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1) ANTI-KICKBACK

Dividing fees for referral of patients or accepting kickbacks on medical or surgical services, appliances, or medications purchased by or on behalf of patients constitutes unethical business practices that may result in disciplinary proceedings under [Michigan Compiled Laws (MCL) § 333.16226](https://www.michigan.gov/michiganlaw/0,1607,7-136-29121_7-136-29122-,00.html). This provision applies to physicians and other health professionals including, but not limited to, chiropractors, dentists, physical therapists, and pharmacists.

Under MCL § 333.16226, violations of MCL. § 333.16221(d)(ii) include: reprimand, fine, probation, denial, or restitution.

**Medicaid False Claim Act, Michigan Compiled Laws § 400.604**
It is a felony to: (1) solicit, offer, or receive a kickback or bribe in connection with the furnishing of goods or services for which payment is or may be made in whole or in part under the Medicaid program; (2) make or receive the payment; or (3) receive a rebate of a fee or charge for referring an individual to another person for the furnishing of the goods and services. Violations are punishable by up to 4 years in prison, a fine of up to $30,000, or both.

**Health Care False Claim Act, Michigan Compiled Laws § 752.1004**
It is a felony to: (1) solicit, offer, pay, or receive a kickback or bribe in connection with the furnishing of goods or services for which payment is or may be made by a health care corporation or health care insurer; or (2) receive a rebate of a fee or charge for referring an individual to another person for the furnishing of health care benefits. Violations are punishable by up to 4 years in prison, a fine of up to $50,000, or both.
Violation of MCL 752.1004; exceptions; cost-sharing requirements not altered; definitions
A rebate or discount from a drug manufacturer or from a company that licenses or distributes the drugs of a drug manufacturer to a consumer for the consumer’s use of a drug manufactured or licensed or distributed by the drug manufacturer or company does not violate the Michigan Health Care False Claim Act. A monetary payment from a drug manufacturer to a consumer, the consumer's health professional, or a vendor that has a contract with the drug manufacturer, for a health care service that the prescribing information of a qualified drug requires or recommends for initiating drug therapy also does not violate the Michigan Health Care False Claim Act.

Rebate or discount from medical supply or device manufacturer; use; effect
A rebate or discount from a medical supply or device manufacturer or from a company that licenses or distributes medical supplies or devices for a medical supply or device manufacturer to a consumer for that consumer’s use of a medical supply or device manufactured or licensed or distributed by that manufacturer or company does not violate the Michigan Health Care False Claim Act.

Penal Code – Physicians and Surgeons, Michigan Compiled Laws § 750.428
Any physician or surgeon who divides fees with, or promises to pay part of his or her fee to, or pays a commission to any other physician or surgeon or person who consults with or sends patients for treatment or operation, and any physician or surgeon who receives any money prohibited by this section, is guilty of a misdemeanor punishable by up to 6 months in prison or a fine of up to $750. A first conviction under this section may result in revocation of the physician’s or surgeon’s license, whereas a second conviction shall result in revocation of the physician’s or surgeon’s license.

Penal Code – Physicians and Surgeons, Michigan Compiled Laws § 750.429
Any physician or surgeon engaged in the practice of medicine in Michigan who employs any solicitor, capper, or drummer for the purpose of procuring patients, or who subsidizes any hotel or boarding house, or who pays or presents to any person money or other valuable gift for bringing patients to him or her, is guilty of a misdemeanor punishable by up to 6 months in prison or a fine of up to $750.

Trade and Commerce – Billing for Clinical Laboratory Services, Michigan Compiled Laws § 445.162
A person licensed to practice medicine in Michigan shall not receive a fee or other remuneration from a clinical laboratory or an intermediary for a clinical laboratory for submitting specimens from patients to a clinical laboratory.

Public Health Code – Nursing Homes, Michigan Compiled Laws § 333.21792
It is a felony for (1) an owner, administrator, employee, or representative of a nursing home to pay, or offer to pay, a commission, bonus, fee, or gratuity to a physician, surgeon, organization, agency, or other person for the referral of a patient to a
nursing home; (2) a person to offer or give a commission, bonus, fee, or gratuity to an owner, administrator, employee, or representative of a nursing home in return for the purchase of a drug, biological, or any other ancillary services provided for a patient of a nursing home; or (3) an owner, administrator, employee, or representative of a nursing home to accept a commission, bonus, fee, or gratuity in return for the purchase of a drug, biological, or any other ancillary services provided for a patient of a nursing home. Violations are punishable by up to 4 years in prison, a fine of up to $30,000, or both.

Public Health Code – Freestanding Surgical Outpatient Facilities, Michigan Compiled Laws § 333.20813
The owner, operator, and governing body of a licensed freestanding surgical outpatient facility shall assure that the facility does not pay a fee to compensate or reimburse a medical referral agency or other person that refers or recommends an individual to the facility for any form of medical or surgical care or treatment.

Relevant Decisions

People v. Motor City Hospital and Surgical Supply, Inc., 227 Mich. App. 209; 575 N.W.2D 95 (1998) (interpreting Section 4 of the Medicaid False Claim Act (MCL § 400.604) and Section 4 of the Health Care False Claim Act (MCL § 752.1004))
The false claim acts do not contain a specific or corrupt intent element. The statutes are intended to “make those who engage in the business of providing goods and services responsible for ensuring that no referral fees are paid.” Therefore, the prosecution does not need to show that the defendant had corrupt intentions in receiving the referral fee, but rather, it is only required to show that the defendant intended to receive a referral fee.

