

# **HEALTH CARE FRAUD AND ABUSE MANUAL**

## **FOREWORD**

The First Edition of the Health Care Fraud and Abuse Manual was originally published in 2002 by the Health Care Law Section of the State Bar of Michigan, combining the work and collaboration of many members of the Section. Since then, not only have many of the statutes listed within been amended, but the use of web-based resources has become of paramount importance and convenience to Michigan attorneys. In recognition of these changes, the Second Edition of this manual is now available in electronic format and has been converted into a “dynamic” resource, so that statutes and regulations may be modified regularly as necessitated by amendments and new enactments and also accessed with the simple click of a mouse.

The Health Care Fraud and Abuse Manual has been undoubtedly a team effort. However, it would not have been possible without the many hours of compilation and editing contributed by Monica Navarro and Maro E. Bush at Frank, Haron, Weiner and Navarro, and by Lindsay Bonkosky at Cooley Law School for her extensive assistance in cite-checking and hyper-linking.

We would also like to acknowledge Taxpayers Against Fraud ([www.taf.org](http://www.taf.org)) for its gracious permission to hyper-link to its citation of state statutes.

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For information, questions or permission requests, please contact Health Care Law Section Chair.

## INTRODUCTION

The purpose of this web-based fraud and abuse manual is to serve as a preliminary research tool for attorneys faced with difficult health care fraud and abuse issues. As health law attorneys, we understand the voluminous amount of material available and wanted to design this fraud and abuse manual to highlight those Michigan and federal statutes that most directly concern health care fraud and abuse.

We chose to continue the tradition of past hard-copy manuals published by the Health Law Section of the State Bar of Michigan by presenting the information in a table format. Most tables present a specific statute and its framework, while other tables introduce a central idea and list relevant statutes.

The manual itself is divided into three major sections: Michigan law, federal law, and collected state False Claims Act statutes. We have included in the federal section what we believe to be the most important statutes pertaining to health law fraud and abuse, namely, the Civil False Claims Act, the Anti-Kickback Statute, Stark regulations, the False Statement Statute, and federal conspiracy statutes. Included in the Michigan section are the Medicaid False Claims Act, the Health Care False Claims Act, the Vulnerable Adult Statute, various licensing laws, and those laws which relate to fraudulent practices in general.

Each topical section contains not only important statutes relating to health care fraud and abuse, but their seminal cases. We feel that we have included the most important cases, however, we recognize that we may have omitted cases from circuits other than the Sixth Circuit representing an opposing side of an issue. Please understand, our intention is to be concise. However, because this web-based manual is dynamic, we will be expanding the offerings as time goes on.

Attorneys should also be aware that many of the regulations, such as the Stark regulations and the Anti-Kickback Statute, relate to government health care programs only. The appropriateness of a practice with respect to commercial insurance companies and HMOs may be regulated by the bylaws and regulations of each insurance company and applicable contract law.

We believe this listing contains the most current information to date; however, we understand that health law is an ever-changing, ever-evolving field. We will endeavor to keep the information current and will revise it in the event of significant changes in the law in as timely a manner as possible.

Of course, the information provided should be used as a resource and guide only. There is no substitute for individual research and determinations by qualified attorneys acting on behalf of individual clients. The information should be viewed as a first-tier resource to obtain a perspective on a fraud and abuse issue with respect to Michigan or federal law; it is not intended to be a treatise, nor should it be used as the sole basis for making critical business or legal decisions regarding fraud and abuse. The information does not constitute and may not be relied upon as legal advice. Accordingly, the information is provided without warranty of any kind and without assumption of liability by the State Bar of Michigan, the officers or members of the Health Law Section, or the editors.

We hope that this information serves its purpose in your health care law practice and will be a valuable resource for all.

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MICHIGAN STATUTES CONCERNING FRAUD IN GENERAL			
SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Common Law Fraud</b>	<a href="#">MCL §750.280</a>	Any person who is convicted of any gross fraud or cheat at common law shall be guilty of a felony, punishable by imprisonment in the state prison for not more than ten years or by a fine of not more than \$5,000.	
<b>False or Assumed Name, Practice of Medicine</b>	<a href="#">MCL §750.298</a>	Any person who practices medicine or advertises to practice medicine under a false or assumed name, or under a name other than his own, shall be guilty of a misdemeanor, punishable by imprisonment for not more than one year or by a fine of not more than \$1,000.	
<b>Representation of Services as Under Supervision of Physician.</b>  Penalties	<a href="#">MCL §750.298a</a>	It is unlawful to misrepresent a product or service as under the guidance or supervision of a physician or that a product or appliance had been indorsed or approved by the medical profession unless rendered under direct personal supervision of a Michigan-licensed physician or actually indorsed or approved in writing by an organization of licensed physicians.  Punishable by imprisonment for not more than one year or by a fine of not more than \$1,000.	

## MICHIGAN STATUTES CONCERNING FRAUD IN GENERAL

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>State Department of Public Health</b> Inspections and investigations to ensure compliance with law enforced by the department.  Warrant to conduct an investigation or inspection.          Authority of the Local Health Department          Criminal penalties for failure to comply with a rule or order of the department	<a href="#">MCL §333.2241</a> , <a href="#">MCL §333.2446</a>          <a href="#">MCL §333.2242</a>          <a href="#">MCL §333.2243</a>          <a href="#">MCL §333.2446</a>          <a href="#">MCL §333.2261</a>	<p>To assure compliance with laws enforced by the department, the department may inspect, investigate, or authorize an inspection or investigation to be made of any matter, thing, premises, place, person, record, vehicle, incident, or event. The department may apply for an inspection or investigation warrant under §2242 to carry out this section.</p> <p>Upon receipt of an affidavit made under oath establishing grounds for issuing a warrant pursuant to §2243, a magistrate shall issue an inspection or investigation warrant authorizing the department applying for the warrant to conduct an inspection or investigation.</p> <p>A magistrate shall issue a warrant if either exists:</p> <ul style="list-style-type: none"> <li>• Reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular subject; or</li> <li>• There is reason to believe that noncompliance with laws may exist with respect to the particular subject.</li> </ul> <p>To ensure compliance, the local health department may inspect, investigate, or authorize an inspection or investigation to be made of any matter, thing, premise, place, person, record, vehicle, incident, or event.</p> <p>Except as otherwise provided, a person who violates a rule or order of the department may be punished by imprisonment for not more than six months or fines of not more than \$200, or both.</p>	

# MICHIGAN STATUTES CONCERNING FRAUD IN GENERAL

SUBJECT	CITATION	SUMMARY	REFERENCES
<p><b>State Department of Public Health</b> (cont.)</p> <p>Civil penalties for failure to comply with a rule or order of the department.</p> <p>False vital records.</p> <p>Penalties for false vital records</p>	<p><a href="#">MCL §333.2262</a></p> <p><a href="#">MCL §333.2894</a></p> <p><a href="#">MCL §333.2898</a></p>	<p>The department may promulgate rules to adopt a schedule of civil penalties not exceeding \$1,000 for each violation or day that a violation continues.</p> <p>Prohibited acts include:</p> <ul style="list-style-type: none"> <li>• Willfully and knowingly refusing to provide vital records;</li> <li>• Willfully and knowingly making a false statement in a vital record;</li> <li>• Willfully and knowingly supplying false information intending that the information be used in preparation of a vital record;</li> <li>• Willfully and knowingly obtaining, possessing, using, or selling to another person for any purpose of deception a false vital record;</li> <li>• Willfully and knowingly furnishing or processing a vital record with knowledge or intent that it be used for purposes of deception; or</li> <li>• Counterfeiting, altering, amending, or mutilating a vital record with the intent to deceive.</li> </ul> <p>A person who violates §2894 or §2895 is guilty of a misdemeanor and may be punished by imprisonment of not more than one year and/or a fine of not more than \$1,000, or both.</p>	
<p><b>False Statements in Occupational Diseases Reports</b></p>	<p><a href="#">MCL §333.5639</a></p>	<p>A physician, hospital or clinic administrator, or employer who fails to make an occupational disease report of a health condition, which is aggravated in the workplace as required by MCL§ 333.5611, or willfully makes a false statement in an occupational disease report required by MCL § 333.5611 is guilty of a misdemeanor and subject to fine of not more than \$50 per violation.</p>	<p>MCL§333.5511</p>

<b>MICHIGAN STATUTES CONCERNING FRAUD IN GENERAL</b>			
<b>SUBJECT</b>	<b>CITATION</b>	<b>SUMMARY</b>	<b>REFERENCES</b>
<b>Michigan Dignified Death Act</b>	<a href="#"><u>MCL §333.5661</u></a>	The Michigan Dignified Death Act prohibits an individual from causing or attempting to cause a patient, patient surrogate, or patient advocate by fraud to make a medical decision that results in the death of the patient with the intent to benefit financially from the outcome of the medical treatment. Fraud includes words or conduct, false or misleading allegations, or concealment. Violation is a felony punishable by four years or a \$2,000 fine, or both.	
<b>Crippled Children</b>	<a href="#"><u>MCL §333.5879</u></a>	It is a misdemeanor for a person to willfully make a false statement or willfully give false information for the purpose of securing aid or for an official of a hospital or a physician or dentist who bills the state for the care of a crippled child in accordance with established fee schedules to seek additional payment from a parent, relative, or guardian of the child for the care.	
<b>Michigan Consumer Protection Act</b>	<a href="#"><u>MCL §445.901 et seq.</u></a>  Nelson v Ho, 564 NW 2d 482 (Mich App 1997)	Prohibits unfair, unconscionable or deceptive methods, acts or practices in the conduct of trade or commerce. “Trade or commerce” means the conduct of a business providing goods, property or service primarily for personal, family or household purposes and includes the advertising, solicitation, offering for sale or rent, sale, lease, or distribution of a service or property, tangible or intangible, real, personal, or mixed, or any other article, or a business opportunity.  Only allegations of unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of the entrepreneurial, commercial, or business aspect of a physician’s practice may be brought under the Michigan Consumer Protection Act. Allegations of misconduct in the actual performance of medical services or the actual practice of medicine may not be brought.	

## MICHIGAN HEALTH CARE FALSE CLAIMS ACT- M.C.L. §752.1001 *ET SEQ.*

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>In General</b>	<a href="#">MCL §752.1001 et seq.</a>  <u>People v Motor City Hosp and Surgical Supply, Inc</u> 575 NW2d 95, appeal denied 590 NW2d 66 (1997)	<p>The Michigan Health Care False Claims Act is a criminal statute, which was designed to prohibit fraud in the obtaining of health care benefits or payments in connection with health care coverage.</p> <p>The Michigan Legislature enacted the Health Care False Claims Act to extend to private insurers and health care corporations the same protection against fraud that it afforded the Department of Social Services (now the Department of Community Health) in the Medicaid False Claims Act.</p>	Medicaid False Claims Act, MCL §400.601 <i>et seq</i> and Federal False Claims Act 31 USC §3729 <i>et seq</i>
<b>Knowing and Knowingly Defined</b>	<a href="#">MCL §752.1002(h)</a>  <u>People v Perez-DeLeon</u> , 568 NW2d 324, appeal denied 570 NW2d 660 (1997)  <u>People v Orzame</u> 570 NW2d 118 (1997)	<p>"Knowing" and "knowingly" mean that a person is in possession of facts under which he or she is aware or should be aware of the nature of his or her conduct and that his or her conduct is substantially certain to cause the payment of a health care benefit. "Knowing" or "knowingly" do not include conduct which is an error or mistake unless the person's course of conduct indicates a systematic or persistent tendency to cause inaccuracies to be present.</p> <p>Evidence of 1,357 instances of erroneous billing was relevant and admissible for establishing the “knowing” element. The number of claims demonstrated persistent tendency to cause inaccuracies to be present.</p> <p>A physician’s submission of multiple incorrect billings satisfied the requirement that conduct violating the act to be “knowing.”</p>	



## MICHIGAN HEALTH CARE FALSE CLAIMS ACT- M.C.L. §752.1001 *ET SEQ.*

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Claims Defined</b>	<a href="#">MCL §752.1002(a)</a>  People v Payne 442 NW2d 675, appeal denied (1989)	“Claim” means any attempt to cause a health care corporation or insurer to make the payment of a health care benefit.  Each false claim needs to be charged in a separate count. Multiple false claims cannot be aggregated into two counts of a “common plan or scheme.”	
<b>Deceptive Defined</b>	<a href="#">MCL §752.1002(b)</a>	“Deceptive” means making a claim to a health care corporation or a health care insurer which contains a statement of fact or which fails to reveal a material fact, which statement or failure leads the health care corporation or health care insurer to believe the representation or suggests a state of affair to be other than it really is.	
<b>False Defined</b>	<a href="#">MCL §752.1002(c)</a>	“False” means wholly or partially untrue or deceptive	
<b>Health Care Benefit Defined</b>	<a href="#">MCL §752.1002(d)</a>	“Health care benefit” means the right under a contract or certificate or policy of insurance to have a payment made by a health care insurer for a specified health care service.	
<b>Health Care Insurer Defined</b>	<a href="#">MCL §752.1002(f)</a>	“A health care insurer” means an insurance company authorized to provide health insurance in Michigan or a legal entity that is self-insured and providing health care benefits to its employees.	
<b>Person Defined</b>	<a href="#">MCL §752.1002(i)</a>	“Person” means an individual, corporation, partnership, association, or any other legal entity.	
<b>Liability for the Submission of False Claims</b>	<a href="#">MCL §752.1003(1)</a>	A person shall not make or present or cause to be made or presented to a health care corporation or health care insurer a claim for payment of health care benefits knowing the claim to be false.	

## MICHIGAN HEALTH CARE FALSE CLAIMS ACT- M.C.L. §752.1001 *ET SEQ.*

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Liability for the Submission of Medically Unnecessary Claims</b>	<a href="#">MCL §752.1003(2)</a>	A person shall not make or present or cause to be made or presented to a health care corporation or health care insurer a claim for payment of health care benefits which he or she knows falsely represents that the goods or services were medically necessary in accordance with professionally accepted standards. Each claim which violates this subsection shall constitute a separate offense. A health facility or agency shall not be liable under this subsection unless the health facility or agency, pursuant to a conspiracy, combination, or collusion with a physician or other provider, falsely represents the medical necessity of the particular goods or services for which the claim was made.	
<b>Liability for the Submission of False Statements</b>	<a href="#">MCL §752.1003(3)</a>	A person shall not knowingly make or cause to be made a false statement or false representation of a material fact to a health care corporation or health care insurer for use in determining rights to health care benefits. Each claim which violates this subsection shall constitute a separate violation.	
<b>Liability for Concealment</b>	<a href="#">MCL §752.1003(4)</a>	A person who, having knowledge of the occurrence of an event affecting his or her initial or continued right to receive a health care benefit, or the continued right of any other person on whose behalf he or she has applied for or is receiving a health care benefit, shall not conceal or fail to disclose that event with intent to obtain a health care benefit to which the person or any other person is not entitled to, or to obtain a health care benefit in an amount greater than that to which the person or any other person is entitled.	
<b>Penalties</b>	<a href="#">MCL §752.1003(5)</a>	A person who violates §752.1003 is guilty of a felony and penalties include imprisonment of not more than four years or fines of not more than \$50,000, or both.	

## MICHIGAN HEALTH CARE FALSE CLAIMS ACT- M.C.L. §752.1001 *ET SEQ.*

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Kickback, Bribes, or Rebates</b>	<a href="#">MCL §752.1004</a>  <a href="#">MCL 752.1004a</a> ; <a href="#">MCL 752.1004b</a>	<p>A person who solicits, offers, pays, or receives a kickback or bribe in connection with the furnishing of goods or services for which payment is or may be made in whole or in part by a health care corporation or health care insurer, or who receives a rebate of a fee or charge for referring an individual to another person for the furnishing of health care benefits, is guilty of a felony, punishable by imprisonment for not more than four years or by a fine of not more than \$50,000, or both.</p> <p>A rebate or discount from a drug manufacturer or from a company that licenses or distributes the drugs of a drug manufacturer to a consumer does not violate §752.1004; nor does a rebate or discount from a medical supply or device manufacturer or from a company that licenses or distributes medical supplies to consumers.</p>	
<b>Conspiracy</b>	<a href="#">MCL §752.1005</a>	A person shall not enter into an agreement, combination, or conspiracy to defraud a health care organization by making or presenting, or aiding another to make or present a false claim for payment of health care benefits. A person who violates this section is guilty of a felony punishable by imprisonment for not more than ten years or a maximum fine of \$50,000, both.	
<b>Second or Subsequent Offenses</b>	<a href="#">MCL §752.1006</a>	Fines and/or imprisonment may be doubled upon conviction of a second or subsequent offense.	

## MICHIGAN HEALTH CARE FALSE CLAIMS ACT- M.C.L. §752.1001 *ET SEQ.*

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Burden of Proof</b>	<a href="#">MCL §752.1007</a>	<p>In a prosecution brought under this act, it is not necessary to show that the person had knowledge of similar acts having been performed in the past by a person acting on the person's behalf, nor to show that the person had actual notice that the acts by the persons acting on the person's behalf occurred, to establish the fact that a false statement or representation was knowingly made.</p> <p>It shall be a rebuttable presumption that a person knowingly made a claim for a health care benefit if the person's actual, facsimile, stamped, typewritten, or similar signature is used on the form required for the making of the claim for health care benefits.</p> <p>If a claim for health care benefit is made by means of computer billing tapes or other electronic means, it shall be a rebuttable presumption that the person knowingly made the claim if the person has advised the health care corporation or health care insurer in writing that claims for health care benefits will be submitted by use of computer billing tapes or other electronic means.</p> <p>The certificate of an authorized agent of the health care corporation or health care insurer setting forth that documentary material or any compilation thereof is an authentic record or compilation of records of the health care corporation or health care insurer shall create a rebuttable presumption that the record or compilation is authentic.</p>	
<b>Investigative Demands</b>	<a href="#">MCL §752.1008</a>	The Attorney General may request information from any person believed to possess relevant information before bringing any criminal action.	

**MICHIGAN HEALTH CARE FALSE CLAIMS ACT- M.C.L. §752.1001 *ET SEQ.***

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Persons Providing Information or Cooperating with Investigations</b>	<a href="#">MCL §752.1008a</a>	If acting in good faith, a person is not subject to civil liability for providing information, investigating, or cooperating with an investigation or examination under the act.	
<b>Liability to the Health Care Insurer</b>	<a href="#">MCL §752.1009</a>	The person committing the offense is also liable to the health care corporation or health care insurer for the full amount of the benefit or payment made.	
<b>Restitution</b>	<a href="#">MCL §752.1010</a>	Upon conviction, restitution may be ordered to a health care corporation or health care insurer in addition to any fines or sentences imposed.	

