1) ANTI-KICKBACK AND PROHIBITIONS ON SELF-REFERRAL

Kentucky has adopted an anti-kickback proscription similar to the federal Anti-Kickback Statute. The Kentucky anti-kickback law incorporates elements of the federal prohibition on self-referral. As provided below, Kentucky incorporates the federal provisions by reference.

Kentucky law provides: (1) except as otherwise provided in Ky. Rev. Stat. §§ 205.510 to 205.630 (which authorizes recovery from third parties for services rendered, also known as Kentucky’s “Medical Assistance Act”), that no provider shall knowingly solicit, receive, or offer any remuneration (including any kickback, bribe, or rebate) for furnishing medical assistance benefits or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made pursuant to Title XIX of the Social Security Act (Medicaid); (2) no provider shall knowingly make, offer, or receive a payment, a rebate of a fee, or a charge for referring a recipient to another provider for furnishing of benefits.

Exceptions to this prohibition include any conduct or activity that does not violate or that is protected under the provisions of either the Stark Law, 42 U.S.C. § 1395nn, or the federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), as amended, or federal regulations promulgated under those statutes. Such conduct or activity shall not be deemed to violate the provisions of the Kentucky Control of Fraud and Abuse laws, Ky. Rev. Stat. §§ 205.8451 to 205.8483, and shall be accorded the same protections allowed under federal law and regulation.
Any person who violates subsection (1) or (2) of this statute shall be guilty of a Class A misdemeanor unless the combination or aggregation of offenses is valued at $300 or more, in which case it shall be a Class D felony. In addition to any other penalty authorized by law, any person who violates the provisions of subsection 2 above shall not be entitled to bill or collect from the recipient or any third-party payer and shall repay any payments due the Commonwealth for services provided that were related to the referral. 

**Ky. Rev. Stat. § 205.8461**

**Ky. Rev. Stat. § 216.2950—Self Referral Restrictions**

Kentucky law provides: (1) except as otherwise provided in Kentucky’s “Medical Assistance Act,” that no provider shall knowingly solicit, receive, or offer any remuneration (including any kickback, bribe, or rebate) for furnishing medical assistance benefits or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be received from Medicare or Medicaid; (2) no provider shall knowingly make, offer, or receive a payment, a rebate of a fee, or a charge for referring a patient to another provider for furnishing of Medicare or Medicaid benefits.

Exceptions to this prohibition include any conduct or activity that does not violate or that is protected under the provisions of 42 U.S.C. § 1395nn, or 42 U.S.C. § 1320a-7b(b), as amended, or federal regulations promulgated under those statutes. Such conduct or activity shall not be deemed to violate the provisions of this section and shall be accorded the same protections allowed under federal law and regulation. Any conduct or activity by any provider that violates the provisions of 42 U.S.C. § 1395nn or 42 U.S.C. § 1320a-7b(b), as amended, where Medicare and Medicaid payment is involved, shall be deemed to violate the provisions of this section.

Any person who violates section (1) or (2) of this statute shall be guilty of a Class A misdemeanor unless the combination or aggregation of offenses is valued at $300 or more, in which case it shall be a Class D felony. In addition to any other penalty authorized by law, any person who violates the provisions of subsection (2) above shall not be entitled to bill or collect from the patient or any third-party payer and shall repay any payments due the Commonwealth for services provided that were related to the referral. 

**Ky. Rev. Stat. § 216.2950**

2) **PROHIBITIONS ON FEE SPLITTING**

Kentucky allows the sharing of fees in certain cases, so long as the practice is disclosed. Kentucky’s fee-splitting prohibition permits two licensed physicians to divide fees, so long as the patient is aware of the division and the division is proportionate to the services rendered.

**Physicians—Ky. Rev. Stat. § 311.595**

A physician or osteopath is subject to denial, probation, suspension, limitation or
restriction, or revocation of license or permit to practice in Kentucky upon proof that the physician or osteopath has given or received, directly or indirectly, from any person, firm, or corporation, any fee, commission, rebate, or other form of compensation for sending, referring, or otherwise inducing a person to communicate with a person licensed under Ky. Rev. Stat. §§ 311.530 to 311.620 in his professional capacity or for any professional services not actually and personally rendered.

The statute provides exceptions for persons holding valid and current licenses for practicing medicine in partnership or association or in a professional service corporation, or from pooling, sharing, dividing, or apportioning the fees and moneys received by them or by the partnership, corporation, or association in accordance with the partnership agreement or the policies of the board of directors of the corporation or association. Also, two or more persons holding valid and current licenses under Ky. Rev. Stat. §§ 311.530 to 311.620 may receive adequate compensation for concurrently rendering professional care to a single patient and divide a fee, if the patient has full knowledge of this division and if the division is made in proportion to the services performed and responsibility assumed by each. Ky. Rev. Stat. § 311.595(19).

In addition, licensing regulations for a number of health care-related professions provide that fee splitting and/or paying or receiving payments for referrals are possible grounds for denial, probation, suspension, or revocation of license or permit to practice in Kentucky under their respective codes of ethical conduct, including:

**Alcohol and Drug Counselors**—201 KAR 35:030
An alcohol and drug counselor shall not offer or accept compensation for a referral of a client.

