1) ANTI-KICKBACK

Prohibits any person, firm, partnership, association, or corporation, or agent or employee thereof, to engage in any for-profit business that includes referrals or recommendations of persons to a physician, hospital, health-related facility, or dispensary for any form of medical care or treatment of any ailment or physical condition, unless the person is advised of the selection criteria of the physicians, hospitals, health-related facilities, or dispensaries considered for the referral or recommendation. The acceptance of a fee or charge for any such referral or recommendation will create a presumption that the business is engaged in such service for profit. Violations will be punishable as a Class 1 misdemeanor, by either or both a fine of not more than $2,500 and confinement in jail for not more than 12 months.

In addition to the criminal sanctions, an application may be made by the Attorney General to the circuit court of the city or county in which the offense occurred, to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation. The statute does not prohibit any licensed physician or practitioner from making referrals or recommendations to other physicians or practitioners in the ordinary course of his professional practice, as long as no fee is received for such referral or recommendation. The criminal and civil provisions of the statute do not apply to any individual association or corporation not organized or incorporated for pecuniary profit or financial gain, or to any organization or association which is exempt from taxation pursuant to 26 U.S.C. § 501(c). The statute specifies that it should not be construed to authorize any division of fees prohibited by Section 54.1-2962 or any remuneration for referral prohibited by
federal law or regulation.

**Va. Code Ann. § 32.1-125.2. Disclosure of other providers of services.**
Requires any hospital that has, or is affiliated with or under the common control of a holding company that has, a financial interest in a facility or entity that engages in the provision of health-related outpatient services, appliances, or devices of which a patient is in need, or any employee or volunteer associated with such hospital, prior to referring the patient to such type of facility or entity, to provide the patient or his representative with a notice stating in bold print that the services, appliances, or devices may be available from other suppliers in the community. The Attorney General, an attorney for the Commonwealth, the attorney for a city, county, or town, or any aggrieved patient may cause an action to be brought in the appropriate circuit court in the name of the Commonwealth, of the county, city, or town, or of any aggrieved patient, to enjoin any violation of the statute. The circuit court having jurisdiction may enjoin such violations, even if an adequate remedy at law exists. When an injunction is issued, the circuit court will impose a civil fine to be paid to the Literary Fund not to exceed $1,000. In any action under this statute, it will not be necessary to prove damages.

**Va. Code Ann. § 32.1-135.2. Offer or payment of remuneration in exchange for referral prohibited.**
Prohibits a hospital from knowingly and willfully offering or paying any remuneration directly or indirectly, in cash or in kind, to induce any practitioner of the healing arts or any clinical psychologist to refer an individual or individuals to such hospital. The statute authorizes the board to adopt regulations as necessary to carry out the provisions of the statute that must be developed in conjunction with the State Mental Health, Mental Retardation and Substance Abuse Services Board and must be consistent with regulations adopted by such board pursuant to Section 37.2-420. The regulations must exclude from the definition of "remuneration" any payments, business arrangements, or payment practices not prohibited by 42 U.S.C. § 1320a, as amended, or any regulations promulgated pursuant to that statutory section.

**Va. Code Ann. § 32.1-315. [Medical Assistance] Solicitation or receipt of remuneration for certain services; offer or payment of remuneration for inducement of such services; penalty.**
Prohibits the knowing and willful solicitation, receipt, offer, or payment of any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in-kind: (1) to refer or in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under medical assistance; or (2) to purchase lease, order, or arrange for or recommend purchasing, leasing, or ordering or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under medical assistance. Violators will be guilty of a Class 6 felony punishable by either or both a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the
court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than $2,500. Additionally, a violator may be fined up to $25,000.

The statute does not apply to: (1) a discount or other reduction in price obtained by a provider of services or other person under medical assistance, if the reduction in price is properly disclosed and appropriately reflected in the cost claimed or charges made by the provider or other person under medical assistance; (2) any reasonable compensation paid by an employer to an employee who has a bona fide employment relationship with such employer, for employment in the provision of covered items or services; (3) an agreement by health care providers for the group purchase of equipment, goods, services, or supplies that results in fees paid to an agent of the providers, when such agreement has been presented to and authorized by the Department of Medical Assistance Services on the basis that the agreement will reduce the costs of providers of institutional services; and (4) any remuneration, payment, business arrangement, or payment practice that is not prohibited by 42 U.S.C. § 1320a-7b(b) or by any regulations adopted pursuant to such statute.