## MICHIGAN MEDICAID FALSE CLAIMS ACT- MCL §400.601 *ET SEQ.*

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>In General</b>	<a href="#">MCL §400.601 et seq.</a>	An act to prohibit fraud in the obtaining of benefits or payments in connection with the Michigan Medicaid program; to prohibit kickbacks or bribes in connection with the program; to prohibit conspiracies in obtaining benefits or payments; to authorize the attorney general to investigate alleged violations of this act; to provide for the appointment of investigators by the attorney general; and to provide for private citizens to bring civil actions to recover money received by reason of fraudulent conduct.	
<b>Benefit Defined</b>	<a href="#">MCL §400.602(a)</a>	A “benefit” is a receipt of money, goods, or anything of pecuniary value.	
<b>Claim Defined</b>	<a href="#">MCL §400.602(b)</a>  <u>People v Payne</u> , 442 NW2d 675, appeal denied (1989)	A “claim” is any attempt to cause the Department of Community Health to pay out sums of money under the Social Welfare Act.  Each false claim needs to be charged in a separate count, and claims cannot be aggregated into a common scheme and plan.	
<b>Deceptive Defined</b>	<a href="#">MCL §400.602(c)</a>	“Deceptive” means making a claim or causing a claim to be made under the Social Welfare Act which contains a statement of fact or which fails to reveal a material fact, which statement or failure leads the Department of Community Health to believe the represented or suggested state of affairs to be other than it actually is.	
<b>False Defined</b>	<a href="#">MCL §400.602(d)</a>  <u>In re Wayne County Prosecutor</u> 329 NW2d 510 (1982)  <u>People v Williamson</u> , 517 NW2d 846 (1994)	“False” means wholly or partially untrue or deceptive.  Medicaid claims submitted for non-compensable services are false claims.  Definition of “false” as “wholly or partially untrue or deceptive” is not unconstitutionally vague.	
<b>Person Defined</b>	<a href="#">MCL §400.602(h)</a>	“Person” means an individual, corporation, partnership, association, or any other legal entity.	

## MICHIGAN MEDICAID FALSE CLAIMS ACT- MCL §400.601 *ET SEQ.*

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Medicaid Benefit Defined</b>	<a href="#">MCL §400.602(g)</a>	“Medicaid benefit” means a benefit paid or payable under a program for medical assistance for the medically indigent in accordance with the Social Welfare Act.	
<b>Knowingly Defined</b>	<a href="#">MCL §400.602(f)</a>  <a href="#">In re Wayne County Prosecutor</a> 329 NW2d 510 (1982)  <a href="#">People v American Medical Centers of Michigan</a> , 324 NW2d 782, certiorari denied 104 S Ct 529, 464 US 1009 (1982)  <a href="#">People v Orzame</a> , 570 NW2d 118 (1997)	<p>"Knowing" and "knowingly" mean that a person is in possession of facts under which he or she is aware or should be aware of the nature of his or her conduct and that his or her conduct is substantially certain to cause the payment of a Medicaid benefit. "Knowing" or "knowingly" includes acting in deliberate ignorance of the truth or falsity of facts, or acting in reckless disregard of the truth or falsity of facts. Proof of specific intent to defraud is not required.</p> <p>Physician’s participation in the Medicaid program, possession and utilization of manuals containing Medicaid regulations, and the physician’s authorization of billing for unallowable services supported finding that the physician submitted claims which he or she knew to be false, thereby establishing the “knowingly” element.</p> <p>Jury instruction that the knowledge required before defendant could be found guilty of Medicaid fraud includes constructive knowledge was not error.</p> <p>Physician’s submission of many incorrect billings satisfied requirement under Medicaid False Claims Act that conduct violating the provisions to be “knowingly.”</p>	<a href="#">People v Perez-DeLeon</a> (1997) 568 NW2d 324
<b>Medicaid Provider’s Manual</b>	<a href="#">People v Williamson</a> , 517 NW2d 846 (1994)	Providers must follow the billing procedures set forth in the Medicaid Providers Manual even if the manual’s provisions have not been promulgated as a rule. Providers must conform with the guidelines set forth in the Medicaid Providers Manual and any deviation from the billing practices set forth in the manual would constitute a false claim under the Medicaid False Claims Act.	

## MICHIGAN MEDICAID FALSE CLAIMS ACT- MCL §400.601 *ET SEQ.*

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Submission of False Claims</b> <ul style="list-style-type: none"> <li>False Claims</li> <li>Medically Unnecessary</li> <li>Reverse False Claims</li> </ul>	<p><a href="#">MCL §400.607(1)</a></p> <p><a href="#">MCL §400.607(2)</a></p> <p><a href="#">MCL §400.607(3)</a></p> <p><u>In re Wayne County Prosecutor 329 NW2d 210 (1982)</u></p>	<p>A person shall not make or present or cause to be made or presented to an employee or officer of this state a claim under the Social Welfare Act, knowing the claim to be false.</p> <p>A person shall not make or present or cause to be made or presented a claim under the Social Welfare Act, which he or she knows falsely represents that the goods or services, for which the claim is made, are medically necessary in accordance with professionally accepted standards. Each claim violating this section shall constitute a separate offense. A health care facility or agency will be not liable under this section unless the facility or agency falsely represents the medical necessity of the particular goods or services for which the claim was made.</p> <p>A person shall not knowingly make, use, or cause to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state pertaining to Medicaid benefits.</p> <p>Submitting bills for Medicaid payment with the representation that the tests that were performed were necessary for diagnosis when, in fact, they were not is a fraudulent representation punishable under the Medicaid False Claims Act.</p>	



## MICHIGAN MEDICAID FALSE CLAIMS ACT- MCL §400.601 *ET SEQ.*

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Penalties</b>	<a href="#">MCL §400.603(4)</a>	A person who violates §400.603 is guilty of a felony, punishable by imprisonment of not more than four years and/or a fine of not more than \$50,000.	
	<a href="#">MCL §400.604</a>	A person who violates §400.604 is guilty of a felony, punishable by imprisonment of not more than four years and/or a fine of not more than \$30,000.	
	<a href="#">MCL §400.605(2)</a>	A person who violates §400.605(1) is guilty of a felony, punishable by imprisonment for not more than four years and/or by a fine of not more than \$30,000.	
	<a href="#">MCL §400.606(2)</a>	A person who violates §400.606 is guilty of a felony, punishable by imprisonment of not more than ten years and/or a fine of not more than \$50,000.	
	<a href="#">MCL §400.607(4)</a>	A person who violates MCL§400.607 is guilty of a felony punishable by a maximum fine of \$50,000 and/or imprisonment for not more than four years.	
<b>False Statements on Applications</b> <ul style="list-style-type: none"> <li>Application for Benefits</li> <li>Determination of Benefits</li> <li>Concealment of Fact in Applying for Benefits</li> </ul>	<a href="#">MCL §400.603(1)</a>	A person shall not knowingly make or cause to be made a false statement or false misrepresentation of a material fact in applying for Medicaid benefits.	
	<a href="#">MCL §400.603(2)</a>	A person shall not knowingly make or cause to be made a false statement or false misrepresentation of a material fact in determining rights to Medicaid benefits.	
	<a href="#">MCL §400.603(3)</a>	Persons having knowledge of an occurrence of an event affecting the initial or continued right to receive a Medicaid benefit or the initial or continued right of any other person on whose behalf he or she has applied for or is receiving a benefit shall not conceal or fail to disclose that event with the intent to obtain a benefit to which that person is not entitled or a benefit that is greater than that to which the person is entitled.	
<b>Kickback, Bribes, or Rebates</b>	<a href="#">MCL §400.604</a>	A person shall not solicit, offer, pay, or receive a kickback or bribe for goods or services for which payment is or may be made in whole or in part pursuant to the Medicaid program.	

## MICHIGAN MEDICAID FALSE CLAIMS ACT- MCL §400.601 *ET SEQ.*

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>False Statements about the Condition of a Health Care Facility</b>	<a href="#">MCL §400.605</a>	A person shall not knowingly and willfully make, or induce or seek to induce the making of a false statement or false representation of a material fact, with respect to the conditions or operation of an institution or facility, in order that the institution or facility may qualify upon initial certification or upon re-certification as a hospital, skilled nursing facility, intermediate care facility, or home health agency.	
<b>Conspiracy</b>	<a href="#">MCL §400.606(1)</a>	A person shall not enter into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another in obtaining of the payment or allowance of a false claim.	
<b>Third or Subsequent Offenses</b>	<a href="#">MCL §400.609</a>	Imprisonment of not more than ten years for a person who is convicted three or more times for an offense under the act.	
<b>Investigative Demands</b>	<a href="#">MCL §400.610</a>	If the Attorney General has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to an investigation for violation of this act, the AG may serve upon the person, before bringing any action, a written demand to appear and be examined under oath, and to produce the document or object for inspection and copying.	

## MICHIGAN MEDICAID FALSE CLAIMS ACT- MCL §400.601 *ET SEQ.*

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Private Right of Action (<i>Qui Tam</i> Provision)</b>	<a href="#">MCL 400.610a</a>	Any person may bring a civil action in the name of the State of Michigan to recover losses that the State suffers from the violation of the Medicaid False Claims Act.	
<ul style="list-style-type: none"> <li>Filing provisions</li> </ul>	<a href="#">MCL §400.610a(2)-(3); MCL §400.611</a>	If a person other than the attorney general institutes an action, the Complaint shall remain under seal for a period of at least 90 days while the attorney general decides whether or not to intervene in this action. At the time of filing the Complaint, the person shall serve a copy of the Complaint on the Attorney General and shall disclose in writing substantially all material evidence and information in the person's possession supporting the Complaint to the attorney general. The suit may be filed in any county in which venue is proper.	
<ul style="list-style-type: none"> <li>Whistleblower rewards</li> </ul>	<a href="#">MCL §400.610a(9)</a>	If a private individual prevails in an action, the court shall award the private individual necessary expenses, costs, reasonable attorneys fees, and based on the amount of effort involved, 15 to 25 percent of the monetary proceeds resulting from the action or settlement in the attorney general intervenes; or 25-30 percent if the attorney general does not intervene.	
<ul style="list-style-type: none"> <li>Original source requirement</li> </ul>	<a href="#">MCL §400.610a(13)</a>	A person must be the "original source" of the information in order to initiate a private action under this section. A person is an "original source" if he or she has direct and independent knowledge of the information on which the allegations are based and voluntarily provided the information to the attorney general before filing an action based on that information under this section.	

## MICHIGAN MEDICAID FALSE CLAIMS ACT- MCL §400.601 *ET SEQ.*

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Civil Penalties</b>	<a href="#">MCL §400.612</a>  Matter of Estate of Chavez, 339 NW2d 35 (1983)	<p>A person who receives a benefit which the person is not entitled to receive by reason of fraud or making a fraudulent statement or knowingly concealing a material fact, or who engages in any conduct prohibited by the Act, shall pay to the state the full amount received, and for each claim a civil penalty of not less than \$5,000 or not more than \$10,000 plus triple the amount of damages suffered by the state as a result of the conduct by the person. A criminal action is not required for the person to be civilly liable.</p> <p>In every instance where fraud is proven, the recipient shall be required to repay the full amount received regardless of whether the recipient would otherwise have been lawfully entitled to receipt of benefits at some point thereafter.</p>	
<b>Statute of Limitations</b>	<a href="#">MCL §400.614</a>	<p>A person shall not bring a civil action pursuant to MCL 400.610a after the later of the following:</p> <p>(a) More than 6 years after the date on which the violation was committed.</p> <p>(b) More than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the State of Michigan charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation was committed.</p> <p>A person may bring an action for conduct that occurred before the January 6, 2009 if the action is filed within the time limitation above.</p>	
<b>Racketeering</b>	<a href="#">MCL §750.159g(e)</a>	Racketeering means committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit an offense for financial gain, involving a violation of §§4, 5, or 7 of the Medicaid False Claims Act.	Michigan's RICO Act <a href="#">MCL§750.159f</a> <i>et seq.</i>
<b>Criminal Act</b>	<a href="#">MCL §600.4701</a>	A crime, which may result in the forfeiture of property, includes committing, attempting to commit, conspiring to commit, or soliciting another person to commit a violation of §§4, 5, or 7 of the Medicaid False Claims Act.	

## MICHIGAN MEDICAID FALSE CLAIMS ACT- MCL §400.601 *ET SEQ.*

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Medicaid Conditions of Participation</b>	<a href="#">MCL §400.111b(16)</a>	As a condition of participation in the Medicaid program, a provider must promptly notify the director of any payment to which a provider is not entitled to or that exceeds the amount to which the provider is entitled. A provider must repay overpayments, either directly or through adjustment of payments, as required by the director. Failure to repay an overpayment or a consistent pattern of failure to notify the director constitutes conversion of the money by the provider.	
	<a href="#">MCL §400.111b(17)</a>	As a condition of payment for services rendered, a provider must certify that a claim for payment is true, accurate, prepared with knowledge and consent of the provider, and does not contain untrue, misleading or deceptive information. A provider is responsible for the ongoing supervision of an agent, officer, or employee who prepares or submits the provider's claims. A provider's certification required under this subsection shall be prima facie evidence that the provider knows that the claim or claims are true, accurate, prepared with his or her knowledge and consent, do not contain misleading or deceptive information, and are filed in compliance with the policies, procedures, and instructions, and on the forms established or developed under this act.	
<b>Denial, Suspension, Termination, or Probation of Medicaid Participation</b>	<a href="#">MCL §400.111e(3)</a>	A provider's participation may be terminated or otherwise sanctioned for submission of: (a) duplicate claims; (b) claims for services, supplies or equipment that were not provided; (c) claims that include costs or charges not related to the service; (d) claims for services, supplies or equipment that are medically inappropriate or medically unnecessary; (e) claims that misrepresent information related to the services, supplies or equipment provided, the identity of the recipient or the identity of the provider; (f) claims that are not supported by information in the patient's medical record; (g) claims that are not completed properly; (h) claims that contain a fee or charge that is higher than the provider's usual and customary charge to the general public; (i) claims for services, supplies or equipment that were not rendered by the provider.	

MICHIGAN LICENSING LAWS			
SUBJECT	CITATION	SUMMARY	REFERENCES
The Corporate Practice of Medicine Doctrine	<u>Berlin v Sarah Bush Lincoln Health Center</u> , 688 NE2d 106 (1997)	The Corporate Practice of Medicine Doctrine, generally, is applied to prohibit the practice of medicine by a business corporation and to prevent a business corporation from employing physicians to furnish medical services. Although a few states have codified the doctrine, the prohibition is primarily inferred from state medical licensure acts, which regulate the profession of medicine and forbid its practice by unlicensed individuals, general corporate statutes and public policy concerns.	
	<u>Dr. Allison, Dentist, Inc v Allison</u> , 196 NE 799 (1935)	To practice a profession requires something more than the financial ability to hire competent persons to do the actual work. It can be done only by a duly qualified human being, and to qualify, something more than knowledge or skill is essential.	

MICHIGAN LICENSING LAWS			
SUBJECT	CITATION	SUMMARY	REFERENCES
<b>The Learned Profession Doctrine</b> <ul style="list-style-type: none"> <li>For-profit Corporations</li> </ul>	1980 Op Atty Gen No 5676 & 1989 Op Atty Gen No 6592	<p>Based on the Learned Profession Doctrine, the Attorney General for the State of Michigan has consistently taken the position that for-profit corporations and businesses incorporated under the Michigan Business Corporation Act are not permitted to practice medicine. A four-point rationale has been generally advanced as the basis for the learned profession doctrine.</p> <ul style="list-style-type: none"> <li>Laymen should not be permitted, directly or indirectly, by virtue of the corporate form, to practice medicine;</li> <li>Necessary confidential and professional relationships existing between a physician and his or her patients could be destroyed by lay shareholders interested only in profit;</li> <li>The limited liability of the corporate form is not appropriate where the client must place such a high degree of trust and confidence in the physician; and</li> <li>It is impossible for a corporation to fulfill the licensing and ethical requirements medical practice demands.</li> </ul>	
<ul style="list-style-type: none"> <li>For-profit Exception</li> </ul>		Allows persons licensed to practice one of the learned professions to form a for-profit corporation as long as all shareholders, officers, and agents are licensed in the profession.	
<ul style="list-style-type: none"> <li>Nonprofit Hospitals and Corporations</li> </ul>	1993 Op Atty Gen No 6770	Nonprofit hospitals and other corporations incorporated under the Nonprofit Corporation Act may provide medical care services through employed physicians.	

MICHIGAN LICENSING LAWS			
SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Impersonation of a Health Care Professional</b>	<a href="#">MCL§333.16179</a>	An individual shall not make a false representation or impersonation, act as a proxy for another individual, or allow or aid an individual to impersonate him or her in connection with an examination or application for licensure or registration or a request to be examined, licensed, or registered.	
<b>Unauthorized Practice of a Health Profession</b>  <ul style="list-style-type: none"> <li>Penalties-First Offense</li> <li>Penalties-Second Offense</li> </ul>	<a href="#">MCL §333.16294</a>  <u>Cherry v State Farm Mut Auto Ins Co</u> 489 NW2d 788 (1992)  <a href="#">MCL §333.16296(a)</a>  <a href="#">MCL §333.16296(b)</a>	<p>Except as allowed under the physicians delegation statute (MCL §333.16215), an individual who practices or holds himself or herself out as practicing a health profession regulated by this article, without a license or registration or under a suspended, revoked, lapsed, void, or fraudulently obtained license or registration, or outside the provisions of a limited license or registration, or who uses as his or her own the license or registration of another person is guilty of a felony.</p> <p>The practice of medicine or the administering of medical treatment can only be lawfully performed by licensed physicians.</p> <p>Imprisonment for not more than 90 days or a fine of \$100, or both.</p> <p>Imprisonment for not less than 60 days, but not more than one year, or a fine of not less than \$300 nor more than \$1,000, or both.</p>	
<b>Personal Disqualifications for a Professional License</b>	<a href="#">MCL §333.16221(b)(ix)</a>	A person who is convicted of a misdemeanor or felony involving fraud in obtaining or attempting to obtains fees relating to the practice of a health profession may be disqualified from obtaining a health care professional license.	