Michigan’s Medicaid False Claim Act and Health Care False Claim Act anti-kickback laws are not strict liability crimes. The prosecution must present some evidence that the defendant intended to receive a kickback. In both cases, the court held that there was no evidence the doctors knew there was a correlation between their monthly bonuses and the number of tests ordered and, therefore, it would be impossible to show that the defendants intended to receive a kickback.

Plaintiffs argued that a physician’s payment of 25% of his collected receipts to another physician as payment for rent constituted improper fee splitting in violation of MCL § 333.16221(d)(ii) and (iii) and MCL § 750.428. A trial court ruled that payment of a percentage of gross receipts from one physician to another physician as rent for shared office space was not improper fee splitting because the physician was
not an employee of the other physician, the rent payment agreement was not illegal, unreasonable or against public policy, and the amount correlated to the amount of services provided by the physician’s staff to the other physician. On appeal, the Court of Appeals of Michigan declined to address the fee splitting issue because the plaintiffs failed to include it in their statement of questions presented, and issues not raised in the state of questions presented are waived on appeal.

Toole v. Michigan State Board of Dentistry, 306 Mich. 527 (1943) (interpreting a fee-splitting rule previously promulgated by the State Board of Dentistry)
The practice of dentistry by partnerships is not prohibited by the Board of Dentistry’s rule prohibiting the splitting of fees by one or a group of individuals engaged in such practice with any other dentist or layman.

2) PROHIBITIONS ON SELF-REFERRAL

Public Health Code – Occupations, Michigan Compiled Laws § 333.16221(e)(iii), (iv) and (v)
Promotion for personal gain of an unnecessary drug, device, treatment, procedure, or service constitutes unprofessional conduct that may result in disciplinary proceedings. MCL § 333.16221(e)(iii).

A requirement by a licensee other than a physician or a registrant that an individual purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee or registrant has a financial interest constitutes unprofessional conduct that may result in disciplinary proceedings. MCL § 333.16221(e)(iv)(A).

A referral by a physician for a designated health service that violates 42 U.S.C. § 1395nn (“Stark law”), or a regulation promulgated under the Stark law, constitutes unprofessional conduct that may result in disciplinary proceedings. The self-referral law incorporates by reference the Stark law and the regulations promulgated under the Stark law as these authorities existed on June 3, 2002. The self-referral law provides that a disciplinary subcommittee shall apply the Stark Law and the regulations promulgated under the Stark law regardless of the source of payment for the designated health service referred and rendered. If the Stark law or regulations promulgated under the Stark law are revised after June 3, 2002, the Michigan Department of Licensing and Regulatory Affairs (LARA) shall officially take notice of the revision. Within 30 days after taking notice of the revision, the Department shall decide whether or not the revision pertains to referrals by physicians for designated health services and continues to protect the public from inappropriate referrals by physicians. If the Department decides that the revision does both of those things, the Department may promulgate rules to incorporate the revision by reference. If the Department does promulgate rules to incorporate the revision by reference, the Department shall not make any changes to the revision. As used in this provision, “designated health service” means that term as defined in the Stark law.
and the regulations promulgated under the Stark law and “physician” means that term as defined in MCL § 333.17001 and MCL § 333.17501. MCL 333.16221(e)(iv)(B).

It is unprofessional conduct for a physician who makes referrals under the Stark law or a regulation promulgated under the Stark law to refuse to accept a reasonable proportion of patients eligible for Medicaid and refuse to accept payment from Medicare or Medicaid as payment in full for a treatment, procedure, or service for which the physician refers the individual and in which the physician has a financial interest. A physician who owns all or part of a facility in which he or she provides surgical services is not subject to this provision if a referred surgical procedure he or she performs in the facility is not reimbursed at a minimum of the appropriate Medicaid or Medicare outpatient fee schedule, including the combined technical and professional components. MCL § 333.16221(e)(v).

Under MCL § 333.16226, violations of MCL § 333.16221(e)(iii), (iv) and (v) include: reprimand, fine, probation, limitation, suspension, revocation, permanent revocation, denial, or restitution.


Pursuant to the most recent version of Mich. Admin. Code R 338.7003, under MCL § 333.16221(e)(iv)(B), the Michigan Department of Licensing and Regulatory Affairs (LARA) has taken notice that the Stark law was revised effective December 30, 2010. The Department has also taken notice that the regulations promulgated under the Stark law, 42 CFR 411.350 to 411.389, were revised effective November 16, 2015. The Department finds that the revisions to both the Stark law and regulations under the Stark law pertain to referrals by physicians for designated health services and continues to protect the public from inappropriate referrals by physicians. Therefore, the Department adopts by reference the Stark law, as revised December 30, 2010, and 42 CFR 411.350 to 411.389, as revised November 16, 2015.

**Relevant Decisions**

Note: There are no published decisions interpreting the current version of the statute that became effective on June 3, 2002. The decisions discussed below interpret a prior version of the statute.