**Va. Code Ann. § 32.1-317. Collecting excess payment for services; charging, soliciting, accepting, or receiving certain consideration as precondition for admittance to facility or requirement for continued stay; penalty.**

When the cost of services provided in a facility or by an individual to a patient is paid for, in whole or in part, under medical assistance, provides that any person who knowingly and willfully:

- Collects from a patient for any service provided under medical assistance, money or other consideration at a rate in excess of entitlements established by the Department of Medical Assistance Services; or
- Charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under medical assistance any gift, money, donation, or other consideration, other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient, as a precondition of admitting a patient to a hospital, skilled nursing facility, or intermediate-care facility or as a requirement for the patient’s continued stay in such facility, shall be guilty of a Class 6 felony and subject to a fine not to exceed $25,000.

**Va. Code Ann. § 37.2-420. Offer or payment of remuneration in exchange for referral prohibited.**

Prohibits licensed providers of mental health, mental retardation, and substance abuse services from knowingly and willfully offering or paying any remuneration directly or indirectly, in cash or in kind, to induce any practitioner of the healing arts or any licensed clinical psychologist to refer an individual or individuals to any service of the provider. The term "remuneration" excludes any payments, business arrangements, or payment practices not prohibited by 42 U.S.C. § 1320a-7b(b), as amended, or any regulations adopted pursuant to such statute.
**Va. Code Ann. § 54.1-2962. Division of fees among physicians prohibited.**
Prohibits any physician licensed to practice medicine or osteopathy in the Commonwealth from directly or indirectly sharing any fee charged for the provision of health services with another physician in return for such other physician’s making a referral of such patient to the physician providing the health services; and no physician may accept any portion of a professional fee paid to another for the provision of health services in return for making a referral of such patient to the physician providing such health services. Members of any regularly organized partnership of such surgeons or physicians may make any division of their total fees among themselves as they may determine and a group of duly licensed practitioners of any branch or branches of the healing arts may use their joint fees to defray their joint operating costs. Violators will be punishable as a Class 1 misdemeanor, punishable by either or both a confinement in jail for not more than 12 months and a fine of not more than $2,500.

Subject to the exception for the division of fees among the members of organized partnerships of surgeons or physicians, Section 54.1-2962 prohibits a licensed medical doctor who refers a patient to another licensed medical doctor from receiving a fee from the doctor for the referral. Assuming absence of any fee splitting or other illegal fee arrangement, neither Section 54-1-2962 nor any other provision of Title 54.1 would prevent a primary care physician from receiving payment for postoperative care from a third party after having referred the patient to another licensed physician for surgery.

**Va. Code Ann. § 54.1-2962.1. Solicitation or receipt of remuneration in exchange for referral prohibited.**
Prohibits a practitioner of the healing arts from knowingly and willfully soliciting or receiving any remuneration directly or indirectly, in cash or in kind, in return for referring an individual or individuals to a facility or institution. The term “facility or institution” is defined as a state or licensed hospital, training center, psychiatric hospital, or other type of residential or outpatient mental health or mental retardation facility or hospital, which in turn is defined as a state hospital or licensed hospital that provides care and treatment for persons with mental illness, when not modified by the words “state” or “licensed.” The statute authorizes the board to adopt regulations as necessary to carry out the provisions of the statute. Such regulations shall exclude from the definition of “remuneration” any payments, business arrangements, or payment practices not prohibited by 42 U.S.C. § 1320a-7b(b), as amended, or any regulations promulgated pursuant to such statute.

**Title 18 Va. Admin. Code § 85-20-80. Solicitation or remuneration in exchange for referral.**
Prohibits a practitioner from knowingly and willfully soliciting or receiving any remuneration, directly or indirectly, in return for referring an individual to a facility or institution defined as a state or licensed hospital, training center, psychiatric hospital, or other type of residential or outpatient mental health or mental retardation facility,
or hospital defined as any licensed facility in which the primary function is the provision, diagnosis, and treatment of medical and nursing services, surgical or non-surgical, for two or more non-related individuals, including hospitals known by varying nomenclature or designation such as sanatoriums, sanitariums, and general, acute, rehabilitation, chronic disease, short-term, long-term, outpatient surgical, and inpatient or outpatient maternity hospitals.

Similar prohibitions apply to other individuals such as licensed acupuncturists (18 Va. Admin. Code § 85-110-181) and licensed midwives (18 Va. Admin. Code § 85-130-150).

Key State Health Care Cases
None.