MICHIGAN LICENSING LAWS			
SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Fingerprinting Requirement</b>	<a href="#">Michigan Public Act 26 of 2006</a>	An applicant for initial licensure or registration must be fingerprinted by the Michigan State Police, who will then conduct a statewide criminal history check and forward the applicant's fingerprints to the Federal Bureau of Investigation to conduct a national criminal history check.	
<b>Effect of Unethical Business Practices and Unprofessional Conduct on Professional License</b>	<u>Mich Dept of Consumer &amp; Industry Services v Shah</u> , 600 NW2d 406 (1999)	The conviction of a licensee's professional corporation for the alteration of medical records, where the licensee is the sole shareholder, cannot be imputed against the licensee for purposes of licensing sanction.	
	<u>Danto v Bd of Medicine</u> , 425 NW2d 171 (1988)	Conviction for misapplication of insurance funds does not relate to a physician's ability to treat patients safely and competently.	
	<u>Mich Dept of Consumer &amp; Industry Services v Greenberg</u> , 586 NW2d 560 (1998)	Conviction of two counts of assault and battery upon female employees does not establish lack of good moral character. However, sanctions imposed are appropriate under other subsections of §16221.	
	<u>Borchardt v Dept of Commerce</u> , 554 NW2d 348 (1996)	Failure to maintain the proper records of a wholesale distributor establishes a violation of §16221. The restitution penalty permitted against pharmacists is limited in scope to penalties that may be imposed by the disciplinary subcommittee and not a trial court.	

MICHIGAN LICENSING LAWS			
SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Prohibited Acts for All Health Care Professionals</b>  <ul style="list-style-type: none"> <li>Sanctions</li> </ul>	<a href="#">MCL §333.16221(c)</a>  <a href="#">MCL §333.16226</a>	<p>A disciplinary committee shall proceed under §16226 if it finds that any of the following prohibited acts have occurred:</p> <ul style="list-style-type: none"> <li>Fraud and deceit in obtaining or renewing a license or registration.</li> <li>Permitting the license or registration to be used by an unauthorized person.</li> <li>Practice outside the scope of the license.</li> <li>Obtaining, possessing, or attempting to obtain or possess a controlled substance or a drug without lawful authority, or selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic services.</li> </ul> <p>Sanctions that may be imposed by the disciplinary committee include fines, probation, denial, suspension, revocation, community service, or restitution</p>	MCL§ 333.7105
<b>Unethical Business Practices Concerning All Health Care Professionals</b>  <ul style="list-style-type: none"> <li>Sanctions</li> </ul>	<a href="#">MCL §333.16221(d)</a>  <a href="#">MCL §333.16226</a>	<p>A disciplinary committee shall proceed under §16226 if it finds that any of the following unethical business practices have occurred:</p> <ul style="list-style-type: none"> <li>False or misleading advertising.</li> <li>Dividing fees for referral of patients or accepting kickbacks for medical or surgical services, appliances, or medications purchased by or in behalf of patients.</li> <li>Fraud and deceit in obtaining or attempting to obtain third party reimbursement.</li> </ul> <p>Sanctions that may be imposed by the disciplinary committee include fines, probation, denial, suspension, revocation, community service, or restitution.</p>	<i>See also</i> MCL §750.428



MICHIGAN LICENSING LAWS			
SUBJECT	CITATION	SUMMARY	REFERENCES
Dentistry- Dental Laboratory	<a href="#">MCL §333.16643</a>	A dental laboratory shall not advertise, solicit, represent, or hold itself out to the general public that it will sell, supply, furnish, construct, repair, or alter a prosthetic denture, bridge, orthodontic or other appliance, or structure to be used as a substitute for or as a part of human teeth or jaws or associated structures or for the correction of malocclusions or deformities.	
	<a href="#">MCL §333.16647</a>	The Board of Dentistry may inspect a dental laboratory to determine the laboratory's compliance with Public Health Code. A dental laboratory which violates this part or refuses to allow the board or an agent or employee of the board to inspect a work authorization, prosthetic denture, bridge, orthodontic or other appliance, or structure to be used as a substitute for or as a part of human teeth or jaws or associated structures or for the correction of malocclusions or deformities in its possession is guilty of a misdemeanor	
Optometry- Advertising	<a href="#">MCL §333.17414(2)</a>	It is unlawful for any licensed optometrist, or any individual, firm, or corporation engaged in the sale of merchandise of any description who maintains or operates, or who allow to be maintained or operated in connection with said merchandise business, an optometric department, or who rents or subleases to any person or persons for the purpose of engaging in the practice of optometry therein, any part of premises in which such person, persons, firm or corporation is engaged in mercantile business, to be publish or circulate, or print or cause to be printed, by any means whatsoever, in which there appears in the advertisements or notice in which the advertisement or notice appears, any truthful or misleading statement, or anything calculated intended to mislead or deceive the public or any individual.	MCL §333.17401 <i>et seq.</i>

MICHIGAN LICENSING LAWS			
SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Pharmacy</b> <ul style="list-style-type: none"> <li>Punishment</li> </ul>	<a href="#">MCL §333.17763</a>	The act gives the disciplinary subcommittee of the Board of Pharmacy the authority to fine, reprimand, or place a pharmacist licensee on probation, or deny, limit, suspend, or revoke the license of a pharmacist for violation of the rules that apply to pharmacists.	<i>See e.g.</i> 21 C.F.R. §210.1; 21 U.S.C. §331; 21 U.S.C. §351
<ul style="list-style-type: none"> <li>Adulterated or Misbranded Drugs</li> </ul>	<a href="#">MCL §333.17764</a>	It is a misdemeanor for a person to adulterate, misbrand, or substitute a drug or to sell, offer for sale, or possess an adulterated or misbranded drug or device.	
<ul style="list-style-type: none"> <li>False Information Regarding Prescriptions</li> </ul>	<a href="#">MCL §333.17766</a>	It is a misdemeanor to provide false information regarding prescriptions such as: <ul style="list-style-type: none"> <li>using a false name or representing oneself as a lawful prescriber;</li> <li>altering or forging a prescription or possessing a false prescription;</li> <li>attempting to obtain a prescription for means other than its intended therapeutic use; or</li> <li>reselling or attempting to resell a prescription.</li> </ul>	

MICHIGAN LICENSING LAWS			
SUBJECT	CITATION	SUMMARY	REFERENCES
<b>False Licenses in Connection with Controlled Substances</b>  <ul style="list-style-type: none"> <li>Penalties</li> </ul>	<a href="#">MCL §333.7407</a>	<p>Prohibits a licensee from knowingly or intentionally distributing controlled substances without an order form; using a false, fictitious, revoked, or suspended license or another's license to manufacture or distribute a controlled substance; obtaining a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge; furnishing false or fraudulent material information in or omitting any material information for an application, report, official prescription form, or other required document; make, distribute or possess a punch, die, plate or stone to print or reproduce a trade name so as to render any drug or container a counterfeit substance; possession of counterfeit prescription forms; refusal or failure to make, keep, furnish any document, record, or other information required.</p> <p>Violation of this section is punishable by imprisonment for not more than four years or a fine of \$30,000, or both.</p>	
<b>Prohibited Act of Health Care Facilities</b>	<a href="#">MCL §333.20165</a>	<p>The Michigan Department of Consumer &amp; Industry Services may deny, limit, suspend, or revoke a facility's license or an application for a license on the following grounds:</p> <ul style="list-style-type: none"> <li>Fraud or deceit in obtaining or attempting to obtain a license or certification or in the operation of the licensed health facility or agency.</li> <li>False or misleading advertising.</li> <li>Negligence or failure to exercise due care, including the negligent supervision of employees and subordinates.</li> <li>Evidence of abuse regarding a patient's health, welfare, or safety or the denial of a patient's rights.</li> <li>Permitting a license or certificate to be used by an unauthorized health facility or agency.</li> </ul>	

MICHIGAN LICENSING LAWS			
SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Licensee-Specific Laws</b> <ul style="list-style-type: none"> <li>Clinical and Other Labs</li> <li>Ambulance Operations</li> <li>Nursing Homes</li> </ul>	<a href="#">MCL §333.20525</a>  <a href="#">MCL §333.20921</a>  <a href="#">MCL §333.21791</a>  <a href="#">MCL §333.21792</a>	<p>Lists the grounds under which the Michigan Department of Consumer &amp; Industry Services may revoke, limit or suspend a license. Such grounds include demonstrating incompetence or consistent error, solicitation of referrals, and billing for false claims to a third party.</p> <p>Prohibits conduct such as providing false and misleading information concerning response time, inducing a patient to patronize a health care facility, advertising health care facilities within the vehicle, and any false or misleading advertising.</p> <p>Prohibits a nursing home from using false or misleading information in the advertising of its facility or name.</p> <p>Prohibits certain referrals and paying inducements for referrals.</p>	
<b>Record Keeping Requirements</b> <ul style="list-style-type: none"> <li>In General</li> <li>Penalties</li> </ul>	<a href="#">MCL §333.20175(1)</a>  <a href="#">MCL §333.20175- all subsections.</a>	<p>Health care facilities are required to keep and maintain a record for each patient, including a full and complete record of tests and examinations performed, observations made, and treatments provided. Unless a longer retention period is otherwise required, a health facility or agency shall keep and retain each record for a minimum of 7 years from the date of service to which the record pertains.</p> <p>Hospitals may be fined \$10,000 for failing to comply with the foregoing requirements or for failing to assure that records are not altered or destroyed. Health professionals may also face disciplinary action taken by the health facility or agency.</p>	

## MICHIGAN VULNERABLE ADULT STATUTE - M.C.L. §750.145m ET SEQ.

<p><b>Vulnerable Adult Abuse</b></p> <ul style="list-style-type: none"> <li><b>First Degree</b></li> <li><b>Second Degree</b></li> <li><b>Third Degree</b></li> <li><b>Fourth Degree</b></li> </ul>	<p><a href="#">MCL §750.145n(1)</a></p> <p><a href="#">MCL §750.145n(2)</a></p> <p><u>People v DeKorte</u>, 593 NW2d 203 (1999); See also <u>People v Hadson</u>, 615 NW2d 784 (2000) (same elements)</p> <p><a href="#">MCL §750.145n(3)</a></p> <p><a href="#">MCL §750.145n(4)</a></p>	<p>A caregiver is guilty in the first degree if the caregiver intentionally causes serious physical harm or serious mental harm to a vulnerable adult. Violation of this section is a felony punishable by fifteen years or \$10,000, or both.</p> <p>A caregiver or other person with the authority over the vulnerable adult is guilty of vulnerable adult abuse in the second degree if the reckless act or reckless failure to act of the caregiver or other person with authority over the vulnerable adult causes serious physical harm or serious mental harm. Violation of this section is a felony punishable by four years or \$5,000, or both.</p> <p>To establish the crime of second degree vulnerable adult abuse, prosecutor must prove:(1) that the defendant is caregiver or other person with authority over a vulnerable adult; (2) that the victim is a vulnerable adult; (3) that the defendant engaged in the reckless act or the reckless failure to act; (4) that the reckless act or reckless failure to act caused serious physical harm or serious mental harm to the vulnerable adult.</p> <p>A caregiver is guilty in the third degree if the caregiver intentionally causes physical harm to a vulnerable adult. Violation of this section is a misdemeanor punishable by two years or \$2,500, or both.</p> <p>A caregiver or other person with authority of the vulnerable adult is guilty in the fourth degree if the reckless act or the reckless failure to act of the caregiver or another person with authority over a vulnerable adult causes physical harm to the vulnerable adult. Violation of this section is a misdemeanor punishable by one year or \$1,000, or both.</p>	
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## MICHIGAN VULNERABLE ADULT STATUTE - M.C.L. §750.145m ET SEQ.

<b>Miscellaneous Prohibited Acts</b>	<a href="#">MCL §750.145p(1)</a>	<p>A person who does one of the following is guilty of a misdemeanor punishable by imprisonment for not more than two years or a fine of not more than \$25,000, or both:</p> <ul style="list-style-type: none"> <li>• Commingles, borrows, or pledges those funds of a resident, which are required by law to be held in a separate trust account;</li> <li>• Interferes with or obstructs an investigation under the adult foster care facility licensing act; or</li> <li>• Files false or misleading information in regard to licensing requirements.</li> </ul>	
<b>Retaliation against Residents</b>	<a href="#">MCL §750.145p(2)</a>	<p>This section protects those residents of an adult foster care facility who engage in protected activities, such as:</p> <ul style="list-style-type: none"> <li>• Providing information to a state or local official;</li> <li>• Making a complaint against a facility; or</li> <li>• Initiating, participating in, or testifying in an administrative or criminal action.</li> </ul> <p>A person who retaliates against a resident for any of the foregoing conduct is guilty of a misdemeanor punishable by imprisonment for not more than two years or a fine of not more than \$25,000, or both.</p>	
<b>Retaliation against Employees</b>	<a href="#">MCL §750.145p(3)</a>	<p>This section protects employees of an adult foster care facility who engage in protected activities, such as:</p> <ul style="list-style-type: none"> <li>• Providing information to a state or local official;</li> <li>• making a complaint against a facility; and/or</li> <li>• initiating, participating in, or testifying in an administrative or criminal action.</li> </ul> <p>A person who retaliates against an employee for engaging in any of the foregoing conduct is guilty of a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$10,000, or both.</p>	

<b>MICHIGAN VULNERABLE ADULT STATUTE - M.C.L. §750.145m ET SEQ.</b>			
<b>Subsequent Offenses</b>	<a href="#">MCL §750.145p(5)</a>	A caregiver or other person with authority who commits a second or subsequent violation of this section is guilty of a felony punishable by imprisonment for not more than five years or a fine of not more than \$75,000, or both.	
<b>Community Service</b>	<a href="#">MCL §750.145r</a>	In addition to or as an alternative to imposing a term of imprisonment, the court may sentence the person to perform a community service that does not involve activities that involve the interaction with or the care of vulnerable adults.	

## MICHIGAN CRIMINAL ENTERPRISES AND RACKETEERING INFLUENCED CORRUPT ORGANIZATIONS (RICO) ACT - MCL §750.159f ET SEQ.

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Enterprise Defined</b>	<a href="#">MCL §750.159f(a)</a>	“Enterprise” includes an individual, sole proprietorship, partnership, corporation, limited liability company, trust, union, association, government or unit or other legal entity or a group of persons associated in fact although not a legal entity. The term “enterprise” also includes illicit as well as legal enterprises.	
<b>Instrumentality Defined</b>	<a href="#">MCL §750.159f(b)</a>	“Instrumentality” means an interest in, real or person property, or other things of value, the use of which contributes directly and materially to the commission of an offense included in the definition of racketeering.	
<b>Pattern of Racketeering Activity</b>	<a href="#">MCL §750.159f(c)</a>	<p>“Pattern of racketeering activity” means not less than two incidents of racketeering to which all of the following characteristics apply:</p> <ul style="list-style-type: none"> <li>• The incidents have the same or substantially similar purpose, result, participant, victim, or method of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated acts;</li> <li>• The incidents amount to or pose a threat of continued criminal activity;</li> <li>• At least one of the incidents occurred within this state on or after the effective date of the amendatory act that added this section, and the last of the incidents occurred within ten years of the commission of any prior incident, including any period of imprisonment served by a person engaged in the racketeering activity.</li> </ul>	
<b>Person Defined</b>	<a href="#">MCL §750.159f(d)</a>	“Person” means an individual, sole proprietorship, partnership, cooperative, association, corporation, limited liability company, personal representative, receiver, trustee, assignee, or other legal or illegal entity.	
<b>Proceeds Defined</b>	<a href="#">MCL §750.159f(e)</a>	“Proceeds” mean any real, personal, or intangible property obtained through the commission of an offense included in the definition of racketeering, including any appreciation of the value of the property.	

## MICHIGAN CRIMINAL ENTERPRISES AND RACKETEERING INFLUENCED CORRUPT ORGANIZATIONS (RICO) ACT - MCL §750.159f ET SEQ.

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Prosecuting Agency Defined</b>	<a href="#">MCL §750.159f(f)</a>	“Prosecuting attorney” means the Attorney General of this state or his or her designee, or the prosecuting attorney of a county or his or her designee.	
<b>Racketeering Defined</b>	<a href="#">MCL §750.159g(e)</a>	“Racketeering” means committing, attempting to commit, conspiring to commit, or aiding and abetting, soliciting, coercing, or intimidating a person to commit an offense for financial gain involving a violation of section 4, 5, or 7 of the Medicaid False Claims Act, concerning Medicaid fraud.	Medicaid False Claims Act MCL§400.601 et seq.
<b>Liability of Certain Conduct</b> <ul style="list-style-type: none"> <li>Participation in Activities</li> <li>Acquiring an Interest in an Enterprise</li> <li>Receiving Proceeds</li> <li>Conspiracy</li> </ul>	<a href="#">MCL §750.159i</a>  <a href="#">MCL §750.159i(1)</a>  <a href="#">MCL §750.159i(2)</a>  <a href="#">MCL §750.159i(3)</a>  <a href="#">MCL §750.159i(4)</a>	<p>A person who is employed by or associated with an enterprise shall not knowingly conduct or participate in the affairs of the enterprise directly or indirectly through a pattern of racketeering activity.</p> <p>A person shall not knowingly acquire or maintain an interest in an enterprise used for the operation of racketeering activity.</p> <p>A person shall not use or receive proceeds from a pattern of racketeering activity.</p> <p>A person shall not conspire or attempt to violate this statute.</p>	

**MICHIGAN CRIMINAL ENTERPRISES AND RACKETEERING INFLUENCED CORRUPT ORGANIZATIONS (RICO) ACT - MCL §750.159f ET SEQ.**

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Penalties</b>	<a href="#">MCL §750.159j</a>	<p>Imprisonment for not more than 20 years or a fine of not more than \$100,000. In addition, the court may impose a variety of other penalties including:</p> <ul style="list-style-type: none"> <li>• Ordering the person to pay court costs; or</li> <li>• Ordering the person to pay the state investigative agency for investigation and prosecution costs.</li> </ul> <p>The court shall order a person convicted of a violation of this section to criminally forfeit to the state any real, personal, or intangible property in which he or she has an interest and that was used in the course of or derived from the prohibited conduct.</p>	

## FRAUD AND CORRUPTION IN GENERAL - FEDERAL STATUTES

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Criminal False Claims Statute</b>	<a href="#">18 USC §287</a>	Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to the department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned for not more than five years and shall be subject to a fine.	Civil False Claims Act 31 USC§3729 <i>et seq</i>
<b>Federal Health Care Program Fraud Criminal Statute</b>	<a href="#">42 USC §1320a-7b(a)</a>  <a href="#">Mt Sinai Hosp of Greater Miami v Weinberger</a> , 517 F2d 329 (5 <sup>th</sup> Cir 1975)	<p>A person is guilty of a felony if that person knowingly and willfully makes or causes to be made any false statement or representation of material fact in any claim or application for benefits or payment under a federal health care program. The statute prohibits the failure to disclose an event that affects a right to payment if the result is that the person or entity receives or retains government payments that are not lawfully owed; and also prohibits presenting or causing to be presented a claim for services provided by an unlicensed physician that would otherwise be payable by a federal health care program Penalties include up to five years imprisonment or \$25,000 in fines, or both, and program exclusion.</p> <p>A person is guilty of a misdemeanor if that person counsels or assists another individual in the commission of the activities described above, and upon conviction shall be fined nor more than \$10,000 or imprisoned for not more than one year, or both.</p> <p>If the provider fails to repay the amount owed, the Department of Health and Human Services may collect an offset. Monies illegally or improperly disbursed, including those disbursed on an erroneous understanding of facts, may be recovered in a quasi-contractual suit for unjust enrichment.</p>	Civil False Claims Act, 31 USC §3729 <i>et seq</i>

## FRAUD AND CORRUPTION IN GENERAL - FEDERAL STATUTES

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Health Care Benefit Fraud</b>	<a href="#">18 USC §1347</a>	This statute prohibits knowingly and willfully executing or attempting to execute a scheme or artifice to defraud any health care benefit program or to obtain remuneration from a health care benefit program by false pretenses, representations, or promises. <b>This statute applies to all health care plans, not just federally-funded plans.</b> Penalties include fines under Title 18 or imprisonment for not more than ten years, or both. If the violation results in serious bodily harm, then the penalty increases to twenty years imprisonment. If the violation results in death, the penalty increases to life imprisonment.	
<b>Aiding in the Disposal of Assets in Order for the Individual to Obtain Medicaid Benefits</b>	<a href="#">42 USC §1320a-7b(a)(6)</a>	Whoever, for a fee, knowingly and willfully counsels or assists an individual to dispose of assets (including by any transfer in trust) in order for the individual to become eligible for medical assistance under a state Medicaid plan, [disposing of the assets results in the imposition of a period of ineligibility for such assistance under section 1396p(c) of this title], shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing (by the person) of items or services for which payment is or may be made under the program, be guilty of a felony and upon conviction thereof fined not more than \$25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure, conversion, or provision of counsel or assistance by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than \$10,000 or imprisoned for not more than one year, or both.	
<b>Termination of Eligibility for Federal health care program benefits</b>	<a href="#">42 USC §1320-7b(a)(6)</a>	In addition, in any case where an individual who is otherwise eligible for assistance under a Federal health care program is convicted of an offense under the preceding provisions of this subsection, the administrator of such program may at its option (notwithstanding any other provision of such program) limit, restrict, or suspend the eligibility of that individual for such period (not exceeding one year) as it deems appropriate; but the imposition of a limitation, restriction, or suspension with respect to the eligibility of any individual under this sentence shall not affect the eligibility of any other person for assistance under the plan, regardless of the relationship between that individual and such other person.	

