1) **ANTI-KICKBACK**

**West Virginia Code § 9-7-5**

West Virginia prohibits fraud and abuse, including kickbacks, in its Medicaid program.

(a) Specifically, “[a] person shall not solicit, offer, pay, or receive any unlawful remuneration, including any kickback, rebate or bribe, directly or indirectly, with the intent of causing an expenditure of moneys from the medical services fund . . . which is not authorized by applicable laws or rules and regulations.”

(d) Any person found to be in violation of subsection (a), (b) or (c) of this section is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than one nor more than ten years or shall be fined not to exceed $10,000, or both fined and imprisoned.

**West Virginia Code § 30-3-14(c)(6)**

West Virginia’s Medical Practice Act provides that the Board of Medicine may deny an application for license or other authorization to practice medicine and surgery or podiatry and may discipline a physician or podiatrist licensed or otherwise lawfully practicing, after a hearing, has been adjudged by the Board of Medicine as unqualified due to:

“Requesting, receiving or paying directly or indirectly a payment, rebate, refund, commission, credit or other form of profit or valuable consideration for the referral of
patients to any person or entity in connection with providing medical or other health care services or clinical laboratory services, supplies of any kind, drugs, medication or any other medical goods, services or devices used in connection with medical or other health care services."

**West Virginia Code of State Rules § 11-1A-12.1(q)**
The West Virginia Board of Medicine "may deny an application for a license, place a licensee on probation, suspend a license, limit or restrict a license or revoke any license" issued by the Board of Medicine, upon satisfactory proof that the licensee has:

“Paid or received any commission, bonus, kickback or rebate, or engaged in any split-fee arrangement in any form whatsoever with a physician, podiatrist, organization, agency or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers or pharmacies. The provisions of this subdivision shall not be construed to prevent a physician or podiatrist from receiving a fee for professional consultation services.”

**West Virginia Code of State Rules § 11-1A-12.3**
"When the Board finds that any applicant is unqualified to be granted a license or finds that any licensee should be disciplined pursuant to the West Virginia Medical Practice Act or rules of the Board, the Board may take any one or more of the following actions:

a. Refuse to grant a license to an applicant;
b. Administer a public reprimand;
c. Suspend, limit or restrict any license for a definite period, not to exceed five (5) years;
d. Require any licensee to participate in a program of education prescribed by the Board;
e. Revoke any license;
f. Require the licensee to submit to care, counseling or treatment by physicians or other professional persons;
g. Assess a civil fine of between $1,000 and $10,000 and/or assess cost of the Board’s investigation and administrative proceedings against the licensee;
h. Require him or her to practice under the direction or supervision of another practitioner or
i. Require the licensee to provide a period of free public or charitable service.”

**West Virginia Code of State Rules § 24-1-18.1.q**
The West Virginia Board of Osteopathy "may deny an application for a license, place a licensee on probation, suspend a license, limit or restrict a license, or revoke any license issued by the Board, upon satisfactory proof that the licensee has:
Paid or received any commission, bonus, kickback or rebate, or engaged in any split-fee arrangement in any form whatsoever with a physician, podiatrist, organization, agency or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers or pharmacies. The provisions of this subdivision shall not be construed to prevent a physician from receiving a fee for professional consultation services."

2) PROHIBITIONS ON SELF-REFERRAL

West Virginia Code § 30-3-14(c)(7)
West Virginia’s Medical Practice Act provides that the West Virginia Board of Medicine "may deny an application for license or other authorization to practice medicine and surgery or podiatry in this state and may discipline a physician or podiatrist licensed or otherwise lawfully practicing in this state who, after a hearing, has been adjudged by the board as unqualified due to:

Unprofessional conduct by any physician or podiatrist in referring a patient to any clinical laboratory or pharmacy in which the physician or podiatrist has a proprietary interest unless the physician or podiatrist discloses in writing such interest to the patient. The written disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having any laboratory work or assignment performed or any pharmacy for purposes of purchasing any prescribed drug or any other medical goods or devices used in connection with medical or other health care services."