2) PROHIBITIONS ON SELF-REFERRAL


Prohibits a practitioner from referring a patient for health services to an entity outside the practitioner's office or group practice if the practitioner or any of the practitioner's immediate family members is an investor in such entity. There is no prohibition if the practitioner directly provides health services within the entity and will be personally involved with the provision of care to the referred patient or has been granted an exception by the board. Additionally, a practitioner may refer patients for health services to a publicly traded entity in which the practitioner has an investment interest, without applying for or receiving an exception from the board, if all of the following conditions are met:

- The entity's stock is listed for trading on the New York Stock Exchange or the American Stock Exchange or is a national market system security traded under an automated interdealer quotation system operated by the National Association of Securities Dealers;
- The entity had, at the end of the corporation's most-recent fiscal year, total net assets of at least $50 million related to the furnishing of health services;
- The entity markets and furnishes its services to practitioner-investors and other practitioners on the same and equal terms;
- All stock of the entity, including the stock of any predecessor privately held company, is one class without preferential treatment as to status or remuneration;
- The entity does not issue loans or guarantee any loans for practitioners who are in a position to refer patients to such entity;
- The income on the practitioner's investment is not tied to referral volumes and is based on the practitioner's equity interest in the entity; and
- The practitioner's investment interest does not exceed one half of 1% of the entity's total equity.
A practitioner may refer a patient to such practitioner's immediate family member or such immediate family member's office or group practice for health services if all of the following conditions are met:

- The health services to be received by the patient referred by the practitioner are within the scope of practice of the practitioner's immediate family member or the treating practitioner within such immediate family member's office or group practice;
- The practitioner's immediate family member or the treating practitioner within such immediate family member's office or group practice is qualified and duly licensed to provide the health services to be received by the patient referred to the practitioner;
- The primary purpose of any such referral is to obtain the appropriate professional health services for the patient being referred, which are to be rendered by the referring practitioner's immediate family member or by the treating practitioner within such immediate family member's office or group practice who is qualified and licensed to provide such professional health services; and
- The primary purpose of the referral is for the provision of designated health services as defined in 42 U.S.C. § 1395nn and the regulations promulgated under such statute.

The practitioner may refer a patient who is a member of a health maintenance organization to an entity in which the practitioner is an investor if the referral is made pursuant to a contract with the health maintenance organization.

A referral to an entity with which the referring practitioner or his immediate family member has an arrangement that would qualify for an exception under the federal practitioner self-referral law, 42 U.S.C. § 1395nn, as amended, or any regulations adopted pursuant thereto, permitting a practitioner or an immediate family member of a practitioner to maintain an ownership or investment interest in an entity that provides designated health services, will not be in violation of this statute, regardless of the type of health service provided or the source of payment for such service.

The board may grant an exception to the prohibitions in this statute, and may permit a practitioner to invest in and refer to an entity, regardless of whether the practitioner provides direct services within such entity, if there is a demonstrated need in the community for the entity and all of the following conditions are met:

- Individuals other than practitioners are afforded a bona fide opportunity to invest in the entity on the same and equal terms as those offered to any referring practitioner;
- No investor practitioner is required or encouraged to refer patients to the entity or otherwise generate business as a condition of becoming or remaining an investor;
- The services of the entity are marketed and furnished to practitioner investors and other investors on the same and equal terms;
- The entity does not issue loans or guarantee any loans for practitioners who are in a position to refer patients to such entity;
- The income on the practitioner's investment is based on the practitioner's equity interest in the entity and is not tied to referral volumes; and
- The investment contract between the entity and the practitioner does not include any covenant or clause limiting or preventing the practitioner's investment in other entities.

Unless the board, the practitioner, or entity requests a hearing, the board will determine whether to grant or deny an exception within 90 days of the receipt of a written request from the practitioner or entity, stating the facts of the particular circumstances and certifying compliance with the conditions required by this subsection. The board's decision will be a final administrative decision and will be subject to judicial review pursuant to the Administrative Process Act. If an exception is granted by the board, the practitioner must disclose his investment interest in the entity to the patient at the time of referral. If alternative entities are reasonably available, the practitioner must provide the patient with a list of such alternative entities and must inform the patient of the option to use an alternative entity. The practitioner must inform the patient that choosing another entity will not affect his treatment or care. Additionally, information on the practitioner's investment must be provided if requested by any third-party payer, the entity must establish and utilize an internal utilization review program to ensure that practitioner investors are engaging in appropriate and necessary utilization; and in the event of a conflict of interest between the practitioner's ownership interests and the best interests of any patient, the practitioner must not make a referral to such entity, but must make alternative arrangements for the referral.

