

# Health Care Fraud and Abuse Laws: Florida

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A Q&A guide to health care-related fraud and abuse laws in Florida. This Q&A addresses civil and criminal actions, consequences for violation, and Medicaid program integrity provisions. Answers to questions can be compared across a number of jurisdictions (see Health Care Fraud and Abuse Laws: State Q&A Tool).

## Laws and Regulations

### 1. Please list each state equivalent of the federal False Claims Act, Anti-Kickback Statute, and the Stark Law in your jurisdiction. For each statute or regulation, please:

- Identify the statute or regulation.
- Provide a description of the statute or regulation, including the elements to prove a violation.
- Identify each person or entity covered by the statute or regulation, including providers and payors.
- Identify the state agency or entity that administers and/or enforces the statute or regulation.

Significant Florida statutes or regulations that govern health care fraud and abuse are:

- Anti-Kickback Statutes:
  - the Florida Anti-Kickback Statute: § 456.054, Fla. Stat.;
  - the Florida Patient Brokering Act: § 817.505, Fla. Stat.;
  - the Medical Practice Act and Osteopathic Medicine Practice Act: §§ 458.331(1)9i) and 459.015(1)(j), Fla. Stat.; and
  - the Florida Medicaid Provider Fraud Statute Anti-Kickback Prohibition: § 409.920(2)(a)(5), Fla. Stat.

- The Florida False Claims Act: §§ 68.081 to 68.092, Fla. Stat.
- The Patient Self-Referral Act: § 456.053, Fla. Stat.

### Florida Anti-Kickback Statute: § 456.054, Fla. Stat.

#### Description

The Florida Anti-Kickback Statute:

- Is a payor-agnostic professional and disciplinary statute that prohibits health care provider licensees from paying or receiving kickbacks in exchange for referring or soliciting patients.
- Prohibits individuals and entities from receiving remuneration in exchange for referring patients to clinical laboratories.

Violations of this statute:

- May subject a health care provider licensee to disciplinary action by the applicable board or Florida Department of Health if there is no board (§ 456.072(1), (2), Fla. Stat.).
- Is “patient brokering” punishable under the Florida Patient Brokering Act, § 817.505, Fla. Stat., which is a criminal statute (§ 456.054(4), Fla. Stat.).

To prove a violation of this law, the enforcing authority must show that the defendant:

- Is a health care provider or provider of health care services who offered, paid, solicited, or received a kickback, directly or indirectly, overtly or covertly, in cash or in kind, for referring or soliciting patients.

- Paid or received, directly or indirectly, a commission, bonus, kickback, or rebate from, or had a split-fee arrangement with, a dialysis facility, health care practitioner, surgeon, person, or entity for referring patients to a clinical laboratory as defined in § 483.803, Fla. Stat. The clinical laboratory cannot:
  - provide personnel to perform any duties in a health care practitioner’s office or dialysis facility for any purpose unless the lab and the facility are wholly owned and operated by the same entity; or
  - lease space within any part of the health care practitioner’s office or dialysis facility for any purpose.

(§ 456.054(2) and (3), Fla. Stat.)

### Covered Persons and Entities

The general kickback prohibition applies to health care providers and providers of health care services (§ 456.054(2), Fla. Stat.). The clinical laboratory referral provisions apply to any person or entity, as well as the clinical laboratory, involved in the referral arrangement (§ 456.054(3), Fla. Stat.).

### State Agency

The [Florida Department of Health](#) and the applicable professional licensing board primarily enforce this law under chapter 456 of the Florida Statutes.

Violations of this law are “patient brokering” and are subject to criminal penalties. The [Florida Attorney General’s Office](#) prosecutes these violations (§ 456.054, Fla. Stat.).

## Florida Patient Brokering Act: § 817.505, Fla. Stat.

### Description

This law prohibits any person, including a health care provider or health care facility, to:

- Offer, pay, solicit, or receive a commission, benefit, bonus, rebate, kickback, or bribe, or engage in any split-fee arrangement:
  - to induce the referral of a patient or patronage to or from a health care provider or health care facility;
  - in return for referring a patient or patronage to or from a health care provider or health care facility; or

- in return for the acceptance or acknowledgement of treatment from a health care provider or health care facility.

- Aid, abet, advise, or otherwise participate in any of the prohibited conduct.

(§ 817.505(1), Fla. Stat.)

The prohibitions apply regardless of payor source. Violations of Florida’s Anti-Kickback Statute, § 456.054, Fla. Stat., constitute “patient brokering” and are punishable under this statute (§ 456.054(4), Fla. Stat.).

Exceptions to this prohibition include:

- Any discount, payment, payment waiver, or payment practice not prohibited by 45 U.S.C. § 1320a-7b(b) or its regulations.
- Any payment, compensation, or financial arrangement within a group practice as defined in § 456.053, Fla. Stat., if the payment, compensation, or arrangement is not to or from persons who are not members of the group practice.
- Payments to a health care provider or health care facility for professional consultation services.
- Commissions, fees, or other remuneration lawfully paid to insurance agents under the insurance code.

(§ 817.505(3), Fla. Stat.)

### Covered Persons and Entities

This law covers all persons, which includes:

- Individuals.
- Firms.
- Partnerships.
- Corporations.
- Trusts.
- Other groups or combinations.

(§ 1.01(3), Fla. Stat.)