Physicians violated a statute (previous version of MCL § 16221(e)(iv)) prohibiting licensees from “directing or requiring” an individual to purchase or secure a drug, device, treatment, procedure, or service from another facility, in which the physicians had a financial interest, by referring patients and specimens to a health care facility in which they had a limited partnership interest, even though the physicians posted a sign in their office disclosing the existence of their interest and stating that patients could choose another facility. Note the current version of this provision (MCL § 333.16221(e)(iv)(A) does not include the language “directing or
requiring” and Michigan subsequently adopted a broad self-referral law (MCL § 333.16221(e)(iv)(B)) incorporating the federal Stark law.

_Michigan Attorney General Opinion No. 5498, June 8, 1979_

The Attorney General Opinion interprets the previous version of M.C.L. § 16221(e)(iii), which defined unprofessional conduct to include “[p]romotion for personal gain of an unnecessary drug, device, treatment, procedure, or service, or directing or requiring an individual to purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee has a financial interest.” The Opinion provided that: (1) a licensed health professional has a “financial interest” in a clinical laboratory if he or she is the proprietor, partner, limited partner, shareholder, or has a similar business interest in a clinical laboratory; (2) a licensed health professional is prohibited from directing or requiring an individual to purchase or secure a drug, device, treatment, procedure or service, even if necessary, from a person, place, facility or business in which the licensed health professional has a financial interest, (3) the statute is violated if a physician collects a specimen from a patient and sends it for analysis to a laboratory in which the physician has a financial interest, whether or not there is a consultation with the patient; and (4) a violation of the statute cannot be avoided by disclosure of the financial interest. Note the current version of this provision (MCL § 333.16221(e)(iv)(A)) does not include the language “directing or requiring” and Michigan subsequently adopted a broad self-referral law (MCL § 333.16221(e)(iv)(B)) incorporating the federal Stark law.

3) FALSE CLAIMS/FRAUD & ABUSE


Fraud or deceit in obtaining or attempting to obtain third-party reimbursement constitutes an unethical business practice that may result in disciplinary proceedings under _Michigan Compiled Laws (MCL) § 333.16226_. This provision applies to physicians and other health professionals including, but not limited to, chiropractors, dentists, physical therapists, and pharmacists.

Under MCL § 333.16226, violations of MCL. § 333.16221(d)(iii) include: fine, probation, denial, suspension, revocation, permanent revocation, or restitution.

_Public Health Code – Occupations, Michigan Compiled Laws § 333.16221(e)(i)_

Misrepresentation to a consumer or patient or in obtaining or attempting to obtain third party reimbursement in the course of professional practice constitutes unprofessional conduct that may result in disciplinary proceedings. This provision applies to physicians and other health professionals.

Under _MCL § 333.16226_, violations of MCL. § 333.16221(e)(i) include: reprimand, fine, limitation, suspension, revocation, permanent revocation, denial, or restitution.
**Medicaid False Claim Act, Michigan Compiled Laws § 400.602**

Under the Medicaid False Claim Act: “deceptive” means making a claim or causing a claim to be made under the social welfare act that contains a statement of fact or that fails to reveal a fact, which statement or failure leads the department to believe the represented or suggested state of affair to be other than it actually is: “false” is defined as wholly or partially untrue or deceptive; “knowing” and “knowingly” mean that a person is in possession of facts that he or she is aware or should be aware of the nature of his or her conduct and that his or her conduct is substantially certain to cause the payment of a Medicaid benefit; knowing or knowingly includes acts in deliberate ignorance of the truth or falsity of facts or acting in reckless disregard of the truth or falsity of facts, proof of specific intent to defraud is not required, and “person” means an individual, corporation, association, partnership, or other legal entity.

**Medicaid False Claim Act, Michigan Compiled Laws § 400.603**

A person shall not knowingly make or cause to be made a false statement or false representation of a material fact in applying for Medicaid benefits.

A person shall not knowingly make or cause to be made a false statement or false representation of a material fact for use in determining rights to Medicaid benefits.

A person, who having knowledge of an occurrence of an event affecting his initial or continued right to receive a Medicaid benefit or the initial or continued right of any other person on whose behalf he or she has applied for or is receiving a benefit, shall not conceal or fail to disclose that event with the intent to obtain a benefit to which the person or any other person is not entitled or in an amount greater than that to which the person or any other person is entitled.

A person who violates MCL §400.603 is guilty of a felony punishable by up to 4 years in prison, a fine of up to $50,000, or both.

**Medicaid False Claim Act, Michigan Compiled Laws § 400.605**

A person shall not knowingly and willfully make, or induce or seek to induce the making of, a false statement or false representation of a material fact with respect to the conditions or operation of an institution or facility in order that the institution or facility may qualify, upon initial certification or upon recertification, as a hospital, skilled nursing facility, intermediate care facility, or home health agency. A person who violates MCL § 400.605 is guilty of a felony punishable by up to 4 years in prison, a fine of up to $30,000, or both.

**Medicaid False Claim Act, Michigan Compiled Laws § 400.606**

It is a felony for a person to enter into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another to obtain the payment or allowance of a false claim for Medicaid benefits. Violations are punishable by up to 10 years in prison, a fine of up to $50,000, or both.
**Medicaid False Claim Act, Michigan Compiled Laws § 400.607**

A person shall not make or present or cause to be made or presented to an employee or officer of the state a claim for Medicaid benefits, upon or against the state, knowing the claim to be false.

