**CONTENT:**

1) **Anti-Kickback**
2) **False Claims/Fraud & Abuse**
3) **General Whistleblower Protections**
4) **Helpful Links**

**Note:** As of 2018, North Dakota does not have a substantive self-referral prohibition, a state False Claims Act with qui tam provisions, or a state Medicaid Fraud Control Unit (MFCU).

**1) ANTI-KICKBACK**

North Dakota Administrative Code § 75-02-05-04(8)
Providers may not offer or accept a fee, portion of a fee, charge, rebate, or kickback for a Medicaid patient referral.

North Dakota Century Code § 43-17-31(1)(r)
Physicians may be disciplined for the payment or receipt, directly or indirectly, of any fee, commission, rebate, or other compensation for medical services not actually or personally rendered, or for patient referrals. This restriction does not affect distributions of professional partnerships, corporations, limited liability companies, or associations.

North Dakota Administrative Code § 17-03-01-01(15)
Chiropractors may be disciplined for the offering, delivering, receiving, or accepting of any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration as compensation or inducement for referring patients to any person.

North Dakota Administrative Code § 56-02-03-01
Optometrists may not split fees for the purpose of obtaining patients, nor may they sell glasses, eye exams, or optometric services door-to-door. Optometrists may not employ “cappers” or “steerers,” which includes an ophthalmic material supplier:
- Paying rent or providing office space for an optometrist;
- Paying professional fees of an optometrist;
3. Paying for advertising for an optometrist;
4. Paying commissions to an optometrist for using the supplier’s materials; and
5. Referring or otherwise directing prospective purchasers of ophthalmic materials to a specific optometrist.

**North Dakota Administrative Code § 61-04-04-01(15)**
Pharmacists may be disciplined for participating in agreements or arrangements with any person, corporation, partnership, association, firm, or others involving rebates, kickbacks, fee-splitting, or special charges in exchange for professional pharmaceutical services, including, but not limited to, the giving, selling, donating, or otherwise furnishing or transferring, or the offer to give, sell, donate, or otherwise furnish or transfer money, goods, or services free or below cost to any licensed health care facility or the owner, operator, or administrator of a licensed health care facility as compensation or inducement for placement of business with that pharmacy or pharmacist. Monetary rebates or discounts returned to the actual purchaser of drugs as a cost-justified discount or to meet competition are permitted if the rebates or discounts conform to other existing state and federal rules and regulations.

**North Dakota Century Code §§ 26.1-04-03(17)**
An entity may not offer a health care provider, and a contract with a health care provider under a health plan may not contain an incentive plan that includes a specific payment made to, or withheld from, the provider as an inducement to deny, reduce, limit, or delay medically necessary care to a patient covered by the health plan. Such a contract provision violating this law is void. However, this law does not prohibit incentive plans, including capitation payments or shared-risk arrangements, not tied to specific medical decisions with respect to patients.

### 2) FALSE CLAIMS/FRAUD & ABUSE

**North Dakota Administrative Code § 75-02-05-05(1) and (2)**
Sanctions may be imposed by the Medical Services Division of the Department of Health Services (DOH) for presenting or causing to be presented for payment any false or fraudulent claim for care or services or for submitting or causing to be submitted false information for the purpose of obtaining greater compensation than that to which the provider is legally entitled under Medicaid.

**North Dakota Administrative Code § 75-02-06-02(4)**
A false report is one where a nursing facility knowingly supplies inaccurate or false information in a required report that results in an overpayment. If a false report is received from a nursing facility, the Department of Human Services (DHS) may:

1. Immediately adjust the facility’s payment rate to recover the entire overpayment within the rate year;
2. Terminate DHS’ agreement with the provider;
3. Prosecute under applicable state or federal law; or
(4) Use any combination of the foregoing actions.

**North Dakota Administrative Code § 75-02-07.1-02(4)**

A false report is one where a basic care facility knowingly supplies inaccurate or false information in a required report that results in an overpayment. If a false report is received from a basic care facility, DHS may:

1. Immediately adjust the facility’s payment rate to recover the entire overpayment within the rate year;
2. Terminate DHS’ agreement with the provider;
3. Prosecute under applicable state or federal law; or
4. Use any combination of the foregoing actions.