“Health care provider” or “health care facility” includes:

- Entities licensed, required to be licensed, or lawfully exempt from licensure with the Agency for Health Care Administration or the Department of Health.
- Medicaid providers.

- County health departments.
- Community service providers contracting with the Department of Children and Families to furnish alcohol, drug abuse, or mental health services.
- Licensed substance abuse service providers.
- Specified federally supported primary care programs.

(§ 817.505(1), (2), Fla. Stat.)

### State Agency

The Florida Attorney General's Office or the state attorney of the judicial circuit in which any part of the offense occurred may enforce this law (§ 817.505(5)-(7), Fla. Stat.).

### Medical Practice Act and Osteopathic Medicine Practice Act: §§ 458.331(1)(i) and 459.015(1)(j), Fla. Stat.

#### Description

These laws provide grounds for disciplinary action against a physician or osteopathic physician for paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement, with a physician, organization, agency, person, partnership, firm, corporation, or other business entity for patients referred to providers of health care goods and services, including hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. However, physicians or osteopathic physicians are not prohibited from receiving a fee for professional consultation services. (§§ 458.331(1)(i) and 459.015(1)(j), Fla. Stat.)

#### Covered Persons and Entities

These laws apply to physicians licensed under chapter 458 of the Florida statutes and osteopathic physicians licensed under chapter 459 of the Florida statutes.

#### State Agency

The Florida Department of Health enforces these laws through:

- The Board of Medicine, for physicians.
- The Board of Osteopathic Medicine, for osteopathic physicians.

### Florida Medicaid Provider Fraud Statute: § 409.920(2)(a)(5), Fla. Stat.

#### Description

To prove a violation of this law, the enforcing authority must show that a person knowingly:

- Made, caused to be made, or aided and abetted in making any false statement or false representation of a material fact in:
  - any claim submitted to the AHCA, its fiscal agent, or a managed care plan for payment; or
  - any document containing items of income and expense used or potentially used by the AHCA to determine a rate of payment for an item or service provided.
- Charged, solicited, accepted, or received anything of value, other than an authorized copayment from a Medicaid recipient, from any source in addition to the amount legally payable for an item or service provided to a recipient or knowingly failed to credit the AHCA or its fiscal agent for payment received from a third-party source.
- Solicited, offered, paid, or received any remuneration, including any kickback, bribe, or rebate but excluding discounts, payments, waivers, or payment practices not prohibited by 42 U.S.C. 1320a-7b(b), in return for either:
  - referring an individual to a person for furnishing or arranging the furnishing of any item or service for which payment may be made wholly or partially under the Medicaid program; or
  - obtaining, purchasing, leasing, or ordering (including arranging for or recommending such actions) any goods, facility, item, or service for which payment may be wholly or partially made under the Medicaid program.
- Submitted false or misleading information or statements to the Medicaid program to be accepted as a Medicaid provider.
- Used or attempted to use a Medicaid provider's or recipient's identification number to make, cause to be made, or aid and abet in making a claim for items or services that is not reimbursable under the Medicaid program.

(§ 409.920(2), Fla. Stat.)

### Covered Persons and Entities

This statute applies to any person who engages in the prohibited conduct, including any natural person or legal entity involved in Medicaid claims or payments (§ 409.920(2)(a)(5), Fla. Stat.).

### State Agency

The Agency for Health Care Administration administers the Medicaid program and works with its fiscal agent to process claims and identify suspected fraud. The attorney general, through the Florida Medicaid Fraud Control Unit, investigates violations of this law and may refer cases for prosecution or pursue civil remedies, including under the Florida False Claims Act. (§§ 409.913 and 409.920(8)-(10), Fla. Stat.)

### Florida False Claims Act: §§ 68.081 to 68.092, Fla. Stat.

#### Description

To prove a violation of this law, the filing party must show that the defendant did any of the following:

- Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval.
- Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim.
- Conspires to commit a violation of this law.
- Has possession, custody, or control of property or money used or to be used by the state and knowingly delivers or causes to be delivered less than all of that money or property.
- Is authorized to make or deliver a document certifying receipt of property used or to be used by the state and, intending to defraud the state, makes or delivers the receipt without knowing that the information on the receipt is true.
- Knowingly buys or receives, as a pledge of an obligation or a debt, public property from an officer or employee of the state not entitled to sell or pledge the property.
- 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 state, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state.

(§ 68.082(2), Fla. Stat.)

### Covered Persons and Entities

All individuals and entities are covered under this law (§ 68.082(2), Fla. Stat.).

### State Agency

The [Florida Department of Legal Affairs](#) enforces this law (§ 68.083, Fla. Stat.).

### Florida Patient Self-Referral Act: § 456.053, Fla. Stat.

#### Description

Unless an exception applies, a health care provider may not refer a patient for:

- Designated health services to an entity in which the provider is an investor or has an investment interest.
- Provision of any other health care item or service to an entity in which the provider is an investor unless the interest satisfies one of the exceptions set out in § 456.053(5)(b), Fla. Stat.

(§ 456.053(5), Fla. Stat.). For exceptions that do not constitute a “referral,” see Question 2: Florida Patient Self-Referral Act.

