1) ANTI-KICKBACK & FEE SPLITTING

Idaho Code § 41-348 – Insurance, Prohibited Acts of Service Providers

It is unlawful for a person: (1) knowing that the payment is for the referral of a claimant to a service provider, either to accept payment from a service provider or, being a service provider, to pay another; or (2) to provide or claim or represent to have provided services to a claimant, knowing the claimant was referred in violation of subsection (1). It is also unlawful for a service provider to engage in a regular practice of waiving, rebating, giving, paying, or offering to waive, rebate, give or pay all or part of a claimant’s deductible or claim for casualty, disability insurance, worker’s compensation insurance, health insurance or property insurance. “Services” means health care services ... and preparing, processing, presenting or negotiating an insurance claim against an insurance company. “Health care services” means a service provided to a claimant for treatment of physical or mental illness or injury arising in whole or substantial part from trauma. “Service provider” means a person who directly or indirectly provides, advertises, or otherwise claims to provide services. Any person or service provider violating the provisions of this section shall be subject to the monetary civil penalties provided in Idaho Code § 41-327, which provides for monetary civil penalty of up to $5,000 imposed by the Department of Insurance.

Idaho’s insurance-based anti-kickback law is not limited to items or services provided under government health programs. The law applies to services performed to “claimants.” “Claimants” is not defined in the statute, but given that the statute is located within Idaho’s insurance code (Title 41), “claimants” arguably means patients that submit claims to their health insurer; however, there do not appear to be any
authoritative statements clarifying the term, and at least one Department of Insurance official has informally opined that “claimants” applies to patients who participate in government programs as well as private insurers.

**Idaho Code § 54-1814 – Physicians and Surgeons, Grounds for Medical Discipline**

Every person licensed to practice medicine, licensed to practice as a physician assistant or registered as an extern, intern or resident in Idaho is subject to discipline for the following acts, among others: (1) division of fees or gifts or agreement to split or divide fees or gifts received for professional services with any person, institution or corporation in exchange for referral; or (2) giving or receiving or aiding or abetting the giving or receiving of rebates, either directly or indirectly. Disciplinary actions may include license suspension, revocation, fines, and other sanctions. Violations also subject providers to injunctions under Idaho Code § 54-1815.

**Idaho Code § 54-2219 – Physical Therapists, Grounds for Disciplinary Action**

Physical therapists may be disciplined for directly or indirectly requesting, receiving or participating in the dividing, transferring or assigning, of any referral fee from any health care professional licensed or regulated by the state of Idaho, or any other third party, or profiting by means of a credit or other valuable consideration such as an unearned commission, discount or gratuity in connection with the furnishing of physical therapy services. The law does not prohibit members, owners, shareholders or partners of any regularly and properly organized business entity recognized by the laws of the state of Idaho and comprised of physical therapists from dividing fees received for professional services amongst themselves. Disciplinary actions may include license suspension, revocation, fines and other sanctions under Idaho Code § 54-2221.

**Idaho Code § 54-609 – Podiatrists, Unprofessional or Dishonorable Conduct Justifying Suspension or Revocation of License Defined**

Unprofessional or dishonorable conduct justifying suspension or revocation of a license to practice podiatry includes the following: (1) to offer, give or promise, either directly or indirectly, any gift in return for the procurement of a patient or patients for podiatric treatment; (2) to request, list, accept or receive any rebates or commission for prescribing or recommending any footwear, drug, medicine, or any other article, to patients; (3) to employ a solicitor or solicitors to obtain business; or (4) to violate any rule promulgated by the Board of Podiatry which prescribes the standards for the ethical practice of podiatry in Idaho, including those described below.

**Idaho Administrative Code (IDAPA) 24.11.01.004, 24.11.01.500 – Board of Podiatry, Standards of The Ethical Practice of Podiatry**

Pursuant to IDAPA 21.11.01.004, the Rules of the Idaho Board of Podiatry incorporate by reference the American Podiatric Medical Association’s (APMA) Code of Ethics. IDAPA 24.11.01.500 provides that the standards for the ethical practice of podiatry in Idaho shall be the APMA Code of Ethics. The Idaho Board of Podiatry’s
website also confirms that “[t]he Board has adopted the APMA Code of Ethics as published by the [APMA], effective March 2013.”

The APMA Code of Ethics includes the following standards related to anti-kickback and fee splitting: (1) the podiatrist shall not offer gifts as an inducement to secure patient patronage (Business Ethics 1.22 – Direct Solicitation of Referrals); and (2) the podiatrist neither accepts nor offers commissions in any form or manner on fees for professional services, referrals, consultations, pathology services, radiology services, prescriptions, or other services or article supplied to patients. Division of professional fees or acceptance of rebates from fees paid by patients to radiological, pathological, laboratory, shoe stores, or other establishments is inappropriate (Business Ethics 2.11 – Fee Splitting).

