1) **ANTI-KICKBACK**

It is unlawful in Kansas to knowingly and intentionally solicit or receive (on the one hand) or offer or pay (on the other hand) any remuneration, including but not limited to any kickback, bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind: in return for (1) referring or refraining from referring an individual to a person for the furnishing or arranging for the furnishing of any goods, service, item, facility or accommodation or (2) purchasing, leasing, ordering or arranging for or recommending such actions with respect to any goods, service, items facility or accommodation, for which payment may be made in whole or in part by the Medicaid program. There is an exception for a refund, discount, copayment, deductible, incentive or other reduction obtained by a provider in the ordinary course of business and appropriately reflected in claims or reports submitted to the fiscal intermediary; there is another exception for deductibles, copayments or other cost or risk sharing arrangements which are part of any program operated by or pursuant to contracts with the Medicaid program. A violation is a severity level 7, nonperson felony and is also subject to statutorily required restitution plus interest and payment of the costs of enforcement, including litigation and attorney fees. (See K.S.A. 21-5928).

2) **PROHIBITIONS ON FEE SPLITTING**

The licensing statutes and regulations for a number of health care related professions provide that fee splitting and/or paying or receiving payment for referrals (as described in more detail in the particular statutes and regulations) are possible grounds for the denial, revocation, suspension or limitation of a licensee’s license or certification, and/or public or private censure. There may be additional penalties for violating particular licensing acts as described in the respective statutes and regulations.

- **Physicians, Surgeons and Chiropractors**: K.S.A. 65-2836(b), 2837(b)(19), 2862, 2863a
- **Podiatrists**: K.S.A. 65-2006(a)(2), 2007, 2837(b)(19)
- **Physical Therapists and PT Assistants**: K.S.A. 65-2912(a)(5), 2916; K.A.R. 100-29-12(a)(27)
• **Naturopathic Doctors:** K.S.A. 65-7208(a)(2); K.A.R. 100-72-3(x)
• **Dentists and Dental Hygienists:** K.S.A. 65-1436(a)(7), 1460
• **Optometrists:** K.S.A. 65-1517(b), 1516(b)(10), 1523, 1526; K.A.R. 65-4-5(b)(2)
• **Master’s Level Psychologists:** K.S.A. 74-5369(a)(9); K.A.R. 102-4-12(b)(28) and (29)
• **Social Workers:** K.S.A. 65-6311(a)(9); K.A.R. 102-2-7(bb) and (cc)
• **Professional Counselors:** K.S.A. 65-5809(a)(9); K.A.R. 102-3-12a(b)(28) and (29)
• **Addiction Counselor:** K.S.A. 65-6615(a)(9);

3) **PROHIBITIONS ON SELF-REFERRAL**

**K.S.A. 65-2837(b)(29), (g) and (h)**
The Kansas Healing Arts Act defines unprofessional conduct to include referring a patient to a health care entity for services if the licensee holds a significant investment interest in the health care entity, unless the licensee informs the patient in writing of the significant investment interest and that the patient may obtain such services elsewhere. The Act defines significant investment interest as at least 10% of the value of the business entity which owns or leases the health care entity. It defines a health care entity as any corporation, firm, partnership or other business entity which provides diagnosis or treatment of human health conditions and which is owned separately from the referring licensee’s principal practice.

**K.S.A. 65-2837(b)(19).**
The Kansas Healing Arts Act also defines unprofessional conduct to include directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered, other than through the legal functioning of lawful professional partnerships, corporations, limited liability companies, or associations.

**K.S.A. 65-2836, 2862 and 2863a.**
Sanctions for unprofessional conduct include revocation, suspension or limitation of license or public censure. Violations of the Act can also result in criminal penalties ($50 - $200 misdemeanor first offense; $100 - $500 misdemeanor second offense) and administrative fines (up to $5,000 first violation; $10,000 second violation; $15,000 third and subsequent violations).