West Virginia Code § 30-3-14(j)
If the Board finds any person unqualified because of any of the above grounds, it “may enter an order imposing one or more of the following:
(1) Deny his or her application for a license or other authorization to practice medicine and surgery or podiatry;
(2) Administer a public reprimand;
(3) Suspend, limit or restrict his or her license or other authorization to practice medicine and surgery or podiatry for not more than five years, including limiting the practice of that person to, or by the exclusion of, one or more areas of practice, including limitations on practice privileges;
(4) Revoke his or her license or other authorization to practice medicine and surgery or podiatry or to prescribe or dispense controlled substances for a period not to exceed ten years;
(5) Require him or her to submit to care, counseling or treatment designated by the board as a condition for initial or continued licensure or renewal of licensure or other authorization to practice medicine and surgery or podiatry;
(6) Require him or her to participate in a program of education prescribed by the board;
(7) Require him or her to practice under the direction of a physician or podiatrist designated by the board for a specified period of time; and
(8) Assess a civil fine of not less than $1,000 nor more than $10,000.”

3) FALSE CLAIMS/FRAUD & ABUSE

West Virginia Code § 9-7-4
Fraud and Abuse in the Medicaid Program. West Virginia Code § 9-7-4 prohibits a person from knowingly making a false statement or false representation of any material fact in an application for medical assistance under the medical programs of the Department of Health and Human Resources. West Virginia Code § 9-7-4 extends to false statements or representations about other persons applying for medical assistance and prohibits a person from knowingly and intentionally concealing or failing to disclose a fact with the intent to obtain medical assistance, to which that person is not entitled. Violations of West Virginia Code § 9-7-4 are considered a felony, and punishment can include one to ten years of imprisonment and/or a fine of $10,000 (or less).

West Virginia Code § 9-7-5(b) and (c)
Fraud and Abuse in the Medicaid Program. Prohibits a person from making a claim that is false, fraudulent, or fictitious under the medical programs of the Department of Health and Human Resources. Also prohibits a person from entering into an agreement, combination, or conspiracy to obtain or aid another to obtain the payment or allowance of a false, fraudulent, or fictitious claim under the medical programs of the Department of Health and Human Resources. Violations of West Virginia Code § 9-7-5 are considered a felony, punishable by one to ten years of imprisonment and/or a fine of $10,000 (or less).

West Virginia Code § 9-7-6
Fraud and Abuse in the Medicaid Program. Prohibits any person, firm corporation or other entity from willfully, by means of a false statement or false representation, or by concealment of any material fact, or by other fraudulent scheme, devise or artifice on behalf of himself, herself, itself, or others, obtains or attempts to obtain benefits or payments or allowances under the medical programs of the Department of Health and Human Resources to which he or she or it is not entitled, or, in a greater amount than that to which he or she or it is entitled. Any person found to be liable under Section 9-7-6 is required to pay the Department of Health and Human Resources three times the amount of such benefits or payments to which he or it was not entitled and attorneys’ fees and all other fees and costs of litigation. This section also provides that no criminal action or indictment is necessary as a condition for establishing civil liability. Any civil action may be prosecuted and maintained on behalf of the Department of Health and Human Resources by the Attorney General and the Attorney General's assistants or a prosecuting attorney and the prosecuting attorney's assistants or by any attorney in contract with or employed by the Department of Health and Human Resources to provide such representation.
West Virginia Bureau for Medical Services, West Virginia Medicaid Provider Manual, Chapter 800 (B)—Quality and Program Integrity
Chapter 800 (B) of the West Virginia Medicaid Provider Manual outlines the policies and procedures for West Virginia Medicaid quality and program integrity oversight. Chapter 800.1 provides definitions for abuse, civil fraud, criminal fraud, self-audit, and other terms relevant to fraud and abuse oversight by the West Virginia Medicaid program. Chapter 800.3.4 indicates that the Office of Quality and Program Integrity is charged with investigating complaints and identifying potential fraud, waste, and abuse occurring within the West Virginia Medicaid program. Chapter 800.6.3 outlines the requirements and procedures on self-disclosures by health care providers. Chapter 800.12 implements Section 6032 of the Deficit Reduction Act of 2005 requiring that any provider who meets a threshold of $5 million in net Medicaid reimbursement during the federal fiscal year (October 1 through September 30 of the following year) must establish and maintain written policies that provide detailed information about the federal laws imposing civil and criminal penalties for submitting false Medicaid claims. West Virginia Medicaid providers must have written policies and procedures to detect and prevent fraud, waste, and abuse in federal health care programs, i.e. Medicaid.