The APMA Code of Ethics includes interpretive guidelines “provided to further elaborate upon the Code of Ethics.” The interpretive guidelines related to anti-kickback and fee splitting standards include the following: (1) no compensation shall be claimed for the referral of patients for care and/or evaluation (Medical Ethics 1.3); (2) the doctrine of informed consent is usually defined as a duty to warn a patient of economic interests that have the potential to influence judgement (Medical Ethics 2.0); (3) remunerations (e.g., kickbacks, inducements and self-referrals) for referrals are inappropriate and illegal. Such remunerations include knowingly and willfully giving or receiving anything of value to induce referrals (Business Ethics 2.0); (4) fee splitting is defined as sharing of fees for the purpose of referrals where one entity provides no service for its portion of the fee; such sharing of fees is considered unethical and potentially illegal (Business Ethics 2.11); and (5) the podiatrist should be aware of the following risk areas: (a) financial arrangements with entities that may involve referrals; (b) joint ventures with entities supplying goods or services to providers or patients; (c) consulting contracts or medical directorships; (d) office or equipment leases with entities that could involve referrals; and (e) soliciting, accepting, or offering any gift or gratuity of more than nominal value to or from an entity or person who may benefit from any referral in a federal program (Business Ethics 2.21).

**Idaho Code § 54-1510 – Optometrists, Grounds for Revocation of License**

Optometrists may be disciplined for, among other things: (1) employment or use of what are known as “cappers” or “steerers”; (2) consistently accepting referrals that violate the laws of the state of Idaho; or (3) willfully attempting to violate, directly or indirectly, conspiring to violate, or assisting or participating in or abetting the violation of any of the provisions of the optometry licensing statute or the rules or code of ethics made, prescribed or promulgated by the Idaho Board of Optometry, including those described below. Per Idaho Code § 54-1512, penalties may include, but are not limited to, the suspension, revocation, restriction or denial of the optometrist’s license, and administrative fines not to exceed $2000 plus costs of prosecution of reasonable attorney fees.
IDAPA 24.10.01.325.04 – Board of Optometry, Code of Ethics, Unprofessional Conduct
In conducting his practice, an optometrist must not use either “cappers” or “steerers”, or accept a split or divided fee for the purpose of obtaining patients, or use solicitors or agents for the purpose of securing patients or conducting eye examinations or furnishing optometric services.

Idaho Code § 54-1525 – Optometrists, Referrals by Optical Firms Prohibited
It is unlawful for any person engaged in the business of manufacturing, selling or dispensing any ophthalmic materials, in any manner to influence or attempt to influence any patron in the choice of an optometrist or physician for the purpose of examining, treating, dispensing or prescribing any ophthalmic materials for such patron, and it shall be unlawful for any such person in any manner to suggest or imply to any such patron that such patron consult with or be examined or treated by or procure a prescription for ophthalmic materials from any specific optometrist or physician, or one or more of several specific optometrists or physicians; provided, that any such person may show or supply to any such patron a typed or printed list containing the names and addresses of all physicians in the community covered by such list who specialize in whole or in part in the care of the eyes and containing also the names and addresses of all optometrists in such community; provided, however, that such list shall not be prepared or marked so as to draw unnecessary attention to one or more of the names thereon; and provided, further, that such list shall segregate and designate separately those practitioners licensed in this state to practice medicine and surgery and those licensed therein to practice optometry.

“Ophthalmic materials” include spectacles, eyeglasses, lenses, prisms, contact lenses, frames and mountings, and any other optical appliances or devices for visual correction. Although no express penalty is identified in the statute, the violation of this statute would presumably also violate Idaho Code § 54-1510, discussed above, thereby subjecting the optometrist to adverse licensure action and administrative penalties under Idaho Code § 54-1512.

Idaho Code § 54-924 – Grounds of Refusal, Revocation, or Suspension of Dentists
Dentists may be subject to discipline for, among other things: (1) engaging in unprofessional conduct, as defined by the Idaho Board of Dentistry rules, or (2) violating any other provisions of law or rules adopted by the board, including those discussed below. Penalties may include adverse licensure action, administrative penalties not to exceed $10,000, and any other action the board may deem proper.

IDAPA 19.01.01.040 (Rule 40) – Board of Dentistry, Unprofessional Conduct
Unprofessional conduct by a dentist includes improperly dividing fees. Specifically, a dentist shall not divide a fee for dental services with another party, who is not a partner or associate with him or her in the practice of dentistry, unless: (1) the patient consents to employment of the other party after a full disclosure that a
division of fees will be made; and (2) the division is made in proportion to the services performed and responsibility assumed by each dentist or party.

Additionally, the Idaho Board of Dentistry’s rules incorporate by reference the “American Dental Association, Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code), January 2009.” Under the most current publicly available version of the ADA’s Code of Ethics (2016), Section 4.E provides that dentists shall not accept or tender “rebates” or “split fees.” Advisory Opinion 4.E.1 (“Split Fees in Advertising and Marketing Services”) provides, in full:

The prohibition against a dentist’s accepting or tendering rebates or split fees applies to business dealings between dentists and any third party, not just other dentists. Thus, a dentist who pays for advertising or marketing services by sharing a specified portion of the professional fees collected from prospective or actual patients with the vendor providing the advertising or marketing services is engaged in fee splitting. The prohibition against fee splitting is also applicable to the marketing of dental treatments or procedures via “social coupons” if the business arrangement between the dentist and the concern providing the marketing services for that treatment or those procedures allows the issuing company to collect the fee from the prospective patient, retain a defined percentage or portion of the revenue collected as payment for the coupon marketing service provided to the dentist and remit to the dentist the remainder of the amount collected. Dentists should also be aware that the laws or regulations in their jurisdictions may contain provisions that impact the division of revenue collected from prospective patients between a dentist and a third party to pay for advertising or marketing services.