A person shall not make or present or cause to be made or presented a claim for Medicaid benefits that he or she knows falsely represents that the goods or services for which the claim is made were medically necessary in accordance with professionally accepted standards. Each claim violating this provision is a separate offense. A health facility or agency is not liable under this provision unless the facility or agency, pursuant to a conspiracy, combination, or collusion with a physician or other provider, falsely represents the medical necessity of the particular goods or services for which the claim was made.

A person shall not knowingly make, use, or cause to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state pertaining to a claim presented for Medicaid benefits.

A person who violates MCL §400.607 is guilty of a felony punishable by up to 4 years in prison, a fine of up to $50,000, or both.

**Medicaid False Claim Act, Michigan Compiled Laws § 400.608**

In a prosecution under the Medicaid False Claim Act, it shall not be necessary to show that the person had knowledge of similar acts performed in the past by a person acting on his or her behalf, nor to show that the person had actual notice that the acts by the persons acting on his or her behalf occurred to establish the fact that a false statement or representation was knowingly made. It shall be a rebuttable presumption that a person knowingly made a claim for a Medicaid benefit if the person's actual, facsimile, stamped, typewritten, or similar signature is used on the form required for the making of a claim for a Medicaid benefit. If a claim for a Medicaid benefit is made by means of computer billing tapes or other electronic means, it shall be a rebuttable presumption that the person knowingly made the claim if the person has notified the department of social services in writing that claims for Medicaid benefits will be submitted by use of computer billing tapes or other electronic means.

**Medicaid False Claim Act, Michigan Compiled Laws § 400.609**

A person who is convicted three or more times for an offense under the Medicaid False Claim Act and who is subsequently convicted of another offense under the Medicaid False Claim Act may be sentenced to imprisonment for a term of up to 10 years. To be subject to punishment under this provision, it is not necessary to establish that the person was indicted and convicted as a previous offender, but the increased punishment provided under this provision shall be imposed in accordance with the procedure prescribed in MCL § 769.13. Sentences imposed for a conviction of separate offenses under the Medicaid False Claim may run consecutively.
Medicaid False Claim Act, Michigan Compiled Laws § 400.610a (Qui Tam Provisions)

Any person may bring a civil action in the name of the state of Michigan under MCL § 400.610a to recover losses that the state suffers as a result of a violation of the Medicaid False Claim Act. A suit filed under MCL § 400.610a shall not be dismissed unless the attorney general has been notified and had an opportunity to appear and oppose the dismissal, however the attorney general waives the opportunity to oppose the dismissal if it is not exercised within twenty-eight days of receiving notice. MCL § 400.610a(1).

If a person other than the attorney general initiates an action under MCL § 400.610a, the complaint shall remain under seal and the clerk shall not issue the summons for service on the defendant until after the time for the attorney general’s election under MCL 400.610a(3) expires (see below). At the time of filing the complaint, the person shall serve a copy of the complaint on the attorney general and shall disclose, in writing, substantially all material evidence and information in the person’s possession supporting the complaint to the attorney general. MCL § 400.610a(2).

The attorney general may elect to intervene in an action under MCL § 400.610a. Pursuant to MCL 400.610a(3), before the expiration of the later of 90 days after service of the complaint and related materials or any extension of the 90 days that is requested by the attorney general and granted by the court, the attorney general shall notify the court and the person initiating the action that: (a) the attorney general will proceed with the action for the state and have primary responsibility for proceeding with the action; or (b) the attorney general declines to take over the action and the person initiating the action has the right to proceed with the action. MCL § 400.610a(3).

If an action is filed under MCL 400.610a, a person other than the attorney general shall not intervene in the action or bring another action on behalf of the state based on the facts underlying the action. MCL § 400.610a(4).

If the attorney general elects to proceed with the action under MCL §§ 400.610a(3) or (6) (see below), the attorney general has primary responsibility for prosecuting the action and may do all of the following: (a) agree to dismiss the action, notwithstanding the objection of the person initiating the action, but only if that person has been notified of and offered the opportunity to participate in a hearing on the motion to dismiss; (b) settle the action, notwithstanding the objection of the person initiating the action, but only if that person has been notified of and offered the opportunity to participate in a hearing on the settlement and if the court determines that the settlement is fair, adequate, and reasonable under the circumstances; (c) request the court to limit the participation of the person initiating the action by (i) limiting the number of the person’s witnesses, (ii) limiting the length of the testimony of the person’s witnesses, (iii) limiting the person’s cross-examination of witnesses, or (iv) otherwise limiting the person’s participation in the litigation. MCL § 400.610a(5).
If the attorney general notifies the court that he or she declines to take over the action under MCL § 400.610a(3), the person who initiated the action may proceed with the action. At the attorney general's request and expense, the attorney general shall be provided with copies of all pleadings filed in the action and copies of all deposition transcripts. Notwithstanding the attorney general's election not to take over the action, the court may permit the attorney general to intervene in the action at any time upon a showing of good cause and, subject to MCL 400.610a(7) (regarding stay of discovery), without affecting the rights or status of the person initiating the action. MCL § 400.610a(6).

