1) ANTI-KICKBACK

Under the Utah False Claims Act, “[a] person may not solicit, offer, pay, or receive a kickback or bribe in return for or to induce” the following:

(a) the purchasing, leasing, or ordering of any goods or services for which payment is or may be made, in whole or in part, pursuant to a medical benefit program; or

(b) the referral of an individual to another person for the furnishing of any goods or services for which payment is or may be made, in whole or in part, pursuant to a medical benefit program.

Utah Code Ann. § 26-20-4(2). A “kickback or bribe” under the statute “includes rebates, compensation, or any other form of remuneration” that is: “(i) direct or indirect; (ii) overt or covert; or (iii) in cash or in kind[.]” Id. § 26-20-4(1) & (1)(a). However, “a kickback or bribe would “not include a rebate paid to the state under 42 U.S.C. § 1396r-8 or any state supplemental rebates.”

A violation of this restriction is grounds for criminal and civil enforcement actions.

Profession-Specific Restrictions

Dentists

For dentists and dental hygienists, the Utah legislature has defined “[u]nprofessional conduct” to include “sharing professional fees with an unlicensed person or paying any person for sending or referring a patient[.]” Utah Code Ann. § 58-69-502(1)(a).
Hearing Instrument Specialists

Pharmacists
Under Utah’s Pharmacy Practice Act, “[u]nprofessional conduct” for pharmacists includes the following:

(i) paying or offering rebates to any health care provider, or receiving or soliciting rebates from any health care provider; or
(ii) paying, offering, receiving, or soliciting compensation in the form of a commission, bonus, rebate, kickback, or split fee arrangement with any health care provider for the purpose of obtaining referrals.

Utah Code § 58-17b-502(2)(a). However, these restrictions do not apply to (1) “giving or receiving price discounts based on purchase volume;” (2) “passing along pharmaceutical manufacturers’ rebates; or” (3) “providing compensation for services to a veterinarian.” Utah Code § 58-17b-502(2)(b).

2) DISCLOSURE OF SELF-REFERRALS

Various Utah statutes require the disclosure of self-referrals for healthcare providers.

Dentists
Dentists and dental hygienists “may not refer patients to any clinical laboratory or health care facility in which the dentist, dental hygienist, or a member of the dentist’s or dental hygienist’s immediate family has any financial relationship as that term is described in 42 U.S.C. § 1395nn,” i.e., the Stark Law, unless the dentist or dental hygienist, “at the time of making the referral discloses that relationship, in writing, to the patient.” Utah Code Ann. § 58-69-805(1). This written disclosure “shall also state that the patient may choose any facility or laboratory for the work or treatment.” Id. § 58-69-805(2).

Physicians—Medical Doctors
Medical doctors “may not refer patients, clients, or customers to any clinical laboratory, ambulatory or surgical care facilities, or other treatment or rehabilitation services such as physical therapy, cardiac rehabilitation, radiology services, dispensing optical lens facility, or lithotripsy, in which the medical doctor or a member of the medical doctor’s immediate family has any financial relationship as that term is described in 42 U.S.C. § 1395nn), i.e., the Stark Law, unless the medical doctor, “at the time of making the referral discloses that relationship, in writing, to the patient, client or customer.” Utah Code Ann. § 58-67-801(1). This written disclosure “shall also state that the patient may choose any facility or service center for purposes of having the laboratory work or treatment service performed.” Id. § 58-67-801(2).
**Physicians—Osteopathic Doctors**

Similarly, under the Utah Osteopathic Medical Practice Act, osteopathic doctors “may not refer patients, clients, or customers to any clinical laboratory, ambulatory or surgical care facilities, or other treatment or rehabilitation services such as physical therapy, cardiac rehabilitation, radiology services, dispensing optical lens facility, or lithotripsy, in which the licensee or a member of the licensee's immediate family has any financial relationship as that term is described in 42 U.S.C. 1395nn,” *i.e.*, the Stark Law, unless the osteopathic doctor, “at the time of making the referral discloses that relationship, in writing, to the patient, client, or customer.” Utah Code Ann. § 58-68-801(1). This written disclosure “shall also state that the patient may choose any facility or service center for purposes of having the laboratory work or treatment service performed.” *Id.* § 58-68-801(2).

**Physicians—Naturopathic Physicians**

Finally, Utah’s Naturopathic Physician Practice Act provides that naturopathic physicians “may not refer patients, clients, or customers to any clinical laboratory, ambulatory or surgical care facilities, or other treatment or rehabilitation services such as physical therapy, cardiac rehabilitation, radiology services, dispensing optical lens facility, or lithotripsy, in which the licensee or a member of the licensee's immediate family has any financial relationship as that term is described in 42 U.S.C. 1395nn,” *i.e.*, the Stark Law, unless the naturopathic physician, “at the time of making the referral discloses that relationship, in writing, to the patient, client, or customer.” Utah Code Ann. § 58-71-801(3). The written disclosure “shall also state that the patient may choose any facility or service center for purposes of having the laboratory work or treatment service performed.” *Id.* § 58-71-801(4).

