-Referral Act) who concurrently provides services to a patient with full knowledge of the patient, and in proportion to the actual services personally performed by each licensee.

- With a legal entity provided the owner(s) is licensed under the Act.
- With a medical corporation, a professional services corporation, a professional association, or a limited liability company organized under Illinois law.
- With an entity permitted under Illinois law to provide physician services or employ physicians, such as a licensed hospital, hospital affiliate, or licensed ambulatory surgical treatment center owned in full or in part by Illinois-licensed physicians.
- With an entity that is a combination or a joint venture of any of the entities described above.
- With an Illinois not-for-profit corporation, organized under Section 501(c)(3) of the Internal Revenue Code, and that has all of its members staffed as full-time faculty of a medical school that (a) offers a M.D. degree that is accredited by the Liaison Committee on Medical Education, and (b) a program of a graduate medical education that is accredited by the Accreditation Council for Graduate Medical Education.
- Payment by a physician or physician practice for the performance of billing, administrative preparation, or collection of claims for professional services if the following three requirements are met:
  1. Compensation is fair market value.
  2. The physician or physician practice controls the amount of fees charged and collected.
  3. All charges are paid directly to either the physician or physician practice, deposited into a bank account in the name and sole control of the physician or physician practice, or placed into a trust account by a licensed collection agency.

Section 22.2 also prohibits, except when within a physician practice, a licensee from dividing, sharing, or splitting a professional service fee with, or otherwise paying a percentage of professional service fees, revenues, or profits, to anyone for: “(i) the marketing or management of the licensee's practice, (ii) including the licensee or the licensee's practice on any preferred provider list, (iii) allowing the licensee to participate in any network of health care providers, (iv) negotiating fees, charges or terms of service or payment on behalf of the licensee, or (v) including the licensee in a program whereby patients or beneficiaries are provided an incentive to use the services of the licensee.”

Unless continued by the Illinois legislature, the Medical Practice Act, including the section on fee-splitting, is scheduled to be repealed on December 31, 2019.
3) PROHIBITIONS ON SELF-REFERRAL

Health Care Worker Self-Referral Act—225 ILCS 47/1

The Illinois Health Care Worker Self-Referral Act (IHCWSRA) provides that “a health care worker shall not refer a patient for health services to an entity outside the health care worker’s office or group practice in which the health care worker is an investor, unless the health care worker directly provides health care services within the entity and will be personally involved in the provision of care to the referred patient. “Health care worker,” includes:

- Dentists
- Dental hygienists
- Nurses
- Advanced registered nurses
- Occupational therapists
- Optometrists
- Pharmacists
- Physical therapists
- Physicians
- Physician assistants
- Podiatric physicians
- Clinical psychologists
- Clinical social workers
- Speech-language pathologists
- Audiologists
- Hearing instrument dispensers

A limited exception to the general prohibition is available if the Illinois Health Facilities and Services Review Board (the “Board”) determines there is a “demonstrated need” in the community for an entity, and alternative financing is not available, such that a health care worker may invest in and refer to such entity, regardless of whether or not the health care worker provides direct services within the entity. In addition, the following ten conditions must be met before the Board may determine whether the health care workers fits within this limited exception:

- Individuals who are not in a position to refer patients to an entity are given a bona fide opportunity to also invest in the entity on the same terms as those offered a referring health care worker.
- No health care worker who invests shall be required or encouraged to make referrals to the entity or otherwise generate business as a condition of becoming or remaining an investor.
- The entity must market or furnish its services to referring health care worker investors and other investors on equal terms.
- The entity must not loan or guarantee any loans for health care workers who are in a position to refer to an entity.
- The income on the health care worker’s investment must be tied to the health care worker’s equity in the facility rather than to the volume of referrals made.
• Any investment contract between the entity and the health care worker must not include any convert or non-competition clause that prevents a health care worker from investing in other entities.
• When making a referral, a health care worker must disclose his or her investment interest in an entity to the patient being referred to such entity. If alternative facilities are reasonably available, the health care worker must also provide the patient with a list of such facilities. The health care worker must inform the patient that they have the option to use an alternative facility other than one in which the health care worker has an investment interest and the patient will not be treated any differently by the health care worker if the patient does choose to use a different entity.
• If a third party payor requests information with regard to a health care worker’s investment interest, such information must be disclosed.
• The entity shall establish an internal utilization review program to ensure that investing health care workers provided appropriate or necessary utilization.
• If a health care worker’s financial interest in an entity is incompatible with a referred patient’s interest, the health care worker must make alternative arrangements for the patient’s care.

4) FALSE CLAIMS

Illinois False Claims Act—740 ILCS 175
The Illinois False Claims Act (IFCA) is modeled after the federal False Claims Act (FCA). Much like the federal statute, for example, IFCA prohibits a person from knowingly (either through actual knowledge of the information, acting in deliberate ignorance of the truth or falsity of the information, or acting in reckless disregard of the truth or falsity of the information) presenting or causing to be presented a false claim, knowingly making, using, or causing to be made or used a false record or statement, or knowingly concealing or improperly avoiding or decreasing an obligation to pay or transmit money to the state. No proof of specific intent to defraud is required. Liability to the state includes civil penalties ranging between $5,500 to $11,000 for each claim, plus treble damages, and recovery of the costs of bringing a civil action. Penalties may be reduced if the person cooperates with the fraud investigation. IFCA allows for private attorneys general/qui tam relators.

ICFPA—740 ILCS 92/1
In addition to its anti-kickback provisions, the ICFPA also provides that violators of Section 17-10.5 of the Illinois Criminal Code shall be subject to ICFPA’s penalties. More specifically, it is unlawful to knowingly offer or pay any remuneration to induce any person to procure clients or patients to obtain services or benefits under an insurance contract that will be the basis for a claim against an insured person or the person’s insurer. Like the FCA and IFCA, ICFPA permits relators to bring actions on behalf of the state. A person who violates ICFPA is subject to civil penalties ranging between $5,000 and $10,000 per claim, plus treble damages.
5) GENERAL WHISTLEBLOWER PROTECTIONS

Whistleblower Act—740 ILCS 174
The Illinois Whistleblower Act prohibits retaliation against employees for disclosing information to a government or law enforcement agency where such individual has reasonable cause to believe that the information discloses a violation of a state or federal law, rule, or regulation.