As an alternative to an action permitted under MCL §400.610a, the attorney general may pursue a violation of the Medicaid False Claims Act through any alternate remedy available to this state, including an administrative proceeding. If the attorney general pursues an alternate remedy, a person who initiated an action under MCL § 400.610a shall have equivalent rights in that proceeding to the rights that the person would have had if the action had continued under MCL § 400.610a to the extent consistent with the law governing that proceeding. Findings of fact and conclusions of law that become final in an alternative proceeding shall be conclusive on the parties to an action under MCL § 400.610a. For purposes of MCL § 400.610a(8), a finding or conclusion is final if it has been finally determined on appeal to the appropriate court, if the time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review. MCL § 400.610a(8).

Subject to MCL §§ 400.610a(10) and (11) (see below), if a person other than the attorney general or the attorney general prevails in an action that the person initiates under MCL § 400.610, the court shall award the person necessary expenses, costs, reasonable attorney fees, and, based on the amount of effort involved, the following percentage of the monetary proceeds resulting from the action or any settlement of the claim: (a) if the attorney general intervenes, 15% to 25%; or (b) if the attorney general does not intervene, 25% to 30%. MCL § 400.610a(9).

If the court finds an action under MCL § 400.610a to be based primarily on disclosure of specific information that was not provided by the person bringing the action, such as information from a criminal, civil, or administrative hearing in a state or federal department or agency, a legislative report, hearing, audit, or investigation, or the news media, and the attorney general proceeds with the action, the court may award the person bringing the action no more than 10% of the monetary recovery in addition to reasonable attorney fees, necessary expenses, and costs. MCL § 400.610a(10).

If the court finds that the person bringing an action under MCL § 400.610a planned and initiated the conduct upon which the action is brought, then the court may reduce or eliminate, as it considers appropriate, the share of the proceeds of the action that the person would otherwise be entitled to receive. A person who is convicted of criminal conduct arising from a violation the Medicaid False Claim Act
shall not initiate or remain a party to an action under MCL § 400.610a and is not entitled to share in the monetary proceeds resulting from the action or any settlement under MCL § 400.610a. MCL § 400.610a(11).

A person other than the attorney general shall not bring an action under MCL § 400.610a that is based on allegations or transactions that are the subject of a civil suit or administrative civil money penalty proceeding to which the state or federal government is already a party. The court shall dismiss an action brought in violation of this provision. MCL 400.610a(12).

Unless the person is the original source of the information, a person, other than the attorney general, shall not initiate an action under MCL § 400.610a based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a state or federal legislative, investigative, or administrative report, hearing, audit, or investigation, or from the news media. The person is the original source if he or she: (1) had direct and independent knowledge of the information on which the allegations are based; and (2) voluntarily provided the information to the attorney general before filing an action based on that information under MCL § 400.610a. MCL § 400.610a(13).

The state and the attorney general are not liable for any expenses, costs, or attorney fees that a person incurs in bringing an action under MCL § 400.610a. Any amount awarded to a person initiating an action to enforce the Medicaid False Claim Act is payable solely from the proceeds of the action or settlement. MCL § 400.610a(14).

If a person proceeds with an action under MCL § 400.610a after being notified that the attorney general has declined to intervene and the court finds that the claim was frivolous, as defined in MCL § 600.2591, the court shall award the prevailing defendant actual and reasonable attorney fees and expenses and, in addition, shall impose a civil fine of up to $10,000.00 to be deposited into the Michigan Medicaid benefits trust fund. MCL § 400.610a(15).

**Medicaid False Claim Act, Michigan Compiled Laws § 400.610b**

The attorney general may recover all costs the state incurs in the litigation and recovery of Medicaid restitution under the Medicaid False Claim Act, including the cost of investigation and attorney fees. The attorney general shall retain the amount received for activities under the Medicaid False Claim Act, excluding amounts for restitution, court costs, and fines, not to exceed the amount of the state's funding match for the Medicaid Fraud Control Unit. The attorney general shall not retain amounts under MCL § 400.610b until all the restitution awarded in the proceeding has been paid. Costs that the attorney general recovers in excess of the state's funding match for the Medicaid Fraud Control Unit shall be deposited in the Michigan Medicaid benefits trust fund.
**Medicaid False Claim Act, Michigan Compiled Laws § 400.610c**

An employer shall not discharge, demote, suspend, threaten, harass, or in any other manner, discriminate against an employee in the terms and conditions of employment because the employee engaged in lawful acts, including initiating, assisting in, or participating in the furtherance of an action under the Medicaid False Claim Act or because the employee cooperates with or assists in an investigation under the Medicaid False Claim Act. This prohibition does not apply to an employment action against an employee who: the court finds brought a frivolous claim, as defined in MCL § 600.2591; the court finds to have planned and initiated the conduct upon which the action is brought; or is convicted of criminal conduct arising from a violation of this act.

An employer who violates MCL § 400.610c is liable to the employee for the following: (a) reinstatement to the employee’s position without loss of seniority; (b) two times the amount of lost back pay; (c) interest on back pay; (d) compensation for any special damages; and (e) any other relief necessary to make the employee whole.

**Medicaid False Claim Act, Michigan Compiled Laws § 400.612**

A person who receives a benefit that the person is not entitled to receive by reason of fraud or making a fraudulent statement or knowingly concealing a material fact, or who engages in any conduct prohibited by the Medicaid False Claim Act, shall forfeit and pay to the state the full amount received, and for each claim a civil penalty of $5,000 to $10,000 per claim plus triple the amount of damages suffered by the state as a result of the person’s conduct. A criminal action is not required for a person to be civilly liable under MCL §400.612.