If an exception applies, the health care provider:

- Must disclose their investment interest to their patients.
- May not refer a patient to an entity in which they are an investor unless the patient receives a written disclosure form (a copy must be posted in a conspicuous place in the provider’s office), informing the patient of:
  - the existence of the investment interest;
  - the name and address of each entity in which the health care provider is an investor;
  - the patient’s right to obtain the referred items or services from an entity of the patient’s choice, including one in which the referring provider is an investor; and
  - the names and addresses of at least two alternative sources of the items or services available to the patient.

(§ 456.052 and 456.053(5)(j), Fla. Stat.)

A prohibited referral does not include an order or plan of care by a health care provider who is the sole provider or member of a group practice for

designated health services or other health care items or services if both:

- The health care services or items are provided by or under the supervision of the referring provider or group practice.
- The supervision complies with all applicable Medicare payment and coverage rules for services.

(§ 456.053(3)(n)(3)(f), Fla. Stat.)

The sole provider or group practice is generally prohibited from accepting outside referrals unless the patient first becomes a “patient of the group practice” as defined by § 456.053(3)(m), Fla. Stat. However, certain providers who practice autonomously may refer to a sole provider or group practice for diagnostic imaging services (excluding radiation therapy services) if certain conditions are met (§ 456.053(4), Fla. Stat.).

### Covered Persons and Entities

This law covers certain categories of Florida-licensed or registered health care providers, including:

- Physicians.
- Osteopathic physicians.
- Chiropractic physicians.
- Podiatrists.
- Optometrists.
- Dentists.
- Advanced practice registered nurses registered to practice autonomously under § 464.0123, Fla. Stat.

(§ 456.053(3)(h), Fla. Stat.)

### State Agency

The [Florida Department of Health](#), through the following licensing boards, enforces this law as to the applicable health care provider:

- Board of Medicine.
- Board of Osteopathic Medicine.
- Board of Chiropractic Medicine.
- Board of Podiatric Medicine.
- Board of Optometry.
- Board of Dentistry.
- Board of Nursing.

(§ 456.053(5)(e), (f), and (g), Fla. Stat.).

For additional information on other significant fraud and abuse laws, please see Question 5.

**2. For each law and regulation identified in Question 1, please list the key terms of art used and the definition of each.**

### Florida Anti-Kickback Statute: § 456.054, Fla. Stat.

As defined, a **kickback** is a remuneration or payment:

- By a provider of health care services or items to any person as an incentive or inducement to refer patients for past or future service or items.
- That is not tax deductible as an ordinary and necessary expense.

(§ 456.054, Fla. Stat.)

The statute does not include explicit statutory exceptions or safe harbors. Instead, the term “kickback” excludes payments that are tax deductible as ordinary and necessary expenses, meaning that bona fide employment compensation likely falls outside the definition. (§ 456.054(1), Fla. Stat.)

### Florida Patient Brokering Act: § 817.505, Fla. Stat.

Key terms of art include:

- **Person.** The core prohibitions apply to any person, including, for example:
  - individuals;
  - firms;
  - joint ventures;
  - partnerships;
  - estates;
  - trusts;
  - business trusts;
  - fiduciaries;
  - corporations; or
  - all other groups or combinations.

(§ 1.01(3), Fla. Stat.)

- **Health care provider or health care facility.** Any:
  - person or entity that is licensed, certified, or registered, required to be licensed, certified, or registered, or lawfully exempt from licensure, certification, or registration requirements with the Agency for Health Care Administration (AHCA) or Department of Health;
  - person or entity that has contracted with the AHCA to provide goods or services to Medicaid recipients under § 409.907, Fla. Stat.;
  - county health department;
  - community service provider contracting with the Department of Children and Families;
  - licensed substance abuse service provider; and
  - certain federally supported primary care programs. (§ 817.505(2)(a), Fla. Stat.)
- **Health care provider network entity.** A corporation, partnership, or limited liability company owned or operated by two or more health care providers and organized to contract with:
  - health insurers;
  - health care purchasing groups; or
  - the Medicare or Medicaid program(§ 817.505(2)(b), Fla. Stat.)

### Medical Practice Act and Osteopathic Medicine Practice Act: §§ 458.331(1)(i) and 459.015(1)(j), Fla. Stat.

Key terms of art include:

- **Physician.** A physician licensed under chapter 458 (§ 458.331(1), Fla. Stat.).
- **Osteopathic physician.** An osteopathic physician licensed under chapter 459 (§ 459.015(1), Fla. Stat.).
- **Commission, bonus, kickback, or rebate.** Any compensation a physician or osteopathic physician pays or receives, directly or indirectly, in cash or in kind, for patients referred to providers of health care goods or services (§§ 458.331(1)(i) and 459.015(1)(j), Fla. Stat.).
- **Split-fee arrangement.** Any arrangement in any form in which a physician shares fees with a physician, organization, agency, person, partnership, firm, corporation, or other business entity for patients referred to providers of health care goods or services (§§ 458.331(1)(i) and 459.015(1)(j), Fla. Stat.).

- **Providers of health care goods and services.** As expressly listed in the anti-kickback paragraphs, these include, but are not limited to:
  - hospitals;
  - nursing homes;
  - clinical laboratories;
  - ambulatory surgical centers; and
  - pharmacies.
- (§§ 458.331(1)(i) and 459.015(1)(j), Fla. Stat.) **Professional consultation services.** This statutory carve-out does not prevent a physician or osteopathic physician from receiving a fee for professional consultation services, which is not treated as a prohibited commission, kickback, or split-fee arrangement (§§ 458.331(1)(i) and 459.015(1)(j), Fla. Stat.).