**Chiropractors**—201 KAR 21:015
Division of any professional fee shall not be made, except upon the basis of actual services rendered and a chiropractor shall not pay or receive compensation for the referral or unlawful solicitation of patients.

**Licensed Diabetes Educators**—201 KAR 45:140
A diabetes educator shall not offer or accept payment for referrals.

**Licensed Professional Counselors**—201 KAR 36:040
A professional counselor shall not offer or accept payment for a referral.

**Marriage and Family Therapists**—201 KAR 32:050
A marriage and family therapist or marriage and family therapist associate shall not offer or accept payment for referrals.

**Massage Therapists**—201 KAR 42:060
A massage therapist shall refuse to accept gifts or benefits, which are intended to
influence a referral or treatment that are purely for personal gain and not for the
good of the client. A massage therapist shall, unless prohibited by law, be allowed to
pool or apportion fees received with other members of a business entity in
accordance with any business agreement.

**Occupational Therapists**—201 KAR 28:140
An occupational therapist or occupational therapist assistant shall not directly or
indirectly request, receive, or participate in the dividing, transferring, assigning,
rebating, or refunding of an unearned fee or profit by means of a credit or other
valuable consideration as an unearned commission, discount, or gratuity in
connection with the furnishing of occupational therapy services.

**Optometrists**—201 KAR 5:040
An optometrist shall not give or receive a fee, salary, commission, or other
remuneration or thing of value, in any manner, or under any pretext, to or from any
person, firm, or corporation: (1) in return for the referral of optometric patients; or (2)
in order to secure optometric patients.

**Physical Therapists and Physical Therapist Assistants**—201 KAR 22:053
A physical therapist shall disclose in writing to each patient any financial interest,
compensation, or other value to be received by the referral source: (1) for services
provided by the physical therapist; (2) for equipment rental or purchase; or (3) for
other services the physical therapist may recommend for the patient. Unless
prohibited by law, all members of a business entity shall be allowed to pool or
apportion fees received in accordance with any business agreement.

**Social Workers**—201 KAR 23:080
A social worker shall not offer or accept payment or other compensation for referral
of a client.

**Specialists in Hearing Instruments**—201 KAR 7:090
A specialist in hearing instruments shall not participate with other health
professionals or any other person in agreements to divide fees or to cause financial
or other exploitation when rendering professional services.

**Speech-Language Pathologist and Audiologists**—201 KAR 17:041
A licensee shall not offer or accept payment for a referral. Finally, the licensure
statute for medical laboratories provides the following with regard to fee splitting.

**Medical Laboratories**—Ky. Rev. Stat. § 333.240
Provides that no person shall either personally or through an agent, solicit referral of
specimens to his or any other medical laboratory or contract to perform medical
laboratory examinations of specimens in a manner that offers or implies an offer or
rebates to a person or persons submitting specimens, other fee-splitting
inducements, participation in any fee-splitting arrangements, or other unearned
remuneration.
3) FALSE CLAIMS/FRAUD & ABUSE

According to the Office of Inspector General of the U.S. Department of Health & Human Services (the “OIG”), Kentucky does not have a state false claims law that meets the requirements for an incentive under section 1909 of the Social Security Act. However, similar to the federal False Claims Act, the Kentucky Control of Fraud and Abuse laws impose liability on persons or organizations that make or cause to be made false or fraudulent claims to the government for payment or who knowingly make, use, or cause to be made or used, a false record or statement to get a false or fraudulent claim paid by the government.

Any provider found to have knowingly violated the Kentucky Control of Fraud and Abuse laws shall be liable for: (1) restitution in the amount of the excess payments, plus interest; (2) a civil payment in an amount up to three times the amount of excess payments; (3) a civil payment of $500 for each false or fraudulent claim submitted for providing treatment, services, or goods; and (4) payment of legal fees and costs of investigation and enforcement of civil payments. The state will have a lien against the property of any provider who is found to have defrauded the Medicaid program, in the amount of the defrauded sum plus interest and penalties.

In addition, those found to have violated the Kentucky Control of Fraud and Abuse laws will be removed as a participating provider in the Medical Assistance Program for two months to six months for a first offense, for six months to one year for a second offense, and for one year to five years for a third offense. Further, any licensed professional found guilty of any criminal provision contained within Kentucky Control of Fraud and Abuse laws, is required, in addition to any other penalties, to forfeit his or her license for a minimum period of five years.

Any person who knows or has reasonable cause to believe that a violation of the Kentucky Control of Fraud and Abuse laws is being committed is required to report the violation to the Medicaid Fraud Control Unit or the Medicaid Fraud and Abuse hotline. The identity of the person making such a report will be kept confidential by the party receiving the report, and the good-faith reporter will not be subject to civil or criminal liability in any action based upon that report.

Employers are not permitted, without just cause, to discharge or in any manner retaliate against any employee who in good faith makes such a report, or who participates in any proceeding with regard to any such report or investigation. An employee injured by any act in violation of the prohibition against employer retaliation may pursue a civil cause of action to enjoin further violations, and to recover the actual damages sustained, together with the costs of the lawsuit, including reasonable attorney’s fees.