FRAUD AND CORRUPTION IN GENERAL - FEDERAL STATUTES			
SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Major Fraud Against the United States</b>  <ul style="list-style-type: none"> <li>Penalties</li> <li>Statute of Limitations</li> <li>“Bounty Hunter” Provision</li> </ul>	<a href="#">18 USC §1031(a)</a>	Whoever knowingly executes, or attempts to execute, any scheme or artifice with the intent to defraud the US; or to obtain money or property by means of false or fraudulent pretenses, representation, or promises, in any procurement of property or services as a prime contractor or subcontractor/supplier, if the property or services are \$1,000,000 or more, shall be fined not more than \$1,000,000 or imprisoned for not more than 10 years.	Civil False Claims Act, 31 USC 3230(d)
	<a href="#">18 USC §1031(b)</a>	The fine imposed for an offense under this section may exceed the maximum otherwise provided by law, if such fine does not exceed \$5,000,000; and the gross loss to the government or the gross gain to a defendant is \$500,000 or greater; or if the offense involves a conscious or reckless risk of serious personal injury.	
	<a href="#">18 USC §1031(c)</a>	The maximum fine imposed upon a defendant for a prosecution, including a prosecution with multiple counts, under this section shall not exceed \$10,000,000.	
	<a href="#">18 USC §1031(e)</a>	In determining the amount of the fine, the court shall consider <i>inter alia</i> the need to reflect the seriousness of the offense; whether the defendant previously has been fined for a similar offense; and any other pertinent equitable considerations.	
	<a href="#">18 USC §1031(f)</a>	A prosecution of an offense under this statute may be commenced at any time not later than seven years after the offense is committed, plus any additional time otherwise provided by law.	
	<a href="#">18 USC §1031(g)</a>	The Attorney General of the United States is authorized to make payments from funds appropriated to the United States Department of Justice to persons who furnish information relating to a possible prosecution under this section. The amount of such payment shall not exceed \$250,000.	



## FRAUD AND CORRUPTION IN GENERAL - FEDERAL STATUTES

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Theft or Embezzlement in Connection with Health Care</b>	<a href="#">18 USC §669</a>  <a href="#">18 USC §24</a>	<p>This statute prohibits a person from knowingly and willfully embezzling, stealing, or otherwise without authority, converting to the use of any person other than the rightful owner, or intentionally misapplying any of the moneys, funds, securities, premiums, credits, property, or other assets of a health care benefit program, and subjects violators to fines under Title 18 and/or imprisonment for not more than 10 years; but if the value of such property does not exceed the sum of \$100, the person is subject to fines under Title 18 or imprisonment of not more than one year, or both.</p> <p>A “health care benefit program” is any public or private plan under which a medical benefit, item, or service is provided, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract.</p>	
<b>Obstruction of Federal Audit</b>	<a href="#">18 USC §1516</a>	<p>This statute criminalizes the obstruction of federal audits with respect to individuals who have received in excess of \$100,000, directly or indirectly, from the United States in any one year period under a contract or subcontract and subjects violators to fines under Title 18 or imprisonment of not more than five years, or both.</p> <p>A “Federal Auditor” includes any person employed on a full-time, part-time or contractual basis to perform an audit or a quality assurance inspection for or on behalf of the United States.</p>	
<b>False Statements Relating to Health Care Matters Liability for Certain Acts</b>	<a href="#">18 USC §1035</a>	Whoever, in any matter involving a health care benefit program, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or makes any materially false, fictitious, or fraudulent statements or representations, or makes or uses any materially false writing or document knowing that it contains a materially false, fictitious, or fraudulent statement to an entity in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under Title 18 or imprisoned not more than five years, or both.	Theft and Embezzlement

<b>FRAUD AND CORRUPTION IN GENERAL - FEDERAL STATUTES</b>			
<b>SUBJECT</b>	<b>CITATION</b>	<b>SUMMARY</b>	<b>REFERENCES</b>
<b>Possession of False Papers to Defraud the United States</b>	<a href="#"><u>18 USC §1002</u></a>	This statute prohibits the possession of false, altered, forged, or counterfeited writings or documents for the purpose of enabling another to obtain from the United States, or from any agency, officer, or agent any sum of money. Penalties include fines under Title 18 or imprisonment of up to five years, or both.	
<b>False Statements and ERISA</b>	<a href="#"><u>18 USC §1027</u></a>	This statute prohibits false statements or the concealment of facts in relation to documents filed under ERISA.	

## FRAUD AND CORRUPTION IN GENERAL - FEDERAL STATUTES

SUBJECT	CITATION	SUMMARY	REFERENCES
Obstruction of Proceedings	<a href="#">18 USC §1505</a>	Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress, shall be fined under Title 18 or imprisoned not more than five years, or both. If the offense involves international or domestic terrorism, the penalty is raised to fines under Title 18, imprisoned for not more than eight years, or both.	
	<u>US v Laurins</u> , 857 F2d 529 (9 <sup>th</sup> Cir 1988); 18 USC §1515(b)	The specific intent required for an obstruction of justice charge is that the defendant must have acted corruptly. “Corruptly” means acting with an improper purpose, personally, or by influencing another, and may include making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.	
	<u>US v Price</u> , 951 F2d 1028 (9 <sup>th</sup> Cir 1991)	The crime of obstruction of proceedings has three essential elements. First, there must be a proceeding pending before a department or agency of the United States. Second, the defendant must be aware of the pending proceeding. Third, the defendant must have intentionally endeavored to corruptly influence, obstruct, or impede the pending proceeding.	

## FRAUD AND CORRUPTION IN GENERAL - FEDERAL STATUTES

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Obstruction of Criminal Investigations</b>	<a href="#">18 USC §1510</a>	Whoever willfully endeavors by means of bribery to obstruct, delay, or prevent the communication of information relating to a violation of any criminal statute of the United States by any person to a criminal investigator, shall be fined under Title 18 or imprisoned not more than five years, or both.  The term “criminal investigator” means an individual duly authorized by a department, agency, or armed force of the United States to conduct or engage in investigations of or prosecutions for violations of the criminal laws of the United States.	
	<a href="#">18 USC §1519</a>	Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any bankruptcy matter, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.	
	<u>US v Abrams</u> , 543 F Supp 1184 (SDNY 1982)	The government must prove beyond a reasonable doubt that (1) the defendant willfully endeavored by one of the means set forth in the statute to prevent the communication of information relating to a violation of the federal criminal laws; (2) the action was taken to prevent the communication from being made to a criminal investigator, that is, to an individual authorized to conduct or engage in investigations of or prosecution for such violations; and (3) the defendant knew that the recipient or intended recipient of the information was a criminal investigator.	
	<u>US v Leisure</u> , 844 F2d 1347 (8 <sup>th</sup> Cir 1988)	The government need not prove that the defendant knew that a federal investigation was underway or that the person who was the object of the obstruction was about to communicate information to a federal agent. Rather, the government need only prove that the defendant believed that a witness might give information to federal officials and that the defendant prevented this communication in order to violate 18 USC §1510.	

## FRAUD AND CORRUPTION IN GENERAL - FEDERAL STATUTES

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Obstructing Criminal Investigations of Health Care Offenses</b>	<a href="#">18 USC §1518</a>	Whoever willfully prevents, obstructs, misleads, delays or attempts to prevent, obstruct, mislead or delay the communication of information or records relating to a violation of a federal health care offense to a criminal investigator shall be subject to imprisonment for not more than five years or fines of not more than (a) \$250,000 for an individual or (b) \$500,000 for an organization. If any person derives a pecuniary gain from the offense, or a person other than the defendant suffers a pecuniary loss from the offense, then the defendant may be fined the greater of the applicable amount set forth in (a) or (b) or twice the gross gain or loss from the offense.	18 USC §24 18 USC §3571
	<a href="#">42 USC §1320a-7</a>	Any individual or entity that violates 18 USC §1518 may be excluded from participation in any federal health care program for a period of up to three years (absent aggravating circumstances). Exclusion is permissive, not mandatory.	
	<a href="#">18 USC §1518(b)</a>	The term “criminal investigator” means any individual duly authorized by a department, agency, or armed force of the US to conduct or engage in investigations for prosecutions for violations of health care offenses.	

## FRAUD AND CORRUPTION IN GENERAL - FEDERAL STATUTES

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Mail Fraud</b>	<a href="#">18 USC §1341</a>	Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under Title 18 or imprisoned for not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.	
<b>Theft of Government Property-Criminal</b>	<a href="#">18 USC §641</a>	Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or whoever receives, conceals, or retains the same with intent to convert it to his or her use or gain, knowing it to have been embezzled, stolen, purloined or converted, shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of \$1,000, he or she shall be fined under this title or imprisoned not more than one year, or both.  “Value” means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.	

## FEDERAL FALSE STATEMENT ACCOUNTABILITY ACT OF 1996- 18 USC §1001

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Liability for Certain Acts</b>	<a href="#">18 USC §1001</a>	Whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully: <ul style="list-style-type: none"> <li>• Falsifies, conceals, or covers up by any trick or scheme, or device a material fact;</li> <li>• Makes any materially false, fictitious, or fraudulent statement or representation; or</li> <li>• Makes or uses any false writing or document knowing that same to contain any materially false fictitious, or fraudulent statement or entry;</li> </ul> shall be fined under this title or imprisoned not more than five years, or both.	
	<u>US v Lawson</u> , 809 F2d 1514 (11 <sup>th</sup> 1987)	To sustain a conviction for violation of 18 USC §1001, the government must prove: <ul style="list-style-type: none"> <li>• That a statement was made;</li> <li>• That it was false;</li> <li>• That it was material;</li> <li>• That it was made with specific intent;</li> <li>• That it was within the jurisdiction of an agency of the US.</li> </ul>	
	US Attorney Manual, Criminal Resource Manual § 908 Elements (1997)	Whether the foregoing acts are criminal depends on whether there is an affirmative response to each of the following questions: <ul style="list-style-type: none"> <li>• Was the act or statement material?</li> <li>• Was the act within the jurisdiction of a department or agency of the US?</li> <li>• Was the act done knowingly and willfully?</li> </ul>	

## FEDERAL FALSE STATEMENT ACCOUNTABILITY ACT OF 1996- 18 USC §1001

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Concealment of a Material Fact</b>	<a href="#">18 USC §1001 (a)(1)</a>	Whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the US, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact.	False Claims Act- 31 USC§3729
• Concealment	<u>US v London</u> , 550 F2d 206 (5 <sup>th</sup> Cir 1997)	To conceal a fact by use of a trick, scheme, or device requires an affirmative act by which a material fact is concealed; mere failure to make a disclosure does not equal this offense.	
• Materiality	<u>US v Gaudin</u> , 515 US 506 (1995)	There is a constitutional right to have a jury decide the materiality of the defendant's false statement. (The parties had agreed that a material fact is one having a tendency to influence the decision of the governmental agency.)	
	<u>US v Larson</u> , 796 F2d 244 (8 <sup>th</sup> Cir 1986)	A person cannot be guilty of concealing material facts unless there was a duty to disclose the facts. The court acknowledged that there was a split in the circuits.	
	<u>US v Lutwak</u> , 195 F2d 748 (7 <sup>th</sup> Cir 1952)	The statute proscribes the acts of making false statements, falsifying, concealing or covering up. The statute also covers half-truths if there is a duty to speak the truth. Court affirmed that the commission of the substantive offense and a conspiracy to commit the offense are separate and distinct offenses. Congress has the power to impose a different penalty to each offense and to conspiracy.	



## FEDERAL FALSE STATEMENT ACCOUNTABILITY ACT OF 1996- 18 USC §1001

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>False, Fictitious or Fraudulent Statements</b>	<a href="#"><u>18 USC §1001 (a)(2)</u></a>	Whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the US, knowingly and willfully makes, any materially false, fictitious, or fraudulent statement or misrepresentation.	
	<u>US v Shah</u> , 44 F3d 285 (5 <sup>th</sup> Cir 1995)	A present statement as to future intent (e.g., a promise to do that which is not actually intended) may be a false statement of an existing fact. “A promise may amount to a false, fictitious, or fraudulent statement if it is made without any present intention of performance and under circumstances such that it plainly, albeit implicitly, represents the present existence of an intent to perform.”	
	<u>US v White</u> , 765 F2d 1469 (11th Cir 1985)	The statement or representation was made “knowingly and willfully” if the defendant demonstrates reckless disregard for the truth with a conscious purpose to avoid learning the truth.	
	<u>US v Aarons</u> , 718 F2d 188 (6 <sup>th</sup> Cir 1983)	There must be a showing that the defendant performed overt acts in the making of the false statements and “mere failure to speak up” is not sufficient.	
	<u>US v Sidhu</u> , 130 F3d 644 (5 <sup>th</sup> Cir 1997)	Statements are material under 18 USC §1001 when they have the tendency or capacity to “deceive, affect, or influence the federal agency.” The basis for a conspiracy theory may be inferred from circumstantial evidence. The Court found no “exculpatory no” exception to liability for making false statements under 18 USC §1001. The defendant may be held liable for the “reasonably foreseeable” actions of a co-conspirator.	
	<u>US v Brack</u> , 747 F2d 1142 (7 <sup>th</sup> Cir 1984)	A statement or representation that was made in a matter within the jurisdiction of the executive, legislative, or judicial branch of the US Government is subject to the exception stated in the statute. In addition, Courts have uniformly held that the false statements need not be made directly to a federal agency. It is sufficient if the private party administers the spending of federal funds and the false statement impacts the use of federal monies.	

## FEDERAL FALSE STATEMENT ACCOUNTABILITY ACT OF 1996- 18 USC §1001

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>False Writings or Documents</b>	<a href="#">18 USC §1001 (a)(3)</a>  <u>Ebeling v US</u> , 248 F2d 429 (8 <sup>th</sup> 1957)	Knowingly or willfully makes or uses a false writing or document knowing it contains any materially false, fictitious, or fraudulent statement.  Falsely created documents do not have to be directly submitted to a government agency to be in violation of 18 USC §1001(a)(3). It is enough that the documents bear a direct relation to the documents that were submitted to the governmental agency for payment.	
<b>Judicial Proceedings</b>	<a href="#">18 USC §1001(b)</a>	Does not apply to a party to a judicial proceeding or that party's counsel or statements, representations, writings, or documents submitted by such party or counsel to a judge or magistrate in that proceeding.	
<b>Legislative Branch</b>	<a href="#">18 USC §1001(c)</a>	With respect to any matter within the jurisdiction of the legislative branch subsection (a) shall apply: <ul style="list-style-type: none"> <li>• Administrative Matters, including claim for payment, a matter related to procurement of property or services, personnel and employment practices, or support services, or a document required by law, rule, or regulation to be submitted to Congress or any office or officer within the legislative branch; or</li> <li>• Any investigation or review conducted pursuant to the authority of any committee, subcommittee, commission or office of Congress, consistent with applicable rules of House or Senate.</li> </ul>	
<b>Whoever Defined</b>	<u>US v Automated Medical Laboratories</u> , 770 F2d 399 (4 <sup>th</sup> Cir 1985)  <u>US v Estus</u> 544 F2d 934 (8 <sup>th</sup> Cir 1976)	A corporation could be convicted of making and using false documents in matter within jurisdiction of federal agency where agents of the corporation were acting within scope of their employment and at least in part to benefit the corporation.  This section was intended to cover government employees and private individuals alike.	

## FEDERAL FALSE STATEMENT ACCOUNTABILITY ACT OF 1996- 18 USC §1001

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Statement Defined</b>	<u>US v Beacon Brass Co.</u> , 344 US 43 (1952)	A false statement may be written or oral.	
	<u>US v Lichenstein</u> , 610 F2d 1272 (5 <sup>th</sup> Cir 1980)	The statement must have been made with an intent to deceive, a design to induce belief in the falsity or to mislead, but §1001 does not require an intent to defraud- that is, the intent to deprive someone of something by means of deceit.	
<b>Knowingly Defined</b>	<u>US v Lewis</u> , 587 F2d 854 (6 <sup>th</sup> Cir 1978)	Defendant's knowledge of federal involvement is not an element of crime of making false statements within the jurisdiction of a department or agency of the US.	
	<u>US v Evans</u> , 559 F2d 244 (5 <sup>th</sup> Cir 1977)	The false statement need not be made with an intent to defraud if there is an intent to mislead or to induce belief in its falsity. Reckless disregard of whether the statement is true or a conscious effort to avoid learning the truth can be construed as "knowingly."	
<b>Willfully Defined</b>	<u>McClanahan v US</u> , 230 F2d 919 (5 <sup>th</sup> Cir 1956)	"Willfully" means no more than that the forbidden act was done deliberately and with knowledge, and does not require proof of evil intent.	
	<u>McBride v US</u> , 225 F2d 249 (5 <sup>th</sup> Cir 1955)	An act is done "willfully" if done voluntarily and intentionally and with the specific intent to do something the law forbids. There is no requirement that the government show evil intent on the part of the defendant in order to prove that the act was done "willfully."	