### Florida Medicaid Provider Fraud Statute: § 409.920(2)(a)(5), Fla. Stat.

Key terms of art include:

- **Agency.** The AHCA (§ 409.920(1)(a), Fla. Stat.).
- **Fiscal agent.** Any individual, firm, corporation, partnership, organization, or other legal entity that has contracted with the AHCA to receive, process, and adjudicate claims under the Medicaid program (§ 409.920(1)(b), Fla. Stat.).
- **Item or service.** This includes:
  - any particular item, device, medical supply, or service claimed to have been provided to a Medicaid recipient and listed in an itemized claim for payment; and
  - for cost-based claims, any entry in cost reports, books of account, or other supporting documents.(§ 409.920(1)(c), Fla. Stat.)
- **Knowingly.** An act done knowingly is done voluntarily and intentionally and not because of mistake or accident. This includes willfully or willful, defined as acting voluntarily and purposely with the specific intent to do something the law forbids and with a bad purpose to disobey or disregard the law. (§ 409.920(1)(d), Fla. Stat.)
- **Managed care plans.** Health insurers and other plan types, such as HMOs, prepaid health plans, provider service networks, minority physician networks, and emergency department diversion

programs, that contract with Medicaid to provide covered services (§ 409.920(1)(e), Fla. Stat.).

- **Remuneration.** This includes any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, paid, offered, solicited, or received in return for either:
  - referring an individual for items or services for which Medicaid may pay in whole or in part; or
  - obtaining, purchasing, leasing, ordering, arranging for, or recommending goods, facilities, items, or services for which Medicaid may pay in whole or in part.

There is a statutory exception for discounts, payments, waivers, or payment practices not prohibited by 42 U.S.C. § 1320a-7b(b). (§ 409.920(2)(a)(5), Fla. Stat.)

### Florida False Claims Act: §§ 68.081 to 68.092, Fla. Stat.

Key terms of art include:

- **Claim.** A request or demand for money or property, regardless of whether the state has title to it, that is:
  - presented to an employee, officer, or agent of the state of Florida; or
  - made to a contractor, grantee, or other recipient if the state of Florida provides or has provided or intends to reimburse any portion of the money or property requested or demanded.
- **Knowing or knowingly.** Regarding information, a person who:
  - has actual knowledge of the information;
  - acts in deliberate ignorance of the truth or falsity of the information; or
  - acts in reckless disregard of the truth or falsity of the information.
- **Obligation.** This means an established duty, arising from:
  - an express or implied contractual relationship;
  - a grantor-grantee relationship;
  - a licensor-licensee relationship;
  - a fee-based or similar relationship;
  - a statute or regulation; or
  - the retention of any overpayment.

- **Material.** This means having a natural tendency to influence or capacity to influence the payment or receipt of money or property.

(§ 68.082, Fla. Stat.)

### Florida Patient Self-Referral Act: § 456.053, Fla. Stat.

Key terms of art include:

- **Designated health services.** This means:
  - clinical laboratory services;
  - physical therapy services;
  - comprehensive rehabilitative services;
  - diagnostic imaging services; and
  - radiation therapy services.
- **Entity.** This is any individual, partnership, firm, corporation, or other business entity.
- **Group practice.** This is a group of two or more health care providers legally organized as a partnership, professional corporation, or similar association in which:
  - each member provides substantially the full range of services they routinely provide through the joint use of shared office space, facilities, equipment, and personnel;
  - substantially all services of the members are provided through and billed in the name of the group, and receipts are treated as receipts of the group; and
  - overhead and income are distributed according to methods determined by the group's members.
- **Health care provider.** This means any physician or other provider licensed in medicine, osteopathy, chiropractic medicine, podiatry, optometry, and dentistry under relevant Florida laws.
- **Investment interest.** With exceptions, an interest that is an equity or debt security issued by an entity, including shares of stock in a corporation, units or other interests in a partnership, bonds, debentures, notes, or other equity interests or debt instruments. Exclusions include:
  - entities that are sole providers of designated health services to a rural area;
  - debt instruments relating to transfers of ownership interests that meet additional criteria;

- fair-market value landlord tenant arrangements that meet additional criteria; and
- certain hospital or nursing home arrangements.
- **Investor.** This is a person or entity owning a legal or beneficial ownership or investment interest, including through an immediate family member, trust, or another entity related to the investor within the meaning of 42 C.F.R. § 413.17, in an entity.
- **Outside referral for diagnostic imaging services.** Referring a patient to a group practice or sole provider for diagnostic imaging services by a physician who is not a member of that group or sole provider's practice and who does not have an investment interest in it. The group or sole provider bills both the technical and professional fee and the patient does not become a patient of that group or practice.
- **Patient of a group practice or sole provider.** A patient who receives a physical examination, evaluation, diagnosis, and development of a treatment plan if medically necessary by a physician who is a member of the group practice or the sole provider's practice.
- **Referral.** With exceptions, including but not limited to, diagnostic imaging services, this means the referral of a patient by a health care provider for health care services, including:
  - a health care provider forwarding a patient to another health care provider or an entity that provides health services or any other health care item or service; or
  - requesting or establishing a plan of care by a health care provider, which includes the provision of designated health services or other health care item or service.

(§ 456.053(3), Fla. Stat.)