**Idaho Code § 54-3320 – Denturists, Prohibited Activities**

No person licensed as a denturist shall directly or indirectly: (1) make any payment or gift to a person who has referred a patient; (2) receive or accept any rebate, payment or gift from any person to whom a patient is referred; or (3) engage in any form of fee splitting or other form of sharing of remuneration, with respect to referrals. Violations constitute a misdemeanor under Idaho Code § 54-3319. Violations also subject denturists to license suspension and revocation under Idaho Code § 54-3315, injunctions under Idaho Code § 54-33223, and other disciplinary actions.

**Idaho Code § 54-1413 – Nurses, Disciplinary Action**

The Idaho Nursing Practice Act prohibits violations of the Act or rules and standards of conduct and practice as may be adopted by the Idaho Board of Nursing, including the those discussed below. Penalties include the denial, revocation, suspension or restriction of a license to practice nursing, or other disciplinary action as the board deems proper.
**IDAPA 23.01.01.101.05(g) – Board of Nurses, Professional Responsibility, Exploit or Receive Fees**
Idaho Board of Nursing rules prohibit nurses from exploiting the patient or the patient’s family for personal or financial gain, or offering, giving, soliciting, or receiving any fee or other consideration for the referral of a patient or client.

**Idaho Code § 54-2309 – Board of Psychologist Examiners, Nonissuance and Revocation of License**
The Idaho Board of Psychologist Examiners may take adverse action against a licensee’s license or impose other discipline for, among other things, violating provisions of the licensing act or any of the rules adopted by the board, including those discussed below.

Under IDAPA 24.12.01.004, the Rules of the Idaho State Board of Psychologist Examiners incorporates by reference the “Ethical Principles of Psychologists and Code of Conduct” published by the American Psychological Association (APA) dated June 1, 2003, including the 2010 amendments effective June 1, 2010. The APA Code of Ethics requires that, “[w]hen psychologists, pay, receive payment from, or divide fees with another professional, other than in an employer-employee relationship, the payment to each is based on the services provided (clinical, consultative, administrative, or other) and is not based on the referral itself” (Ethical Standard 6.07 – Referrals and Fees).

**Idaho Code § 54-1726 – Pharmacists, Grounds for Discipline**
The Idaho Board of Pharmacy may take adverse action against a pharmacist, student pharmacist, or technician for, among other things: (1) unprofessional conduct as defined by the Idaho Board of Pharmacy rules; or (2) violating any of the provisions of the Idaho Pharmacy Act, or rules adopted pursuant to the Act, including those discussed below.

**IDAPA 27.01.01.500.11 – Board of Pharmacy, Unprofessional Conduct**
Unprofessional conduct and conduct contrary to the public interest of a pharmacist, student pharmacist, or technician include allowing a commission or rebate to be paid, or personally paying a commission or rebate, to a person writing, making, or otherwise ordering a prescription.

**Idaho Code § 54-4013 – Massage Therapists, Disciplinary Action**
The Idaho Board of Massage Therapists may take adverse action against a license or impose other discipline against a license holder for, among other things: (1) engaging in any act or practice in violation of any of the provisions of the licensing act or any of the rules adopted by the board, or aiding, abetting or assisting any other person in such a violation; or (2) violating the code of ethics or standards of practice as adopted by the board, including code and standards described below.
The applicable code of ethics for massage therapists state that licensees shall refuse any gifts or benefits that are intended to influence a referral, decision, treatment or the professional relationship between the licensee and the client.

**Relevant Case Law**


The Court noted that as a result of the federal anti-kickback statute (42 U.S.C. § 1320a-7b(b)) and similar state statutes, courts have voided contracts between health care professionals in which some form of consideration is given in exchange for referrals. An oral agreement whereby one provider agreed to continue referrals to another provider if that provider voluntarily left his current practice was not illegal as the agreement did not include the form of consideration strictly proscribed by Idaho Code § 54-1814. The oral agreement contemplated no division or agreement to divide fees or gifts in exchange for referrals, nor the giving or receiving of remuneration in exchange for referrals. In dissent, a justice noted that one provider accepted a referral agreement in exchange for his voluntary termination of his partnership, which was a benefit to the other provider in exchange for the continuing flow of referrals; thus, because referrals were “made to satisfy an oral agreement, they would have been made in violation of the Medicare/Medicaid Anti-Fraud and Abuse statute, 42 U.S.C. § 1320a-7(b(b).”

Accordingly, Idaho Code § 54-1814 has been interpreted to require an exchange of some benefit in exchange for referrals. Additionally, due to the Court’s references to the federal anti-kickback statute (42 U.S.C. § 1320a-7b(b)), Idaho providers should consider whether an agreement violates the federal anti-kickback statute and related guidance when evaluating an agreement under similar state laws. The ability of an arrangement to comply with the federal anti-kickback statute (42 U.S.C. § 1320a-7b(b)) may aid in any review of the agreement under Idaho Code 54-1814 and other similar state laws.