## FEDERAL FALSE STATEMENT ACCOUNTABILITY ACT OF 1996- 18 USC §1001

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Falsity or False Defined</b>	<u>US v Lange</u> , 528 F2d 1280 (5th Cir 1976)	Word "false" means more than simply being incorrect or untrue; the intent to deceive or mislead is required.	
	<u>US v Clearfield</u> , 358 F Supp 564 (ED Pa 1973)	Knowledge of actual falsity is not required under this section relating to false and fraudulent statements. A conviction can be based on a finding that the defendant acted with reckless disregard of whether a statement was true and with a conscious purpose to avoid learning the truth.	
	<u>US v Diogo</u> , 320 F2d 898 (2nd Cir 1963)	Although a statement may be misleading, unauthorized, or even fraudulent, a conviction under this section generally cannot be sustained unless the statement is also false. A statement that is literally true cannot be said to be a false representation.	
	<u>US v Lutwak</u> , 195 F2d 748 (7th Cir 1948)	This section also covers half-truths when there is a duty to speak the truth- as in a sworn deposition before an agency.	
	<u>US v Anderson</u> , 579 F2d 455 (8th Cir 1978)	The government need only prove that the statement was "false" under "a reasonable interpretation."	
	<u>US v Worthington</u> , 822 F2d 315 (2nd Cir 1987)	A "false" or "fictitious" statement or representation is an assertion that is untrue when made or when used, and that is known by the person making it to be true.	
	11th Circuit Pattern Jury Instructions, Criminal Cases, Offense Instruction 32 (1997)	A document is false when made or used, if it is untrue and is known to be untrue by the person making or using it.	

## FEDERAL FALSE STATEMENT ACCOUNTABILITY ACT OF 1996- 18 USC §1001

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Materiality Defined</b>	<u>US v Jones</u> , 464 F2d 11 18 (8 <sup>th</sup> Cir 1972)	“Materiality” is an essential element under this section but reliance is not necessary to establish materiality and it is immaterial whether the government was deceived or suffered loss.	
	<u>US v Lueben</u> , 838 F2d 751 (5 <sup>th</sup> Cir 1988)	To establish “materiality” as an element, it is sufficient that the statement have the capacity or a natural tendency to influence the determination required to be made. The test for materiality is not whether the false statement actually influenced the government function, but whether it had the capacity to influence.	
	<u>US v Weinstock</u> , 231 F2d 699 (DC Cir 1956)	“Material” when used in respect to evidence is often confused with “relevant,” but the two terms have wholly different meanings. To be “relevant” means to relate to the issue. To be “material” means to have probative weight, i.e. reasonably likely to influence the tribunal in making a determination required to be made. A statement may be relevant but not material. In prosecution for violations of false statement provisions, the question of materiality is for the court.	
<b>Jurisdiction</b>	<u>US v Munoz</u> , 392 F Supp 183 (ED Mich 1974)	The fraud need not be perpetrated directly against the government agency or the department involved. The false statement need only relate to and affect a relationship within the jurisdiction of an agency or a department of US.	
<b>Venue</b>	<u>US v Stephenson</u> , 895 F2d 867 (2 <sup>nd</sup> Cir 1990)	Venue for false statements under §1001 is proper in the district in which the false statements are made, filed, or ultimately submitted.	
	<a href="#">18 USC §3237</a>	Where the offense is of a continuing nature, venue is proper in any district where the acts constituting the offense were begun, continued, or completed.	

## FEDERAL FALSE STATEMENT ACCOUNTABILITY ACT OF 1996- 18 USC §1001

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Penalties</b>	<a href="#">18 USC §1001(a)(3)</a>	Five years maximum per offense or fines, or both.	
	<u>Alire v US</u> , 313 F2d 31 (10 <sup>th</sup> Cir 1962)	Fines of up to \$10,000 and up to five years imprisonment or both for making a false statement in any matter within the jurisdiction of any department of the US did not inflict cruel and unusual punishment.	

## FEDERAL CONSPIRACY STATUTE- 18 USC §371

SUBJECT	CITATION	SUMMARY	REFERENCES
Statutory Language	<a href="#">18 USC §371</a>	If two or more persons conspire either to commit an offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose and one or more such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. If however, the offense, the commission of which is the object of the conspiracy is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.	
	<u>US v Suba</u> , 132 F3d 662 (11 <sup>th</sup> Cir 1999)	The defendant was found guilty of conspiracy to defraud Medicare where the conspirators submitted cost reports seeking reimbursement for certain overhead expenses that were not reasonable or necessary. The court ruled that if the proof demonstrated that the defendant knew the essential objective of the conspiracy, it does not matter that he did not know of the details or otherwise played a minor role in the overall scheme.	

## FEDERAL CONSPIRACY STATUTE- 18 USC §371

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Elements</b> <ul style="list-style-type: none"> <li>The existence of an agreement between two or more people to achieve an unlawful objective;</li> <li>The defendant's knowing and voluntary participation in the conspiracy;</li> <li>The commission of an overt act in furtherance of the conspiracy.</li> </ul>	<p><u>US v Gold</u>, 743 F.2d 800 (11<sup>th</sup> Cir 1984)</p> <p><u>US v Peterson</u>, 223 F3d 756 (8<sup>th</sup> Cir 2000)</p>	<p>The court stated that direct proof of a formal agreement is not necessary to establish the existence of a conspiracy because the very nature of a conspiracy frequently requires the existence of an agreement be proved by inferences from the conduct of the alleged participants or from circumstantial evidence of a scheme.</p> <p>The court found that the evidence demonstrated that the defendant performed some act to effect the object of the conspiracy where the defendant instructed the employees to put false information on the services requisition form in an effort to receive increased reimbursement and hide his fraudulent conduct from the government.</p>	
<b>Penalties</b>	<p><a href="#"><u>18 USC §3571(b)</u></a></p> <p><a href="#"><u>18 USC §3571(c)</u></a></p>	<p>Fines for Individuals.</p> <p>Fines for Organizations.</p>	



FEDERAL FALSE CLAIMS CONSPIRACY- 18 USC §286			
SUBJECT	CITATION	SUMMARY	REFERENCES
Statutory Language	<a href="#">18 USC §286</a>	Whoever enters into any agreement, combination, or conspiracy to defraud the US, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious, or fraudulent claim, shall be fined under this title or imprisoned not more than ten years.	
	<u>US v Lanier</u> , 920 F2d 887 (11 <sup>th</sup> Cir 1991)	Sections 286 and 371 each require an element not required by the other; therefore, the Double Jeopardy Clause does not prevent conviction and sentencing under both Sections as a result of a single conspiracy. Under §371, the government must establish that one of the conspirators has taken some concrete action in furtherance of the conspiracy, which is not required by §286. Section 286 applies only when the conspirators agree to defraud in a specific manner by obtaining the payment or allowance of any false, fictitious or fraudulent claim, while under §371 the agreement is reached without regard to the particular means by conspirators to carry out their agreement.	18 USC §371
	<u>US v Uzzell</u> , 648 F Supp 1362 (D DC 1986)	Since the same elements must be proven under both §286 and under the Federal False Claims Act, a criminal conviction under §286 estops the defendant from denying liability under the False Claims Act.	False Claims Act 31 USC §3729 <i>et seq</i>

## FEDERAL FALSE CLAIMS CONSPIRACY- 18 USC §286

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Elements</b> <ul style="list-style-type: none"> <li>There exists a conspiracy to defraud the US Government;</li> <li>The defendant knew of the conspiracy and intended to join the conspiracy; and</li> <li>The defendant voluntarily participated in the conspiracy.</li> </ul>	<p><u>US v Okoronkwo</u>, 46 F3d 426 (5<sup>th</sup> Cir 1995)</p> <p><u>US v Gieger</u>, 190 F3d 661 (5<sup>th</sup> Cir 1999)</p> <p><u>US v Khan</u>, 787 F2d 593 (Table, Text in Westlaw) (6<sup>th</sup> Cir 1986)</p>	<p>There is sufficient evidence to prove the intent to join or participate in a conspiracy where the defendant's modus operandi was identical to that used in the conspiracy. Participation in a conspiracy can be proven by circumstantial evidence and need not be proven by direct evidence.</p> <p>Defendant misrepresented in Medicare claims that individuals transported by an ambulance were "bed-confided." Statute is violated by this false statement in the claim for payment even if the claim might have been covered on an alternate theory.</p> <p>The court found that defendant's participation in the conspiracy was demonstrated by the defendant's filing false tax return, claiming a refund, negotiating a check made out to a fictitious person and making statements to the IRS that he knew were false.</p>	
<b>Overt Acts</b>	<u>US v Lanier</u> , 920 F2d 887 (11 <sup>th</sup> Cir 1991)	The statute, which prohibits the conspiracy to defraud US by obtaining payment of false claims, does not require the government to establish overt acts.	

<b>FEDERAL FALSE CLAIMS CONSPIRACY- 18 USC §286</b>			
<b>SUBJECT</b>	<b>CITATION</b>	<b>SUMMARY</b>	<b>REFERENCES</b>
<b>Penalties</b>  • Federal Sentencing Guidelines	<a href="#">18 USC §286</a>	Fines under this title and/or imprisonment of not more than ten years, or both.	
	<a href="#">18 USC §3571(b)</a>	Fines for Individuals	
	<a href="#">18 USC §3571(c)</a>	Fines for Organizations	
	US v Gieger, 190 F3d 661 (5 <sup>th</sup> Cir 1999)	Restitution is an appropriate penalty for conviction of conspiracy to submit false Medicare claims. For purposes of the sentencing guidelines: (a) US Government is not a “vulnerable victim,” but (b) submission of false insurance claims constitutes an abuse of “a position of trust” with the insurer.	

FEDERAL CIVIL FALSE CLAIMS ACT 31 USC §3729 ET SEQ.			
SUBJECT	CITATION	SUMMARY	REFERENCES
In General	<a href="#"><u>31 USC §3729 et seq</u></a>	The False Claims Act (“FCA”) has been called the government’s primary tool in combating fraud committed against the government. The FCA is unique in that it empowers private persons, called relators, to bring an action on the government’s behalf against persons who have submitted false claims to the government.	

## FEDERAL CIVIL FALSE CLAIMS ACT 31 USC §3729 ET SEQ.

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Liability for Certain Acts</b>	<a href="#">31 USC §3729(a)</a>	Liability under the FCA is imposed on any person who:	
• False Claims	<a href="#">31 USC§3729(a)(1)(A)</a>	Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval.	
• False Statements	<a href="#">31 USC§3729(a)(1)(B)</a>	Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim.	
• Conspiracy	<a href="#">31 USC§3729(a)(1)(C)</a>	Conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G).	
• Possession of Government Property or Money	<a href="#">31 USC§3729(a)(1)(D)</a>	Has possession, custody, or control of property or money used, or to be used by the government and, knowingly delivers, or causes to be delivered, less than all of the money or property.	
• False Receipts	<a href="#">31 USC§3729(a)(1)(E)</a>	Authorizes to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true.	
• Unauthorized Buying of Government Property	<a href="#">31 USC§3729(a)(1)(F)</a>	Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property.	
• Concealing an Obligation or Debt to the Government	<a href="#">31 USC§3729(a)(1)(G)</a>	Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the government, or knowingly conceals, avoids or decreases an obligation to pay or transmit money or property to the government.	

## FEDERAL CIVIL FALSE CLAIMS ACT 31 USC §3729 ET SEQ.

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Damages and Penalties</b>			
• Under the Act	<a href="#">31 USC §3729(a)(1); 64 Fed Reg at 47099</a> (Aug. 30, 1999)	Treble damages and civil penalties of \$5,500-\$11,000.	
• Mischarge	<u>Peterson v Weinberger</u> , 508 F2d 45 (5 <sup>th</sup> Cir 1975)	Damages were calculated as the total amount paid by the government because the services as rendered did not qualify for payment.	
• Overcharge	<u>Austin v US</u> , 509 US 602 (1993)	A civil penalty imposed under the penalty provision of the False Claims Act may be held to be so large in comparison to the government's damages that it violates the excessive fine clause of the Eight Amendment.	
• Excessive Penalties	<u>US ex rel Smith v Gilbert Realty Co</u> , 840 F Supp 71 (ED Mich 1993)	A ratio of actual damages of 1:178 constitutes excessive fines in violation of the 8 <sup>th</sup> Amendment.	
• Voluntary Self-Disclosure	<a href="#">31 USC §3729(a)(2)</a>	If the person committing the violation of the FCA voluntarily discloses his or her own acts and the government had not yet commenced a criminal prosecution or civil action, the court may assess not less than two times the amount of damages which the Government sustains.	
• Damages	<u>US ex rel Longhi v Lithium Power Technologies</u> , 575 F3d 458 (5 <sup>th</sup> Cir 2009)	In cases where contracted for services produce no tangible benefit to the government and intangible benefit is impossible to calculate, it is appropriate to value damages in the amount the government actually paid to the Defendants.	

## FEDERAL CIVIL FALSE CLAIMS ACT 31 USC §3729 ET SEQ.

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Knowing and Knowingly Defined</b>	<a href="#"><u>31 USC §3729(b)(1)</u></a>	<p>“Knowing” and “knowingly,” as defined under the FCA, mean that a person, with respect to the information:</p> <ul style="list-style-type: none"> <li>• Has actual knowledge of the information;</li> <li>• Acts in deliberate ignorance of the truth or falsity of the information;</li> <li>• Acts in reckless disregard of the truth or falsity of the information, and require no proof of specific intent to defraud.</li> </ul>	
	<u>US v Mackby</u> , 261 F3d 821 (9 <sup>th</sup> Cir 2000)	The defendant acted in reckless disregard or in deliberate ignorance of requirements for obtaining Medicare payments when he failed to inform himself of those requirements and when 20 percent of the clinic’s patients were Medicare beneficiaries. Submitting claims under another’s Medicare provider number constitutes false claims.	
	<u>US v Krizek</u> , 111 F3d 934 (DC Cir 1997)	A provider acts in reckless disregard when he or she fails to review bills submitted on his or her behalf.	

## FEDERAL CIVIL FALSE CLAIMS ACT 31 USC §3729 ET SEQ.

SUBJECT	CITATION	SUMMARY	REFERENCES
Claim Defined	<a href="#">31 USC §3729(b)(2)</a>	<p>A claim is any request or demand whether under a contract or otherwise for money or property and whether or not the United States has title to the money or property, that –</p> <p>(i) Is presented to an officer, employee or agent of the United States; or</p> <p>(ii) Is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government’s behalf or to advance a Government program or interest, and if the United States government –</p> <p>(a) Provides or have provided any portion of the money or property requested or demanded; or</p> <p>(b) Will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded</p>	Stark and Anti-Kickback Regulations
	<a href="#">US ex rel Pogue v American Healthcorp Inc</a> , 914 F Supp 1507 (MD Tenn 1992)	A claim that is obtained in violation of anti-kickback and/or self-referral statutes constitutes a false claim.	
	<a href="#">Mikes v Straus</a> , 274 F3d 687 (2 <sup>nd</sup> Cir 2001)	Failure to comply with a statute or regulation renders a claim “false” under the FCA only when a party certifies compliance with the statute or regulation as a condition to payment by the Government. An FCA action based on “implied certification” is only viable if the underlying rule expressly states that compliance is a prerequisite to payment.	
	<a href="#">US ex rel Swafford v Borgess Medical Center</a> , 24 Fed. Appx. 491 (WD Mich 2001)	In order for a relator to prevail on an “implied false certification” theory, the defendant’s compliance with the regulation at issue must be so essential that the government’s payment is conditioned upon compliance.	



## FEDERAL CIVIL FALSE CLAIMS ACT 31 USC §3729 ET SEQ.

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Person Defined</b> <ul style="list-style-type: none"> <li>In General</li> <li>States</li> <li>County and Cities</li> <li>State Officials</li> </ul>	<p><a href="#">31 USC §3801(a)(6)</a></p> <p><u>Vermont Agency of Natural Resources v US ex rel Stevens</u>, 120 SCt 1858 (2000)</p> <p><u>US v University Hospital at Stony Brook</u>, 2001 WL 1548797 (EDNY 2001)</p> <p><u>US ex rel Satalich v City of Los Angeles</u>, 160 F Supp 2d 1092 (CD Cali 2001)</p> <p><u>Cook County, Ill. v U.S. ex rel Chandler</u>, 538 US 119 (S. Ct. 2003)</p> <p><u>Stoner v. Santa Clara County Office of Educ.</u>, 502 F3d 1116 (CA 2007)</p>	<p>“Person” means any individual partnership, corporation, association, or private organization.</p> <p>The FCA does not subject a state or a state agency to liability in a federal court suit by a private individual on behalf of the United States. Such a state or a state agency is not a “person” subject to a <i>qui tam</i> action under §3729(a).</p> <p>In FCA actions brought <u>directly by the government</u>, states are “persons” subject to suit.</p> <p>A city is not a person for the purposes of the FCA.</p> <p>Municipal corporations are “persons” amenable to qui tam actions under the False Claims Act.</p> <p>State employees may be sued in their individual capacities under the FCA for actions taken in the course of their official duties.</p>	

## FEDERAL CIVIL FALSE CLAIMS ACT 31 USC §3729 ET SEQ.

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>The Falsity of Healthcare Claims</b> <ul style="list-style-type: none"> <li>Upcoded Claims</li> </ul>	<a href="#">42 USC §1320a-7a (a)(1)(A)</a>	Upcoding occurs when a provider bills Medicare or Medicaid using a billing code that results in a greater payment to the provider than the code applicable to the actual service furnished or documented.	
<ul style="list-style-type: none"> <li>Explicit Certification</li> </ul>	<a href="#">US ex rel Thompson v Columbia/HCA Healthcare</a> , 20 F Supp 2d 1017 (SD Tex 1998)	The hospital “explicitly certified” in its cost report that the services complied with federal and state law. A cost report which contained services that were rendered in violation of the Anti-kickback law constitutes a false claim and its submission violates the FCA.	
<ul style="list-style-type: none"> <li>Implied Certification</li> </ul>	<a href="#">US ex rel Pogue v American Healthcorp Inc.</a> , 914 F Supp 1507 (ND Tenn 1992)	Participation in any federal program involves an implied certification that the participant will abide by the rules and regulations. Even if the government had not suffered actual damages, the defendants had submitted false claims because they concealed their illegal activities from the government in an effort to defraud the government into paying Medicare claims it would not have otherwise paid.	
<ul style="list-style-type: none"> <li>Medically Necessary Defined</li> </ul>	<a href="#">42 USC §1395y (a)(1)(A)</a>	A claim is “medically necessary” if it is reasonable or necessary for the diagnosis or treatment of illness or injury, or to improve the functioning of a malformed body member.	
<ul style="list-style-type: none"> <li>Medically Necessary Requirement</li> </ul>	<a href="#">42 USC §1320a-7 (b)(6)(B)</a> ; <a href="#">42 USC §1320c-5(a)(1)</a>	Providers are required to assure that services are not substantially in excess of the needs of patients and provide economically medical services and then, only when medically necessary.	
<ul style="list-style-type: none"> <li>Billing under Another’s Provider Number</li> </ul>	<a href="#">US v Mackby</a> , 261 F3d 821 (9 <sup>th</sup> Cir 2000)	Submitting claims under another’s Medicare provider number is a false statement and constitutes the submission of false or fraudulent claims.	