**North Dakota Century Code § 43-17-31(a) and (g)**

Physicians may be disciplined for obtaining any fee by fraud, deceit, or misrepresentation or for the use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine.

**North Dakota Administrative Code § 17-03-01-01(1), (10), (13), and (18)**

Chiropractors may be disciplined for overutilization of certain chiropractic practices and related procedures or tests, for knowingly making or signing any false certificate or other document relating to the practice of chiropractic care that falsely represents the existence or nonexistence of a state of facts, for participating in any act of fraud or misrepresentation, or for utilizing false or misleading advertising.

**North Dakota Administrative Code § 50-03-01-11(3) and (13)**

Physician assistants may be disciplined for the use of any false, fraudulent, or forged statement or document or the use of any fraudulent, deceitful, dishonest, or immoral practice in connection with any of the licensing requirements or for obtaining any fee by use of fraud, deceit, or misrepresentation.

**North Dakota Administrative Code § 50-03-04-15(6) and (14)**

Fluoroscopy technologists may be disciplined for obtaining a fee by fraud, deceit, or misrepresentation or for the use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine.

**North Dakota Administrative Code § 56-02-03-02(8)**

Optometrists may be disciplined for employing fraud, deceit, misrepresentation, or fraudulent advertising in the practice of optometry.

**North Dakota Administrative Code § 61-04-04-01(7) and (8)**

A pharmacist may not bill or charge for quantities greater than delivered, or for a brand-name drug when a generic is dispensed, nor may a pharmacist submit a fraudulent bill or report to a third-party payer of prescription charges.
North Dakota Administrative Code § 61-04-04-01(13)
A pharmacist may not engage in the publication or circulation of false, misleading, or otherwise-deceptive statements concerning the practice of pharmacy.

North Dakota Century Code § 26.1-04-03(5)
Unfair methods of competition and an unfair or deceptive act in the business of insurance includes making any false entry in any book, report, or statement with intent to deceive any agent or examiner or any public official, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of the person in any book, report, or statement.

3) GENERAL WHISTLEBLOWER PROTECTIONS

North Dakota Century Code § 34-01-20(1)
An employer may not discharge, discipline, threaten discrimination, or penalize an employee regarding the employee’s compensation, conditions, location, or privileges of employment because:

(a) The employee, or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of federal, state, or local law, ordinance, regulation, or rule;
(b) The employee is requested by a public body or official to participate in an investigation, a hearing, or an inquiry; or
(c) The employee refuses an employer’s order to perform an action that the employee believes violates local, state, or federal law, ordinance, rule, or regulation. The employee must have an objective basis in fact for that belief and shall inform the employer that the order is being refused for that reason.

North Dakota Century Code § 26.1-04-03(18)
An entity may not take any of the following actions against a health care provider solely because the provider, in good faith, reports to state or federal authorities an act or practice by the entity that jeopardizes patient health or welfare, or advocates on the behalf of a patient in a utilization review or grievance procedure:

(1) Refusal to contract with the health care provider;
(2) Termination of or refusal to renew a contract with the health care provider;
(3) Refusal to refer patients to or to allow others to refer patients to the health care provider; or
(4) Refusal to compensate the health care provider for medically necessary covered services.

North Dakota Century Code § 50-10.1-05
A long term care facility, and its agents, may not take or threaten retaliatory action against a resident, employee, or any other person on account of the filing of a complaint by or on behalf of that resident, or on account of the providing of information to a long-term care ombudsman constituting or relating to a complaint.
**North Dakota Administrative Code § 75-03-25-13**

A long term care facility, and its agents, may not take or threaten retaliatory action against a long term care resident, an employee, or any other individual because of the filing of a complaint by or on behalf of the long term care resident, or because of the provision of information to a long term care ombudsman constituting or relating to a complaint.

4) HELPFUL LINKS

- North Dakota Official State Government Portal
- North Dakota Department of Health
- North Dakota Department of Human Services
- North Dakota Attorney General
- North Dakota Insurance Department
- North Dakota Board of Medical Examiners
- North Dakota State Board of Chiropractic Examiners
- North Dakota Board of Nursing
- North Dakota Board of Pharmacy
- North Dakota Board of Examiners for Nursing Home Administrators
- North Dakota Supreme Court