**Worlton v. Davis, 73 Idaho 217 (1952) (fee splitting)**

This case interprets Idaho’s Corporate Practice of Medicine Doctrine, which prohibits fee splitting between healthcare providers and non-professionals. In dicta, the Court noted that “[i]t is against public policy for a licensed professional man to engage in a partnership with a layman, by the terms of which the layman receives a portion of the fees for professional services.”

**2) PROHIBITIONS ON SELF-REFERRAL**

As of May 1, 2018, Idaho does not maintain any laws, administrative rules, Board of Medicine policies, or other authorities that independently prohibit or restrict physicians’ referrals to providers or entities with which the physician has a financial
relationship. For some types of providers other than physicians, Idaho’s Administrative Code incorporates by reference ethical rules of national provider associations that include guidelines directly related to, or that may be interpreted to apply to, self-referrals. Finally, although not directly addressed, some of the statutes, regulations or ethical standards referenced in the prior section on “Anti-Kickback & Fee Splitting” might be extended to self-referral situations, and should be considered.

**IDAPA 16.05.07.200.01 – Department of Health and Welfare (Medicaid) – The Investigation and Enforcement of Fraud, Abuse, and Misconduct**

Although Idaho does not have its own self-referral or “mini-Stark” law, Idaho's Medicaid rules do allow Medicaid to deny payment for claims that violate Stark. Specifically, the Idaho Department of Health and Welfare may deny payment for any and all claims it determines are for items or services provided as a result of a prohibited physician referral under 42 C.F.R. Part 411, Subpart J (“Financial Relationships Between Physicians and Entities Furnishing Designated Health Services”), which are the federal regulations for the Stark law.

**IDAPA 24.11.01.004, 24.11.01.500 – Board of Podiatry, Standards of The Ethical Practice of Podiatry**

As discussed above, the Rules of the Idaho Board of Podiatry incorporate by reference the APMA Code of Ethics. The APMA Code of Ethics includes the following ethical standards related to self-referrals: (1) the podiatrist strives to ensure that any economic benefit involving services, materials, medications, or facilities shall not interfere with their primary responsibility for the welfare of the patient and shall comply with applicable legal requirements (Medical Ethics 2.31 – Economic Interests); (2) the podiatrist shall not promote the sale of drugs, devices, appliances or goods to a patient, which are offered in such manner as to exploit the patient for the financial gain of the podiatric physician (Business Ethics 2.31 – Economic Interest); (3) the podiatrist shall provide truthful disclosure of actual and potential conflicts of interest in the recommendation and/or prescription of services, materials, medications, and facilities that may be utilized in the care of a patient (Business Ethics 2.41 – Conflict of Interest); (4) the podiatrist shall provide truthful disclosure of actual or potential conflicts of interest in communication with patients, potential patients, colleagues, and others, including but not limited to lectures, published material in peer review and other publications, and advertisements (Business Ethics 2.42 – Conflict of Interest); and (5) the podiatrist shall provide full public disclosure of financial relationships that constitute a conflict of interest, including any in which remuneration is expected to be awarded on an annual basis or any equity holding in a related company (excluding mutual funds and blind trusts) (Business Ethics 2.43 – Conflict of Interest).

The APMA Code of Ethics interpretive guidelines include the following statements relevant to self-referrals: (1) the doctrine of informed consent is usually defined as a duty to warn a patient of economic interests that have the potential to influence judgement (Medical Ethics 2.0); and (2) remunerations (e.g., kickbacks,
inducements and self-referrals) for referrals are inappropriate and illegal (Business Ethics 2.0). The guidelines advise podiatrists to be aware of the following risk areas: (1) financial arrangements with entities that may involve referrals; (2) joint ventures with entities supplying goods or services to providers or patients; (3) consulting contracts or medical directorships; (4) office or equipment leases with entities that could involve referrals; and (5) soliciting, accepting, or offering any gift or gratuity of more than nominal value to or from an entity or person who may benefit from any referral in a federal program (Business Ethics 2.21).

3) FALSE CLAIMS / FRAUD & ABUSE

Idaho maintains false claims and other fraud and abuse laws within general insurance laws, Medicaid laws, worker’s compensation laws, and other laws specific to certain types of providers. The laws summarized below are usually the most relevant; however, additional laws may exist based on the type of provider, facility, or other person or entity.

Idaho Code § 41-293 – Insurance Fraud
Insurance fraud is defined to include, but is not necessarily limited to: (1) any person who, with the intent to defraud or deceive an insurer for the purpose of obtaining any money or benefit, presents or causes to be presented to any insurer, producer, practitioner or other person, any statement as part of, or in support of, a claim for payment or other benefit, knowing that such statement contains false, incomplete, or misleading information concerning any fact or thing material to such claim; (2) any person who, with intent to defraud or deceive an insurer assists, abets, solicits, or conspires with another to prepare or make any statement that is intended to be presented to any insurer, producer, practitioner or other person, in connection with, or in support of, any claim for payment or other benefit, knowing that such statement contains false, incomplete, or misleading information concerning any fact or thing material to such claim; (3) any person who, with intent to defraud or deceive, presents or causes to be presented to or by an insurer, a producer, practitioner or other person, a false or altered statement material to an insurance transaction or claim. Violators are guilty of a felony and subject to a term of imprisonment not to exceed 15 years and/or a fine not to exceed $15,000, and shall be ordered to make restitution to the insurer or any other person for any financial loss sustained as a result of a violation. Each instance of violation may be considered a separate offense.