The term **referral** excludes certain specific orders, recommendations, or plans made by specific providers, including, but not limited to:

- A radiologist for diagnostic imaging services.
- A medical oncologist who administers intravenous drugs and solutions to patients.
- A cardiologist for cardiac catheterization services.
- A pathologist for diagnostic clinical laboratory tests and pathological examination services if furnished by or under the pathologist due to a consultation requested by another physician.
- A urologist for lithotripsy services.

- A dentist for dental services performed by an employee of or independent contractor with the dentist or the dentist's group practice.
- A nephrologist for rental dialysis services and supplies.
- A health care provider for services provided by an ambulatory surgery center.

(§ 456.053(3), Fla. Stat.)

### 3. For each law or regulation identified in Question 1, please specify the possible consequences for violating the statute or regulation.

In addition to the consequences listed, a Medicaid-enrolled provider may be terminated from participating in the Florida Medicaid program by the [Florida Agency for Health Care Administration \(AHCA\)](#) for conduct that includes fraudulent or abusive practices (§ 409.913(13) to (16), Fla. Stat.). For more information, see Question 4.

A party may also be in violation of unprofessional conduct laws and subject to disciplinary actions, including license revocation, suspension, or non-renewal. For more information, see Question 5: Unprofessional Conduct in Health Professions.

#### **Florida Anti-Kickback Statute: § 456.054, Fla. Stat.**

A party that violates this law may be subject to criminal penalties for violations of the Florida Patient Brokering Act (§§ 456.054(4), 456.072(2), 458.331(2), and 459.015(4), Fla. Stat.; see Florida Patient Brokering Act).

#### **Florida Patient Brokering Act: § 817.505, Fla. Stat.**

A party that violates this law faces:

- A third-degree felony and a mandatory \$50,000 fine for any violation.
- A second-degree felony and mandatory \$100,000 fine if the prohibited conduct involves between 10 and 19 patients.
- A first-degree felony and mandatory \$500,000 fine if the prohibited conduct affects 20 or more patients.

(§ 817.505(4), Fla. Stat.)

### **Medical Practice Act and Osteopathic Medicine Practice Act: §§ 458.331(1)(i) and 459.015(1)(j), Fla. Stat.**

A party that violates these laws may face disciplinary penalties (§§ 456.072(2), 458.331(1)(i), and 459.015(1)(j), (2), Fla. Stat.; see Question 5: Unprofessional Conduct in Health Professions).

### **Florida Medicaid Provider Fraud Statute – Anti-Kickback Prohibition: § 409.920(2)(a)(5), Fla. Stat.**

A party that violates this law may face:

- A third-degree felony if the person receives or endeavors to receive \$10,000 or less.
- A second-degree felony if the person receives or endeavors to receive more than \$10,000 but less than \$50,000.
- A first-degree felony if the person receives or endeavors to receive \$50,000 or more.
- In all cases, a mandatory fine equal to the greater of either:
  - five times the unlawful monetary gain; or
  - the loss incurred by the Medicaid program or managed care organization.

(§§ 409.920(2)(b)(1)–(3), 2(b)(2), (3), 775.082, 775.083, and 775.0841, Fla. Stat.)

This statute allows the attorney general to:

- Seek the assistance of any state attorney or law enforcement agency to investigate and prosecute any violation.
- Seek any civil remedy provided by law.
- Refer each instance where a health care provider under Medicaid was overpaid to the AHCA.

(§ 409.920(10), Fla. Stat.)

### **Florida False Claims Act: §§ 68.081 to 68.092, Fla. Stat.**

An individual or entity that violates this law may face a civil claim from the [Florida Department of Legal Affairs](#) (DLA), the [Florida Department of Financial Services](#) under certain conditions, or a private party

(§ 68.082(2), Fla. Stat.). An individual or entity that violates this law may be required to pay:

- Three times the amount of damages sustained from a violation (§ 68.082(2), Fla. Stat.).
- A civil penalty between \$5,500 and \$11,000 (§ 68.082(2), Fla. Stat.).
- Attorneys' fees, expenses, and costs (§ 68.086(1), Fla. Stat.).

### **Patient Self-Referral Act: § 456.053, Fla. Stat.**

Any person who violates this law may be:

- Required to refund the amount that was collected from any individual or payor due to a claim submitted in furtherance of a prohibited referral.
- Required to pay a civil penalty of up to \$15,000 for each service that was unlawfully billed or claimed or for an unrefunded claim.
- For a health care provider or entity that enters into an arrangement or scheme where the parties know that the primary purpose is to utilize patient referrals, required to pay a civil penalty of up to \$100,000 for each arrangement or scheme.
- Subject to disciplinary action by the applicable board.

(§ 456.053(5)(d)–(g), Fla. Stat.)

## **Medicaid Program Integrity**

**4. If your jurisdiction has a law or regulation governing Medicaid program integrity requirements, please identify the law or regulation and provide a brief description.**

### **Oversight of Integrity of Medicaid Program: § 409.913, Fla. Stat.**

The [Florida Agency for Health Care Administration](#) (AHCA) conducts, investigates, analyzes, or audits any of the following violations in the Medicaid program and reports the findings in audit reports:

- Fraud.
- Abuse.

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- Overpayment.
- Recipient neglect.

(§ 409.913(2), Fla. Stat.)