The Act prohibits any hospital licensed in Virginia from discriminating against or otherwise penalizing any practitioner for compliance with the provisions of the Act and also prohibits a practitioner, other health care worker, or entity from entering into any agreement, arrangement, or scheme intended to evade the provisions of the Act by inducing patient referrals in a manner which would be prohibited by the Act if the practitioner made the referrals directly. Moreover, it prohibits a group practice from being formed for the purpose of facilitating referrals that would otherwise be prohibited by this Act.

The Act authorizes the Board of Health Professions (Board) to administer the Act and promulgate regulations to effectively administer the Act. Upon a determination of a violation by the Board, pursuant to the Administrative Process Act, any entity, other than a practitioner, that presents or causes to be presented a bill or claim for services that the entity knows or has reason to know is prohibited by Section 54.1-2411 will be subject to a monetary penalty of no more than $20,000 per referral, bill, or claim. The monetary penalty may be sued for and recovered in the name of the Commonwealth. All such monetary penalties will be deposited in the Literary Fund. Any violation of this chapter by a practitioner constitutes grounds for disciplinary action as unprofessional conduct by the appropriate health regulatory board within the Virginia Department of Health Professions (VDHP). Sanctions for violation of this
chapter may include, but are not limited to, the monetary penalty authorized in Section 54.1-2401.

Allows any practitioner or entity to request an advisory opinion on the applicability of the Practitioner Self-Referral Act (Act) upon completion of an application and payment of a fee. Allows any practitioner or entity to request an exception to the prohibitions of the Act upon completion of an application and payment of a fee. Exceptions are valid for a period of no more than five years. Subject to verification by the Board, an exception must be renewed upon payment of a renewal fee and the receipt of certification from the practitioner or entity that the conditions under which the original exception was granted continue to warrant the exception.

Outlines the fees to be paid for an opinion on the applicability of the Act, for an exception, and for renewal or Board approval of exceptions to the Act.

Permits the Board to determine violations of prohibitions of the Act on the part of an entity other than a practitioner in accordance with the provisions of the Administrative Process Act. Upon receipt of an investigative report of an alleged violation of the Act by a practitioner, the VDHP, on behalf of the Board, must provide a copy of the report to the appropriate regulatory board within the department as required by subdivision 13 of Section 54.1-2510 of the Code of Virginia. Violations of the Act by a practitioner will be determined by the appropriate regulatory board within the department and will be subject to disciplinary action by that board in accordance with Section 54.1-2412 D of the Code of Virginia. Upon closure of a case involving an alleged violation of the Act by a practitioner, the appropriate regulatory board will provide a copy of the final order or of the letter of dismissal of the case to the Board. The Board will review periodically the disposition of cases involving allegations of violations of the Act by practitioners to ensure the protection of the public and the fair and equitable treatment of health professionals, as authorized by subdivision 11 of Section 54.1-2510 of the Code of Virginia. Designates the provisions of the Administrative Process Act to govern proceedings on questions of violations of the Act.

The Alliance Xpress Care, LLC (“Alliance”) Advisory Opinion interpreted whether a recommending Alliance, an urgent care provider, as an option to patients by a physician-investor would constitute a “referral” under the Act. The VDHP concluded that a “casual, verbal reference” to Alliance as an urgent care option would not violate the Act as long as all other regional urgent care entities were given the same level of reference. Additionally, the physician-investor must provide written disclosure of their investment interest in all written or electronic documents made available to patients.
The Center for Weight Loss Success, P.C. (“CFWLS”) Advisory Opinion interpreted whether an arrangement for using materials and educational services of Weight Loss Practice Builder LLC (WL Practice Builder) by a weight loss clinic would violate the Act when WL Practice Builder’s owner is the wife of the CFWLS’ owner. The VDHP concluded that the 1) WL Practice Builder provides “health services” under the Act for its alternatives to surgery to treat overweight patients; 2) if the owner of CFWLS is available on an ongoing basis to clients of WL Practice Builder then the arrangement would satisfy the “office practice” exception; and 3) the mere purchase of a license to use materials of WL Practice Builder by a physician or group would not implicate the Act because no referral would have been made.

Requires any collaborative agreement or referral under an agreement governed by the regulations governing collaborative practice agreements to be in compliance with the requirements of the Act and with Chapters 29 (Section 54.1-2900 et seq.), 33 (Section 54.1-3300 et seq.), and 34 (Section 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia and regulations promulgated pursuant under those statutes. A “collaborative practice agreement” is an agreement entered into between practitioners of medicine, osteopathy or podiatry, and pharmacists to improve outcomes for their mutual patients using drug therapies, laboratory tests, and medical devices, pursuant to the provisions of Section 54.1-3300 of the Code of Virginia.