Key Definitions
"False claim" means a claim for: (1) unfurnished medical care, services, or supplies;
or (2) Medical care, services, or supplies provided: (a) in excess of accepted standards of practice for the medical care or other type of service; (b) in excess of established limits that were communicated, in writing, to providers by the department; or (c) if there is documentation that the provider has knowledge of third-party coverage of the recipient, but the provider knowingly chooses not to bill the third-party payer. 907 KAR 1:671.1(20).

"Fraud" means an intentional deception or misrepresentation made by a recipient or a provider with the knowledge that the deception could result in some unauthorized benefit to the recipient or provider or to some other person. It includes any act that constitutes fraud under applicable federal or state law. Ky. Rev. Stat. § 205.8451(2).

“Provider” means an individual, company, corporation, association, facility, or institution which is providing or has been approved to provide medical services, goods, or assistance to recipients under the Medical Assistance Program. Ky. Rev. Stat. § 205.8451(7).

"Provider abuse" means, with reference to a healthcare provider, practices that are inconsistent with sound fiscal, business, or medical practices, and that result in unnecessary cost to the Medical Assistance Program established pursuant to the applicable chapter of the Kentucky Revised Statutes, or that result in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for healthcare. It also includes practices that result in unnecessary cost to the Medical Assistance Program. Ky. Rev. Stat. § 205.8451(8).

“Unacceptable Practice” means conduct by a provider that constitutes "fraud" or "provider abuse," as defined in Ky. Rev. Stat. § 205.8451(2) or (8), or willful misrepresentation, and includes the following practices: (1) knowingly submitting, or causing the submission of false claims, or inducing, or seeking to induce, a person to submit false claims; (2) knowingly making, or causing to be made, or inducing, or seeking to induce, a false, fictitious, or fraudulent statement or misrepresentation of material fact in claiming a Medicaid payment, or for use in determining the right to payment; (3) having knowledge of an event that affects the right of a provider to receive payment and concealing or failing to disclose the event or other material omission with the intention that a payment be made or the payment is made in a greater amount than otherwise owed; (4) conversion; (5) soliciting or accepting bribes or kickbacks; (6) failing to maintain or to make available, for purposes of audit or investigation, administrative and medical records necessary to fully disclose the medical necessity for the nature and extent of the medical care, services, and supplies furnished, or to comply with other requirements established in 907 KAR 1:673, Section 2; (7) knowingly submitting a claim or accepting payment for medical care, services, or supplies furnished by a provider who has been terminated or excluded from the program; (8) seeking or accepting additional payments, for example, gifts, money, donations, or other consideration, in addition to the amount paid or payable under the Medicaid Program for covered medical care, services, or supplies for which a claim is made; (9) charging or agreeing to charge or collect a
fee from a recipient for covered services which is in addition to amounts paid by the Medicaid Program, except for required co-payments or recipient liability, if any, required by the Medicaid Program; (10) engaging in conspiracy, complicity, or criminal syndication; (11) furnishing medical care, services, or supplies that fail to meet professionally recognized standards, or that are found to be noncompliant with licensure standards promulgated under Ky. Rev. Stat. Chapter 216B and failing to correct the deficiencies or violation as reported to the department by the Office of Inspector General, for health care or that are beyond the scope of the provider’s professional qualifications or licensure; (12) discriminating in the furnishing of medical care, services, or supplies as prohibited by 42 U.S.C. 2000d; (13) having payments made to or through a factor, either directly or by power of attorney, as prohibited by 42 CFR 447.10; (14) offering or providing a premium or inducement to a recipient in return for the recipient's patronage of the provider or other provider to receive medical care, services, or supplies under the Medicaid Program; (15) knowingly failing to meet disclosure requirements; (16) unbundling as defined under subsection (40) [sic] of this section; or (17) an act committed by a nonprovider on behalf of a provider that, if committed by a provider, would result in the termination of the provider's enrollment in the program. 907 KAR 1:671.1(40).

“Unbundling” means submitting fragmented or multiple bills that results in a higher total reimbursement for tests and services that were performed within a specified time period that are required to be billed under a single bill code pursuant to 42 U.S.C. 1396b, that mandates a provider utilize the uniform identification coding system Current Procedural Terminology (CPT) that establishes the specific range of services that are to be billed as one CPT code. 907 KAR 1:671.1(41).

**Ky. Rev. Stat. § 205.8453**—Responsibility for control of fraud and abuse
The Kentucky Cabinet for Health and Family Services and the Department for Medicaid Services are responsible for controlling recipient and provider fraud and abuse.