AHCA randomly conducts at least 5% of all audits. AHCA's fraud detection activities include:

- Identifying and monitoring patterns of overutilization of Medicaid services based on state averages.
- Tracking Medicaid provider prescription and billing patterns and evaluating them against Medicaid guidelines.
- Conducting reviews of provider exceptions to peer group norms and using various methods to detect and investigate abnormal increases in billing or payment of claims for Medicaid services and medically unnecessary provision of services.

(§ 409.913(2), Fla. Stat.)

The AHCA may also conduct prepayment review of provider claims to ensure:

- Cost-effective purchasing.
- That billing by a provider to the AHCA complies with all Medicaid rules, regulations, and policies as well as with federal, state, and local laws.
- That appropriate care is provided to Medicaid recipients.

(§ 409.913(3), Fla. Stat.)

The AHCA:

- Refers any suspected criminal violation identified to the [Medicaid Fraud Control Unit](#) for the [Florida attorney general](#) for investigation (§ 409.913(4), Fla. Stat.).
- Must terminate a Medicaid provider's participation in the Medicaid program and may seek civil remedies or impose other administrative sanctions if the provider (or applicable person or entity) was convicted of a criminal offense:
  - under any federal or state laws relating to the practice of the provider's profession; and
  - under § 408.809(4), Fla. Stat. (dealing with Medicare and insurance fraud), § 409.907(10), Fla. Stat. (issues relating to Medicaid provider agreements), § 409.920, Fla. Stat. (dealing with Medicare provider fraud), and § 435.04(2), Fla. Stat. (various felonies).

- Does not terminate the provider if it determines that the provider did not participate or acquiesce in the offense.

(§ 409.913(13), Fla. Stat.)

The AHCA must immediately suspend or terminate, as appropriate, a provider's participation in the Florida Medicaid program if the provider:

- Is suspended or terminated from the Medicaid or Medicare program by the federal government or any state. The suspension period must match the duration of the federal suspension.
- Participated or acquiesced in any action in which any officer, employer, affiliated person, or person having a 5% or greater ownership interest in the provider was suspended or terminated from participating in the Medicaid or Medicare program by the federal government or any state.

(§ 409.913(14), Fla. Stat.)

The AHCA must seek any remedy provided by law, including but not limited to those set out in §§ 409.913 and § 812.035, Fla. Stat., if, for example:

- The provider's license has not been renewed or has been revoked, suspended, or terminated for cause by the licensing agency of any state.
- The provider failed to maintain medical records made at the time of service demonstrating the necessity and appropriateness of the goods or services.
- The provider is not in compliance with various Medicaid-related state or federal laws, rules, or regulations, agreements, or certifications on provider-submitted claim forms.
- The provider or an authorized representative submitted or caused the submission of a Medicaid provider enrollment application that contains materially false or incorrect information.
- The provider failed to comply with notice and reporting requirements regarding information set out on the Medicaid enrollment application required under § 409.907, Fla. Stat.
- Improper billing or collection by the provider to a Medicaid recipient for amounts that the provider billed to the Medicaid program for the same service.

(§ 409.913(15), Fla. Stat.)

The AHCA may, among other remedies:

- Suspend the provider for a maximum of one year.
- Terminate the provider between 1 to 20 years.
- Impose a fine of up to \$5,000 for each violation.

(§ 409.913(16), Fla. Stat.)

### **Florida Medicaid Provider Fraud Statute: § 409.920, Fla. Stat.**

For information about this statute, see Question 1: Florida Medicaid Provider Fraud Statute.

The attorney general must conduct a statewide program of Medicaid fraud control, including, but not limited to:

- Investigating:
  - possible criminal violations of any applicable Florida law related to fraud in administering the Medicaid program or provider activity under the Medicaid program; or
  - alleged abuse or neglect of patients in health care facilities receiving payments under the Medicaid program.
- Referring all violations indicating a substantial potential for criminal prosecution to the Office of Statewide Prosecution.
- Publicizing to state employees and the public that they may file a lawsuit under the Florida False Claims Act and be eligible to receive a monetary award.

(§ 409.920(9), Fla. Stat.)

## **Other Significant State Laws**

**5. Please briefly describe any other significant laws used by your jurisdiction to prevent, address, or prosecute health care fraud and abuse.**

### **Provisions for Specific Professions Regarding Unprofessional Conduct**

Florida has laws that prohibit specific health care professions from engaging in unprofessional conduct such as offering or receiving remuneration

or compensation to obtain patient referrals. These professions include, but are not limited to:

- Chiropractors (§§ 460.401 to 460.417, Fla. Stat.). Unprofessional conduct includes soliciting patients, either personally or through an agent, unless the Board of Chiropractic Medicine has approved the type of solicitation (§ 460.413, Fla. Stat.).
- Dentists and dental hygienists (§§ 466.001 to 466.041, Fla. Stat.). Unprofessional conduct includes advertising services in a fraudulent or misleading manner and split fee arrangements for a client's referral of patients to another health care practice (§ 466.058, Fla. Stat.; Fla. Admin. Code R. 64B5-17.003).
- Pharmacists (§§ 465.001 to 465.1902, Fla. Stat.). Unprofessional conduct includes paying or receiving a commission, bonus, kickback, or rebate, or engaging in any form of split-fee arrangement with a physician, surgeon, agency, or person for patients referred to a registered pharmacy (§ 465.016(1)(r) and 465.185(1), Fla. Stat.; Fla. Admin. Code R. 64B16-27.1042.)