West Virginia Code § 23-1-19
False or Fraudulent Claims Under Workers’ Compensation. Provides a civil penalty for “[a]ny person, firm, corporation or other entity which willfully, by means of false statement or representation, or by concealment of any material fact, or by other fraudulent scheme, device or artifice on behalf of himself, itself or others, obtains or attempts to obtain benefits, payments, allowances or reduced premium costs or other charges, including workers' compensation coverage under the programs of the workers' compensation commission, the company, a private carrier or self-insured employer, to which he or it is not entitled, or in a greater amount than that to which he or it is entitled.”

Liability under West Virginia Code § 23-1-19 consists of an amount equal to three times the amount of such benefits, payments or allowances to which he or it is not entitled and shall be liable for the payment of reasonable attorneys’ fees and all other fees and costs of litigation.

West Virginia Code § 33-41-5(a)
Insurance Fraud Prevention Act. West Virginia Code § 33-41-5(a) requires a person engaged in the business of insurance having knowledge or a reasonable belief that insurance fraud or another crime related to the business of insurance is being, will be, or has been committed, to report to the Insurance Commissioner with such information.

West Virginia Code § 33-41-11
Fraudulent Claims to Insurance Companies. West Virginia Code § 33-41-11 provides a criminal penalty for any person who knowingly and willfully and with intent to defraud submits a materially false statement in support of a claim for insurance
benefits or payment pursuant to a policy of insurance or who conspires to do so. If the benefit sought is $1,000 or more, the violation is considered a felony, and the penalty can be one to ten years imprisonment and/or a fine of $10,000 (or less). If the benefit is less than $1,000, the violation is considered a misdemeanor, and the penalty can be one year imprisonment and/or a fine of $2,500 (or less).

**Insurance Commissioner Informational Letter No. 154, December 2005**
Letter from the Insurance Commissioner to all insurance companies and agents reminding the companies and agents of their duty to report instances of suspected insurance fraud to the West Virginia Insurance Fraud Unit.

**West Virginia Code § 61-3-24g**
Workers’ Compensation Health Care Offenses. West Virginia Code § 61-3-24g(1) provides a criminal penalty for any person who knowingly and willfully executes or attempts to execute a scheme to defraud the Workers’ Compensation Fund, private carrier, or a self-insured employer in connection with the delivery of or payment for workers’ compensation health care benefits, items, or services. Also provides a criminal penalty for those persons who obtain by false or fraudulent pretenses any money or property owned by or under the custody and control of the Workers’ Compensation Fund, private carrier, or a self-insured employer in connection with the delivery of or payment for workers’ compensation health care benefits, items, or services. Violations of subsection (1) are considered a felony, with a penalty of one to ten years of jail time and/or a $2,500 fine. Subsection (2) pertains to people who knowing and willfully make a false or fraudulent statement in any matter involving a health care program, which relates to Workers’ Compensation insurance. Violations of subsection (2) are also considered a felony, with punishment of one to three years of imprisonment and/or a $10,000 fine. Any person convicted under West Virginia Code § 61-3-24g will be barred from providing future services to injured employees for purposes of workers’ compensation and will not receive payment for any such services. In addition, the court can order the defendant to pay all money gained from any such violation back to the Workers’ Compensation Fund.