**Ky. Rev. Stat. § 205.8463**—Fraudulent acts—Penalties
(1) No person shall knowingly or wantonly devise a scheme or plan a scheme or artifice, or enter into an agreement, combination, or conspiracy to obtain or aid another in obtaining payments from any medical assistance program under this chapter by means of any fictitious, false, or fraudulent application, claim, report, or document submitted to the Cabinet for Health and Family Services, or intentionally engage in conduct that advances the scheme or artifice.
(2) No person shall intentionally, knowingly, or wantonly make, present, or cause to be made or presented to an employee or officer of the Cabinet for Health and Family Services any false, fictitious, or fraudulent statement, representation, or entry in any application, claim, report, or document used in determining rights to any benefit or payment.
(3) No person shall, with intent to defraud, knowingly 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 operations 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, home health agency, or other provider of services to the Medical Assistance Program.

(4) No person shall, in any matter within the jurisdiction of the Cabinet for Health and Family Services under this chapter, knowingly falsify, conceal, or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry.

(5) Any person who violates subsections (1) and (2) of this section shall be guilty of a Class A misdemeanor unless the sum total of benefits or payments claimed in any application, claim, report, or document, or in any combination or aggregation thereof, is valued at $300 or more in which case it shall be a Class D felony. Any person who violates the provisions of subsection (3) of this section shall be guilty of a Class C felony. Any person who violates the provisions of subsection (4) of this section shall be guilty of a Class D felony.

**Ky. Rev. Stat. § 205.8465—Mandatory reporting of violations—Confidentiality—Prohibition against employer discrimination or retaliation**

Any person who knows or has reasonable cause to believe that a violation of these statutes has been or is being committed by any person, corporation, or entity, shall report or cause to be reported certain information regarding the alleged violation to the state Medicaid Fraud Control Unit, or the Medicaid Fraud and Abuse hotline. The identity of any person making a report shall be considered confidential by the receiving party. Any person making a report under this section regarding the offenses of another shall not be liable in any civil or criminal action based on the report if it was made in good faith. No employer shall, without just cause, discharge, or in any manner discriminate or retaliate against any person who in good faith makes a report required or permitted by **Ky. Rev. Stat. §§ 205.8451 to 205.8483**, testifies, or is about to testify, in any proceeding with regard to any report or investigation. Any individual injured by any act in violation of the provisions of this subsection shall have a civil cause of action in Circuit Court to enjoin further violations, and to recover the actual damages sustained, together with the costs of the lawsuit, including a reasonable fee for the individual's attorney of record.

No employee of the state Medicaid Fraud Control Unit, the Office of the Attorney General, the Office of Inspector General, or the Cabinet for Health and Family Services shall notify the alleged offender of the identity of the person who in good faith makes a report required or permitted by **Ky. Rev. Stat. §§ 205.8451 to 205.8483** nor shall the employee notify the alleged offender that a report has been made alleging a violation of **Ky. Rev. Stat. §§ 205.8451 to 205.8483** until such time as civil or criminal proceedings have been initiated or a formal investigation has been initiated. Any information or report concerning an alleged offender shall be considered confidential in accordance with the Kentucky Open Records Law, **Ky. Rev. Stat. §§ 61.870 to 61.884**.
Kentucky  

**Ky. Rev. Stat. § 205.8467**—Liability of violators—Payment of penalties to Medicaid trust fund

Any provider who has been found by a preponderance of the evidence in an administrative process to have knowingly submitted or caused claims to be submitted for payment for furnishing treatment, services, or goods under a medical assistance program, which payment the provider was not entitled to receive, shall:

1. be liable for restitution of any payments received in violation of these statutory provisions and interest at the maximum legal rate on the date any payment was made, for the period from the date payment was made to the date of repayment to the Commonwealth;
2. be liable for a civil payment in an amount up to three times the amount of excess payments;
3. be liable for payment of a civil payment of $500 for each false or fraudulent claim submitted for providing treatment, services, or goods;
4. be liable for payment of legal fees and costs of investigation and enforcement of civil payments; and
5. be removed as a participating provider in the Medical Assistance Program for two months to six months for a first offense, for six months to one year for a second offense, and for one year to five years for a third offense.

**Ky. Rev. Stat. § 205.8469**—Enforcement proceedings by Attorney General

The Attorney General, on behalf of the Commonwealth, may commence proceedings to enforce Ky. Rev. Stat. §§ 205.8451 to 205.8483, and to prosecute for all other criminal offenses that involve or are directly related to the use of any Medical Assistance Program funds or services. In enforcing these statutory provisions, the Attorney General may subpoena witnesses or documents to the grand jury, District Court, or Circuit Court of the county or counties where venue lies, and subpoena witnesses or documents to the Office of the Attorney General to secure testimony for use in civil or criminal trials, investigations, or hearings affecting the Cabinet for Health and Family Services.

**Ky. Rev. Stat. § 205.8471**—Lien on property of provider or recipient defrauding Medicaid program

The Commonwealth shall have a lien against all property of any provider or recipient who is found to have defrauded the Medicaid program for an amount equal to the sum defrauded plus any interest and penalties levied under Ky. Rev. Stat. §§ 205.8451 to 205.8483. The lien shall attach to all property and rights to property owned by the provider or recipient and all property subsequently acquired after a finding of fraud by the Cabinet for Health and Family Services.