### **Unprofessional Conduct in Health Professions: §§ 456.072(2) and 456.0635, Fla. Stat.**

In Florida, unprofessional conduct in health professions includes, but is not limited to:

- Making misleading, deceptive, or fraudulent representations in or related to the practice of the health care practitioner's profession.
- Making or filing a report that the health care practitioner knows to be false, intentionally or negligently failing to file a report or record required by law, or willfully impeding or obstructing another person to do so. This only applies to reports and records that are signed in the capacity of a health care practitioner licensee.
- Being convicted of or pleading guilty or *nolo contendere* to a crime in any jurisdiction that relates to the practice of or ability to practice a licensee's profession.
- Making deceptive, untrue, or fraudulent representations or employing a trick or scheme in or related to the practice of a profession.

(§§ 456.072(1), 458.331(1), 459.015(1), and 460.413(1), Fla. Stat.)

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Health care professional licensees who violate § 456.072(1), Fla. Stat. or their individual practice act statutes may be subject to:

- A refusal to certify a license application or license certification with restrictions.
- License suspension, revocation, or restriction.
- Administrative fines.
- Probation.
- Reprimand or letter of concern.
- Corrective action.
- A requirement to refund fees billed and collected from a patient or from a third party on the patient's behalf.
- A requirement to complete remedial education. (§ 456.072(2), Fla. Stat.)

The FDOH:

- Through its licensing boards may not issue nor renew a license, certificate, or registration to a candidate or their affiliate if:
  - convicted of or entered a plea of guilty or *nolo contendere* of certain felonies, with specified exceptions;
  - terminated for cause from the Florida or another state's Medicaid program (unless an exception applies); or
  - currently listed on the Department of Health and Human Services Office of Inspector General's list of excluded individuals and entities, unless an exception applies.
- (§ 456.0635(2), (3), Fla. Stat.)
- Must suspend the license of any health care practitioner who was found guilty of or entered a plea of guilty or *nolo contendere* to felonies involving fraud or abuse of public assistance and health care programs or fraud and false statement offenses related to the Medicaid program (§ 456.074, Fla. Stat.).

### Prohibited Kickbacks Involving Home Health Agencies: §§ 400.474(6) and 400.518, Fla. Stat.

The Agency for Health Care Administration (AHCA) may deny, revoke, or suspend a home health agency's (HHA's) license and must impose a fine of \$5,000

against an HHA for certain violations, including but not limited to:

- Compensating another HHA or a health services pool with which it has formal or informal patient-referral transactions or arrangements for staffing services.
- Providing services to residents in or staffing to an assisted living facility for which the HHA does not receive fair market value compensation.
- Contracting with more than:
  - one medical director at one time; or
  - one medical director and one physician specialist required for program qualification under an active federal or state health care program at one time.
- Compensating a physician without a medical director contract in effect.
- Having received a patient referral in the previous 12 months from a physician or physician's office staff and compensating:
  - the physician, if the HHA has violated the medical director contract requirements in § 400.747(6)(g) or (h);
  - a member of the physician's office staff; or
  - a member of the physician's immediate family.
- Demonstrating a pattern of billing the Medicaid program for services to Medicaid recipients that a final order has determined are medically unnecessary.

(§ 400.474(6), Fla. Stat.)

A licensed physician must comply with the Patient Self-Referral Act (§ 456.053, Fla. Stat.) regarding any referrals to HHAs in which the physician is an investor or has an investment interest. A hospital or ambulatory surgical center that has a financial interest in an HHA cannot require any of its staff physicians to make referrals to the HHA. (§ 400.518(1), (2), Fla. Stat.)

A violating party may face:

- An administrative fine not exceeding \$15,000.
- Disciplinary action by:
  - the appropriate board if the violating party is a physician; or
  - the AHCA if the violating party is a hospital or ambulatory center.

- An administrative fine of \$15,000 from the AHCA if an HHA provides nurses, certified nursing assistants, home health aides, or other staff without charge to a licensed assisted living facility in return for patient referrals from the facility. (§ 400.518, Fla. Stat.)

### **Prohibited Kickbacks Involving Nurse Registries: § 400.506, Fla. Stat.**

The AHCA may deny, revoke, or suspend the license of and impose a \$5,000 fine against a nurse registry that:

- Provides services to residents in an assisted living facility for which the nurse registry does not receive fair market value compensation.
- Provides staffing to an assisted living facility for which the nurse registry does not receive fair market value compensation.

The AHCA must also impose an administrative fine of \$15,000 if the nurse registry refers nurses, certified nursing assistants, home health aides, or other staff without charge to a licensed assisted living facility in return for patient referrals from the facility. (§ 400.506(15), Fla. Stat.)

The AHCA may also assess costs related to an investigation that results in a successful prosecution, except for attorneys' fees (§ 400.506(16), Fla. Stat.).

### **Prohibited Bribes and Kickbacks Involving Nursing Homes and Related Facilities: §§ 400.17 and 400.176, Fla. Stat.**

A person furnishing items or services directly or indirectly to a nursing home resident may not:

- Solicit, offer, or receive any kickback or bribe for furnishing these items or services.
- Return an amount paid for referring an individual to another person to furnish these items or services.

(§ 400.17(2), Fla. Stat.)

A party that violates this law faces either or both of the following:

- First-degree misdemeanor charges.
- A fine of up to \$5,000.