**Medicaid False Claim Act, Michigan Compiled Laws § 400.614**

A person may not bring a civil action under MCL §400.610a after the later of the following: (1) more than six years after the date of the violation; or (2) more than three years after the date when facts material to the right of action are known or should have been known by the official of the state of Michigan charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation was committed.

**Medicaid False Claim Act, Michigan Compiled Laws § 400.615**

A person bringing a civil action under the Medicaid False Claim Act is required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

**Social Welfare Act, Michigan Compiled Laws § 400.111b(16)**

As a condition of participation in the Medicaid program, a provider promptly shall notify the director of a payment received by the provider to which the provider is not entitled or that exceeds the amount to which the provider is entitled. If the provider makes or should have made notification under MCL §400.111b(16) or receives notification of overpayment under section MCL § 400.111a(17), the
provider shall repay, return, restore, or reimburse, either directly or through adjustment of payments, the overpayment in the manner required by the director. Failure to repay, return, restore, or reimburse the overpayment or a consistent pattern of failure to notify the director shall constitute a conversion of the money by the provider.

**Social Welfare Act, Michigan Compiled Laws § 400.111b(17)**

As a condition of payment for services rendered to a medically indigent individual, a provider shall certify that a claim for payment is true, accurate, prepared with knowledge and consent of the provider, and does not contain untrue, misleading, or deceptive information. A provider is responsible for the ongoing supervision of an agent, officer, or employee who prepares or submits the claims. A provider’s certification required under MCL § 400.111b(17) shall be prima facie evidence that the provider knows that the claim or claims are true, accurate, prepared with his or her knowledge and consent, do not contain misleading or deceptive information, and are filed in compliance with the policies, procedures, and instructions, and on the forms established or developed under the Social Welfare Act.

**Social Welfare Act, Michigan Compiled Laws § 400.111e(3)**

A provider’s participation in the program may be terminated or otherwise sanctioned for submission of: (a) duplicate claims; (b) claims for services, supplies, or equipment that were not provided; (c) claims that include costs or charges not related to the services, supplies, or equipment provided; (d) claims for services, supplies, or equipment that are medically inappropriate or medically unnecessary; (e) claims that misrepresent information related to the services, supplies, or equipment provided, the identity of the recipient, or the identity of the provider; (f) claims that are not supported by information in the patient’s medical record; (g) claims that are not completed properly; (h) claims that contain a fee or charge that is higher than the provider’s usual and customary charge to the general public; or (i) claims for services, supplies, or equipment that were not rendered by the provider.

**Health Care False Claim Act, Michigan Compiled Laws § 752.1002**

Under the Health Care False Claim Act: “claim” means any attempt to cause a health care corporation or health care insurer to make the payment of a health care benefit; “deceptive” means making a claim to a health care corporation or health care insurer which contains a statement of fact or which fails to reveal a fact, which statement or failure leads the health care corporation or health care insurer to believe the represented or suggested state of affair to be other than it actually is; “false” means wholly or partially untrue or deceptive; “knowing” and “knowingly” mean that a person is in possession of facts under which he or she is aware or should be aware of the nature of his or her conduct and that his or her conduct is substantially certain to cause the payment of a health care benefit; “knowing” or “knowingly” does not include conduct which is an error or mistake unless the person’s course of conduct indicates a systematic or persistent tendency to cause inaccuracies to be present; and “person” means an individual, corporation,
association, partnership, or other legal entity.

**Health Care False Claim Act, Michigan Compiled Laws § 752.1003**

It is a felony to: (1) make or present or cause to be made or presented to a health care corporation or health care insurer a claim for payment of health care benefits knowing the claim to be false; (2) make or present or cause to be made or presented to a health care corporation or health care insurer a claim for payment of health care benefits which he or she knows falsely represents that the goods or services were medically necessary in accordance with professionally accepted standards; (3) knowingly make or cause to be made a false statement or false representation of a material fact to a health care corporation or health care insurer for use in determining rights to health care benefits; or (4) having knowledge of the occurrence of an event affecting his or her initial or continued right to receive a health care benefit, or the continued right of any other person on whose behalf he or she has applied for or is receiving a health care benefit, conceal or fail to disclose that event with intent to obtain a health care benefit to which the person or any other person is not entitled, or to obtain a health care benefit in an amount greater than that to which the person or any other person is entitled. Violations are punishable by up to 4 years in prison, a fine of up to $50,000, or both.

**Health Care False Claim Act, Michigan Compiled Laws § 752.1005**

It is a felony to enter into an agreement, combination, or conspiracy to defraud a health care corporation or health care insurer by making or presenting, or aiding another to make or present, a false claim for the payment of health care benefits. Violations are punishable by up to 10 years in prison, a fine of up to $50,000, or both.

**Health Care False Claim Act, Michigan Compiled Laws § 752.1006**

A person who is convicted of a second or subsequent offense under the Health Care False Claim Act may be sentenced to imprisonment for a term of up to twice the term otherwise authorized, or fined an amount of up to twice the amount otherwise authorized, or both.