**Ky. Rev. Stat. § 205.8473**—Reliance on written governmental advice as defense

In a prosecution for any violation of the provisions of Ky. Rev. Stat. §§ 205.8451 to 205.8483, it shall be a defense if the person relied on the written advice of an employee or agent of the Cabinet for Health and Family Services, and the advice constitutes a defense under any of the provisions of Ky. Rev. Stat. § 501.070.

**Ky. Rev. Stat. § 205.8475**—Forfeiture of provider's license

Any professional, licensed or regulated by any agency of the Commonwealth of Kentucky, who upon final and unappealable decision by a court of competent
jurisdiction, is convicted or pleads guilty to a violation of any of the criminal provisions of Ky. Rev. Stat. §§ 205.8451 to 205.8483, shall, in addition to any other penalty provided by law, forfeit the license to practice his or her profession for a mandatory minimum period of five years. The license to practice a profession shall be reinstated only after compliance with all conditions for reinstatement contained in administrative regulations of the applicable licensure or regulatory board or agency. Pending such final and unappealable decision of a court of competent jurisdiction, the provider shall not be eligible to participate in the Kentucky Medical Assistance Program.

**Ky. Rev. Stat. § 205.8479—Report of license or certificate suspension, revocation, or limitation**

Any provider licensed or certified under the laws of the Commonwealth whose license or certificate to practice is suspended, revoked, limited, or otherwise restricted shall have that fact reported to the medical assistance program by the respective licensure or regulatory board or agency within five working days of the action.

**Ky. Rev. Stat. § 205.8483—Toll-free hotline for receiving reports of fraud and abuse**

The Office of the Inspector General in the Cabinet for Health and Family Services shall establish, maintain, and publicize a 24-hour, toll-free hotline for the purpose of receiving reports of alleged fraud and abuse by Medical Assistance Program recipients and participating providers.

The Office of the Inspector General in the Cabinet for Health and Family Services shall develop and implement procedures for screening alleged fraud and abuse of the Medical Assistance Program to ensure that appropriate written referrals are made to: (a) The state Medicaid Fraud Control Unit and to the Office of the Attorney General of credible allegations of fraud and abuse by providers participating in the Medical Assistance Program; and (b) Other agencies and licensure boards of all allegations received on the hotline that are relevant to their jurisdiction.

The Office of the Inspector General in the Cabinet for Health and Family Services shall provide, upon request, a Medicaid fraud and abuse report that shall include but not be limited to the following information from the prior fiscal year: (a) The number and type of reports received in the Office of the Inspector General in the Cabinet for Health and Family Services, from the Medicaid fraud and abuse hotline categorized by recipient and provider groups; and (b) The number and type of alleged Medicaid recipient fraud and abuse reports which were opened for investigation by the Office of Inspector General and their disposition.

The toll-free hotline number is (800) 372-2970.

**907 KAR 1:671—Medicaid Provider Participation**

This regulation establishes provisions relating to Medicaid provider participation,
recoupment of overpayments, identification and referral of unacceptable practices, withholding of payments during an investigation, the appeals process, and sanctions. It includes the requirement not to submit a “false claim,” or commit an “unacceptable practice” that constitutes “fraud” or “provider abuse.”

**Prohibited Activity**

Certain of the activities that are prohibited under 907 KAR 1:671 include:

1. Submitting a claim for medical care, services, or supplies that were not furnished (907 KAR 1:671.1(20)(a));
2. Submitting a claim for medical care, services, or supplies that are in excess of accepted standards of practice for the medical care or other type of service, i.e., not medically necessary (907 KAR 1:671.1(20)(b)) (also specifically included in definition of “provider abuse” in Ky. Rev. Stat. § 205.8451(8));
3. Submitting a claim for medical care, services, or supplies that are in excess of established limits communicated, in writing, to providers by the state Medicaid agency (907 KAR 1:671.1(20)(b));
4. Failing to bill a third-party payer when the provider knows there is third-party coverage for the recipient (907 KAR 1:671.1(20)(b));
5. Knowingly submitting, or causing the submission of false claims, or inducing, or seeking to induce, a person to submit false claims (907 KAR 1:671.1(40)(a));
6. Knowingly making, or causing to be made, or inducing, or seeking to induce, a false, fictitious, or fraudulent statement or misrepresentation of material fact in claiming a Medicaid payment, or for use in determining the right to payment (907 KAR 1:671.1(40)(b));
7. Soliciting or accepting kickbacks, bribes, or rebates in exchange for referring goods, facilities, services, or items that are reimbursed by government programs (Ky. Rev. Stat. § 205:8461 & 907 KAR 1:671.1(40)(e));
8. Failing to maintain or to make available, for purposes of audit or investigation, administrative and medical records necessary to fully disclose the medical necessity for the nature and extent of the medical care, services, and supplies furnished, or to comply with other requirements established in 907 KAR 1:673, Section 2 (907 KAR 1:671.1(40)(f));
9. Knowingly submitting a claim or accepting payment for medical care, services, or supplies furnished by a provider who has been terminated or excluded from the program (907 KAR 1:671.1(40)(g));
10. Seeking or accepting additional payments, for example, gifts, money, donations, or other consideration, in addition to the amount paid or payable under the Medicaid Program for covered medical care, services, or supplies for which a claim is made (907 KAR 1:671.1(40)(h));
11. Charging or agreeing to charge or collect a fee from a recipient for covered services that is in addition to amounts paid by the Medicaid Program, except for required copayments or recipient liability, if any, required by the Medicaid Program (907 KAR 1:671.1(40)(i));
12. Furnishing medical care, services, or supplies that do not meet professionally recognized standards for health care, e.g., substandard care (907 KAR
1:671.1(40)(k)) (also specifically included in definition of “provider abuse” in Ky. Rev. Stat. § 205.8451(8));