**West Virginia Code § 61-3-24h**
False Documentation to Workers’ Compensation. West Virginia Code § 61-3-24h provides a criminal penalty to “[a]ny person, firm, partnership, company, corporation association or medical provider who submits false documentation to Workers’ Compensation, the Insurance Commissioner or a private carrier of workers’ compensation insurance with the intent to defraud.” The section also provides penalties to those who alter, falsify, deface, change, or modify any certificate or other document that would indicate good standing with workers’ compensation. Violations of § 61-3-24h are considered a misdemeanor, with a penalty of one year or less of imprisonment and/or fine of $2,500 (or less).
4) UNFAIR BUSINESS PRACTICES

**West Virginia Code of State Rules § 11-1A-12.1(hh) and (ii)**
A physician may not engage in false or deceptive advertising or engage in advertising that is not in the public interest. Advertising that is not in the public interest includes the following, with the exceptions specifically listed:
A. Advertising that has the effect of intimidating or exerting undue pressure;
B. Advertising that uses testimonials;
C. Advertising which is false, deceptive, misleading, sensational or flamboyant;
D. Advertising which guarantees satisfaction or a cure;
E. Advertising which offers gratuitous services or discounts, the purpose of which is to deceive the public. This subdivision does not apply to advertising which contains an offer to negotiate fees, nor to advertising in conjunction with an established policy or program of free care for patients; and
F. Advertising which makes claims of professional superiority which a licensee is unable to substantiate.

**West Virginia Code of State Rules § 11-1A-12.2**
Acts declared to constitute dishonorable, unethical or unprofessional conduct. As used in this rule at subdivision 12.1.e, “Dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof” includes, but is not limited to:

a. Prescribing or dispensing any "Controlled Substance" as defined in W. Va. Code § 60A-1-1 et seq.:
   A. With the intent or knowledge that a controlled substance will be used or is likely to be used other than medicinally or for an accepted therapeutic purpose;
   B. With the intent to evade any law with respect to the sale, use, or disposition of the controlled substances;
   C. For the licensee's personal use, or for the use of his or her immediate family when the licensee knows or has reason to know that an abuse of controlled substance(s) is occurring, or may result from such a practice; or
   D. In such amounts that the licensee knows or has reason to know, under the attendant circumstances, that the amounts prescribed or dispensed are excessive under accepted and prevailing medical practice standards;

b. Issuing or publishing in any manner whatsoever, representations in which grossly improbable or extravagant statements are made which have a tendency to deceive or defraud the public, or a member thereof, including, but not limited to:
   A. Any representation in which the licensee claims that he or she is able to cure or treat manifestly incurable diseases, ailments, or infirmities by any method, procedure, treatment, or medicine which the licensee knows or has reason to know has little or no therapeutic value;
   B. Represents or professes or holds himself or herself out as being able and willing to treat diseases, ailments, or infirmities under a system or school of practice:
(a) Other than that for which he or she holds a certificate or license granted by the Board;
(b) Other than that for which he or she holds a degree or diploma from a school otherwise recognized as accredited by the Board; or
(c) Which he or she professes to be self-taught;

c. A serious act, or a pattern of acts committed during the course of his or her medical or podiatric practice which, under the attendant circumstances, would be considered to be gross incompetence, gross ignorance, gross negligence, or malpractice, including the performance of any unnecessary service or procedure;

d. Conduct which is calculated to bring or has the effect of bringing the medical or podiatric profession into disrepute, including, but not limited to, any departure from or failure to conform to the standards of acceptable and prevailing medical or podiatric practice within the state, and any departure from or failure to conform to the current principles of medical ethics of the AMA available from the AMA in Chicago, Illinois, or the principles of podiatric ethics of the APMA available from the APMA in Bethesda, Maryland. For the purposes of this subsection, actual injury to a patient need not be established;

e. Any charges or fees for any type of service rendered within 72 hours of the initial visit, if the licensee advertises free service, free examination or free treatment;
   f. The administration of anabolic steroids for other than therapeutic purposes;
   g. Failing to meet the standard of practice in connection with any supervisory and/or collaborative agreement with any category of health practitioner;
   h. Violation of the Board rules for dispensing of legend drugs, as set forth in West Virginia Board of Medicine Rule 11 CSR 5, Board of Medicine Rules for Dispensing of Legend Drugs by Physicians and Podiatrists;
   i. Charging or collecting an excessive, unconscionable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:
      A. The time and effort required;
      B. The novelty and difficulty of the procedure or treatment;
      C. The skill required to perform the procedure or treatment properly;
      D. Any requirements or conditions imposed by the patient or circumstances;
      E. The nature and length of the professional relationship with the patient;
      F. The experience, reputation, and ability of the licensee; and
      G. The nature of the circumstances under which the services are provided.

