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**FINANCIAL ARRANGEMENTS  
BETWEEN PHYSICIANS AND HEALTH  
CARE BUSINESSES: STATE LAWS  
AND REGULATIONS**

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**Management Advisory Report**

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INSPECTOR GENERAL**

## INTRODUCTION

### PURPOSE

Section 203(c)(3) of the Medicare Catastrophic Coverage Act of 1988 mandated the Office of Inspector General to study and report to Congress concerning:

- o physician ownership of, or compensation from, an entity providing items or services to which the physician makes referrals and for which payment may be made under the Medicare program;
- o the range of such arrangements and the means by which they are marketed to physicians;
- o the potential of such ownership or compensation to influence the decision of a physician regarding referrals and to lead to inappropriate utilization of such items and services; and
- o the practical difficulties involved in enforcement actions against such ownership and compensation arrangements that violate current anti-kickback provisions.

In order to collect relevant background information and set the context for this study, the Office of Inspector General interviewed State officials regarding their perspectives and experiences in the area of physician ownership. This Management Advisory Report (MAR) reports on responses from those interviews concerning state requirements and legal barriers affecting physicians who refer to health care businesses in which they are financially vested.

### BACKGROUND

In the last ten years, increasing attention has been focused on the financial arrangements that exist between physicians and the health care businesses to which they refer patients. In 1980, an influential article in The New England Journal of Medicine by the journal's editor, Dr. Arnold Relman, elicited strong debate in the medical community concerning the appropriateness of such arrangements and the impact that they might have on medical judgments made by physicians in determining what services their patients require. Since then, public scrutiny of those financial arrangements has increased.

In 1982, the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, U.S. House of

Representatives, expressed its concern regarding the emergence of such arrangements. In 1988, a bill that would generally prohibit physicians from referring to health care businesses in which they hold financial interests was introduced in the U.S. House of Representatives. That bill, "The Ethics in Patient Referrals Act," was reintroduced in 1989 and is now pending. The Subcommittees on Health and Oversight, Committee on Ways and Means held a joint hearing on the bill in March 1989. Further hearings are anticipated.

Currently the Federal anti-kickback law prohibits soliciting, receiving, offering or paying anything of value in return for the referral of a health care item or service payable under the Medicare or Medicaid program. (42 U.S.C. Section 1320a-7b.) Since the law could be interpreted to prohibit a wide range of conduct--including physician ownership and self-referral--Congress directed the Secretary of HHS to promulgate regulations specifying "safe harbors," that is, conduct which would not be subject to the anti-kickback statute. A Notice of Proposed Rulemaking (NPRM) was issued on January 23, 1989 (54 Fed. Reg. 3088) that proposes to establish certain such "safe harbors." The NPRM proposes a safe harbor for physicians with investment interests in large publicly held corporations, but does not do so for any other types of investment or ownership arrangements. Thus, if the NPRM were to take effect as proposed, such types of arrangements would continue to be subject to the scrutiny of Federal law enforcement officials on a case by case basis.

The only specific Federal prohibitions which currently exist against physician ownership and self-referral concern home intravenous (IV) drug therapy and home health agencies. The Medicare Catastrophic Coverage Act of 1988 prohibits a home IV therapy provider from providing services to a Medicare patient when such services have been ordered by a physician with a financial interest (including financial interest held through an immediate family member) in the provider. Some exceptions, such as for a sole rural provider or financial interest in a publicly traded company, are made. Federal regulations also prohibit physicians from certifying the home health plan of care for a beneficiary if they own more than 5 percent of the home health agency which will provide the care.

Despite the intense debate over this issue, few studies have been conducted to determine the extent of such arrangements between physicians and the health care businesses to which they refer patients, or the impact of such arrangements on utilization of services, cost and pricing, competitiveness, and quality of care. This MAR is the first in a series of reports to be issued by the Office of Inspector General (OIG) on this subject.

## METHODOLOGY

The OIG conducted interviews with 143 individuals in 50 States. In most cases, three individuals were interviewed in each State. The individuals interviewed represented Medical Licensing Boards, State Medicaid agencies, Medicaid Fraud Control Units (MFCUs), and State Attorney General's offices.