(13) Furnishing medical care, services, or supplies that are found to be noncompliant with licensure standards and failing to correct the deficiencies or violation as reported to the Office of Inspector General (907 KAR 1:671.1(40)(k));

(14) Furnishing medical care, services, or supplies that are beyond the scope of the provider’s professional qualifications or licensure (907 KAR 1:671.1(40)(k));

(15) “Unbundling,” which means to bill separately for each component of a group of procedures that are commonly used together and for which Medicare and/or Medicaid provide a special “bundled” reimbursement rate (907 KAR 1:671.1(40)(p) & (41));

(16) Knowingly failing to meet disclosure requirements (907 KAR 1:671.1(40)(o));

(17) Having payments made through a third party, either directly or by power of attorney, as prohibited by 42 CFR 447.10 regarding reassignments (907 KAR 1:671.1(40)(m)); and

(18) Offering or providing a premium or inducement to a Medicaid beneficiary in return for the beneficiary’s patronage of the provider or other provider to receive medical care, services, or supplies under the Medicaid Program (907 KAR 1:671.1(40)(n)).

907 KAR 1:671, Section 2—Methods for Recoupment of Overpayments

If a determination is made by the Kentucky Department for Medicaid Services (Department) that a provider was overpaid, a demand letter shall be sent to the provider. The provider shall within: (1) 60 calendar days from the date of the demand letter, pay the amount of overpayment in full; or (2) 60 calendar days from the date of the demand letter, or during the administrative appeal process, submit a written request for a payment plan. A payment plan may be approved by the Department, if a provider substantiates that payment in full would create an undue hardship.

If a provider fails to make a payment as specified in a payment plan or takes no action toward repayment, the Department shall recoup the amount due from future payments. If a provider disputes the amount of overpayment, a provider may initiate the administrative appeals process as provided for in this regulation, which if timely filed will stay the recoupment process until the appeal is final.

907 KAR 1:671, Section 3—Administrative Process for Identification and Referral of Unacceptable Practices

A preliminary investigation of alleged unacceptable practice shall be conducted by the Department or its agent, if: (1) a complaint is received by or referred from the Department, the Cabinet for Health and Family Services, or the Office of Attorney General; or (2) questionable or unacceptable practices are identified by the Department.

If the findings of a preliminary investigation indicate that an incident of fraud or abuse involving substantial allegations or other indication of fraud may have occurred under the Medicaid Program, a referral for a full investigation shall be
made to the Medicaid Fraud and Abuse Control Unit or the Office of the U.S. Attorney, if appropriate.

907 KAR 1:671, Section 4—Withholding of Payments During an Investigation of Fraud or Willful Misrepresentation
The Department may withhold Medicaid payments pursuant to 42 CFR 455.23 upon receipt of reliable evidence that the circumstances giving rise to the need for a withholding of payments involve fraud or willful misrepresentation under the Medicaid Program. The Department may withhold payments without first notifying a provider of its intention to do so.

907 KAR 1:671, Section 5—Sanctions
The sanction process may include a termination of a provider from the Medicaid Program. If a provider is terminated, the termination notice shall specify the period of exclusion. The sanction process shall include liability for civil payments, restitution of overpayments, and agency costs as specified in Ky. Rev. Stat. § 205.8467. The Department shall use a lien, as specified in Ky. Rev. Stat. § 205.8471, to assure payment of restitution and monetary penalties imposed under the administrative determination of fraud. A provider excluded from the Medicare Program shall be excluded from the Medicaid Program for the same period of time.

907 KAR 1:671, Section 7—Provider Reinstatement or Reenrollment Following Termination
A provider whose participation has been terminated under the provisions of this administrative regulation may request reinstatement. The Department may grant reinstatement from an exclusion based on a program violation, if the provider shall have: (1) demonstrated to the Department that the violation that led to the sanction is corrected; or (2) otherwise established to the Department's satisfaction that further violations will not be repeated.

907 KAR 1:671, Sections 8-9—Provider Dispute Resolution Process
If a provider disagrees with a Medicaid determination with regard to an appealable issue, the provider may request a dispute resolution meeting and if the matter is still not resolved an administrative hearing shall be conducted by a hearing officer who is knowledgeable of Medicaid policy.