In addition these limitations, naturopathic physicians “may not own, directly or indirectly,” the following: (a) “any pharmacy or pharmaceutical facility”¹ or (b) “a retail store, wholesaler, distributor, manufacturer, or facility of any other kind located in the state that is engaged in the sale, dispensing, delivery, distribution, or manufacture of homeopathic remedies, dietary supplements, or natural medicines.” *Id.* § 58-71-801(1). There are two exceptions to these restrictions: a naturopathic physician (1) “may own or control less than 5% of the outstanding stock of a corporation whose ownership is prohibited” as described above “if the stock of the corporation is publicly traded” and (2) “may sell from their offices homeopathic remedies or dietary supplements as defined in the Federal Food Drug and Cosmetic Act consistent with division rule.” *Id.* § 58-71-801(2) & (5).

---

¹ These are both defined terms. A “'[p]harmaceutical facility’ means a business engaged in the dispensing, delivering, distributing, manufacturing, or wholesaling of prescription drugs or devices within or into this state.” Utah Code Ann. § 58-17b-102(46). And a “'[p]harmacy’ means any place where: (a) drugs are dispensed; (b) pharmaceutical care is provided; (c) drugs are processed or handled for eventual use by a patient; or (d) drugs are used for the purpose of analysis or research.” *Id.* § 58-17b-102(51).
3) PROHIBITION OF FEE-SPLITTING

**Chiropractors**
Utah’s Chiropractic Physician Practice Act provides that unprofessional conduct includes “directly or indirectly giving or receiving any fee, commission, rebate, or other compensation for professional services not actually rendered or supervised. This restriction does not preclude legal relationships within lawful professional partnerships, corporations, or associations.” Utah Code Ann. § 58-73-501(13).

**Dentists**
As set out in the Anti-Kickback section above, for dentists and dental hygienists, “[u]nprofessional conduct” includes “sharing professional fees with an unlicensed person or paying any person for sending or referring a patient.” Utah Code Ann. § 58-69-502(1)(a).

**Optometrists**
The Utah Optometry Practice Act defines unprofessional conduct for optometrists to include “directly or indirectly giving or receiving any fee, commission, rebate, or other compensation for professional services not actually and personally rendered, except as part of a legal relationship within a lawful professional partnership, corporation, or association.” Utah Code Ann. § 58-16a-502(5).

**Physicians—Medical Doctors**
The Utah Medical Practice Act Rule provides that unprofessional conduct for a medical doctor includes “directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude legal relationships within lawful professional partnerships, corporations or associations, or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them.” Utah Admin. Code R. 156-67-502(4).

**Physicians—Osteopathic Doctors**
Similarly, the Utah Osteopathic Medical Practice Act Rule states that unprofessional conduct for an osteopathic doctor includes “directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations, or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them.” Utah Admin. Code R. R156-68-502(4).
4) FALSE CLAIMS/FRAUD & ABUSE

The Utah False Claims Act specifically addresses claims for medical benefits as follows:

(1) A person may not make or present or cause to be made or presented to an employee or officer of the state a claim for a medical benefit:
   (a) which is wholly or partially false, fictitious, or fraudulent;
   (b) for services which were not rendered or for items or materials which were not delivered;
   (c) which misrepresents the type, quality, or quantity of items or services rendered;
   (d) representing charges at a higher rate than those charged by the provider to the general public;
   (e) for items or services which the person or the provider knew were not medically necessary in accordance with professionally recognized standards;
   (f) which has previously been paid;
   (g) for services also covered by one or more private sources when the person or provider knew of the private sources without disclosing those sources on the claim; or
   (h) where a provider:
      (i) unbundles a product, procedure, or group of procedures usually and customarily provided or performed as a single billable product or procedure into artificial components or separate procedures; and
      (ii) bills for each component of the product, procedure, or group of procedures:
         (A) as if they had been provided or performed independently and at separate times; and
         (B) the aggregate billing for the components exceeds the amount otherwise billable for the usual and customary single product or procedure.

(2) In addition to the prohibitions in Subsection (1), a person may not:
   (a) fail to credit the state for payments received from other sources;
   (b) recover or attempt to recover payment in violation of the provider agreement from:
      (i) a recipient under a medical benefit program; or
      (ii) the recipient's family;
   (c) falsify or alter with intent to deceive, any report or document required by state or federal law, rule, or Medicaid provider agreement;
   (d) retain any unauthorized payment as a result of acts described by this section; or
   (e) aid or abet the commission of any act prohibited by this section.

Utah Code Ann. § 26-20-7. A violation of this restriction is grounds for criminal and civil enforcement actions.
The Utah Supreme Court has addressed the pleading standards under the Utah False Claims Act, holding that claims under that Act must be stated with particularity, but that the State is not required to provide detailed information on every false claim submitted or fraudulent misrepresentation made, under pleadings rule requiring that fraud claims be stated with particularity. *State v. Apotex Corp.*, 2012 UT 36, 282 P.3d 66.

5) UNFAIR BUSINESS PRACTICES

While it does not address healthcare specifically, Utah’s Unfair Practices Act broadly prohibits unfair practices, including the following: directly or indirectly “discriminat[ing] in price between different purchasers of commodities of like grade and quality . . . where the effect of such discrimination may be substantially to lessen competition or to create a monopoly[.]” Utah Code Ann. § 13-5-3(1)(a). Additionally, it is unlawful for any person “to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for and not exceeding the actual cost of services rendered in connection with the sale or purchase of goods, wares, or merchandise.” *Id.* § 13-5-3(3).

6) HELPFUL LINKS

- Utah Department of Health
- Utah Medicaid Program
- Utah Division of Occupational and Professional Licensing