**Health Care False Claim Act, Michigan Compiled Laws § 752.1007**

In a prosecution under the Health Care False Claim Act, it shall not be necessary to show that the person had knowledge of similar acts having been performed in the past by a person acting on the person’s behalf, nor to show that the person had actual notice that the acts by the persons acting on the person’s behalf occurred, to establish the fact that a false statement or representation was knowingly made. It shall be a rebuttable presumption that a person knowingly made a claim for a health care benefit if the person’s actual, facsimile, stamped, typewritten, or similar signature is used on the form required for the making of the claim for the health care benefit. If a claim for a health care benefit is made by means of computer billing tapes or other electronic means, it shall be a rebuttable presumption that the person knowingly made the claim if the person has advised the health care corporation or health care insurer in writing that claims for health care benefits will be submitted by
use of computer billing tapes or other electronic means. In any civil or criminal action under this act the certificate of an authorized agent of the health care corporation or health care insurer setting forth that documentary material or any compilation thereof is an authentic record or compilation of records of the health care corporation or health care insurer shall create a rebuttable presumption that the record or compilation is authentic.

**Health Care False Claim Act, Michigan Compiled Laws § 752.1009**
A person who receives a health care benefit or payment from a health care corporation or health care insurer which the person knows that he or she is not entitled to receive or be paid; or a person who knowingly presents or causes to be presented a claim which contains a false statement, shall be liable to the health care corporation or health care insurer for the full amount of the benefit or payment made.

**Health Care False Claim Act, Michigan Compiled Laws § 752.1010**
Any person convicted of a violation of MCL §§ 752.1003, 752.1004 (anti-kickback), or 752.1005, in addition to any fines or sentences imposed, including any order of probation, may be ordered to make restitution to a health care corporation or health care insurer.

**Code of Criminal Procedure – Sentencing Guidelines, Michigan Compiled Laws § 777.17d**
For felony convictions under MCL § 752.1003 (false claim, statement, or representation to obtain health care benefits) and MCL § 752.1004 (soliciting, paying, or receiving kickback or receiving referral fee for health care payment), the statutory maximum sentence is 4 years. For felony convictions under MCL § 752.1005 (conspiring to commit health care fraud), the statutory maximum sentence is 10 years. For felony convictions under MCL § 752.1006 (health care fraud – subsequent offense), the statutory maximum sentence is 20 years.

**Insurance Code – Insurance Fraud, Michigan Compiled Laws § 500.4503(c), (d), (i)**
A fraudulent insurance act includes, but is not limited to, act or omissions committed by any person who knowingly, and with an intent to injure, defraud, or deceive: (c) presents or causes to be presented to or by an insurer, any oral or written statement including computer-generated information as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false information concerning any fact or thing material to the claim; (d) assists, abets, solicits, or conspires with another to prepare or make any oral or written statement including computer-generated documents that is intended to be presented to or by any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false information concerning any fact or thing material to the claim; or (i) knowingly and willfully assists, conspires with, or urges any person to fraudulently violate the insurance fraud act, or any person who due to that assistance, conspiracy, or urging knowingly and willfully benefits from the proceeds derived from
the fraud.

**Insurance Code – Insurance Fraud, Michigan Compiled Laws § 500.4509(1)**
A person acting without malice is not subject to liability for filing a report or requesting or furnishing orally or in writing other information concerning suspected or completed insurance fraud, if the reports or information are provided to or received from the insurance bureau, the national association of insurance commissioners, any federal, state, or governmental agency established to detect and prevent insurance fraud, as well as any other organization, and their agents, employees, or designees, unless that person knows that the report or other information contains false information pertaining to any material fact or thing.

**Insurance Code, Michigan Compiled Laws § 500.4511**
A person who commits a fraudulent insurance act under MCL § 500.4503 is guilty of a felony punishable by up to 4 years in prison, a fine of up to $50,000, or both, and shall be ordered to pay restitution. A person who enters into an agreement or conspiracy to commit a fraudulent insurance act under MCL § 500.4503 is guilty of a felony, punishable by up to 10 years in prison, a fine of up to $50,000, or both, and shall be ordered to pay restitution. If the court finds a practitioner or insurer responsible for or guilty of a fraudulent insurance act under MCL § 500.4503, the court will notify the appropriate licensing authority in Michigan of the adjudication.

**Relevant Decisions**

The Medicaid False Claim Act is not preempted by federal law (42 U.S.C. § 1320a-7) because there is no evidence of a congressional intent, under either express or implied theories, to preempt the Medicaid False Claim Act; rather, express language in Title XIX (the Medicaid provisions of the Social Security Act) indicate an intent by Congress to allow state law prosecutions for Medicaid fraud. The trier of fact is entitled to consider expert testimony that the Medicaid claims filed by defendants were false. Minimal circumstantial evidence will suffice to establish that the defendants had actual or constructive knowledge that the claims were false.

In determining whether a defendant should be bound over for trial on Medicaid fraud charges, the actual number of errors alleged, and the relatively small dollar figure they represent, is irrelevant and does not automatically convert or allow for the assumption that the errors must have comprised of only inadvertent mistakes. Evidence of only nine erroneous billings for 4 or 5 patients, totaling just more than $300, was sufficient to support a finding of probable cause because a reasonable trier of fact could determine that there were 9 instances of purposeful or knowing deceit by defendants in their billing practices.
The elements of the crime of submitting a Medicaid false claim are: (1) there must be a claim; (2) that the accused makes, presents, or causes to be made or presented to the state or its agent; (3) the claim must be made under the Michigan Social Welfare Act; (4) the claim is false, fictitious, or fraudulent; and (5) the accused knows the claim is false, fictitious, or fraudulent. It is a violation of the statute to submit bills for Medicaid payment with the representation that the tests performed were necessary for diagnosis when, in fact, they were not. Section 7 of the Medicaid False Claim Act (MCL § 400.607) is a specific intent crime.