907 KAR 1:672—Medicaid Provider Enrollment, Disclosure, Documentation
All providers or entities who wish to participate in the Medicaid Program shall be enrolled as participating providers prior to being eligible to receive reimbursement in accordance with federal and state laws. Upon enrollment a provider must provide true, accurate, and complete information in relation to any claim for payment and not engage in any activity that would constitute unacceptable practice. A provider shall comply with the disclosure of information requirements contained in 42 C.F.R. 455.100–455.106 and Ky. Rev. Stat. § 205.8477. A knowing failure to do so constitutes “unacceptable practice” per 907 KAR 1:671.1(40)(o).
**907 KAR 1:673—Claims Processing**

By submitting a claim, a provider is liable for the accuracy of all claims submitted by the provider, its representatives or employees, or any individual or entity working on the provider’s behalf, including responsibility to review statements of payment or remittance to assure that paid claims shown are true and correct, and has the responsibility for informing the Department of any discrepancy. Any submittal of a false claim, statement, or document shall be considered an “unacceptable practice” and subject to all remedies available to the Department.

**4) GENERAL WHISTLEBLOWER PROTECTIONS**

Any person who reports suspected fraud to the state Medicaid Fraud Control Unit or the Medicaid Fraud and Abuse hotline shall not be liable in any civil or criminal action based on the report if it was made in good faith. An employer may not, without just cause, discharge or in any manner discriminate or retaliate against any person who in good faith makes such a report or who participates in any proceeding related to such report. Ky. Rev. Stat. § 205.8465

**Ky. Rev. Stat. § 61.102—Public Employees**

Ky. Rev. Stat. § 61.102 protects public employees against reprisal for disclosing violations of the law. In summary, it prohibits the Commonwealth of Kentucky (or any of its political subdivisions) from subjecting to reprisal, using or threatening to use any authority or influence tending to “discourage, restrain, depress, dissuade, deter, prevent, interfere with, coerce or discriminate” against any state employee who reports information relative to “an actual or suspected” violation of the law, or information relative to actual or suspected “waste, fraud, abuse of authority, or a substantial and specific danger to public health or safety.”

**Ky. Rev. Stat. § 216.541—Long-Term Care Ombudsman**

Ky. Rev. Stat. § 216.541 provides that “[r]etaliation and reprisals by a long-term care facility or other entity against any employee or resident for having filed a complaint or having provided information to the long-term care ombudsman shall be unlawful.”

**Ky. Rev. Stat. § 216B.165—Health Care Facility Quality of Care & Safety**

Ky. Rev. Stat. § 216B.165 generally provides that "any agent or employee of a health care facility or service" who knows or has reasonable cause to believe that patient quality of care or safety or the healthcare facility/service's safety is in jeopardy shall report the problem to the health care facility/service and may report the matter to the appropriate governmental agency. The statute goes on to prohibit the respective health care facility or service from subjecting the reporting agent or employee to reprisal, using or threatening to use any authority or influence tending to "discourage, restrain, suppress, dissuade, deter, prevent, interfere with, coerce or discriminate" against the agent or employee who "discloses, divulges, or otherwise brings to the attention" of the facility/service the circumstances or facts of the matter.
5) DISCLOSURE OF FINANCIAL INTEREST

**Ky. Rev. Stat. § 205.8477**—Ownership Reporting Requirements for health Facilities and Health Services

Each Medicaid provider, other than an individual practitioner or group of practitioners, fiscal agent that processes or pays vendor claims on behalf of the Medicaid agency, and managed care entity shall file a disclosure with the Cabinet for Health and Family Services in accordance with 42 C.F.R. § 455.104.

Each owner of or direct financial investor in any health facility or health service that dispenses or supplies drugs, medicines, medical devices, or durable medical equipment to a patient shall annually file with the Cabinet for Health and Family Services the names and addresses of any immediate family member who is authorized under state law to prescribe drugs or medicines or medical devices or equipment.

Each provider shall, as a condition of participation in the Medical Assistance Program, file a disclosure with the Cabinet for Health and Family Services in accordance with 42 C.F.R. § 455.105 relating to business transactions and in accordance with 42 C.F.R. § 455.106 relating to information on persons convicted of crimes.

**Ky. Rev. Stat. § 342.020**—Medical treatment at expense of employer; selection of physician and hospital; payment; managed health care system; artificial members and braces; waiver of privilege; disclosure of interest in referrals

When a provider of medical services or treatment, required by this chapter, makes referrals for medical services or treatment by this chapter, to a provider or entity in which the provider making the referral has an investment interest, the referring provider shall disclose that investment interest to the employee, the commissioner, and the employer's insurer or the party responsible for paying for the medical services or treatment, within thirty (30) days from the date the referral was made.

**201 KAR 22:053**—Code of Ethical Standards (Physical Therapists)

Physical therapists and physical therapist assistants shall disclose in writing to each patient any financial interest or compensation or other value to be received by the referral source: (1) for services provided by the physical therapist; (2) for equipment rental or purchase; and (3) for other services the physical therapist might recommend for the patient.

**Kentucky Board of Medical Licensure Opinion, December 11, 1987**

The Board adopts the position of the Current Opinions of the Council on Ethical and Judicial Affairs of the American Medical Association that physician ownership interest in a commercial venture with the potential for abuse is not in itself unethical.