The interviews collected information on State laws or regulations that (1) prohibit referrals by physicians with financial interests in certain health care businesses; (2) require disclosure of such arrangements to the public; or (3) forbid payment for referrals. The OIG did not conduct a comprehensive review of State laws through independent legal research, and state statutes cited by respondents may not reflect the full range of State requirements in this area. However, laws that were cited by State officials were documented and confirmed through reviewing State codes.

## FINDINGS

No respondents indicated that their States have an outright ban on physicians owning a health care entity. However, respondents in Michigan cited a law in their State which forbid physicians from referring patients to an entity in which they have financial interests.

Michigan law forbids "directing or requiring an individual to purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility or business in which the licensee has a financial interest." This statute was challenged by two physicians in 1979 who contended that the language of the law was unconstitutionally vague and therefore void. Based on the challenge, the Circuit Court for the County of Oakland, State of Michigan, issued a preliminary injunction against enforcing the law in July 1979. In October 1982, the Court upheld the constitutionality of the law and vacated the preliminary injunction. The law remains in effect at this time.

Two physicians have recently requested a declaratory ruling from the Michigan Board of Medicine on the meaning of the words "directing or requiring" under the law. The question for which the physicians seek a declaratory ruling is whether "directing or requiring" is synonymous with "referring." The physicians seeking a ruling have posted signs in their offices noting their financial relationships with other facilities and the patient's freedom in choosing another facility. They argue, in the request for a ruling, that "...the patient is fully informed of the relationship and can make a choice, and so is not commanded, ordered or compelled to use the physician's entity. Thus the physician is not 'directing or requiring' within the meaning of [Michigan law], and does not violate [the] statute." The Michigan Board of Medicine is currently reviewing the petition.

Many states have laws or regulations prohibiting physicians from exploiting patients for financial gain.

While only Michigan forbids physicians from referring patients to entities in which they have a financial interest, many States forbid physicians from referring patients for goods and services where such referral is unnecessary or is only made to financially benefit the physician. For example, California law states that "it shall not be unlawful for any person...to refer a person to any laboratory, pharmacy, clinic or health care facility solely because such licensee has a proprietary interest or co-ownership in such laboratory, pharmacy, clinic or health care facility; but such referral shall be unlawful

if...there was no valid medical need for the referral." Rhode Island law prohibits "promotion by a physician...of the sale of drugs, devices, appliances or goods or services provided for a patient in such a manner as to exploit the patient for the financial gain of the physician...."

Missouri law protects patients by ensuring freedom of choice, as do several other States. Grounds for revocation of a physician's license in Missouri include "...requiring, as a condition of the physician-patient relationship, that the patient receive prescribed drugs, devices, or other professional services directly from facilities of that physician's office or other entities under that physician's ownership or control."

Respondents from 11 States cited laws or regulations which specifically require a physician to disclose a financial interest to patients, or that forbid physicians from referring patients to entities in which they hold a financial interest unless disclosure to the patient is made. The stringency of this requirement, however, varies from State to State.

At least 11 States specifically require physicians to disclose their financial interest to patients when referring patients to health care providers in which they are financially vested. These States include Arizona, California, Delaware, Florida, Massachusetts, Minnesota, Nevada, Pennsylvania, Virginia, Washington, and West Virginia.

Disclosure requirements vary greatly from State to State. Many States do not specify what form the disclosure must take. However, Minnesota law specifies that disclosure must be made in advance and in writing and must include a statement indicating that the patient is free to choose a different health care provider. Washington law requires an affirmative disclosure "to the patient in writing."

Other States require disclosure only in certain circumstances or when certain specialties of practice are involved. Florida's disclosure requirement, for example, applies when the referring physician has an equity interest of 10 percent or more. Virginia's law applies to "any financial interest of or ownership by the practitioners...." Massachusetts's disclosure requirement applies only to referral of patients for physical therapy services.

Respondents from 36 States cited State laws which prohibit physicians from receiving or giving payments for patient referrals. These laws are generally similar to the Federal statute which prohibits payment for referrals.

Section 1128B(b) of the Social Security Act prohibits individuals from soliciting, receiving, offering or paying anything of value in return for the referral of a health care item or service which is payable under the Medicare or the Medicaid programs. Many States have laws which are similar to the Federal anti-kickback law.