The Tidewater Kidney Specialists (“TKS”) Advisory Opinion interpreted some of the key terms of the “office practice” exception to the Virginia Self-Referral Act. For services to be considered part of an office practice and satisfy the office practice exception, physicians must “on an ongoing basis, provide or supervise the provision of” health services. The VDHP found that the statute does not define the terms “supervise” or “on an ongoing basis,” but that such terms should be given their usual, commonly understood meanings. It concluded “[t]o ‘supervise’ means to watch over a particular activity or task being carried out by other people and ensure that it is carried out correctly” and “‘[o]n an ongoing basis’ has been defined as ‘consistent with the concept of services being available on ‘a continuing, day to day basis,’ ‘an exclusive, permanent and full time’ basis or a ‘regular or regularly’ scheduled basis.‘” Examining the facts of the TKS proposal, VDHP found that the TKS physicians would be involved, whether practicing or supervising, in their patients’ care at the vascular facility they planned to open on an ongoing basis due to the TKS physicians’ continual monitoring of the patients referred to the facility for vascular access services.
The definition of “practitioner” in Section 54.1-2410 of the Act encompasses both physicians and optometrists. Section 54.1-2411(A) of the Act prohibits a “practitioner” from referring a patient for health services only to another “entity” in which the practitioner or any member of his immediate family is an “investor”; however, Section 54.1-2411(B) permits the Board to grant exceptions to the prohibition under certain circumstances. Whether any referral would violate the prohibitions of the Act will depend on the particular facts.

A practitioner who directly or indirectly has a legal or beneficial ownership interest in an entity that operates a licensed hospital may refer patients to such hospital for health services without violating the provisions of Section 54.1-2411(A).

The Act does not permit the Board to discipline practitioners for violations of the Act. Instead, the Act requires the Board to establish criteria that would be used to investigate allegations of Act violations. Board regulations may establish terms and conditions for granting exceptions, including fees for initial and renewal applications for exceptions.

Requires that any practitioner of the healing arts must, prior to referral of a patient to any facility or entity engaged in the provision of health-related services, appliances, or devices, including but not limited to physical therapy, hearing testing, or sale or fitting of hearing aids or eyeglasses, provide the patient with a notice in bold print that discloses any known material financial interest of or ownership by the practitioner in such facility or entity and states that the services, appliances, or devices may be available from other suppliers in the community. In making any such referral, the practitioner of the healing arts may render such recommendations as he considers appropriate, but must advise the patient of his freedom of choice in the selection of such facility or entity. This section shall not be construed to permit any of the practices prohibited in Section 54.1-2914 or Chapter 24.1 (Section 54.1-2410 et seq.).

Any practitioner of the healing arts must, prior to ordering any medical test from an independent clinical laboratory for a patient, provide the patient with notice in bold print that discloses any known material financial interest or ownership by the practitioner in such laboratory unless the independent clinical laboratory is operated by a publicly held corporation. The practitioner must inform the patient about the accreditation status and credentials of the laboratory. The Attorney General, an attorney of the Commonwealth, the attorney for a city, county or town, or any aggrieved patient may cause an action to be brought in the appropriate circuit court in the name of the Commonwealth, of the county, city or town, or of any aggrieved
patient, to enjoin any violation of this statute. The circuit court having jurisdiction may enjoin such violations, even if an adequate remedy at law exists. When an injunction is issued, the circuit court may impose a civil fine to be paid to the Literary Fund not to exceed $1,000. In any action under this statute, it is not necessary that damages be proven.

Key State Health Care Cases
None.

3) FALSE CLAIMS/FRAUD & ABUSE

**Va. Code Ann. § 8.01-216.3. False claims; civil penalty.**
Virginia Fraud Against Taxpayers Act (Va. Code Ann. §§ 8.01-216.1–8.01-216.19). Prohibits a person from knowingly (either has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information) making claims for money or property to the Commonwealth (including any agency of state government and any political subdivision of the Commonwealth). No proof of specific intent to defraud is required. Liability to the Commonwealth is for a civil penalty of not less than $5,500 and not more than $11,000, plus three times the amount of damages, and reasonable attorney fees and costs of a civil action for recovery of any penalties or damages. Damages may be reduced if the person cooperates with the fraud investigation. Does not apply to claims, records, or statements relating to state or local taxes.

Provides that any person, in any commercial dealing in any matter within the jurisdiction of any department or agency of the Commonwealth of Virginia, or any local government within the Commonwealth or any department or agency thereof, who knowingly falsifies, conceals, misleads, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be guilty of a Class 6 felony.