Idaho Code § 56-209h – Public Assistance Law (Medicaid), Administrative Remedies
Idaho Code § 56-209h and associated regulations grant the Idaho Department of Health and Welfare and its Medicaid Fraud Control Unit broad powers in addressing program fraud and abuse. The statute defines “abuse” or “abusive” practices as
provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to a public assistance program, in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care, or in physical harm, pain or mental anguish to a public assistance recipient. “Fraud” or “fraudulent” means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person.

Under Idaho Code § 56-209h(4), if the department identifies a suspected case of fraud or abuse and the department has reason to believe that payments made during the investigation may be difficult or impractical to recover, the department may suspend or withhold payments to the provider pending investigation. If the department identifies a suspected case of fraud or abuse and it determines that it is necessary to prevent or avoid immediate danger to the public health or safety, the department may summarily suspend a provider agreement pending investigation and an expedited hearing.

Under Idaho Code § 56-209h(5), if the department determines that any condition of payment contained in rule, regulation, statute, or provider agreement was not met, the department may initiate administrative proceedings to recover any payments made for items or services under any public assistance contract or provider agreement the individual or entity has with the department. Interest shall accrue on overpayments at the statutory rate set forth in Idaho Code § 28-22-104, from the date of final determination of the amount owed for items or services until the date of recovery.

Under Idaho Code § 56-209h(6), the department may terminate the provider agreement or otherwise deny provider status to any individual or entity who: (1) submits a claim with knowledge that the claim is incorrect, including reporting costs as allowable which were known to be disallowed in a previous audit, unless the provider clearly indicates that the item is being claimed to establish the basis for an appeal and each disputed item and amount is specifically identified; (2) submits a fraudulent claim; (3) knowingly makes a false statement or representation of material fact in any document required to be maintained or submitted to the department; (4) submits a claim for an item or service known to be medically unnecessary; (5) fails to provide, upon written request by the department, immediate access to documentation required to be maintained; (6) fails repeatedly or substantially to comply with the rules and regulations governing medical assistance payments or other public assistance program payments, including those described below; (7) knowingly violates any material term or condition of its provider agreement, including those described below; (8) has failed to repay, or was a managing employee or had an ownership or control interest in any entity that has failed to repay, any overpayments or claims previously found to have been obtained contrary to statute, rule, regulation or provider agreement; (9) has been found, or was a managing employee in any entity that has been found, to have engaged in
fraudulent conduct or abusive conduct in connection with the delivery of health care or public assistance items or services; or (10) fails to meet the qualifications specifically required by rule or by any applicable licensing board. Any individual or entity denied provider status under Idaho Code 56-209h(6) may be precluded from participating as a provider in any public assistance program for up to five (5) years from the date the department’s action becomes final.

For conduct identified in Idaho Code § 56-209h(6)(a) through (i), in addition to or in lieu of adverse action against the provider’s participation in Medicaid, the department may impose penalties of up to one thousand dollars ($1,000) for each item or service improperly claimed, except that in the case of multiple penalties the department may reduce the penalties to not less than ten percent (10%) of the amount of each item or service improperly claimed if an amount can be readily determined. Each line item of a claim, or cost on a cost report is considered a separate claim. The department may also assess civil monetary penalties against a provider and any officer, director, owner, and/or managing employee of a provider in the same circumstances. The foregoing penalties are intended to be remedial, recovering, at a minimum, costs of investigation and administrative review, and placing the costs associated with noncompliance on the offending provider.

Under Idaho Code § 56-209h(9), any individual or entity convicted of a criminal offense related to the delivery of an item or service under any state or federal program shall be excluded from program participation as a Medicaid provider for a period of not less than ten (10) years. Unless otherwise provided in Idaho Code 56-209h or required by federal law, the department may exclude any individual or entity for a period of not less than one (1) year for any conduct for which the Secretary of the Department of Health and Human Services or designee could exclude an individual or entity. The scope of exclusions imposed by the Secretary of the Department of Health and Human Services is defined in 42 U.S.C. § 1320a-7.

**Idaho Code § 56-227(1) – Public Assistance Law (Medicaid) – Fraudulent Acts**

Whoever knowingly obtains, or attempts to obtain, or aids or abets any person in obtaining, by means of a willfully false statement or representation, material omission, or fraudulent devices, public assistance to which he is not entitled, or in an amount greater than that to which he is justly entitled, shall be punished in the same manner and to the same extent as for larceny or theft of the money or value of the public assistance so obtained or attempted to be so obtained.