## FEDERAL CIVIL FALSE CLAIMS ACT 31 USC §3729 ET SEQ.

SUBJECT	CITATION	SUMMARY	REFERENCES
<b><i>Qui Tam</i> Provision</b>			
• In General	<a href="#">31 USC §3730(b)</a>	A person may bring a civil action for a violation of the FCA for the person and for the United States.	
• Procedural Requirements	<a href="#">31 USC §3730(b)(2)</a>	A copy of the complaint and disclosure statement must be served on the Government. The complaint must be filed in camera, remain under seal for at least sixty days, and shall not be served on the defendant until the court so orders.	
• Intervention or Declination by the Government	<a href="#">31 USC §3730(b)(3) – (4)</a>	The Government has sixty days to elect to intervene and proceed with the action. The Government may ask the court for an extension if good cause is shown. The Government must notify the court of its decision. If it declines the Relator may proceed with the action.	
• Responsibilities of the Government	<a href="#">31 USC §3730(c)</a>	If the Government intervenes, it has the primary responsibility of prosecuting the action and it is not bound by an act of the Relator. The Government may dismiss the action provided that the Relator is notified and is given an opportunity for a hearing on the motion to dismiss. The Government may settle the action notwithstanding the objections of the Relator provided that the settlement is fair, adequate, and reasonable.	
• Award to the <i>Qui Tam</i> Plaintiff/Relator	<a href="#">31 USC §3730(d)</a>	If the Government intervenes in the action, the Relator is awarded between 15-25 percent of the recovery. If the Government declines and the Relator proceeds with the action, the Relator is entitled to 25-30 percent of the recovery.	
• Whistleblower Protection	<a href="#">31 USC §3730(h)</a>	Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against by his or her employer because of lawful acts done by the employee in furtherance of an action under the FCA is entitled to relief. Relief includes reinstatement, two times the amount of back pay, interest on back pay, and costs and attorney’s fees.	

## FEDERAL CIVIL FALSE CLAIMS ACT 31 USC §3729 ET SEQ.

SUBJECT	CITATION	SUMMARY	REFERENCES
Public Disclosure Bar	<a href="#">31 USC §3730(e)(4)(A)</a>	The court shall dismiss an action or claims under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publically disclosed in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party; in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information	
	<u>US ex rel Jones v Horizon Health Care</u> , 160 F3d 326 (6 <sup>th</sup> Cir 1998)	The allegations of the <i>qui tam</i> action are supported by the publicly disclosed allegations if there is substantial identity between the two.	
• Discovery Material	<u>US ex rel Ramseyer v Century Healthcare Corp</u> , 90 F3d 1514 (10 <sup>th</sup> Cir 1996)	The filing of civil pleadings and discovery undeniably constitute a public disclosure under the Act.	
	<u>US ex rel Stinson v Prudential Insurance</u> , 944 F2d 1149 (3 <sup>rd</sup> Cir 1991)	Disclosure of discovery material to a party who is not under any court-imposed limitation as to its use is a public disclosure under the Act.	

## FEDERAL CIVIL FALSE CLAIMS ACT 31 USC §3729 ET SEQ.

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Original Source Defined</b>	<a href="#">31 USC §3730(e)(4)(B)</a>  US ex rel McKenzie v Bell South Communications, 123 F3d 935 (6 <sup>th</sup> Cir 1997)	<p>An original source is an individual who either prior to a public disclosure, has voluntarily disclosed to the Government the information on which the allegations or transactions in a claim are based; or who has knowledge that is independent of and materially adds to the publically disclosed allegation or transactions, and who has voluntarily provided the information to the Government before filing an action under this section.</p> <p>To be an original source, the relator must provide the government with the information prior to any public disclosure.</p>	
<b>Statute of Limitations</b>	<a href="#">31 USC §3731(b)</a>	<p>Six years from the date the violation was committed or three years from the date of discovery of the violation by the Government. No more than ten years after the date on which the violation is committed.</p>	
<b>Jurisdiction</b> <ul style="list-style-type: none"> <li>In General</li> <li>State Claims</li> </ul>	<a href="#">31 USC §3732(a)</a>  <a href="#">31 USC §3732(b)</a>	<p>An FCA action may be brought in any judicial district in which the Defendant can be found, resides, transacts business, or in which the act occurred.</p> <p>The district court has jurisdiction over state claims arising from the same transaction or occurrence as an action brought under the FCA.</p>	

## FEDERAL CIVIL FALSE CLAIMS ACT 31 USC §3729 ET SEQ.

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Civil Investigative Demands</b>	<a href="#">31 USC §3733</a>	The Attorney General or designee may request information from any person believed to have information relevant to an FCA investigation. This includes requests to: <ul style="list-style-type: none"> <li>• Produce documents;</li> <li>• Answer interrogatories;</li> <li>• Give oral testimony regarding documents; or</li> <li>• Furnish information in any of the above combinations.</li> </ul>	
	<u>Avco Corp v US Department of Justice</u> , 884 F2d 621 (US App DC 1989)	The US Attorney General is not precluded from issuing CID's when a <i>qui tam</i> relator has initiated the proceeding.	
<b>Constitutionality</b>	<u>US ex rel Smith v Gilbert Realty Co</u> , 840 F Supp 71 (ED Mich 1993)	A ratio of actual damages of 1:178 constitutes excessive fines in violation of the 8 <sup>th</sup> Amendment.	
	<u>Vermont Agency of Natural Resources v US ex rel Stevens</u> , 120 SCt 1858 (2000)	In cases in which the government has elected to decline, relators have standing to litigate on behalf of the federal government under the FCA. The FCA can reasonably be regarded as effecting a partial assignment of the government's damages claim and the Relator derives standing through the doctrine that the assignee of a claim has standing to assert the injury in fact suffered by the assignor.	

FEDERAL PROHIBITION ON KICKBACKS AND REMUNERATIONS			
SUBJECT	CITATION	SUMMARY	REFERENCES
Anti-kickback Statute- In General	<a href="#">42 USC §1320a-7b(b)</a>	<p>The anti-kickback statute makes it a criminal offense to knowingly and willfully offer, pay, solicit, or receive any remuneration in order to induce the referral of a patient, or the purchasing, leasing, ordering (or arranging for or recommending the purchasing, leasing or ordering) of any good, facility, service, or item if any portion of that patient's care of the cost of the good, facility, service or item may be paid in whole or in part by a federal health care program. Illegal payments (or offers or solicitations of payments) include those in cash or in kind, those made directly or indirectly, and those made overtly or covertly. Where remuneration is purposefully paid in exchange for referrals of items or services that are paid for by a federal health care program, the anti-kickback statute is violated.</p> <p>Remuneration includes anything of value, whether tangible or intangible; a reduction or discount; direct payment, cash, loans, etc.; and free items and/or services.</p>	
Anti-Kickback Statute and Stark Law		The anti-kickback statute is a criminal statute that requires proof of illegal intent, but does not require proof that a person had actual knowledge of the statute or specific intent to violate the same. Conversely, the Stark law is a civil statute and no illegal intent is required. Furthermore, Stark only applies to entities that provide certain designated health services ("DHS").	Stark Law, 42 USC §1395nn
Anti-kickback Statute- One Purpose Test	<a href="#">US v Kats</a> , 871 F2d 105 (9 <sup>th</sup> Cir. 1989); <a href="#">US v Greber</a> , 760 F2d 68 (3 <sup>rd</sup> Cir. 1985), cert denied 474 US 988 (1985)	The statute has been interpreted to cover any arrangement where <b>one purpose</b> of the remuneration is to obtain money for the referral of services or to induce future referrals.	

## FEDERAL PROHIBITION ON KICKBACKS AND REMUNERATIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Penalties</b>	<a href="#">42 USC §1320a-7b(b)</a>  <a href="#">42 USC § 1320a – 7b(g)</a>	<p>A person who is guilty of violating the anti-kickback statute is guilty of a felony punishable by up to five years imprisonment and/or a \$25,000 fine and possible exclusion from federal health care programs, including Medicare and Medicaid. A conviction under this statute may also result in loss of state licensure, revocation of hospital privileges and exclusion from other private insurance contracts and managed care programs. The government may also seek to impose civil penalties under the Civil Monetary Penalties Statute, the federal False Claims Act, and other applicable civil statutes.</p> <p>Both individuals and corporations are liable under the statute, and criminal liability is assigned to both sides of an impermissible “kickback” transaction.</p> <p>A claim that includes items of services resulting from a violation of the anti-kickback statute constitutes a false or fraudulent claim for purposes of 31 USC 3729, the Federal False Claims Act.</p>	Civil Monetary Penalties Statute, 42 USC §1320a-7a(a)(7); Federal False Claims Act, 31 USC §3729
<b>Exceptions within the Anti-Kickback Statute</b>	<a href="#">42 USC §1320a-7b(b)(3)</a>	<p>The Office of Inspector General (“OIG”) has carved out the following exceptions to the anti-kickback statute:</p> <ul style="list-style-type: none"> <li>• Bona fide employment relationships;</li> <li>• Discounts or other reductions in price which are properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under the federal health care program;</li> <li>• Payments made to an authorized group purchasing agent;</li> <li>• Waiver of coinsurance with respect to an individual who qualifies for subsidized services under a provision of the Public Health Service Act (42 USC §201 et seq);</li> <li>• Any remuneration between an organization and an individual or entity engaged in a specified risk-sharing arrangement;</li> </ul> <p>Note that an “exception” is found within the actual anti-kickback statute. The “safe harbors” which are found below were promulgated by the Office of Inspector General (“OIG”).</p>	



## FEDERAL PROHIBITION ON KICKBACKS AND REMUNERATIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Anti-kickback Statute Safe Harbor Regulations</b>	<a href="#">42 CFR §1001.952</a>	<p>The OIG (under a mandate from Congress) promulgated a series of safe harbor regulations in an effort to tailor the broad statute. As a result, the following payment practices are not treated as a criminal offense and do not serve as a basis for exclusion:</p> <ul style="list-style-type: none"> <li>• Investment interests in large publicly traded entities or certain small entities;</li> <li>• Space and Equipment Rentals;</li> <li>• Personal services and management contracts;</li> <li>• Sale of practice;</li> <li>• Referral services; Warranties; Discounts;</li> <li>• Employment relationships;</li> <li>• Group Purchasing Organizations;</li> <li>• Certain Part A waivers of copayments and deductibles;</li> <li>• Increased coverage, reduced cost-sharing amounts, or reduced premium amounts offered by certain health plans;</li> <li>• Price reductions offered to certain health plans, such as managed care organizations;</li> <li>• Certain types of practitioner recruitment;</li> <li>• Obstetrical malpractice insurance subsidies;</li> <li>• Investment interests in group practices composed exclusively of active investors who are licensed health care professionals;</li> <li>• Cooperative hospital service organizations;</li> <li>• Investment interests in surgeon-owned, single specialty, multi-specialty and hospital/physicians ambulatory surgical centers;</li> <li>• Referral arrangements for specialty services;</li> <li>• Price reductions offered to eligible managed care organizations;</li> <li>• Price reductions offered to contractors with substantial financial risk to managed care organizations;</li> <li>• Ambulance replenishing;</li> <li>• Health centers;</li> <li>• Electronic prescribing items and services, and;</li> <li>• Electronic health record items and services.</li> </ul>	

<b>FEDERAL PROHIBITION ON KICKBACKS AND REMUNERATIONS</b>			
<b>SUBJECT</b>	<b>CITATION</b>	<b>SUMMARY</b>	<b>REFERENCES</b>
<b>Anti-kickback Statute Safe Harbor Regulations</b> (cont)	<a href="#">64 Fed Reg 63503</a> (Nov 19, 1999)	The OIG has consistently stated that the failure of an arrangement to fit inside a safe harbor or statutory exception does not mean that the arrangement is illegal. It is incorrect to assume that arrangements outside of a safe harbor are suspect due to that fact alone. That an arrangement does not meet a safe harbor only means that the arrangement does not have guaranteed protection and must be evaluated on a case-by-case basis.	
<b>Civil Monetary Penalties (“CMP”)</b>	<a href="#">42 USC §1320a-7a (a)</a>	<ul style="list-style-type: none"> <li>• Certain provisions in the Civil Monetary Penalties Act prohibit the filing of claims which are based on kickbacks or remunerations. CMPs (of up to \$10,000 in most cases and up to \$50,000 in some cases) may be imposed on any person who knowingly:</li> <li>• Offers to transfer or transfers inducements to a beneficiary;</li> <li>• Arranges or contracts with an individual or entity that is excluded from participation in a federal health care program in order to receive reimbursement for services under such program;</li> <li>• Makes direct or indirect payment as an inducement by certain hospitals to physicians to limit or reduce services to individuals who receive benefits under Medicare or Medicaid and are under the care of the physician;</li> <li>• Violates the anti-kickback statute;</li> <li>• Violates the Stark self-referral prohibition.</li> </ul>	Civil Monetary Penalties Regulations 42 CFR Part 1003
<b>CMP: Beneficiary Inducement</b>	<a href="#">42 USC §1320a-7a (a)(5)</a>	A person is prohibited from offering or transferring remuneration to any individual eligible for benefits under Medicare or Medicaid that such person knows or should know is likely to influence the individual to order or receive an item or service for which payment may be made under Medicare and Medicaid.	

## FEDERAL PROHIBITION ON KICKBACKS AND REMUNERATIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>CMP: Definition of Remuneration</b>	<a href="#">42 USC §1320a-7a(i)(6)</a> ; <a href="#">42 CFR §1003.101</a>	<p>The term “remuneration” includes the waiver of coinsurance and deductible amounts (or any part thereof) and transfers of items of services for free or for other than fair market value.</p> <p>The term “remuneration” does <u>not</u> include:</p> <ul style="list-style-type: none"> <li>• The waiver of coinsurance and deductible amounts by a person, if the waiver is not offered as part of any advertisement or solicitation; the person does not routinely waive coinsurance and deductible amounts; and the person waives coinsurance and deductible amounts after determining in good faith that the individual is in financial need or fails to collect coinsurance or deductible amounts after making reasonable collection efforts;</li> <li>• Differentials in coinsurance and deductible amounts as part of a benefit plan design (as long as the differentials have been disclosed in writing to all beneficiaries, third party payers, and providers) to whom claims are presented; or</li> <li>• Incentives given to individuals to promote the delivery of preventive care services where the delivery of such services is not tied to the provision of other services reimbursed in whole or in part by Medicare or an applicable State health care program.</li> </ul>	
<b>Exclusionary Authority: Routine Waiver of Coinsurance and Deductibles</b>	OIG Fraud Alert May 1991 (republished in <a href="#">59 Fed Reg 65372</a> , December 19, 1994)	The OIG views coinsurance as a deterrent to excess or inappropriate utilization of services. Accordingly, the routine waiver of coinsurance and deductible eliminates this deterrent and causes excess or inappropriate utilization of services. Furthermore, the waiver of coinsurance and deductible effectively reduces the provider’s “usual charge.” For example, if the usual charge is \$100, but the provider routinely waives the 20% coinsurance, the actual charge is \$80. Thus, by submitting a \$100 charge, the provider submits a false claim.	Federal False Claims Act, 31 USC §3729 <i>et seq</i>

## FEDERAL PROHIBITION ON KICKBACKS AND REMUNERATIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Anti-kickback Statute: Routine Waiver of Coinsurance and Deductible</b>	<a href="#">42 USC §1320a-7b(b)</a>	The routine waiver of coinsurance and deductibles is considered “remuneration” under the anti-kickback statute. The OIG construes the discounting of services as prohibited remuneration if one of the purposes of the discount was to induce referrals or use of services covered by the Medicare and Medicaid programs. Thus, these practices are subject to criminal prosecution under the anti-kickback statute.	Definition of Remuneration <i>See infra</i> p. AKS-4.
<b>Safe Harbors for Waivers of Coinsurance and Deductible</b>	<a href="#">42 CFR §1001.952(k)</a>	<p>Remuneration does not include any reduction or waiver of a Medicare or a State health care program beneficiary’s obligation to pay coinsurance or deductible amounts as long as all of the standards are met within either of the following categories of health care providers:</p> <ul style="list-style-type: none"> <li>• To meet the safe harbor for waivers of copayment (or coinsurance) and deductibles for Part A, a hospital must comply with the following standards: <ul style="list-style-type: none"> <li>• The hospital may not claim the amount as a bad debt or shift the burden of the debt to other payors, including Medicare and Medicaid;</li> <li>• The hospital must offer to reduce the amounts without regard to the reason for admission, the length of stay, or the DRG for which the claim for Medicare reimbursement is filed; and</li> <li>• The reduction must not be made as part of a price reduction agreement between the hospital and a third party.</li> </ul> </li> <li>• If the coinsurance or deductible amounts are owed by an individual who qualifies for subsidized services under a provision of the Public Health Services Act to a federally qualified health care center or other health care facility under any Public Health Services Act grant program, the health care center or facility may reduce or waive the coinsurance or deductible amounts for items or services for which payment may be made in whole or in part under Medicare part B or a State health care program.</li> </ul>	