**Va. Code Ann. § 32.1-310. Declaration of purpose; authority to audit records.**
Provides that the acceptance of medical assistance recipients of medical assistance services, and the acceptance of practitioners of reimbursement for health services rendered to medical assistance recipients, authorizes the Attorney General to inspect and audit all records in connection with the provision of such services.

**Va. Code Ann. § 32.1-312. Fraudulently obtaining excess or attempting to obtain excess benefits or payments; penalty.**
Where the Commonwealth directly or indirectly provides any medical assistance benefits or payments, prohibits any person, agency, or institution from using willful
false statements, willful misrepresentations, willful concealment of material facts, or any other fraudulent scheme or device to obtain or attempt to obtain any medical assistance benefits or payments in a greater amount than that to which the person is entitled. This section does not apply to an individual medical assistance recipient of health care. Liability to the Commonwealth is for the amount of any excess benefits or payments plus interest and civil penalties not to exceed three times the amount of the excess benefits or payments.

**Va. Code Ann. § 32.1-314. False statement or representation in applications for payment or for use in determining rights to payment; concealment of facts; penalty.**
Provides that persons shall be guilty of a felony for knowingly and willfully making or causing to be made a false statement or representation of a material fact for use in any application for any payment under medical assistance or for use in determining rights to such payment, or falsifying or concealing any material fact in connection with such medical assistance application or payment, or, when having knowledge of any event affecting the initial or continued right to any payment, willfully concealing or failing to disclose such an event with the intent to fraudulently secure such payment either in a greater amount or quantity that is due. Violations are punishable by imprisonment of not less than one nor more than 20 years, or in the discretion of the jury or court sitting without a jury, confinement in jail for not more than 12 months. Guilty persons also may be fined up to $25,000.

**Va. Code Ann. § 32.1-316. False statement or representation as to conditions or operations of institution or facility; penalty.**
Prohibits any person from knowingly, willfully, and fraudulently making or causing to be made, or inducing or seeking to induce the making of, any false statement or representation of material fact with respect to the conditions or operations of any institution or facility in order to qualify that facility, either initially or upon recertification, as a hospital, skilled nursing facility, intermediate care facility, or home care organization. Violations are punishable as a Class 6 felony and may carry a fine not to exceed $5,000.

**Va. Code Ann. § 32.1-317. Collecting excess payment for services; charging, soliciting, accepting, or receiving certain consideration as precondition for admittance to facility or requirement for continued stay; penalty.**
When the cost of services provided in a facility or by an individual to a patient is paid for, in whole or in part, under medical assistance, provides that any person who knowingly and willfully:
- Collects from a patient for any service provided under medical assistance, money, or other consideration at a rate in excess of entitlements established by the Department of Medical Assistance Services; or
- Charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under medical assistance any gift, money, donation, or other consideration, other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient, as a precondition of
admitting a patient to a hospital, skilled nursing facility, or intermediate care facility or as a requirement for the patient’s continued stay in such facility, shall be guilty of a Class 6 felony and subject to a fine not to exceed $25,000.

**Va. Code Ann. § 32.1-320. Duties of Attorney General; medical services providers audit and investigation unit.**
Establishes an investigative unit in the Office of the Attorney General to audit and investigate providers of services rendered under the state medical assistance plan. Requires the Department of Medical Assistance Services to cooperate with the Attorney General in conducting such audits and investigations. Provides that the relevant board within the VDHP shall advise the Attorney General. Provides for the confidentiality of patient records. Authorizes the Attorney General to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within and without the Commonwealth as provided by law, and compel the production of pertinent books, payrolls, accounts, papers, records, documents, and testimony relevant to such investigation.

**Va. Code Ann. § 32.1-321.3. Fraudulently obtaining benefits; liability for fraudulently issued benefits; civil action to recover; penalty.**
Prohibits, under threat of criminal prosecution and civil penalties, any person, on behalf of himself or another, from issuing, obtaining, or attempting to obtain medical assistance benefits by means of: (1) willful false statement; (2) willful misrepresentation or concealment of a material fact; or (3) any other fraudulent scheme or device. Violators also are liable for repayment of the cost of all benefits issued, plus interest.