In any case where it is found that an excessive, unconscionable fee has been charged, in addition to any actions taken under the provisions of subsection 12.3 of this rule, the Board may require the licensee to reduce or pay back the fee; and

j. Failure by a licensee to report a known or observed violation of this rule, the rule for dispensing legend drugs as set forth in West Virginia Board of Medicine Rule 11 CSR 5, Board of Medicine Rules for Dispensing of Legend Drugs by Physicians and Podiatrists, and/or the provisions of the West Virginia Medical Practice Act.
k. A practice of providing treatment recommendations relating to issuing prescriptions, via electronic or other means, for persons without establishing an ongoing physician-patient relationship wherein the physician has obtained information adequate to support the prescription: Provided, that this definition does not apply: in a documented emergency; or in an on-call or cross-coverage situation; or where patient care is rendered in consultation with another physician who has an ongoing relationship with the patient, and who has agreed to supervise the patient's treatment, including use of any prescribed medications.

**West Virginia Code § 33-11-1 et seq.**
Unfair Trade Practices Act. The stated purpose of West Virginia Code § 33-11-1 et seq. is to regulate trade practices in the business of insurance. That section specifically prohibits any person from engaging in an unfair method of competition or an unfair or deceptive act or practice in the business of insurance. West Virginia Code § 33-11-4 defines unfair methods of competition and unfair or deceptive acts or practices, which include failure to maintain privacy of consumer health information.

**West Virginia Code § 46A-6-101 et seq.**
West Virginia Consumer Credit and Protection Act. West Virginia Code § 46A-6-101 declares that the purpose of the statute is to complement the body of federal law governing unfair competition and unfair, deceptive, and fraudulent acts or practices in order to protect the public and foster fair and honest competition. It is the intent of the Legislature that, in construing this article, the courts be guided by the interpretation given by the federal courts to the various federal statutes dealing with the same or similar matters. To this end, this article is liberally construed so that its beneficial purposes may be served. West Virginia Code § 46A-6-104 broadly prohibits unfair methods of competition and unfair or deceptive acts in trade or commerce.

While there have been claims filed that attempt to assert violations of the West Virginia Consumer Credit and Protection Act in medical malpractice lawsuits against health care providers, West Virginia’s judiciary has held that the Medical Professional Liability Act (West Virginia Code § 55-7B-1, et seq.) controls. See Blankenship v. Ethicon, Inc., 221 W.Va. 700, 656 S.E.2d 451 (2007).

**5) PROHIBITIONS ON FEE SPLITTING**

**West Virginia Code of State Rules § 11-1A-12.1(ff)**
The West Virginia Board of Medicine may deny an application for a license, place a licensee on probation, suspend a license, limit or restrict a license, or revoke any license heretofore or hereafter issued by the Board of Medicine, upon satisfactory proof that the licensee has:
Divided fees or agreed to divide fees received for professional services with any person, firm, association, corporation, or other entity for bringing or referring a patient.

West Virginia Code of State Rules § 24-1-18.1.q
The West Virginia’s Board of Osteopathy may deny an application for a license, place a licensee on probation, suspend a license, limit or restrict a license, or revoke any license issued by the Board, upon satisfactory proof that the licensee has:

Paid or received any commission, bonus, kickback, or rebate, or engaged in any split-fee arrangement in any form whatsoever with a physician, podiatrist, organization, agency, or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. The provisions of this subdivision shall not be construed to prevent a physician from receiving a fee for professional consultation services.