## FEDERAL “STARK” REGULATIONS AND SELF-REFERRAL PROHIBITIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Limitations on Certain Physician Referrals (also known as “Stark” law)</b>	<a href="#">42 USC §1395nn</a> ; <a href="#">42 CFR §411.353</a> ; <a href="#">66 Fed Reg at 856, 958</a> (January 4, 2001)	In general, this civil statute prohibits a physician from referring patients who receive benefits under a federal or state health care program (Medicare or Medicaid) for those designated health services that are furnished by an entity with which the physician (or an immediate family member) has a financial relationship (identified as a compensation arrangement and/or an ownership/investment interest), unless otherwise excepted by the statute or rules.	
	<a href="#">42 USC §1395nn (a)(1)(B)</a> ; <a href="#">42 CFR §411.353</a> ; <a href="#">66 Fed Reg at 958</a> (January 4, 2001)	Furthermore, the entity providing the services may not present or cause to be presented a claim for designated health services furnished pursuant to a prohibited referral. However, a payment may be made to an entity that submits a claim for a designated health service if the entity did not have actual knowledge of, and did not act in reckless disregard or deliberate ignorance of, the identity of the physician who made the referral of the designated health service to the entity, and the claim otherwise complies with all federal laws, rules, and regulations.	
	<a href="#">66 Fed Reg at 856</a> (January 4, 2001)	Phase I of the final Stark Rules went into effect on January 4, 2002. Phase I implements the general referral prohibitions, its general exceptions to ownership/investment interests and compensation arrangements and all relevant statutory definitions. Phase II of the regulations took effect July 26, 2004 and address the statutory exceptions related to ownership and investment interests; the statutory exceptions for certain compensation arrangements, and reporting requirements. Phase III took effect September 4, 2007 and inter alia added the “stand in the provisions” (see 42 CFR §411.354) with respect to certain compensation arrangements.	
	<a href="#">72 Fed Reg 51012</a> (Sept. 5, 2007)		

## FEDERAL “STARK” REGULATIONS AND SELF-REFERRAL PROHIBITIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
Sanctions	<a href="#">66 Fed Reg at 859, 860</a> (January 4, 2001)	No wrongful intent or culpable conduct is required. The primary remedy is nonpayment or recoupment by the program. However, wrongful conduct, such as knowingly submitting a claim in violation of the prohibition, can be punished through recoupment of overpayments and the imposition of penalties, the federal False Claims Act, and other federal statutory and common law remedies.	Federal False Claims Act 31 USC §3729 <i>et seq</i>
	<a href="#">42 USC §1395nn(g)</a>	Sanctions under this statute may include: <ul style="list-style-type: none"> <li>• Denial of claim or mandatory refund of an improperly paid claim;</li> <li>• Civil monetary penalties and exclusion for the improper claims-fines of up to \$15,000 for each claim;</li> <li>• Civil monetary penalties and exclusion for circumvention schemes- fines of up to \$100,000 for each arrangement or scheme.</li> <li>• Fines of up to \$10,000 for failure to meet certain reporting requirements. Reporting requirements include providing the Secretary of HHS the names of all physicians (or their immediate family members) with an ownership or investment interest, or a compensation arrangement with an entity that furnishes services payable under Medicare or Medicaid.</li> <li>• Refund of claims</li> </ul>	Civil Monetary Penalties Statute, 42 USC §1320a-7a; Exclusionary Authority, 42 USC §1320a-7b

## FEDERAL “STARK” REGULATIONS AND SELF-REFERRAL PROHIBITIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Designated Health Services (DHS) Defined</b>	<a href="#">42 USC §1395nn(h)(6)</a> ; <a href="#">42 CFR §411.351</a> ; <a href="#">66 Fed Reg at 953, 963-65</a> (January 4, 2001); <a href="#">73 Fed Reg 69934-35</a> (Nov. 19, 2008)	<p>The term “designated health services” refers to any of the following items or services:</p> <ul style="list-style-type: none"> <li>• Clinical laboratory services;</li> <li>• Physical therapy services, occupational therapy, and (effective July 1, 2009) outpatient speech-language pathology services;</li> <li>• Radiology services and supplies, including magnetic resonance imaging, computerized axial tomography scans; and ultrasound services;</li> <li>• Radiation therapy services and supplies;</li> <li>• Durable medical equipment and supplies;</li> <li>• Parenteral and enteral nutrients, supplies, and equipment;</li> <li>• Prosthetics, orthotics, and prosthetic devices and supplies;</li> <li>• Home health services;</li> <li>• Outpatient prescription drugs;</li> <li>• Inpatient and outpatient hospital services.</li> </ul>	

## FEDERAL “STARK” REGULATIONS AND SELF-REFERRAL PROHIBITIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Financial Relationship Defined</b>	<a href="#">42 USC §1395nn (a)(2); 42 CFR §411.351; 66 Fed Reg at 958</a> (January 4, 2001)	A physician (or an immediate family member of the physician) has a “financial relationship” with an entity if he or she has any ownership or investment interest in the entity or there exists any compensation arrangement between the physician and the entity. The ownership or investment interest may be through equity, debt, or other means and includes an interest in an entity that holds an ownership or investment interest in any entity providing the designated health services, either directly or indirectly.	
	<a href="#">66 Fed Reg at 864, 903</a> (January 4, 2001)	Any financial relationship between the referring physician and the DHS entity triggers application of the statute, even if the financial relationship is wholly unrelated to a DHS payable by Medicare. Unless the financial relationship fits into a statutory or regulatory exception (listed in detail below), referrals for DHS are prohibited.	
		A physician’s financial relationship with an entity that furnishes designated health services will not be imputed to his or her group practice. Thus, other members of the group practice can continue to make referrals to the entity, provided the members do not have financial relationships with the entity and the physician with the financial relationship is not in a position to control the referrals of the other group members.	



## FEDERAL “STARK” REGULATIONS AND SELF-REFERRAL PROHIBITIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Indirect Ownership or Investment Interest Defined</b>	<a href="#">42 CFR §411.354(5)(i)</a> ; <a href="#">66 Fed Reg at 958</a> (January 4, 2001)  <a href="#">66 Fed Reg at 865</a> (January 4, 2001)	An “indirect ownership or investment interest” exists if: <ul style="list-style-type: none"> <li>• Between the referring physician (or an immediate family member) and the DHS entity there exists an unbroken chain of persons or entities having ownership or investment interests between them; and</li> <li>• The DHS entity has actual knowledge of or acts in reckless disregard or deliberate ignorance of the fact that the referring physician has some ownership or investment interest in the entity.</li> </ul> The “knowledge element” generally imposes a duty of reasonable inquiry on health care providers. In other words, the DHS entity has no affirmative duty to inquire or investigate whether an indirect financial relationship exists, absent some information that would put a reasonable person on alert.	

## FEDERAL “STARK” REGULATIONS AND SELF-REFERRAL PROHIBITIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Indirect Compensation Arrangement Defined</b>	<a href="#">42 CFR §411.354</a> ; <a href="#">66 Fed Reg at 958, 959</a> (January 4, 2001)	<p>An “indirect compensation arrangement” has three elements:</p> <ul style="list-style-type: none"> <li>• Between the referring physician and the DHS entity, there exists an unbroken chain of persons or entities having financial relationships between them, so that each link in the chain has either an ownership or investment interest or a compensation agreement with the preceding link;</li> <li>• The referring physician receives aggregated compensation from the person or entity in the chain with which the physician has a direct financial relationship that varies with or reflects the volume or value of referrals or other business generated by the referring physician for the entity; and</li> <li>• The entity has actual knowledge, or acts in reckless disregard or deliberate ignorance of, the fact that the referring physician receives compensation that varies with or reflects the value or volume of referrals or other business generated by the referring physician for the DHS entity.</li> </ul>	
	<a href="#">66 Fed Reg at 865</a> (January 4, 2001)	The “knowledge element” generally imposes a duty of reasonable inquiry on providers. In other words, the DHS entity has no affirmative duty to inquire or investigate whether an indirect financial relationship exists, absent some information that would put a reasonable person on alert.	

## FEDERAL “STARK” REGULATIONS AND SELF-REFERRAL PROHIBITIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Referral Defined</b>	<a href="#">42 USC §1395nn (h)(5); 42 CFR §411.351; 66 Fed Reg at 863</a> (January 4, 2001)	<p>A “referral” includes any request for an item or service payable by Medicare Part B, including a request for a consultation (including any tests or procedures ordered or performed by the consulting physician or under the supervision of the consulting physician), and the request or establishment of a plan of care by a physician that includes the furnishing of DHS. There are exceptions to this definition. For example, a “referral” does not include DHS personally performed by the referring physician. A service is not personally performed by the referring physician if it is performed by any other person, including the referring physician’s employees, independent contractors, or group practice members.</p> <p>A referral also does not include a request by a pathologist for clinical diagnostic laboratory tests and pathological examination services, by a radiologist for diagnostic radiology services, and by a radiation oncologist for radiation therapy or ancillary services necessary for, and integral to, the provision of radiation therapy if certain criteria are met. <i>See</i> 42 CFR §411.351 for details.</p> <p>The referral can be in any form, including but not limited to written, oral, or electronic.</p>	
<b>Immediate Family Member Defined</b>	<a href="#">42 CFR §411.351; 66 Fed Reg at 954</a> (January 4, 2001)	<p>An “immediate family member” includes:</p> <ul style="list-style-type: none"> <li>• A husband or wife;</li> <li>• A natural or adoptive parent, child, or sibling;</li> <li>• A stepparent, stepchild, stepbrother or stepsister;</li> <li>• A mother/father-in-law, son/daughter-in-law, or brother/sister-in-law;</li> <li>• A grandparent or grandchild; and</li> <li>• A spouse of grandparent or grandchild.</li> </ul>	

## FEDERAL “STARK” REGULATIONS AND SELF-REFERRAL PROHIBITIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Entity Defined</b>	<a href="#">42 CFR §411.351</a> ; <a href="#">66 Fed Reg at 953</a> (January 4, 2001)	<p>The term “entity” includes a physician’s sole practice or a practice of multiple physicians or any other person, public or private agency or trust, corporation, partnership, limited liability company, foundation, not-for-profit corporation, or unincorporated association that furnishes DHS. An “entity” does <u>not</u> include the physician himself or herself, but does include his or her medical practice.</p> <p><i>Effective Oct. 1, 2009</i> - Entity also includes a health plan, MCO, PSO, or IPA that employs a supplier or operates a facility that could accept reassignment from a supplier.</p> <p><i>Effective Oct. 1, 2009</i> - Entity does not include a physician’s practice when it bills Medicare for the technical component or professional component of a diagnostic test for which the anti-markup provision applies.</p>	<p>42 CFR 424.80(b)(1)-(2)</p> <p>42 CFR 414.50</p>
<b>Fair Market Value Defined</b>	<a href="#">42 CFR §411.351</a> ; <a href="#">66 Fed Reg at 953</a> (January 4, 2001)	<p>“Fair market value” means the value in arm’s length transactions, consistent with the general market value. The compensation or price must be the product of bona fide bargaining between well-informed parties who are not otherwise in a position to generate business for each other, or the compensation that would be included in a services agreement as the result of bona fide bargaining between well-informed parties to the agreement who are not otherwise in a position to generate business for the other party.</p>	<p>42 CFR §411.357(l)</p>
<b>New Approach to Defining Certain Designated Health Services</b>	<a href="#">42 CFR §411.51</a> ; <a href="#">66 Fed Reg at 952-956, 963-965</a> (January 4, 2001)	<p>Phase I of the Stark final rule creates a bright line definition of certain designated health services by referring to specific CPT and HCPCS codes. The list of codes will be updated annually as part of the annual physician fee schedule regulation and made available on the Centers for Medicare and Medicaid Services website.</p>	<p>CMS Website located at <a href="http://www.cms.hhs.gov">www.cms.hhs.gov</a></p>

## FEDERAL “STARK” REGULATIONS AND SELF-REFERRAL PROHIBITIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Statutory Exceptions Related to Ownership and Compensation Arrangement</b>	<a href="#">42 USC §1395nn(b)</a> ; <a href="#">42 CFR §411.357</a>	<p>The referral prohibition does not apply to the following ownership/investment or compensation arrangements:</p> <ul style="list-style-type: none"> <li>• Physician services that are “personally provided” or provided by a physician within the same group practice as the referring physician;</li> <li>• In-office ancillary services that are performed by the referring physician, by a physician who is a member of the same group as the referring physician, or by individuals who are directly supervised by the referring physician or other physician in the group practice; and in a building in which the referring physician (or group practice member) furnishes physicians’ services unrelated to the furnishing of designated health services.</li> <li>• Prepaid plans;</li> <li>• Electronic prescribing</li> <li>• Ownership of investment securities;</li> <li>• Ownership of shares in a regulated investment company;</li> <li>• Hospital ownership;</li> <li>• Ownership or investment in hospitals in Puerto Rico or rural providers;</li> <li>• Space or equipment rentals.</li> <li>• Bona fide employment relationships;</li> <li>• Personal service arrangements;</li> <li>• Remuneration unrelated to the provision of DHS;</li> <li>• Isolated Transactions;</li> <li>• Physician Recruitment;</li> <li>• Certain Group Practice Arrangements with a hospital;</li> <li>• Payments by a physician for items and services.</li> </ul>	

## FEDERAL “STARK” REGULATIONS AND SELF-REFERRAL PROHIBITIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Regulatory Exceptions</b>	<a href="#">42 CFR §411.357</a>	<p>The following categories are also exceptions to the referral prohibition (i.e. they do not constitute a financial relationship):</p> <ul style="list-style-type: none"> <li>• Non-monetary compensation up to \$300;</li> <li>• Fair market value compensation;</li> <li>• Medical staff incidental benefits;</li> <li>• Risk-sharing arrangements;</li> <li>• Compliance training;</li> <li>• Indirect compensation arrangements; (cont.)</li> </ul>	

## FEDERAL “STARK” REGULATIONS AND SELF-REFERRAL PROHIBITIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
Regulatory Exceptions (cont.)	<a href="#">42 CFR §411.357</a> ; <a href="#">66 Fed Reg at 962</a> (January 4, 2001)	<ul style="list-style-type: none"> <li>• Obstetrical malpractice insurance subsidies;</li> <li>• Professional courtesy;</li> <li>• Retention payments in underserved areas;</li> <li>• Community-wide health information systems;</li> <li>• Electronic prescribing items and services;</li> <li>• Electronic health records items and services.</li> </ul> <p>One of the new regulatory exceptions protects an “indirect compensation arrangement” if the following conditions are met:</p> <ul style="list-style-type: none"> <li>• The compensation received by the referring physician from the entity in the chain with which the referring physician has a direct financial relationship is fair market value for the items or services provided under the arrangement and does not take into account the value or volume or other business generated between the parties;</li> <li>• Compensation for the rental or office space or equipment using a formula based on (effective October 1, 2009) a percentage of the revenue raised, earned, billed, collected, or otherwise attributable to the services performed and business generated in the office space or through the use of equipment, or per-unit of service rental charges, to the extent that such charges reflect services provided to patients referred by the lessor to the lessee.</li> <li>• The compensation arrangement between the referring physician and the person or entity in the chain with which the physician has the direct financial relationship is set out in writing, signed by the parties, and specifies the services covered by the arrangement (in the case of bona fide employment relationship, the arrangement need not be set out in a written contract, but it must be commercially reasonable even if no referrals are made to the employer); and</li> <li>• The compensation arrangement does not violate the Anti-kickback statute or any laws or regulations governing billing or claims submission.</li> </ul>	Anti-kickback Statute, 42 USC §1320a-7b(b)

## FEDERAL “STARK” REGULATIONS AND SELF-REFERRAL PROHIBITIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
Exceptions related to both ownership/investment and compensation	<a href="#">42 CFR §411.355</a>	<p>The prohibition on referrals does not apply to the following types of services:</p> <ul style="list-style-type: none"> <li>• Academic medical centers;</li> <li>• Services furnished by an organization (or its contractors/subcontractors) to enrollees;</li> <li>• Implants furnished by an ASC, including but not limited to cochlear implants, intraocular lenses, and other implanted prosthetics;</li> <li>• EPO and other dialysis-related drugs;</li> <li>• Preventive screening tests, immunizations, and vaccines;</li> <li>• Eyeglasses and contact lenses following cataract surgery;</li> <li>• Intra-family rural referrals.</li> </ul>	



## FEDERAL “STARK” REGULATIONS AND SELF-REFERRAL PROHIBITIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Fair Market Value Compensation Exception</b>	<a href="#">42 CFR §411.357(l)</a>	<p>This regulatory exception protects compensation arrangements that reflect fair market value. This exception protects compensation arrangements between an entity and a physician or any group of physician (regardless of whether the group meets the definition of “group practice”) for the provision of items or services by the physician or group to the entity if the arrangement is set forth in an agreement that meets the following conditions:</p> <ul style="list-style-type: none"> <li>• It is in writing, signed by the parties, and covers identifiable items and services;</li> <li>• The time frame is specified;</li> <li>• The compensation is “set in advance,” is consistent with fair market value and is not determined in a manner that takes into account the volume and value of referrals or other business generated between the parties – compensation for the rental of equipment may not be determined using a formula based on (effective October 1, 2009) a percentage of the revenue raised, earned, billed, collected or otherwise attributable to the services performed or business generated through the use of the equipment, or per unit of service rental charges, to the extent that such charges reflect services provided to patients referred by the lessor to the lessee.</li> <li>• The transaction is commercially reasonable and furthers the legitimate business purposes of the parties;</li> <li>• It does not violate the anti-kickback statute; and</li> <li>• The services performed do not involve the counseling or promotion of a business arrangement that violates state or federal law.</li> </ul>	

## FEDERAL “STARK” REGULATIONS AND SELF-REFERRAL PROHIBITIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>Physician Services Exception</b>	<a href="#">42 CFR §411.355(a)</a> ; <a href="#">66 Fed Reg at 959</a> (January 4, 2001)	<p>The “physician services exception” applies to physician services that are furnished:</p> <ul style="list-style-type: none"> <li>• Personally by another physician who is a member of the referring physician’s group practice or is a physician in the same group practice as the referring physician; or</li> <li>• Under the supervision of another physician who is a member of the referring physician’s group practice or is a physician in the same group as the referring physician, provided that the supervision complies with all other applicable Medicare payment and coverage rules for the physician services.</li> </ul> <p>Physician services include only those “incident to” services that are physician services under 42 CFR §410.20(a), while all other “incident to” services are outside the scope of this exception.</p>	