4) **FALSE CLAIMS/FRAUD & ABUSE**

The licensing statutes and regulations for a number of health care related professions prohibit licensees or applicants from engaging in conduct related to their health care practice that is likely to deceive, defraud or harm the public, including: (1) using fraudulent advertisements; (2) using fraud in securing a registration or permit; (3) submitting a fraudulent or false misrepresentation on a claim form, bill or invoice; (4) charging an excessive fee for services rendered; (5) obtaining any fee by fraud, deceit or misrepresentation; (6) performing unnecessary tests, examinations or services which have no legitimate medical purpose; and (7) using in connection with such person’s name, any designation implying that such person is a licensed or certified medical professional unless so duly licensed or certified.

Sanctions for violating the health care licensing statutes and regulations include revocation, suspension or limitation of license or public or private censure. Violations can also result in criminal penalties (from $50 - $200 misdemeanor first offense to $100 - $500 misdemeanor
second offense) and administrative fines (up to $5,000 first violation; $10,000 second violation; $15,000 third and subsequent violations).

- **Physicians, Surgeons and Chiropractors:** [K.S.A. 65-2836](#)
- **Podiatrists:** [K.S.A. 65-2006](#)
- **Physical Therapists and PT Assistants:** [K.S.A. 65-2912, 2914; K.A.R. 100-29-12](#)
- **Naturopathic Doctors:** [K.S.A. 65-2006](#)
- **Nurses:** [K.A.R. 60-3-110](#)
- **Mental Health Technicians:** [K.A.R. 60-7-106](#)
- **Physician Assistants:** [K.S.A. 65-28a05; K.A.R. 100-28a-8](#)
- **Optometrists:** [K.S.A. 65-1516, 1517](#)
- **Pharmacists:** [K.S.A. 65-1626, 1627](#)
- **Psychologists:** [K.S.A. 74-5324; K.A.R. 102-1-10a](#)
- **Social Workers:** [K.S.A. 65-6310; K.A.R. 102-2-7](#)
- **Professional Counselors:** [K.S.A. 65-5809; K.A.R. 102-3-12a](#)
- **Marriage and Family Therapists:** [K.S.A. 65-6408; K.A.R. 102-5-12](#)
- **Addiction Counselor:** [K.S.A. 65-6609; K.A.R. 102-7-11](#)

**K.S.A. 65-1122 and 1441**
Prohibit selling or fraudulently obtaining or furnishing any nursing or dental diploma, license, record or certificate of qualification.

**K.S.A. 65-2859 and 2860**
Any person who shall file or attempt to file with the board of healing arts any false or forged diploma, certificate, affidavit or identification or qualification, or any other written or printed instrument, shall be guilty of forgery. Any person who presents to the board a diploma or certificate of which he or she is not the rightful owner for the purpose of procuring a license, or who falsely impersonates anyone to whom a license has been issued, (1) shall be guilty of an unclassified nonperson felony and (2) may be liable for a civil penalty, as well as reasonable costs of investigation and prosecution, unless otherwise specified.

**K.S.A. 39-702 and 720**
Any person who obtains or attempts to obtain, or aids or encourages any other person to obtain, by means of a willfully false statement, representation or other fraudulent device, assistance to which the applicant or client is not entitled, shall be guilty of the crime of theft; and shall be required to remit to the secretary the amount of any assistance given him under such fraudulent act. For purposes of the foregoing, (a) “secretary” means the secretary for children and families; (b) “applicants” means all persons who, as individuals, or in whose behalf requests are made of the secretary for aid or assistance; and (c) “assistance” includes such items or functions as the giving or providing of money, food assistance, food, clothing, shelter, medicine or other materials, the giving of any service, including instructive or scientific.

**K.S.A. 44-510j**
A provider may not improperly overcharge or charge for services rendered under the Workers Compensation Act which were not provided for the purpose of obtaining additional payment. “Provider” is defined as any health care provider, vocational rehabilitation service provider or any facility providing health care services or vocational rehabilitation services, or both, including any hospital.
K.S.A. 44-510j
Any improper charge which is willful or which demonstrates a pattern of improperly charging or overcharging for services rendered constitutes grounds for the director to impose a civil fine not to exceed $5,000.