6) CORPORATE PRACTICE OF MEDICINE

West Virginia’s Medical Practice Act, West Virginia Code § 30-3-1, et seq., contains a prohibition against the so-called corporate practice of medicine. Under West Virginia Code § 30-3-15, it is unlawful for any corporation to practice medicine and surgery without a certification of authorization from the West Virginia Board of Medicine.

On November 3, 2014, the Board of Medicine issued a public policy statement titled “Position Statement on the Corporate Practice of Medicine.” The statement concluded as follows:

When a corporation seeks to obtain authorization as a medical or podiatric corporation, it must identify all shareholders, and must indicate whether any of the shareholders are nominee shareholders. In the event that a corporation seeking authorization as a medical or podiatric corporation utilizes the beneficial/nominee shareholder structure, the identity of all beneficial shareholders must be fully disclosed. If a beneficial shareholder is not a licensed physician or podiatrist, the prohibition upon the corporate practice of medicine precludes the authorization of the corporation as a medical or podiatric corporation unless the beneficial shareholder is a nonprofit organization, such as a nonprofit hospital, which has been determined by a court of competent jurisdiction or a provision of state law not to violate the prohibition on the corporate practice of medicine.
7) WHISTLE-BLOWER PROTECTIONS

West Virginia Code § 16-39-1 to § 16-39-7
West Virginia’s Patient Safety Act prohibits retaliation or discrimination in any manner against any health care worker because the worker, or any person acting on behalf of the worker:

(1) Makes a good faith report, or is about to report, verbally or in writing, to the health care entity or appropriate authority an instance of wrongdoing or waste.
(2) Advocated on behalf of a patient or patients with respect to the care, services or conditions of a health care entity;
(3) Initiated, cooperated or otherwise participated in any investigation or proceeding of any governmental entity relating to the care, services or conditions of a health care entity.

Remedies include reinstatement of the health care worker, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. The court can also award all or a portion of the costs of litigation, including reasonable attorneys fees and witness fees, if the court determines that the award is appropriate. Actions must be brought within two years.

West Virginia Code § 6C-1-1 to § 6C-1-8
West Virginia’s Whistle-Blower Law provides that no employer may discharge, threaten or otherwise discriminate or retaliate against an employee by changing the employee’s compensation, terms, conditions, location, or privileges of employment because the employee, acting on his own volition, or a person acting on behalf of or under the direction of the employee, makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste. Section 6C-1-2 defines “employee” as any person who performs a full- or part-time service for wages under a contract of hire for a “public body.” A “public body” is defined as any of the following:

(1) A department, division, officer, agency, bureau, board, commission, court in its nonjudicial functions only, council, institution, spending unit, authority or other instrumentality of the state of West Virginia;

(2) A commission, council, department, agency, board, court, in its nonjudicial functions only, official, special district, corporation or other instrumentality of a county or a municipality or a regional or joint governing body of one or more counties or municipalities; or

(3) Any other body which is created by state or political subdivision authority or which is funded by thirty-five percent or more by or through state or political subdivision authority, or a member or employee of that body.
Thus, the Whistle-Blower Law may apply to hospitals and other health care providers with Medicare and/or Medicaid funding of 35% or more. A person who alleges that they are entitled to the protections of the Whistle-Blower Law may bring a civil action for injunctive relief or damages within 180 days after the alleged violation. Employers must post notices of the protections available to whistle-blowers. An employer who does not afford its employees the protections of the Whistle-Blower Law is subject to a maximum fine of $5,000.

8) HELPFUL LINKS
- West Virginia Supreme Court of Appeals Opinions
- West Virginia Code
- West Virginia Code of State Rules
- West Virginia Department of Health and Human Resources
- West Virginia DHHR – Bureau for Medical Services
- West Virginia DHHR/OIG – Medicaid Fraud Control Unit
- West Virginia Offices of the Insurance Commission
- West Virginia Insurance Commission – Worker’s Compensation
- West Virginia Insurance Commission – Informational Letters
- West Virginia State Register
- West Virginia Board of Medicine
- West Virginia Board of Osteopathy