(§ 400.17(2), Fla. Stat.)

Additionally, a person may not pay or receive a commission, bonus, kickback, or rebate, or engage in any form of split-fee arrangement with any physician, surgeon, organization, agency, or person for residents referred to a nursing home (§ 400.17(1), Fla. Stat.). The AHCA enforces this statute; however, an entity that violates this statute and is not licensed by or subject to the AHCA's jurisdiction may face administrative penalties including:

- A fine of up to \$ 5,000.
- A recommendation of disciplinary action to the appropriate licensing board issued by the AHCA.

(§ 400.176(2), Fla. Stat.)

### **Prohibited Kickbacks Involving Hospitals and Ambulatory Surgical Centers: § 395.0185, Fla. Stat.**

A person cannot pay or receive any commission, bonus, kickback, or rebate or engage in any form of split-fee arrangement with any physician, surgeon, organization, or person for patients referred to a licensed hospital or ambulatory surgical center (§ 395.0185, Fla. Stat.).

The AHCA enforces this statute. However, an entity that violates this law and is not subject to the AHCA's jurisdiction may be face administrative penalties including:

- A fine of up to \$1,000.
- The AHCA recommendation for disciplinary action to the appropriate licensing board.

(§ 395.0185, Fla. Stat.)

### **Prohibited Rebates for Pharmacies: § 465.185, Fla. Stat.**

A person cannot pay or receive any commission, bonus, kickback, or rebate or engage in any form of split-fee arrangement with a physician, surgeon, organization, agency, or person for patient referrals to a pharmacy permitted under this chapter (§ 465.185, Fla. Stat.).

A party that violates this law may be subject to disciplinary action (§ 465.185(2), Fla. Stat.). The penalties adopted by the Board of Pharmacy, to be imposed at their discretion, include:

- For a first violation:
  - a minimum penalty of a \$1,500 fine and completion of either a 12-hour Laws and Rules course or the Multistate Pharmacy Jurisprudence Examination (MPJE); and
  - a maximum penalty of a \$5,000 fine and one year of probation.
- For second and further violations:
  - a minimum penalty of a \$5,000 fine, completion of either a 12-hour Laws and Rules course or the MPJE, and one year suspension followed by one year of probation; and
  - a maximum penalty of license revocation.

The Board of Pharmacy must also assess costs relating to the case's investigation and prosecution. (§ 465.185(2), Fla. Stat.; Fla. Admin. Code R. 64B16-30.001(1), (2).)

Any violating entity that is not licensed by or subject to the Board of Pharmacy's jurisdiction is subject to:

- A fine of up to \$1,000.
- If applicable, the Board of Pharmacy's recommendation for disciplinary action to the appropriate regulatory agency.

(§ 465.185(2), Fla. Stat.)

### **Prohibited Rebates Involving Assisted Living Facilities: § 429.195, Fla. Stat.**

An assisted living facility (ALF) cannot contract or promise to pay or receive any commission, bonus, kickback, or rebate or engage in any kind of split-fee arrangement with any person, health care provider, or health care facility. However, this does not apply to:

- Individuals employed by the ALF or contracted to provide marketing services for the facility, if the individual clearly indicates they work with or for the facility.
- A ALF's payments to a referral service that provides information, consultation, or referrals to consumers to assist them in finding appropriate care or housing options for seniors or disabled adults if the referred consumers are not Medicaid recipients.
- A resident of an ALF who refers a friend, family members, or other individuals with whom they have a personal relationship to the ALF, in which case

the ALF may provide the resident with a monetary reward for the referral.

(§ 429.195(1), (2), Fla. Stat.)

A party that violates this law is guilty of patient brokering under § 817.505, Fla. Stat. (§ 429.195(3), Fla. Stat.).

### **Health Care Clinic Medical/Clinic Director Responsibilities: § 400.9935, Fla. Stat.**

Certain entities licensed as health care clinics must appoint a medical director or clinic director who agrees in writing to accept legal responsibility for performing specific activities on the clinic's behalf. The medical or clinic director may not refer a patient to the clinic if the clinic performs magnetic resonance imaging, static radiographs, computed tomography, or positron emission tomography. Referring a patient means referring one or more patients of the medical or clinical director or a member of the medical or clinical director's group practice for the imaging services. (§ 400.9935(1), Fla. Stat.)

A medical or clinic director who violates this statute may be subject to:

- Third-degree felony charges.
- Disciplinary action by the applicable licensing board.

(§ 400.9935(5), Fla. Stat.)

Any clinic that violates this statute may be subject to fines and other administrative penalties, up to and including license suspension and denial of a licensure renewal application (§§ 400.9935(3) and 400.995(1), (2), Fla. Stat.).

### **Disqualification from Employment § 435.06, Fla. Stat.**

Employers who conduct Level 2 background screening may not hire or retain an employee in any position that involves contact with a minor or a vulnerable adult unless the background screening is complete and shows no disqualifying offenses. An employer must:

- Remove an employee who was arrested for a disqualifying offense from contact with minors or

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vulnerable adults. The employee may only resume that contact if the matter is resolved in a way that confirms the employee's eligibility.

- Terminate an employee's employment or move the employee to a non-screened position if the

employee is not in compliance with minimum standards unless an exemption § 435.07, Fla. Stat. applies.

(§§ 435.02, 435.04, and 435.06, Fla. Stat.)

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