K.S.A. 21-5927(a).
Medicaid fraud is, (1) with intent to defraud, making presenting, submitting, offering, or causing the same, in connection with any payment under the Medicaid program, whether or not the claim is allowed or allowable, any false or fraudulent claim, statement, report or representation: (A) for payment for any goods, service, item, facility, accommodation; (B) for use in determining payments; (C) which may be used in computing or determining a rate of payment for any goods, service, item, facility or accommodation; (D) in connection with any report or filing which is or may be used in computing or determining a rate of payment for any goods, service, item, facility or accommodation; (E) for use by another in obtaining any goods, service, item, facility or accommodation; (F) for any goods, service, item, facility, or accommodation, which is not medically necessary in accordance with professionally recognized parameters or as otherwise required by law; (G) which is required to be kept or which is kept as documentation for any goods, service, item, facility or accommodation of any cost or expense claimed for reimbursement for any goods, service, item, facility or accommodation; (H) in connection with any audit or investigation involving any claim for payment or rate of payment for any goods, service, item, facility or accommodation; or (I) with the intent to influence any acts or decision of any official, employee or agent of a state or federal agency having regulatory or administrative authority over the Kansas Medicaid program or (2) intentionally executing or attempting to execute a scheme or artifice to defraud the Medicaid property or any contractor or subcontractor thereof.

K.S.A. 21-5926
“Medically necessary” means any goods, service, item, facility or accommodation, that a reasonable and prudent provider under similar circumstances would believe is appropriate for diagnosing or treating a recipient’s condition, illness or injury.

K.S.A. 21-5927(b)
As defined in subsection (a)(1)(A) though (a)(G) and (a)(2) above, each individual count of Medicaid fraud where the aggregate amount of payments illegally claimed is: (A) $250,000 or more is a severity level 3, nonperson felony; (B) at least $100,000 but less than $250,000 is a severity level 5, nonperson felony; (C) at least $25,000 but less than $100,000 is a severity level 7, nonperson felony; (D) at least $1,000 but less than $25,000 is a severity level 9, nonperson felony; (E) less than $1,000 is a class A nonperson misdemeanor. Medicaid fraud as defined by subsections (a)(1)(H) and (a)(1)(I) above, is a severity level 9, nonperson felony. When great bodily harm results from such act, each individual count of Medicaid fraud as defined in subsection (a)(1)(A) through (a)(1)(G) and (a)(2), regardless of the aggregate amount of payments illegally claimed, is a severity level 4, person felony, unless death results from such act, in which case the Medicaid fraud is a severity level 1, person felony. A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any form of battery or homicide. In sentencing for Medicaid fraud, an act or omission by the defendant that resulted in any Medicaid recipient receiving any service that was of lesser quality or amount than the service to which such recipient was entitled may be considered an aggravating factor in determining whether substantial and compelling reasons for departure exist pursuant to the Kansas Revised Sentencing Guidelines (K.S.A. 21-6801 et seq.).
K.S.A. 21-5930, 5931
Upon submitting a claim or receiving payment for goods, services, items, facilities or accommodations under the Medicaid program, a person shall not destroy or conceal any records for five (5) years after the date on which payment was received, if payment was received, or for five years after the date on which the claim was submitted, if the payment was not received. Destruction or concealment of records is intentionally destroying or concealing such records as are necessary to disclose fully the nature of the goods, services, items, facilities or accommodations for which a claim was submitted or payment was received under the Medicaid program, or such records as are necessary to disclose fully all income and expenditures upon which rates of payment were based under the Medicaid program. Failure to maintain adequate records is a class A, nonperson misdemeanor. Destruction or concealment of records is a severity level 9, nonperson felony.

K.S.A. 40-2,118
A “fraudulent insurance act” means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written, electronic, electronic impulse, facsimile, magnetic, oral, or telephonic communication or statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

K.S.A. 40-2,118.
A fraudulent insurance act shall constitute a felony if the amount involved is equal to or more than $1,000; a fraudulent insurance act shall constitute a misdemeanor if the amount is less than $1,000. Any combination of fraudulent acts as defined in subsection (a) which occur in a period of six consecutive months which involves $25,000 or more shall have a presumptive sentence of imprisonment regardless of its location on the sentencing grid block. In addition to any other penalty, a person who commits a fraudulent insurance act shall be ordered to make restitution to the insurer or any other person or entity for any financial loss sustained as a result of such action.