**Idaho Code §§ 56-227A, 56-227B – Public Assistance Law (Medicaid), Provider Fraud**

Under Idaho Code § 56-227A, it is unlawful for any provider or person, knowingly, with intent to defraud, by means of a willfully false statement or representation or by deliberate concealment of any material fact, or any other fraudulent scheme or device, to: (1) present for allowance or payment any false or fraudulent claim for furnishing services or supplies; (2) attempt to obtain or to obtain authorization for furnishing services or supplies; (3) attempt to obtain or to obtain compensation from public funds greater than that to which he is legally entitled for services or supplies.
furnished or purportedly furnished. Any provider or person who violates the provisions of this section shall be guilty of a felony.

Under Idaho Code § 56-227B, any provider who knowingly with intent to defraud by means of false statement or representation, obtains compensation from public funds greater than that to which he is legally entitled for services or supplies furnished or purportedly furnished shall be liable for civil damages equal to three (3) times the amount by which any figure is falsely overstated. The remedy under Idaho Code § 56-227B shall be in addition to any other remedy provided by law.

**IDAPA 16.05.07 – Department of Health and Welfare (Medicaid), The Investigation and Enforcement of Fraud, Abuse, and Misconduct**

IDAPA 16.05.07 sets forth the administrative rules governing Medicaid fraud and abuse enforcement, and generally parallels the definitions, standards and penalties set forth in Idaho Code §§ 56-209h, 56-227, 56-227A, and 56-227B. Per IDAPA 16.05.07.020, the Department of Health and Welfare will take corrective action to address fraud, abuse or other proscribed misconduct, which action may include denial of payment, recoupment, payment suspension, provider agreement suspension, termination of provider agreement, imposition of civil monetary penalties, exclusion, participant lock-in, referral for prosecution, or referral to state licensing boards.

Under IDAPA 16.05.07.200, the department may deny payment for any and all claims it determines are for items and services: (1) not provided or not found by the department to be medically necessary; (2) not documented to be provided or medically necessary; (3) not provided in accordance with professionally recognized standards of health care; (4) provided as a result of a prohibited physician referral under the federal Stark law, 42 CFR Part 411, Subpart J; or (5) are billed are contrary to department rules or the provider agreement.

IDAPA 16.05.07.235 and -.236 set forth standards and factors for determining civil penalties authorized by Idaho Code § 56-209h. The department may assess civil monetary penalties against a provider, any officer, director, owner, and managing employee for conduct identified in Idaho Code § 56-209h(6) and IDAPA 16.05.07.230. The amount of the penalty will depend on several factors, including whether the conduct resulted in an overpayment; the type of misconduct involved; the severity of the rule violation; the number of violations; and the relevant mens rea of the person involved.

IDAPA 16.05.07.240 to -.261 set forth the standards and terms for mandatory and permissive program exclusion and reinstatement.

In lieu of the foregoing remedies, IDAPA § 16.05.07.270 allows the department to take lesser action to investigate, monitor and correct suspected instances of fraud, abuse, over utilization, and other misconduct, including issuance of warnings, prepayment reviews, and referrals to licensing boards for action.
Idaho Medicaid Provider Agreement (06/11)

As discussed above, the Idaho statutes and regulations impose sanctions for violations of the Idaho Medicaid provider agreement. Among other things, the current version of the standard Medicaid provider agreement requires providers to:

1. provide services in accordance with all applicable federal laws, and provisions of statutes, state rules, and federal regulations governing the reimbursement of services and items under Medicaid in Idaho; the current applicable Medicaid Provider Handbook; any additional terms attached to the provider agreement; and any instructions contained in provider information releases or other program notices;
2. provide truthful information in and timely notification of changes in the enrollment application;
3. be properly licensed, and provide items and services in accordance with statutes, rules, and professionally recognized standards by qualified staff or professionally supervised paraprofessionals where their use is authorized;
4. document each item or service for which Medicaid reimbursement is claimed, at the time it is provided, in compliance with documentation requirements of Idaho Code, § 56-209h(3), applicable rules, and the provider agreement;
5. when submitting claims, certify that items or services claimed were actually provided and medically necessary, were documented at the time they were provided, and were provided in accordance with professionally recognized standards of health care, applicable department rules, and the provider agreement;
6. agree to be solely responsible for the accuracy of claims submitted, and immediately repay the department for any items or services the department or the provider determines were not properly provided, documented, or claimed; assure that a duplicate claim under another program or provider type is not submitted; and bill only for services delivered by individuals who are not on any state or federal exclusion or disbarment list and have the qualifications required for the type of service that is being delivered;
7. accept Medicaid payment for any item or service as payment in full and make no additional charge except that specifically allowed by Medicaid;
8. and bill only for service providers who have the qualifications required for the type of service that is being delivered.

The provider agreement authorizes the department to terminate the agreement when the provider fails to comply with any applicable rule, term, or provision of the agreement, which may include failure to comply with any applicable law, regulation or Medicaid condition of payment or participation.