**Va. Code Ann. § 32.1-321.4. False statement or representation in applications for eligibility or for use in determining rights to benefits; concealment of facts; criminal penalty.**
Provides that any person who engages in the following activities, on behalf of himself or another, shall be guilty of larceny and, in addition to being subject to penalties and imprisonment for larceny, may be fined an amount not to exceed $10,000:

- Knowingly and willfully making or causing to be made any false statement or misrepresentation of a material fact in an application for eligibility, benefits, or payments under medical assistance;
- Knowingly and willfully falsifying, concealing, or covering up by any trick, scheme, or device a material fact in connection with an application for eligibility, benefits, or payments;
- Knowingly and willfully concealing or failing to disclose any event affecting the initial or continued right of any individual to any benefits or payment with an intent to secure fraudulently such benefits or payment in a greater amount or quantity than is authorized or when no such benefit or payment is authorized;
- Knowingly and willfully converting any benefits or payment received pursuant to an application for another person and receipt of benefits or payment on behalf of
such other person to use other than for the health and welfare of the other person; or

- Knowingly and willfully failing to notify the local department of social services, through whom medical assistance benefits were obtained, of changes in the circumstances of any recipient or applicant that could result in the reduction or termination of medical assistance services.

**Va. Code Ann. § 32.1-349. Liability for excess payments.**

Provides that any person who, on behalf of himself or another, obtains or attempts to obtain the benefits of the State/Local Hospitalization Program by means of: (1) willful false statement; (2) willful misrepresentation or concealment of a material fact; or (3) any other fraudulent scheme or device shall be liable for repayment of any excess benefits received, plus interest on the amount of the excess benefits.


Provides that any person who engages in the following activities, on behalf of himself or another, shall be guilty of a Class 1 misdemeanor in addition to any other penalties provided by law:

- Knowingly and willfully making or causing to be made any false statement or misrepresentation of a material fact in an application for eligibility under the State/Local Hospitalization Program or in order to participate in or receive reimbursement from the program;
- Knowingly and willfully concealing or failing to disclose any event affecting the initial or continued right of any individual to any benefits with an intent to secure fraudulently such benefits in a greater amount or quantity than is authorized or when no such benefit is authorized;
- Knowingly and willfully failing to notify the local department of social services, through whom the benefits of this program were obtained, of changes in the circumstances of any recipient or applicant that could result in reduction or termination of the benefits; or
- Knowingly and willfully failing to provide any reports or data to the Department as required in this chapter.

Conviction of any provider or any employee or officer of such provider of any offense under this section also shall result in forfeiture of any payments due.

**Title 12 Va. Admin. Code § 30-141-600. Recipient audit unit.**

Provides that recipient audit units shall investigate allegations of fraud and abuse, and for initiation of civil and criminal actions. Provides that a Family Access to Medical Insurance Security (FAMIS) plan enrollee or authorized representative of a FAMIS enrollee who, on behalf of others, attempts to obtain benefits to which the enrollee is not entitled by means of a willful false statement or by willful misrepresentation, or by willful concealment of any material facts, shall be liable for repayment of any excess benefits received and the appropriate interest charges.
Provides that recipient audit units shall investigate allegations of fraud and abuse, and for initiation of civil and criminal actions. Provides that a FAMIS MOMS enrollee or authorized representative of a FAMIS MOMS enrollee who, on the behalf of others, attempts to obtain benefits to which the enrollee is not entitled by means of a willful false statement or by willful misrepresentation, or by willful concealment of any material facts, shall be liable for repayment of any excess benefits received and the appropriate interest charges.

Key State Health Care Cases
Commonwealth v. ProNurses, 91 Va. Cir. 197 (2015). In a case brought under the Virginia False Claims Act (Va. Code Ann. § 8.01-216.3 or “VFATA”) the defendant, ProNurses, overbilled the Commonwealth for payment under a contract. The circuit court found that the defendant had indeed knowingly overbilled the government and that by submitting invoices for reimbursement above the contracted rate, the defendant had presented false claims for payment. The court multiplied the number of false claims by the statutory penalty to arrive at the damages figure.

4) UNFAIR BUSINESS PRACTICES

Remedial act to promote fair and ethical standards in consumer transactions. Consumer transaction is generally defined as the advertisement, sale, lease, license, or offering for sale, lease, or license of goods or services to be used primarily for personal, family, or household purposes. The Act can be enforced either by the Virginia Attorney General, any attorney for the Commonwealth, or the attorney for a city, county, or town, or by private action, and can lead to civil penalties, treble damages, attorney fees, and court costs.

Key State Health Care Cases
None.