K.S.A. 21-5929.
Obstruction of a Medicaid fraud investigation is knowingly and intentionally (i) falsifying, concealing or covering up a material fact, (ii) knowingly making or causing to be made any materially false writing or document. Obstruction of a Medicaid fraud investigation is a severity level 9, nonperson felony.

K.A.R. 30-5-60
A Medicaid provider’s participation in Medicaid/Medikan may be terminated for, amongst other reasons, one or more of the following: (i) civil or criminal fraud against Medicare, the Kansas Medicaid/Medikan or social services programs, or any other state’s Medicaid or social service programs; (ii) direct or indirect ownership of five percent or more in a provider institution, organization or agency by a person who has been found guilty of civil or criminal fraud; or (iii) employing in a managerial capacity or as an agent, an individual or entity who has committed civil or criminal fraud as provided in subsection (i) of K.A.R. 30-5-60.
**K.S.A. 21-6004**
Presenting a false claim is, with intent to defraud presenting a claim or demand which is false in whole or in part, to a public officer or body authorized to audit, allow, or pay such claim.

**K.S.A. 21-6004**
Presenting a false claim for $1,000 or more is a felony; presenting a false claim for less than $1,000 is a class A misdemeanor.

**K.S.A. 75-7501 – 7511**
The Kansas False Claims Act (the “Act”) was enacted in 2009 to provide another tool for pursuing those who knowingly receive State funds after having submitted a false or fraudulent claim. A person is in violation of the Act if that person (1) knowingly presents or causes to be presented to any employee of the government or any other recipient of state funds, a false or fraudulent claim for payment or approval; (2) knowingly makes, uses or causes to be made or used a false record or statement to get a fraudulent claim approved; (3) defrauds the state by getting a false claim allowed or paid by using a false record to conceal, avoid or decrease an obligation to pay money to the state; (4) has possession of public property or money used or to be used by the state and knowingly delivers less property or money than the amount for which the person receives a certificate or receipt; (5) knowingly makes or delivers a receipt falsely representing property received that is to be used by the state; (6) knowingly buys or receives a pledge of an obligation or debt, public property from any person who may not sell or pledge the property; (7) benefits from a false claim to an employee or agent of the state, who subsequently discovers the falsity of the claim and fails to disclose the false claim and make satisfactory repayment to the state within a reasonable time after discovery; (8) conspires to commit any of the violations stated above.

“Claim” is defined as any request or demand for money, property or services made to a state employee if the state provides or reimburses any portion of the money, property or services requested. “Person” includes any natural person or legal entity, including a trust. A person who commits any of the acts set out above is liable to the state for three times the amount of damages incurred by the state because of the Act and shall be liable for a civil penalty of not less than $1,000 and not more than $11,000 for each violation, as well as all reasonable costs and attorney fees. The Act imposes joint and several liability for any violation done by two or more persons. A civil action may not be brought more than 6 years after the date of the violation or more than 3 years after the date on which the violation was discovered or should have reasonably been discovered. In no event may a civil action be brought more than 10 years after the date of the violation.

**5) UNFAIR BUSINESS PRACTICES**

**K.S.A. 40-2403, 2402, 2407; K.A.R., Ch. 40**
Prohibits any person from engaging in any trade practice which is defined in the Act, or determined under K.S.A. 40-2406 to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance. “Person” includes any individual or legal entity engaged in the business of insurance; any nonprofit medical and hospital service corporations, as defined in K.S.A. chapter 40, article 19c; administrators, as defined in K.S.A. chapter 40, article 38; and health maintenance organizations, as defined in K.S.A. chapter 40, article 32. Violation of this section may result in payment of monetary penalties, suspension or revocation of the person’s license, or refund of consumer premiums and public notification of the violation.
K.S.A. 50-101 et seq
Prohibits a number of practices in restraint of trade, including agreements between two or more persons to restrict competition or to fix prices. Penalties for violating the Act may include damages and attorney fees to any person damaged by such agreement; and, in an action brought by the attorney general, a restraining order, a prohibition on doing business in Kansas, forfeiture of a corporation’s charter or authority to do business in Kansas, and reasonable expenses and investigation fees of the attorney general.