Pursuant to the agreement, if the provider is any type of partnership, corporation or nonprofit entity, the provider agrees that the entity and the partners, directors, officers, members, or individuals with an ownership interest of 5% or greater, are jointly and severally liable for any breach of the provider agreement, and that action by the department against the provider may result in action against all such individuals in the entity.
Idaho Code § 56-134 – Payment for Skilled and Intermediate Services (Medicaid), Denial, Suspension, Revocation of License or Provisional License

The Department of Health and Welfare is authorized to deny, suspend, or revoke a license or provisional license or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature not to exceed one thousand dollars ($1,000) per violation in any case in which it finds that skilled nursing or intermediate care facility, or any partner, officer, director, owner of five percent (5%) or more of the assets of the facility, or managing employee: (1) failed or refused to comply with the requirements of the licensing act, or the rules and regulations established thereunder; (2) has knowingly or with reason to know made a false statement of a material fact in any record required by the act; (3) refused to allow representatives or agents of the director to inspect all books, records, and files required to be maintained by the provisions of the act, or to inspect any portion of the facility’s premises; (4) willfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the director and the lawful enforcement of any provision of the act; (5) willfully prevented or interfered with any representative of the director in the preservation of evidence of any violation of any of the provisions of the act, or the rules.

Idaho Code § 72-801 – Worker’s Compensation, False Representations A Misdemeanor

If, for the purpose of obtaining any benefit or payment under the provisions of Idaho’ worker’s compensation law, either for himself or for any other person, any one willfully makes a false statement or representation, he shall be guilty of a misdemeanor and upon conviction for such offense he shall forfeit all right to compensation under the worker’s compensation law (Idaho Code, Title 72).

Idaho Code § 54-1814 – Physicians and Surgeons, Grounds for Medical Discipline

Every person licensed to practice medicine, licensed to practice as a physician assistant or registered as an extern, intern or resident in Idaho is subject to discipline upon any of the following grounds: (1) use of false, fraudulent or forged statements or documents, diplomas or credentials in connection with any licensing or other requirements of the Medical Practice Act; (2) the direct promotion by a physician of the sale of drugs, devices, appliances or goods to a patient that are unnecessary and not medically indicated; or (3) engaging in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the physician by the patient. Disciplinary actions include license suspension, revocation, fines, and other sanctions. Violations also subject providers to injunctions under Idaho Code § 54-1815.

IDAPA 22.01.01.101 – Board of Medicine, Additional Grounds for Suspension, Revocation, or Disciplinary Sanctions

In addition to the statutory grounds for medical discipline set forth in Idaho Code § 54-1814, every person licensed to practice medicine or registered as an extern, intern, resident or physician assistant is subject to discipline by the Board upon any
of the following grounds: (1) making a false or misleading statement regarding his skill or the efficacy or value of the medicine, treatment or remedy prescribed by him or her at his direction in the treatment of any disease or other condition of the body or mind; (2) directly promoting surgical procedures or laboratory tests that are unnecessary and not medically indicated; or (3) engaging in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the physician by the patient including, but not limited to, obtaining any fee by fraud, deceit or misrepresentations or employing abusive billing practices.

**Idaho Code § 54-2219 – Physical Therapists, Grounds for Disciplinary Action**
The following conduct, acts, or conditions shall constitute grounds for disciplinary action, among others: (1) obtaining or attempting to obtain a license by fraud, misrepresentation or omission; (2) engaging in the performance of substandard care by a physical therapist due to an intentional, negligent, or reckless act or failure to act; (3) engaging in the performance of substandard care by a physical therapist assistant, due to an intentional, negligent, or reckless act or failure to act, or performing tasks not selected or delegated by the supervising licensed physical therapist; (4) making misleading, deceptive, untrue or fraudulent representations in violation of this chapter or in the practice of the profession, or in the application process; (5) promoting unnecessary devices, treatment, intervention or service for the financial gain of the practitioner or of a third party; and (6) providing treatment intervention unwarranted by the condition of the patient.

**Idaho Code § 54-609 – Podiatrists, Unprofessional or Dishonorable Conduct Justifying Suspension or Revocation of License Defined**
Unprofessional or dishonorable conduct justifying suspension or revocation of a license to practice podiatry includes, among other things, publishing or using untruthful or improbable statements with the intent of deceiving or defrauding the public or any patient.

**Idaho Code § 54-712 – Chiropractors, Grounds for Discipline by the Board**
Any license or permit to practice as a chiropractor shall be subject to restriction, suspension, revocation or other discipline if the licensing board finds that the licensee: (1) used false, fraudulent or forged statements or documents, diplomas or credentials in connection with any licensing or other requirements of the licensing act or misrepresented or concealed a material fact in obtaining licensing, renewal or reinstatement; (2) has engaged in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the licensee by the patient; (3) has violated the standard of care or code of ethics as adopted by the board or misrepresented or committed fraud in any aspect of the business or practice of chiropractic services; or (4) promoted unnecessary or inefficacious treatment, procedures, devices or services or practiced in an incompetent or negligent manner resulting in or creating an unreasonable risk of harm.
Idaho Code § 54-1758, Idaho Pharmacy Act, Prohibited Acts
It is unlawful for a pharmacist licensee to knowingly perform, or cause the performance of, or aid and abet any of the following acts: (1) obtain, or attempt to obtain, a prescription drug by fraud, deceit or misrepresentation or engage in misrepresentation or fraud in the distribution of a prescription drug; or (2) receive any prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit or suspected of being counterfeit.