5) GENERAL WHISTLEBLOWER PROTECTIONS

Va. Code Ann § 2.2-3009-3014. The Fraud and Abuse Whistle Blower Protection Act
Lays out the policy that citizens and employees of governmental agencies be freely able to report instances of wrongdoing or abuse committed by governmental agencies or independent contractors of governmental agencies. The Act protects all those whistleblowers who in good faith disclose information about suspected wrongdoing or abuse. Knowledge of falsity of information disclosed or malice are not deemed good faith. The Act prohibits discharge, threats, discrimination or retaliation against whistleblowers based on their disclosures. If an employer is found in violation of this Act, the court may impose a penalty of between $500 and $2500 to
be paid to the Fraud and Abuse Whistle Blower Reward Fund. The court may also order 1) reinstatement of the employee to the same or equivalent position; 2) back pay; 3) full reinstatement of fringe benefits and seniority rights; or 4) any combination of the aforementioned remedies.

**Va. Code Ann. § 8.01-216.8. Certain actions barred; relief from employment discrimination; waiver of sovereign immunity.**
Prohibits retaliation against any employee by his employer because the employee has opposed any practice referenced in Va. Code Ann. § 8.01-216.3 or has assisted or participated in any manner in any investigation, action, or hearing. Relief shall include all relief necessary to make the employee whole, including reinstatement, two times the amount of back pay, interest on back pay, and compensation for special damages, including litigation costs and reasonable attorneys’ fees.

**Va. Code Ann. § 32.1-125.4. Retaliation or discrimination against complainants.**
Prohibits hospitals from retaliating or discriminating in any manner against any person who: (1) in good faith complains or provides information to, or otherwise cooperates with, the Department of Health or any other agency of government or any person or entity operating under contract with an agency of government having responsibility for protecting the rights of patients of hospitals; or (2) attempts to assert any right protected by state or federal law.

**Va. Code Ann. § 32.1-138.4. Retaliation or discrimination against complainants.**
Prohibits nursing facilities from retaliating or discriminating in any manner against any person who: (1) in good faith complains or provides information to, or otherwise cooperates with, the Department of Health or any other agency of government or any person or entity operating under contract with an agency of government, having responsibility for protecting the rights of patients of nursing facilities; or (2) attempts to assert any right protected by state or federal law.

**Va. Code Ann. § 63.2-1730. Retaliation or discrimination against complainants.**
Prohibits assisted living facilities, adult day care centers, or child welfare agencies from retaliating or discriminating in any manner against any person who: (1) in good faith complains or provides information to, or otherwise cooperates with, the Department of Health or any other agency of government or any person or entity operating under contract with an agency of government, having responsibility for protecting the rights of residents of assisted living facilities, participants in adult day care centers or children in child welfare agencies; (2) attempts to assert any right protected by state or federal law; or (3) assists any person in asserting such right.

**Key State Health Care Cases:**
Systems Inc., of providing kickbacks to Omnicare, a large supplier of pharmaceutical drugs to nursing homes, to promote Johnson & Johnson’s branded drugs over less-costly alternatives. The allegations included violations of Va. Code Ann. § 32.1-312, one component of the state false claims prohibition. Accepting the Virginia Attorney General’s invitation to interpret the state laws in conjunction with the federal False Claims Act, the federal court found that the allegations of fraud were sufficiently pled and the state prohibitions encompassed kickback activity.

Virginia v. McKesson Corp., 2011 WL 4853369 (N.D. Cal. Oct. 13, 2011). Virginia alleged that the defendants, as agents of McKesson, constructed a scheme to mark up the average wholesale prices of drugs to extract excess payments from Virginia’s Medicaid agency to McKesson’s pharmacy customers, in violation of Va. Code Ann. § 32.1-312. The defendants contended that the qualifier, “on behalf of himself or others,” means that the statute captures not only frauds by providers themselves, but also agents of providers who submitted false claims on their behalf, and must be so limited. However, the court agreed with the state of Virginia, which argued that the plain language of the statute reaches the defendants, who committed the fraud “on behalf of” their retail clients. The court found, “Va. Code section 32.1-312(A) covers those who, ‘on behalf of [themselves] or others, whether under a contract or otherwise, obtain or attempt to obtain benefits or payments where the Commonwealth directly or indirectly provides any portion of the benefits or payments.’ Nowhere does the statute limit the phrase ‘on behalf of others,’ to include only agents acting on behalf of the payment recipients.” Id. at 3.

6) HELPFUL LINKS

- Virginia Department of Health
- Virginia’s Medicaid Fraud Control Unit
- Virginia Department of Medical Assistance Services
- Virginia Code
- Va. Admin. Code
- Virginia Board of Health Professions – Practitioner Self-Referral Page (Includes Advisory Opinions)