See the False Claims/Fraud & Abuse section above for a discussion of, and citations to, the various licensing statutes for health care professions prohibiting conduct likely to deceive, defraud or harm the public and/or false, fraudulent, misleading or deceptive statements or claims in advertisements.

6) GENERAL WHISTLE-BLOWER PROTECTIONS

K.S.A. 75-2973(c), (d)
No supervisor or appointing authority of any state agency shall prohibit any employee of the state agency from (1) discussing the operations of the state agency or other matters of public concern with any member of the legislature or any auditing agency or (2) reporting any violation of state or federal law or rules and regulations to any person, agency or organization. Nor shall any supervisor or appointment authority require any employee to provide notice prior to making any such report.

K.S.A. 75-2973(g)
Each state agency shall prominently post a copy of the Whistleblower Act in locations where it can reasonably be expected to come to the attention of all employees of the state agency.

Termination of an employee in retaliation for the good faith reporting of a serious infraction of the law by a co-worker or an employer to either company management or law enforcement is an actionable tort.

K.S.A. 39-926, 1401, 1402 and 1403
Any person who is licensed to practice any branch of the healing arts, who has reasonable cause to believe that a resident is being or has been abused, neglected, or exploited, or is in need of protective services, shall report immediately such information or cause a report of such information to be made in any reasonable manner to the appropriate state or law enforcement agencies. Any person required to report such information and knowingly fails to do so shall be guilty of a class B misdemeanor. No employer shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that such employee made or caused to be made such a report. “Resident” means any individual kept, cared for, treated, boarded or otherwise accommodated in (1) a medical care facility; (2) a state psychiatric hospital or state institution for people with intellectual disability; or (3) an adult care home.

K.S.A. 65-1515, 1462 and 2898
No person reporting to the boards of optometry, or dentistry under oath and in good faith or to the board of healing arts in good faith any information such person may have relating to alleged incidents of malpractice, or the qualifications, fitness or character of, or disciplinary action taken against, a person licensed, registered or certified by the applicable board shall be subject to a civil action for damages as a result of reporting such information.
**K.S.A. 65-1135, 1467 and 2898a**
Any complaint or report, record or other information sent to any of the boards of healing arts, nursing or dentistry relating to a complaint of malpractice shall be confidential and shall not be disclosed by the recipient or its employees in a manner which identifies or enables identification of the person who is the subject or source of the information; except that the information may be disclosed (1) in a proceeding conducted by the applicable board; (2) to the person who is the subject of the information; (3) to a state or federal licensing, regulatory or enforcement agency with jurisdiction over the subject of the information.

**K.S.A. 44-5,123**
No person shall be subject to civil liability by virtue of (a) filing reports or furnishing of other information, in good faith and without malice, required by K.S.A. 44-5,120 through 44-5,122 and amendments thereto, including reports and information which disclose fraud or abusive practices under the workers compensation act, or required by the director of workers compensation or (b) notifying the division of workers compensation of any alleged violation of the workers compensation act or providing information in the course of an investigation of an alleged violation of the workers compensation act where such person's actions were in good faith and without malice.

7) **HELPFUL LINKS**
- Kansas Statutes
- Kansas State Board of Healing Arts
- Kansas Department of Health and Environment
- Kansas Department of Health and Environment – Health Occupations Credentialing
- Kansas Medicaid Fraud & Abuse Unit
- Kansas Attorney General
- Kansas Dental Board
- Kansas State Board of Nursing
- Kansas Board of Pharmacy
- Behavioral Sciences Regulatory Board
- Kansas Board of Emergency Medical Services
- Kansas Board of Examiners in Optometry
- Kansas Department for Aging and Disability Services
- Kansas Department for Aging and Disability Services (Behavioral Health)
- Kansas Bureau of Family Health
- Kansas Department for Children and Families (Formerly Dept. of Social and Rehab. Services)
- State of Kansas Government