IDAPA 19.01.01.040 – Board of Dentistry, Unprofessional Conduct
A dentist or dental hygienist shall not engage in unprofessional conduct in the course of his practice. Unprofessional conduct is defined as, but not limited to: (1) obtaining fees by fraud or misrepresentation, or over-treatment either directly or through an insurance carrier; (2) exercising undue influence on a patient in such manner as to exploit a patient for the financial or personal gain of a practitioner or of a third party; or (3) willful misrepresentation of the benefits or effectiveness of dental services.

IDAPA 24.11.01.004, 24.11.01.500 – Board of Podiatry, Standards of The Ethical Practice of Podiatry
For some types of providers other than physicians, Idaho’s Administrative Code incorporates by reference ethical rules of national provider associations that include standards and interpretive guidelines related to fraud and false claims. For example, pursuant to IDAPA 21.11.01.004, the Rules of the State Board of Podiatry incorporate by reference the APMA Code of Ethics. Under the APMA Code of Ethics, “[f]raud includes but is not limited to knowingly presenting (through actual knowledge, deliberate ignorance or reckless disregard) or causing to be presented a false or fraudulent claim” (Business Ethics 2.0 – Interpretive Guidelines), and fraudulent acts include, but are not limited to, “[w]illfully making or filing false records or reports within the scope of practice” and “gross, willful, and continued overcharging for professional services including filing false statements for collection of fees for those services, including, but not limited to, filing false statement for collection of monies for services not rendered or not provided as claimed” (Business Ethics 2.0 – Interpretive Guidelines).

4) GENERAL WHISTLEBLOWER PROTECTIONS

Idaho Code § 6-2104 – Actions in Particular Cases, Protection of Public Employees
A public employer may not take adverse employment action against a public employee because: (1) the employee, or a person authorized to act on behalf of the employee, communicates in good faith the existence of any waste of public funds, property or manpower, or a violation or suspected violation of a law, rule or regulation adopted under Idaho law, a political subdivision of the state of Idaho or the United States, provided that communication was made at a time and in a manner to give employer reasonable opportunity to correct the waste or violation; (2) the
employee in good faith participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review; or (3) the employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law or a rule or regulation adopted under the authority of Idaho law or the United States. A public employer may not implement rules or policies that unreasonably restrict a public employee’s ability to document the existence of any waste of public funds, property or manpower, or a violation, or suspected violation of any laws, rules or regulations.

**Idaho Code § 54-1818 – Physicians and Surgeons, Reporting Violations by Physicians**

A licensed physician and surgeon possessing knowledge of a violation of the Idaho Medical Practice Act, Idaho Code § 54-1814, by any other physician and surgeon licensed to practice medicine in Idaho shall with reasonable promptness report such knowledge to the board of medicine or its duly authorized committee, agency or representative, and failure to do so shall subject such person to disciplinary action by the state board of medicine as in its discretion the board shall deem proper, pursuant to procedures provided in Idaho Code § 54-18; provided, no person shall be civilly liable for communications, reports or acts of any kind made, given or handled under the provisions of this act. However, notwithstanding the foregoing, no physician or surgeon shall be required to report, nor shall any physician or surgeon report, any information known, learned or discovered by that physician or surgeon as a result of participation in peer review or access to peer review records, as defined in Idaho Code § 39-1392a. Idaho Code § 54-1818 shall not relieve a health care organization of its notification obligations as set forth in Idaho Code § 39-1393.

**Relevant Case Law**

*Thomas v. Medical Ctr. Physicians, P.A.*, 138 Idaho 200, 61 P.3d 557 (2002). Idaho recognizes an exception to the employment-at-will doctrine when the employee’s discharge would violate public policy. In order for the public policy exception to apply, the discharged employee must: (1) refuse to commit an unlawful act; (2) perform an important public obligation; or (3) exercise certain rights or privileges protected by law or public policy.

*Van v. Portneuf Med. Ctr.*, 147 Idaho 552, 212 P.3d 982 (2009). The determination of what constitutes public policy sufficient to protect an employee from adverse employment action is a question of law. A plaintiff must demonstrate that he or she clearly reported or complained about a statutory violation or illegal conduct, that his or her complaint served an important public interest, and that there was a causal link between the report or complaint and the termination.

*Noak v. Idaho Department of Correction, 152 Idaho 305*  
The Court found that the plain, usual, and ordinary meaning of Idaho Code § 54-1818 suggests that it provides immunity to any person for communications to the Idaho Board of Medicine (“IBOM”) made in connection with physician performance. Because the Defendant’s letter to the IBOM was a communication within the
meaning of Idaho Code § 54-1818, any claims based upon the letter, including the defamation claim and the infliction of emotional distress claim, are barred by that statute's immunity provision. The Court determined that the law applies to all persons, not just physicians regulated under the Medical Practice Act.

5) HELPFUL LINKS

- Idaho Code
- Idaho Administrative Rules
- Idaho Board of Medicine
- Idaho Board of Chiropractors
- Idaho Board of Dentistry
- Idaho Board of Nursing
- Idaho Board of Pharmacy
- Idaho Board of Physical Therapy
- Idaho Board of Podiatry
- Idaho Board of Optometry
- Idaho Medicaid Fraud Control Unit
- Idaho Medicaid Provider Handbook