## FEDERAL “STARK” REGULATIONS AND SELF-REFERRAL PROHIBITIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>In-office Ancillary Services Exception</b>	<a href="#">42 USC §1395nn(b)(2); 42 CFR §411.355(b)</a>	<p>The “in-office ancillary services” exception protects services that meet the following conditions:</p> <ul style="list-style-type: none"> <li>• They are furnished personally by one of the following individuals: <ul style="list-style-type: none"> <li>• The referring physician;</li> <li>• A physician who is a member of the same group practice as the referring physician; or</li> <li>• Individuals who are directly supervised by the referring physician, or in the case of group practices, by another physician in the same group practice as the referring physician, provided the supervision complies with all other applicable Medicare payment and coverage rules for the services.</li> </ul> </li> <li>• They are furnished in the “same building as the referring physician or group practice” if the office is normally open to the physician’s or group’s patients for medical services at least 35 hours per week; in a “centralized building” that is used by the group practice for the provision of some or all of the group practice’s clinical laboratory services; or a “centralized building” that is used by the group practice for the provision of some or all of the group practice’s DHS (other than clinical lab services)</li> <li>• They are billed by: <ul style="list-style-type: none"> <li>• The physician performing or supervising the services;</li> <li>• A group practice of which the physician is a member under a billing number assigned to the group practice;</li> <li>• The group practice if the supervising physician is a “physician in group practice” under a billing number assigned to the group practice;</li> <li>• An entity that is wholly owned by the physician or group practice under the entity’s own billing number or a billing number assigned to the physician or group practice; or</li> <li>• An independent third party billing company acting as an agent of the physician, group practice or entity under a billing number assigned to the physician, group practice or entity.</li> </ul> </li> </ul>	

## FEDERAL “STARK” REGULATIONS AND SELF-REFERRAL PROHIBITIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
<b>The “Group Practice” Definition</b>	<a href="#">42 USC §1395nn(h)(4)</a> ; <a href="#">42 CFR §411.352</a> ; <a href="#">66 Fed Reg at 956-958</a> (January 4, 2001)	<p>In order for any group of physicians to take advantage of the physicians’ services exception or the in-office ancillary services exception, the group must qualify as a “group practice” under the Stark law. A “group practice” is defined as a physician practice that meets all of the following conditions:</p> <ul style="list-style-type: none"> <li>• It is a single legal entity;</li> <li>• It has at least two or more physicians who are members of the group;</li> <li>• Each physician member of the group furnishes substantially the full range of patient care services that are the physician routinely provides, through joint use of shared office space, facilities, equipment, and personnel;</li> <li>• At least 75 percent of the total patient care services of the group practice members are furnished through the group and billed under a billing number assigned to the group, and the amounts received are treated as receipts of the group;</li> <li>• Members of the group personally conduct no less than 75 percent of the physician-patient encounters of the group practice;</li> <li>• The overhead expenses of, and income from, the practice are distributed according to methods determined before the receipt of payment for the services giving rise to the overhead expenses or producing the income.</li> <li>• The group practice is a unified business; and</li> <li>• No physician member of the group directly or indirectly receives compensation based on the volume or value of referrals by the physician (except under special rules for productivity bonuses and profit shares).</li> </ul>	

## FEDERAL “STARK” REGULATIONS AND SELF-REFERRAL PROHIBITIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
Space and Equipment Rental Exception	<a href="#">42 USC§1395nn(e)(1)</a>	<p>The rental of office space or equipment is not considered a prohibited compensation arrangement if:</p> <ul style="list-style-type: none"> <li>• The lease is set out in writing, signed by the parties and specifies the premises covered by the lease or the equipment covered by the lease;</li> <li>• The space or equipment leased does not exceed that which is reasonable and necessary for the legitimate business purpose of the rental and is used exclusively by the lessee, when being used by the lessee, except that for space rentals, a lessee may make payments for the use of space consisting of common areas if such payments do not exceed the lessee’s pro rata share of expenses for such space based upon the ratio of space used exclusively by the lessee to the total amount of space occupied by all persons using such common areas;</li> <li>• The lease is for at least a one year term;</li> <li>• The rental charges over the term of the lease are set out in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties;</li> <li>• The lease would be commercially reasonable even if no referrals were made between the parties; and</li> <li>• The lease meets any other requirements imposed by the Secretary by regulations.</li> </ul>	<p><i>See United State ex rel Goodstein v McLaren Regional Medical Center et al</i>, 202 F Supp 2d 671(ED Mich, February 14, 2002)</p>

## FEDERAL “STARK” REGULATIONS AND SELF-REFERRAL PROHIBITIONS

SUBJECT	CITATION	SUMMARY	REFERENCES
<b><i>Bona Fide Employment Relationship Exception</i></b>	<a href="#"><u>42 USC §1395nn(e)(2)</u></a>	<p>Any amount paid by an employer to a physician who has a <i>bona fide</i> employment relationship with the employer will not be considered a prohibited compensation arrangement if:</p> <ul style="list-style-type: none"> <li>• the employment is for identifiable services;</li> <li>• the amount of remuneration is consistent with fair market value; <u>and</u> not determined in a manner that takes into account the volume or value of any referrals by the referring physician (although this sub-part does not prohibit the payment of remuneration in the form of a productivity bonus based on services performed personally by the physician);</li> <li>• the remuneration is provided under an agreement that would be commercially reasonable even if no referrals are made to the employer; and</li> <li>• the employment meets other requirements that may be established by regulations.</li> </ul>	

STATE FALSE CLAIMS ACTS			
SUBJECT	CITATION	SUMMARY	REFERENCES
Arizona Health Care Cost Containment – Prohibited Acts	<a href="#">Ariz. Rev. Stat. Ann. § 36-2918 et seq.</a>	This statute does not contain a <i>qui tam</i> provision.	
Arkansas Medicaid Fraud Act	<a href="#">Ark. Code Ann. §§ 5-55-101 et seq.</a>	This statute does not contain a <i>qui tam</i> provision.	
California False Claims Act	<a href="#">Cal. Gov’t. Code §§ 12650 et seq.</a>	This statute contains a <i>qui tam</i> provision.	
Colorado False Claims Act	<a href="#">Colo. Rev. Stat. § 25.5-4-304 et seq.</a>	This statute contains a <i>qui tam</i> provision.	
Connecticut False Claims Act	<a href="#">Conn. Gen. Stat. §17b-301a et seq.</a>	This statute contains a <i>qui tam</i> provision	
Connecticut Health Insurance Fraud Act	<a href="#">Conn. Gen. Stat. § 53-440 et seq.</a>	This statute does not contain a <i>qui tam</i> provision.	
Delaware False Claims and Reporting Act	<a href="#">Del. Code Ann. tit. 6 §§ 1201 et seq.</a>	This statute contains a <i>qui tam</i> provision.	
District of Columbia	<a href="#">DC Code §§ 2-308.03 et seq.</a>	This statute contains a <i>qui tam</i> provision.	
Florida False Claims Act	<a href="#">Fla. Stat. Ann. §§ 68.081 et seq.</a>	This statute contains a <i>qui tam</i> provision.	
Georgia <ul style="list-style-type: none"> <li>State False Medicaid Claims Act</li> <li>Georgia Criminal Code</li> </ul>	<a href="#">Ga. Code Ann. §§ 49-4-168 et seq.</a> <a href="#">Ga. Code Ann. § 16-10-20</a>	The Georgia False Claims Medicaid Act contains a <i>qui tam</i> provision.	
Hawaii False Claims Act	<a href="#">Haw. Rev. Stat. Ann. §§ 661-21 et seq.</a>	This statute contains a <i>qui tam</i> provision.	
Idaho – Prohibition Against Medical Provider Fraud	<a href="#">Idaho Code Ann. § 56-227B</a>	This statute does not contain a <i>qui tam</i> provision.	

STATE FALSE CLAIMS ACTS			
SUBJECT	CITATION	SUMMARY	REFERENCES
Illinois Whistleblower Reward and Protection Act	<a href="#">740 Ill. Comp. Stat. §§175/1 et seq.</a>	This statute contains a <i>qui tam</i> provision.	
Indiana False Claims Act and Whistleblower Protection Act	<a href="#">Ind. Code §§5-11-5.5 et seq.</a>	This statute contains a <i>qui tam</i> provision.	
Iowa False Claims Act	<a href="#">Iowa Code Ann. §685.1 et seq.</a>	This statute contains a <i>qui tam</i> provision.	
Kansas False Claims Act	Kan. Stat. Ann. § 75-7502	This statute does not contain a <i>qui tam</i> provision.	
Kentucky – Control of Fraud and Abuse	Ky. Rev. Stat. Ann. § 205.8451 et seq.	This statute does not contain a <i>qui tam</i> provision.	
Louisiana Medical Assistance Programs Integrity Law	<a href="#">La. Rev. Stat. Ann. §§46:437.1 et seq.</a>	This statute contains a <i>qui tam</i> provision.	
Maine – Civil Liability of Persons Making False Claims	<a href="#">Me. Rev. Stat. Ann. Tit. 22 §15</a>	This statute does not contain a <i>qui tam</i> provision.	
Maryland False Health Claims Act	<a href="#">SB 279 (2010); Md. Ann. Code. 2-601 et seq.</a>	This statute contain a <i>qui tam</i> provision applies to Medicaid funds only.	
Massachusetts False Claims Act	<a href="#">Mass. Gen. Laws Ann. Ch. 12 §§ 5(A) et seq.</a>	This statute contains a <i>qui tam</i> provision.	



STATE FALSE CLAIMS ACTS			
SUBJECT	CITATION	SUMMARY	REFERENCES
Michigan <ul style="list-style-type: none"> <li>Medicaid False Claims Act</li> <li>Health Care False Claims Act</li> </ul>	<a href="#">Mich. Comp. Laws §§400.601 <i>et seq.</i></a> <a href="#">Mich. Comp. Laws §§752.1001 <i>et seq.</i></a>	<p>The Michigan Medicaid False Claims Act contains a <i>qui tam</i> provision. It only applies to Medicaid.</p> <p>A person who violates the Health Care False Claim Act is guilty of a felony punishable by imprisonment for not more than 4 years, or by a fine of not more than \$50,000.00, or both.</p>	
Minnesota Criminal Code	<a href="#">Minn. Stat. § 609.465</a>	Prohibits against presenting false claims to a public officer or body.	
Minnesota False Claims Act	<a href="#">Minn. Stat. §§15C.01 <i>et seq.</i></a>	This statute contains a <i>qui tam</i> provision.	
Mississippi Medicaid Fraud Control Act	Miss. Code Ann. §§43-13-201 <i>et seq.</i>	This statute does not contain a <i>qui tam</i> provision.	
Missouri Health Care Payment Fraud and Abuse	Mo. Rev. Stat. §§ 191-905 <i>et seq.</i>	This statute does not contain a <i>qui tam</i> provision.	
Montana False Claims Act	<a href="#">Mont. Code Ann. §§ 17-8-401 <i>et seq.</i></a>	This statute contains a <i>qui tam</i> provision.	
Nebraska False Claims Act	Neb. Rev. St. §§ 68-936 <i>et seq.</i>	This statute does not contain a <i>qui tam</i> provision.	
Nevada False Claims Act	<a href="#">Nev. Rev. Stat. §§ 357.010 <i>et seq.</i></a>	This statute contains a <i>qui tam</i> provision.	
New Hampshire False Claims Act	<a href="#">N.H. Rev. Stat. §§ 167:61-b <i>et seq.</i></a>	This statute contains a <i>qui tam</i> provision.	
New Jersey False Claims Act	<a href="#">N.J. Stat. Ann. §§ 2A:32C-1 <i>et seq.</i></a>	This statute contains a <i>qui tam</i> provision.	

STATE FALSE CLAIMS ACTS			
SUBJECT	CITATION	SUMMARY	REFERENCES
New Mexico <ul style="list-style-type: none"> <li>Medicaid False Claims Act</li> <li>Fraud Against Taxpayers False Claims Act</li> </ul>	<a href="#">N.M. Stat. Ann. §§ 27-14-1 et seq.</a> <a href="#">N.M. Stat. Ann. §§ 44-9-1 et seq.</a>	Both these statutes contain a <i>qui tam</i> provision.  The New Mexico Medicaid False Claims Act applies to Medicaid and the New Mexico Fraud Against Taxpayers False Claims Act applies to state funds generally.	
New York False Claims Act	<a href="#">McKinney's State Finance Law §§187 et seq.</a>	This statute contains a <i>qui tam</i> provision.	
North Carolina False Claims Act	<a href="#">N.C. Gen. Stat. §1-607 et seq.</a>	This statute contains a <i>qui tam</i> provision.	
North Carolina Medical Assistance Provider False Claims Act	<a href="#">N.C. Gen. Stat. Ann. §§ 108A-70.10 et seq.</a>	This statute does not contain a <i>qui tam</i> provision.	
Ohio <ul style="list-style-type: none"> <li>Medical Assistance Program Fraud</li> <li>Ohio Criminal Code</li> </ul>	<a href="#">Ohio Rev. Code Ann. § 5111.03</a> <a href="#">Ohio Rev. Code Ann. § 2913.40(b)</a>	This statute does not contain a <i>qui tam</i> provision.  This statute does not contain a <i>qui tam</i> provision.	
Oklahoma Medicaid False Claims Act	<a href="#">63 Okl. St. Ann. §§ 5053 et seq.</a>	This statute contains a <i>qui tam</i> provision. Note that despite the name, this is a general false claims act and does not apply solely to Medicaid.	
Oregon False Claims Act	75th Oregon Legislative Assembly – 2009 Regular Session House Bill 2264	This Statute does not contain a <i>qui tam</i> provision.	
Rhode Island False Claims Act	<a href="#">R.I. Gen. Laws §§ 9-1.1-1 et seq.</a>	This statute contains a <i>qui tam</i> provision.	

STATE FALSE CLAIMS ACTS			
SUBJECT	CITATION	SUMMARY	REFERENCES
South Carolina False Claims Act	S.C. Code Ann. §§ 43-7-60 <i>et seq.</i>	This statute does not contain a <i>qui tam</i> provision.	
Tennessee Medicaid False Claims Act Tennessee False Claims Act	<a href="#">Tenn. Code Ann §§ 71-5-181 <i>et seq.</i></a> <a href="#">Tenn. Code Ann §§ 4-18-101 <i>et seq.</i></a>	Both statutes contain a <i>qui tam</i> provision. The Tennessee Medicaid False Claims Act applies to Medicaid and the Tennessee False Claims Act applies to state funds in general.	
Texas False Claims Act	<a href="#">Tex. Hum. Res. Code Ann. §§ 36.001 <i>et seq.</i></a>	This statute contains a <i>qui tam</i> provision.	
Utah False Claims Act	Utah Code Ann. §§ 26-20-1 <i>et seq.</i>	This statute does not contain a <i>qui tam</i> provision.	
Vermont, prohibited practices/fraud	<a href="#">33 Vt. Stat. Ann. § 141</a>	This statute does not contain a <i>qui tam</i> provision.	
Virginia Fraud Against Taxpayers Act	<a href="#">Va. Code Ann. §§ 8.01-216.1 <i>et seq.</i></a>	This statute contains a <i>qui tam</i> provision.	
Washington State False Claims Act	<a href="#">ESSB 5978, 62nd Legislature, 2012 Regular Session</a>	This statute contains a <i>qui tam</i> provision.	
Wisconsin False Claims for Medical Assistance Act	<a href="#">Wisc. Stat. Ann. §§ 20.931 <i>et seq.</i></a>	This statute contains a <i>qui tam</i> provision.	

## **USEFUL WEBSITES**

### **Federal Governmental Agencies**

Agency for Healthcare Research and Quality  
Centers for Disease Control and Prevention  
Department of Health and Human Services  
DHHS Office of the Inspector General  
Department of Justice  
Centers for Medicare and Medicaid Services  
Medicare  
National Institute of Health  
CFR and Federal Register Online  
Federal Bureau of Investigation

<http://www.ahrq.gov/>  
[www.cdc.gov](http://www.cdc.gov)  
[www.hhs.gov](http://www.hhs.gov)  
[www.oig.hhs.gov](http://www.oig.hhs.gov)  
[www.usdoj.gov](http://www.usdoj.gov)  
[www.cms.hhs.gov](http://www.cms.hhs.gov)  
[www.medicare.gov](http://www.medicare.gov)  
[www.nih.gov](http://www.nih.gov)  
[www.access.gpo.gov](http://www.access.gpo.gov)  
[www.fbi.gov](http://www.fbi.gov)

### **Michigan Governmental Agencies**

Michigan Legislature  
Attorney General Opinions  
Michigan Medicaid AG- Health Care Fraud

[www.michiganlegislature.org](http://www.michiganlegislature.org)  
<http://www.michigan.gov/ag/0,1607,7-164-20988---,00.html>  
[http://www.michigan.gov/ag/0,1607,7-164-17334\\_18152---,00.html](http://www.michigan.gov/ag/0,1607,7-164-17334_18152---,00.html)  
<http://www.michigan.gov/mdch>  
<http://www.senate.michigan.gov>

Bureau of Health Professions,  
Disciplinary Action Report

[http://www.michigan.gov/lara/0,4601,7-154-35299\\_28150\\_27529-43008--,00.html](http://www.michigan.gov/lara/0,4601,7-154-35299_28150_27529-43008--,00.html)

### **Organizations and Associations**

American Academy of Family Physicians  
American Academy of Pediatrics

[www.aafp.org](http://www.aafp.org)  
[www.aap.org](http://www.aap.org)  
[www.aapc.com](http://www.aapc.com)

American Chiropractic Association  
American Dental Associations  
American Health Care Association  
American Hospital Association  
American Medical Association  
American Public Health Association  
Association of American Medical College  
Internet Public Library  
Michigan Medical Society  
Mental Health America

<http://www.acatoday.org/>  
[www.ada.org](http://www.ada.org)  
[www.ahcancal.org](http://www.ahcancal.org)  
[www.aha.org](http://www.aha.org)  
[www.ama-assn.org](http://www.ama-assn.org)  
[www.apha.org](http://www.apha.org)  
[www.aamc.org](http://www.aamc.org)  
[www.ipl.org](http://www.ipl.org)  
[www.msms.org](http://www.msms.org)  
[www.nmha.org](http://www.nmha.org)

### **Medical Search Engines**

MEDLINE  
MEDLINE Plus  
Reuters Health Information  
Current Procedural Terminology Search

[www.ncbi.nlm.nih.gov/PubMed](http://www.ncbi.nlm.nih.gov/PubMed)  
[www.nlm.nih.gov/medlineplus](http://www.nlm.nih.gov/medlineplus)  
[www.reutershealth.com](http://www.reutershealth.com)  
<https://commerce.ama-assn.org/ocm/index.jsp>

### **Legal Websites**

Findlaw  
Michigan Legal Resources  
American Health Lawyers Association  
Taxpayers against Fraud

[www.findlaw.com](http://www.findlaw.com)  
[guide.lp.findlaw.com/11stategov/mi/index.html](http://guide.lp.findlaw.com/11stategov/mi/index.html)  
[www.healthlawyers.org](http://www.healthlawyers.org)  
[www.taf.org](http://www.taf.org)