Under the Medicaid False Claim Act and Health Care False Claim Act, a defendant may be charged with constructive knowledge of the falsity of a claim if he or she persistently presents an extremely high number of similar inaccurate claims. A claimant has the affirmative duty to check the accuracy of claims to avoid mistakes.

The court rejected a claim that Section 7 of the Medicaid False Claim Act (MCL § 400.607) is unconstitutionally vague because the definition of what constitutes a false Medicaid claim is found in the Medicaid provider manual. An identifiable pattern or routine billing method, such as a dentist billing for a full X-ray series but only filming a partial series, may qualify as evidence of a “course of conduct” sufficient to overcome the allowance for mistakes or errors.

Under the Medicaid False Claim Act and Health Care False Claim Act, each submission of a false claim constitutes a separate offense, and must be tried as such. The mere fact that a defendant commits multiple violations of the statute does not permit a charge under a “common plan or scheme” theory. Because each submission of a false claim constitutes a single criminal act, the prosecution must prosecute each claim separately, as opposed to prosecuting one charge of ongoing criminal activity for all violations of the false claims acts.

If a defendant contractually agrees to abide by billing procedures and the defendant has access to the applicable manuals and documentation controlling those procedures, deviations from the established procedures are presumed to be intentional or provide evidence that the defendant knew the submitted claims were false.
4) UNFAIR BUSINESS PRACTICES

**Michigan Consumer Protection Act, Michigan Compiled Laws § 445.901, et seq.**

**445.903 Unfair, unconscionable, or deceptive methods, acts, or practices in conduct of trade or commerce; rules; applicability of subsection (1)(hh)**

Broadly prohibits unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce. “Trade or commerce” means the conduct of a business providing goods, property, or service primarily for personal, family, or household purposes and includes the advertising, solicitation, offering for sale or rent, sale, lease, or distribution of a service or property, tangible or intangible, real, personal, or mixed, or any other article, or a business opportunity.

5) GENERAL WHISTLEBLOWER PROTECTIONS

*Please note the general whistleblower protections included below are in addition to the healthcare-specific whistleblower protection provisions identified above, including MCL § 400.610c (Medicaid False Claim Act) and MCL §500.4509(1) (Insurance Code – Insurance Fraud).*

**Whistleblowers’ Protection Act, Michigan Compiled Laws § 15.361, et seq.**

**15.362 Discharging, threatening, or otherwise discriminating against employee reporting violation of law, regulation, or rule prohibited; exceptions**

It is unlawful for an employer to take adverse action against an employee because that employee reports a suspected violation of law to a public body, unless the employee knows that the report is false. It also is unlawful for an employer to take adverse action against an employee because that employee is requested by a public body to participate in an investigation, hearing, inquiry, or court action. A person who alleges a violation of this act may bring a civil action for injunctive relief and actual damages within 90 days after the occurrence of the alleged violation of the act. If a court finds that an employer violated this act, it may order reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, and actual damages. A person who violates this act is also subject to a $500 fine.

**Relevant Decisions**

*West v. General Motors Corporation, 469 Mich. 177; 665 N.W.2D 468 (2003)*

To establish a prima facie case under the Whistleblowers’ Protection Act, a plaintiff must show that: (1) the plaintiff was engaged in protected activity as defined by the act; (2) the plaintiff was discharged or discriminated against; and (3) a causal connection exists between the protected activity and the discharge or adverse employment action.
The Whistleblowers’ Protection Act is to be construed liberally in favor of the employee. Therefore, the act protects employees who, while acting in the scope of employment, report third-party violations or suspected violations of law that directly affect their employer’s business.

The Whistleblowers’ Protection Act does not require that an employee report the employer’s suspected legal violations to an outside agency or higher authority. Rather, a report by the employee to the employer may trigger statutory whistleblower protection if the employer is a “public body” within the meaning of the statute. Also, whistleblower protection is available to all employees, even if it is within the employee’s job duties to report the violation.

An employee who has already reported a suspected violation of the law must establish a claim under the Whistleblowers’ Protection Act by a preponderance of the evidence. However, if the employee’s claim is based on an allegation that he or she was “about to report” a violation, the employee must show by clear and convincing evidence that he or she was on the verge of reporting the violation.

A plaintiff is not afforded protection under the Whistleblowers’ Protection Act unless he or she reasonably believed that his or her employer violated the law.

Although it is the general rule that either party to an employment contract for an indefinite term may terminate the relationship at any time for any reason, an implied action for wrongful discharge may exist where the reason for the discharge was the failure or refusal of the employee to violate a law in the course of employment or the employee’s exercise of a statutory right.

6) HELPFUL LINKS
• Michigan Compiled Laws (MCL) – Chapter Index
• Michigan Department of Licensing and Regulatory Affairs (LARA) – Administrative Rules
• Michigan Attorney General
• Michigan Attorney General – Health Care Fraud Division
• Michigan Department of Community Health
• Michigan Department of Community Health – Board of Medicine
• Michigan Department of Community Health – Information for Medicaid Providers
• Michigan Legislature (access to Michigan laws, bills, etc.)