MONTANA: Summary of Fraud and Abuse Statutes and Regulations

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1) ANTI-KICKBACK

Mont. Code Ann. § 45-6-313(1)(b)(i)
A person commits the offense of Medicaid fraud when the person purposely or knowingly solicits, accepts, offers, or provides any remuneration, including, but not limited to, a kickback, bribe, or rebate, other than an amount legally payable under the medical assistance program, for furnishing services or items for which payment may be made under the Medicaid program or in return for purchasing, leasing, ordering, arranging for, or recommending the purchasing, leasing, or ordering of any services or items from a provider for which payment may be made under the Medicaid program.

Mont. Code Ann. § 37-2-103(2)
It is unlawful for a medical practitioner, directly or indirectly, to solicit or to knowingly receive from a community pharmacy or for a community pharmacy knowingly to pay or promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based on income received or resulting from the sale or furnishing by the community pharmacy of drugs to patients of a medical practitioner.

Mont. Code Ann. § 50-5-117(1)(a)
A hospital may not condition staff membership or clinical privileges on a physician’s agreement to make referrals to that hospital or any related facility.
2) SELF-REFERRAL LAWS

In the context of workers’ compensation claims, a health care provider may not refer a worker for treatment or diagnosis of an injury or illness to a facility owned wholly or in part by the provider, unless the provider informs the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

**Mont. Code Ann. § 39-71-1108(1)**
In the context of workers’ compensation claims, unless authorized by the insurer, a treating physician may not refer a claimant to a health care facility at which the physician does not directly provide care or services when the physician has an investment interest in the facility, unless there is either a demonstrated need in the community for the facility and alternative financing is not available.

**Mont. Code Ann. § 37-2-103(1)**
It is unlawful for a medical practitioner to own, directly or indirectly, a community pharmacy.

3) FALSE CLAIMS/FRAUD & ABUSE

**Mont. Code Ann. § 17-8-401–416**
Mont. has a robust False Claims Act (FCA) law that generally mirrors the Federal FCA. However, it contains an additional provision that requires “a beneficiary of an inadvertent submission” to disclose any overpayment within a reasonable time, language which could implicate both patient and provider.

**Mont. Admin. R. § 24.156.625(1)(c)-(e), (n)**
Unprofessional conduct by a physician includes: (1) conduct likely to deceive, defraud, or harm the public; (2) making a false or misleading statement regarding the value of certain treatment ordered or prescribed by the physician; (3) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person, or in billing, giving, or receiving a fee related to professional services; and (4) abusive billing practices.

**Mont. Admin. R. § 24.174.2301(1)(c)-(d), (g), (m)**
Unprofessional conduct by a pharmacist includes: (1) dispensing a cheaper product and charging for a more expensive product; (2) charging for more dosage units than actually dispensed; (3) defrauding any persons or government agency receiving pharmacy services; (4) buying, selling, purchasing, or trading any prescription drug samples or offering to sell, purchase, or trade drug samples; and (5) use of a false, fraudulent, or deceptive statement in any document connected with the practice of pharmacy.
4) GENERAL WHISTLEBLOWER PROTECTIONS

**Mont. Code Ann. § 17-8-412(2)**
No person or entity may discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee, agent, or contractor in the terms and conditions of employment, agency, or contract because of the disclosure by the employee, agent, or contractor of information to a government or law enforcement agency pertaining to a Mont. FCA violation.

**Mont. Code Ann. § 39-2-904(1)(a)**
Terminated employees can pursue an action for wrongful discharge if the discharge was in retaliation for the employee’s refusal to violate public policy or for reporting a violation of public policy.

6) HELPFUL LINKS

- Mont. Department of Public Health and Human Services
- Mont. Board of Medical Examiners
- Mont. State Board of Chiropractic Examiners
- Mont. Board of Nursing
- Mont. Board of Pharmacy
- Mont. Supreme Court
- Mont. Attorney General