Physicians are free to enter into lawful contractual relationships, including the acquisition of ownership interests in health facilities or equipment or
pharmaceuticals. However, the potential conflict of interest must be addressed by the following:

(1) The physician has an affirmative ethical obligation to disclose to the patient or referring colleagues his or her ownership interest in the facility or therapy prior to utilization;
(2) The physician may not exploit the patient in any way, as by inappropriate or unnecessary utilization;
(3) The physician’s activities must be in strict conformance with the law;
(4) The patient should have free choice either to use the physician’s proprietary facility or therapy or to seek the needed medical services elsewhere; and
(5) When a physician’s commercial interest conflicts so greatly with the patient’s interest as to be incompatible, the physician should make alternative arrangements for the care of the patient.

6) UNFAIR BUSINESS PRACTICES

Kentucky’s Consumer Protection Act contains prohibitions that are analogues to the Federal Trade Commission Act. Ky. Rev. Stat. § 367.170(1) provides that "[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." The term "unfair" is defined in the statute to mean "unconscionable." See Ky. Rev. Stat. § 367.170(2). Ky. Rev. Stat. Chapter 367 specifically identifies certain practices as "unfair, false, misleading or deceptive" trade practices. For example, Ky. Rev. Stat. § 367.826 provides that "[n]o unlicensed health care practitioner shall utilize an academic title, or represent in any other manner that he or she possesses an academic degree, unless the practitioner actually possesses the degree, and the degree is accredited." Ky. Rev. Stat. § 367.826.

*Ky. Attorney General Opinion 82-430 (Aug. 9, 1982)*

Dentists who advertise in Kentucky to perform dental acts outside Kentucky must conform "with the licensing laws of the state within which" they are offering to perform the dental acts and such advertising is subject to the Kentucky Consumer Protection Act. *Note: Opinions prior to 1992 must be requested from the KY Attorney General’s Office in writing.*

*Simmons v. Stephenson, 84 S.W.3d 926 (Ky. Ct. App. 2002)*

Cataract patient’s claim that doctor engaged in misleading and deceptive acts, in violation of Ky. Rev. Stat. § 367.170(1), when doctor advised patient to return for a follow-up visit in six months rather than advising him of the immediate need for surgery were not actionable under the Kentucky Consumer Protection Act. In the court’s opinion, eye surgery does not constitute a "trade" or "commerce" within the meaning of the statute. The court concluded that "the allegations in the complaint did not relate to the entrepreneurial, commercial, or business aspect of [the doctor’s] practice of medicine." Furthermore, much like the federal Sherman Act, the Kentucky
Consumer Protection Act prohibits concerted action in restraint of trade, as well as monopolization. See generally Ky. Rev. Stat. § 367.175. The Act specifically provides that "[e]very contract, combination in the form of trust and otherwise, or conspiracy, in restraint of trade or commerce in this Commonwealth shall be unlawful." Ky. Rev. Stat. § 367.175(1). Additionally, "[i]t shall be unlawful for any person or persons to monopolize, or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of the trade or commerce in this Commonwealth." Ky. Rev. Stat. § 367.175(2).

*Brandon v. Combs, 666 S.W.2d 755 (Ky. Ct. App. 1983).* Exclusive contract with radiologist where radiologist was to "direct the operation of the radiology department so as to meet the needs of the patient to the satisfaction of the medical staff and the hospital" and was to perform "all radiological services on behalf of" the hospital was lawful and reasonable and the denial of the use of the facilities to another radiologist was not a violation of the second radiologist's constitutional rights.

7) HELPFUL LINKS

- Administrative Offices of the Courts
- Cabinet for Health and Family Services (links to certificate of need, Medicaid, Office of Inspector General, etc.)
- Office of Attorney General
- Kentucky Board of Medical Licensure
- Kentucky Secretary of State
- Kentucky State Data Center
- Kentucky State Agency Listing
- Kentucky Board of Nursing
- Permits, Licenses, and Renewals
- Kentucky Hospital Association
- Kentucky Legislation/Regulations
- Kentucky Revised Statutes
- Kentucky Department of Insurance
- Kentucky Medical Association
- American Academy of Pediatrics - Kentucky Chapter
- American College of Emergency Physicians, Kentucky Chapter
- Kentucky Academy of Eye Physicians and Surgeons
- Kentucky Academy of Family Physicians
- Kentucky Academy of Physician Assistants
- Kentucky Association for Marriage and Family Therapy
- Kentucky EMS Connection
- Kentucky Association of Health Care Facilities
- Leading Age Kentucky (formerly, Kentucky Association of Homes and Services for the Aging)
- Kentucky Association of Hospice and Palliative Care
- Kentucky Association of Nurse Anesthetists
- Kentucky Board of Emergency Medical Services
- Kentucky Dental Association
- Kentucky Department for Medicaid Services
- Kentucky Department for Public Health
- Kentucky Department for Behavioral Health, Developmental and Intellectual Disabilities
- Licensed Professional Counselors Board
- Kentucky Home Care Association
- Kentucky Pharmacists Association
- Kentucky Podiatric Medical Association
- Kentucky Psychiatric Medical Association