1) ANTI-KICKBACK

Ohio Revised Code § 3999.22
No person shall knowingly solicit, offer, pay, or receive any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, in return for referring an individual for the furnishing of health care services or goods for which whole or partial reimbursement is or may be made by a health care insurer, except as authorized by the health care or health insurance contract, policy, or plan. Statutory exceptions include: (1) deductibles, copayments, or similar amounts owed by the person covered by the health care or health insurance contract, policy, or plan; (2) discounts or price reductions; (3) any amount paid within a bona fide legal entity, or within legal entities under common ownership or control, including any amount paid to an employee in a bona fide employment relationship; and (4) any amount paid as part of a bona fide lease, management, or other business contract. In addition, the statute does not apply to: (1) a provider who provides goods or services not covered by the individual’s health insurance contract, policy, or plan; (2) a provider who, in good faith, provides goods or services ordered by another health care provider; (3) a provider, who in good faith, resubmits a claim within 30 days of the original submission; and (4) a provider who, in good faith, makes a diagnosis different from the interpretation of a diagnosis reached by a health care insurer in the payment of claims. A first violation of the statute is a felony of the fifth degree, punishable by a fine of up to $2,500 and imprisonment for a maximum of 12 months. Any subsequent violation is a felony of the fourth degree, punishable by a fine of up to $5,000 and imprisonment for a maximum of 18 months.\(^1\)

\(^1\) See ORC § 2929.18(A)(3) for financial penalties; ORC 2929.14(A)(4),(5) for imprisonment penalties.
2) PROHIBITIONS ON SELF-REFERRAL

**Ohio Revised Code § 4731.65–.71**
No licensed physician shall refer a patient to a person for designated health services if the licensed physician, or a member of the licensed physician's immediate family, has a financial relationship with the person. Financial relationships include ownership or investment interests through debt, equity, or other means, and any compensation arrangement involving any remuneration, directly or indirectly, overtly or covertly, in cash or in kind. Designated health services include only clinical laboratory services, home health care services, and outpatient prescription drugs. Exceptions are contained in O.R.C. §§ 4731.67 for certain referrals, including referrals for physicians' services performed by or under the personal supervision of a physician in the same group practice as the referring physician, referrals by a pathologist if supervised by the pathologist pursuant to a referral from another physician, and referrals for in-office ancillary services under specified circumstances. Exceptions from ownership or investment interests contained in ORC §§ 4731.68 for ownership of securities in a corporation, rental or lease of office space, employment recruitment and medical director services, and isolated transactions roughly parallel the federal Stark Law exceptions. The statute also prohibits a person to which a physician has referred a patient, in violation of the basic prohibition, from billing for the designated health services rendered pursuant to the prohibited referral. It also prohibits any person from knowingly entering into an arrangement or scheme, including a cross-referral arrangement that has a principal purpose of assuring referrals by a license holder to a particular person that, if the licensed physician directly made referrals to such person, would violate the basic prohibition. Any person who collects any amounts billed in violation of this law shall be liable to the individual, third-party payer, governmental health care program, or other person or governmental entity for the amount collected and shall refund the amount on a timely basis. Violations, as determined by the Ohio State Medical Board (OSMB), result in a civil penalty of up to $5,000 for the first violation and up to $20,000 for each subsequent violation, as well as disciplinary action by OSMB, including possible license revocation.2

**Ohio Revised Code § 4731.22**
The State of Ohio Medical Board (“SMBO”), by an affirmative vote of not fewer than six of its members, may limit, revoke, or suspend an individual's license or certificate to practice, refuse to register an individual, refuse to reinstate a license or certificate, or reprimand or place on probation the holder of a license or certificate if the individual applying for or holding the license or certificate has committed fraud during the administration of an examination for a license certificate to practice, or to have committed fraud, misrepresentation, or deception in applying for, renewing, or securing any license or certificate to practice or certificate to recommend issued by the SMBO, or for one or more specified grounds, including the obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentation in the course of practice, the division of fees for referral of

---

2 See ORC § 4731.225.
patients, or receiving a thing of value in return for a specific referral of a patient to utilize a particular service or business.

3) FALSE CLAIMS/FRAUD & ABUSE

**Medicaid Fraud Statute—Ohio Revised Code § 2913.40**
No person shall knowingly make or cause to be made a false or misleading statement or representation for use in obtaining reimbursement from the Ohio Medicaid program, such as knowingly altering, falsifying, destroying, concealing or removing any records necessary to fully disclose the goods or services, or income and expenditures for the claim or reimbursement, for a period of six years after reimbursement is received from the Ohio Medicaid program. The statute also prohibits doing, with a purpose to commit fraud or knowing that the person is facilitating a fraud, any of the following: (i) contrary to the terms of the person’s provider agreement, charging, soliciting, accepting, or receiving for goods or services that the person provides under the Ohio Medicaid program any property, money, or other consideration in addition to the amount of reimbursement under the Ohio Medicaid program and the person’s provider agreement for the goods or services and any cost-sharing expenses authorized by law; or (ii) soliciting, offering, or receiving any remuneration, other than any cost-sharing expenses authorized by law, in cash or in kind, including, but not limited to, a kickback or rebate, in connection with the furnishing of goods or services for which whole or partial reimbursement is or may be made under the Ohio Medicaid program. A person who violates this statute is guilty of Medicaid fraud, which is a first degree misdemeanor except as otherwise provided in the statute. If the value of property, services, or funds obtained in violation is one thousand dollars or more and is less than seven thousand five hundred dollars, it is a felony in the fifth degree; if it is seven thousand five hundred dollars or more and is less than one hundred fifty thousand dollars, it is a felony in the fourth degree; and if it is one hundred fifty thousand dollars or more, it is a felony in the third degree.

**Insurance Fraud Statute—Ohio Revised Code § 2913.47**
No person, with a purpose to defraud or knowing that the person is facilitating a fraud, shall (i) present to, or cause to be presented to, an insurer any written or oral statement that is part of, or in support of, an application for insurance, a claim for payment pursuant to a policy, or a claim for any other benefit pursuant to a policy, knowing that the statement, or any part of the statement, is false or deceptive; or (ii) assist, aid, abet, solicit, procure, or conspire with another to prepare or make any written or oral statement that is intended to be presented to an insurer as part of, or in support of, an application for insurance, a claim for payment pursuant to a policy, or a claim for any other benefit pursuant to a policy, knowing that the statement, or any part of the statement, is false or deceptive. A violation of this statute is insurance fraud and is a misdemeanor of the first degree except as otherwise indicated in the statute. If the amount of the claim that is false or deceptive is $1,000 or more and below $7,500, it is a felony in the fifth degree; if it is $7,500 or more and less than $150,000, it is a felony in the fourth degree; and if the amount is $150,000
or more, it is a felony in the third degree.\(^3\)

**Forfeiture Law—Ohio Revised Code § 2981.01 et seq.**
The law applies to and governs criminal and civil asset forfeitures relating to offenses including Medicaid fraud. The act provides that, upon application by the prosecutor who prosecutes or brings an action that allows forfeiture, the court in which the action is prosecuted or filed may issue an order taking any reasonable action necessary to preserve the reachability of the property, including a restraining order or injunction, an order requiring execution of a satisfactory bond or insurance policy, an order to inventory or inspect the property, or place a lien on the property, or appoint a receiver or trustee. The burden of proof in a criminal forfeiture action is on the defendant to show that any forfeiture of property is disproportionate or should not be forfeited. The State has the burden of proof in civil forfeiture proceedings, however.

**State v. Wintersong Village of Delaware, Inc. (1990) 69 Ohio App.3d 552**
A corporation may be found guilty of Medicaid fraud, but only where high-level managerial personnel approve, recommend, or implement the actions involving the criminal offense. Where such personnel are found not guilty of Medicaid fraud, the corporation cannot be found guilty.

**State v. Pollard (2010), 2010 Ohio 908**
Because the defendant did not provide a transcript in his appeal from a denial of his motion seeking the return of seized property, an appellate court was compelled to presume that the state proved that the subject property was subject to forfeiture or that the defendant waived this requirement in the plea proceedings.

4) **UNFAIR BUSINESS PRACTICES**

**Ohio Consumer Sales Practices Act—Ohio Revised Code § 1345.01, et seq.**
The Ohio Consumer Sales Practices Act (CSPA) broadly prohibits, and provides civil remedies to enforce the prohibition of, unfair or deceptive or unconscionable acts and practices by Ohio suppliers in connection with a consumer transaction. Consumer transaction is defined as including any sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes primarily personal, family, or household related in nature. Consumer transaction does not include transactions between physicians, or dentists and their patients, subject to specified limited exceptions. Transactions between chiropractors and their patients are not subject to the CSPA. The CSPA can be enforced either by the Ohio Attorney General or by private action, and can lead to civil penalties, treble damages, and attorney fees.

**Summa Health Sys. v. Viningre (2000) 140 Ohio App.3d 780**
While transactions with physicians are exempted from the CSPA, a transaction

---

\(^3\) See ORC § 2913.47(C).
between a service provider, such as a hospital, and a consumer to provide surgery without charge due to the hospital’s earlier failure to diagnose the condition was not a transaction clearly exempted under the CSPA.

**In re Rebarchek (2002) 293 B.R. 400**
Intent is not a required element of CSPA. A consumer "must simply show that the supplier did or said something that had the likelihood of inducing in the mind of the consumer a belief that is not in accord with the facts."

**Mermer v. Medicare Correspondence Services, 115 Ohio App.3d 717 (1996)**
Providing copies of Medicare records to personal injury plaintiffs constituted consumer transactions under the CSPA.

**Reuss v. First Fin. Collection Co. (2009), S.D. Ohio.**
While a physician is clearly exempt from the CSPA, it is unclear if a group of physicians is also exempt. The court made no ruling to clarify the uncertainty, but acknowledged the two sides of the argument: that lawyers and law firms are exempt, but also acknowledged a 2006 U.S. district court ruling—*Foster v. D.B.S. Collection Agency*, 463 F. Supp. 2d 783(2011)—that certain medical service providers would not qualify for the physician-patient exemption.

**Chiropractic Clinic of Solon, Inc. v. Kutsko, 92 Ohio App.3d 608 (1994)**
Transactions between chiropractors and their patients are not subject to the CSPA.

5) **GENERAL WHISTLEBLOWER PROTECTIONS**

**Whistleblower’s Protection—Ohio Revised Code § 4113.51, et seq.**
The Whistleblower Protection statute gives a general right to employees to report a violation of law by an employer or fellow employees. In particular, the employer of an employee whose duties include providing health care or supervising an individual who provides health care may make information available to the employee explaining the employee’s duty to make reports pursuant to the statute and the employee’s opportunity to make reports regarding patient safety pursuant to ORC § 3701.91. The following are other anti-retaliation statutes specific to certain types of employees: § 173.24—long term care; § 3721.24—nursing homes; § 4123.90—workers’ compensation; and § 4723.33—nurses.

6) **HELPFUL LINKS**
- Ohio Department of Health
- Ohio Department of Insurance
- Ohio Department of Medicaid
- State Medical Board of Ohio
- Ohio Revised Code and Ohio Administrative Code