Most States consider the practice of receiving or giving payment for referrals unprofessional conduct and prohibit it in their medical practice act. For example, the State of Arizona's medical practice act contains a section on defining unprofessional conduct. It states that unprofessional conduct includes "charging a fee for services not rendered or dividing a professional fee for patient referrals."

Delaware's medical practice act contains a similar provision. It states that "payment of a fee by a physician to another physician who has referred the patient to him, unless the fee is in proportion to work actually performed by the referring physician" is unethical.

Grounds for medical disciplinary action in Idaho include "division of fees or gifts or agreement to split or divide fees or gifts received for professional services with any person, institution or corporation in exchange for a referral."

The overwhelming majority of respondents responsible for enforcing applicable State statutes reported that they were unable to monitor for compliance of existing laws.

Only two State officials reported that their offices have enough resources to search out violations of existing laws. The rest of the State officials which dealt with enforcement stated that they were only able to enforce the laws in a reactive manner. This would include following up on tips and complaints. For example, one State official stated that his office "gets cases primarily through complaints and secondarily through utilization exception reports." Another respondent stated, "We don't have a mechanism to monitor anything other than complaints from individuals and information from follow-up investigations."

Most respondents noted that a lack of resources prevent them from enforcing these laws in a more aggressive manner. Additional impediments cited were vagueness in the law and priorities in other areas.

Certain States are now reviewing the practice of physician ownership and self-referral.

Several States are now reviewing the practice of physician ownership and self-referral. The New York State Health Commissioner created an ad hoc committee to meet with the public this year and gather comments on ethical or other concerns the public may have regarding the practice. Further hearings are scheduled. The Health Care Committee of the Florida House of Representatives is currently collecting information on the practice and may conduct a study on such arrangements in Florida.



## FURTHER REPORTS

The OIG will produce additional reports on the subject of financial arrangements between referring physicians and other health care businesses.

On May 1, 1989, the OIG will report to Congress on the areas outlined in Section 203(c)(3) of the Medicare Catastrophic Coverage Act. This report will detail information obtained from OIG surveys in regard to the nature, range, and prevalence of ownership and compensation arrangements between physicians and health care businesses. Information from the Medicare Part B Annual Data (BMAD) files will be used to assess use of selected ancillary services by patients associated with physician owners or investors, as compared to use of ancillary services by Medicare beneficiaries in general. The report will also detail the enforcement experiences of the OIG in connection with physician ownership or compensation arrangements which violate Federal anti-kickback laws.

Reports focusing on physician ownership and other market forces in the independent clinical laboratory, independent physiological laboratory, and durable medical equipment industries will be issued in Fall 1989.

**APPENDIX A**  
**STATE LAWS AND REGULATIONS CITED BY RESPONDENTS**

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ALABAMA

ALA. CODE § 22-1-11. Making false statement or representation of material fact in claim or application for payments on medical benefits from medicaid agency generally; kickbacks, bribes, etc.; exceptions; multiple offenses.

. . . .

(b) Any person who solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind:

(1) In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by the medicaid agency or its agents, or

(2) In return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part by the medicaid agency, or its agents shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$10,000 or imprisoned for not less than one nor more than five years, or both.

ARIZONA

Medical Practice Act

ARIZ. REV. STAT. ANN. § 32-1401. Definitions.

12. "Unprofessional conduct" includes the following acts, whether occurring in this state or elsewhere:

. . . .

(u) Charging a fee for services not rendered or dividing a professional fee for patient referrals.

. . . .

(ff) Knowingly failing to disclose to a patient on a form prescribed by the board which is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the doctor has a direct pecuniary interest in a separate diagnostic or treatment agency or in non-routine goods or services which the patient is being prescribed and if the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one doctor of

medicine to another doctor of medicine within a group of doctors of medicine practicing together.

ARIZ. REV. STAT. ANN. § 36-472. Rebates, fee-splitting and solicitation of referrals prohibited.

A. The owner or director of a laboratory shall not personally or through an agent solicit the referral of specimens to his or any other laboratory in a manner which offers or implies an offer of rebates to persons submitting specimens or other fee-splitting inducements or participate in any fee-splitting arrangement. This applies to contents of fee schedules, billing methods or personal solicitation. The contractual provision of laboratory services for a fixed fee independent of the number of specimens submitted for such services is declared to be a violation of this section.

B. The bill to the patient shall specify the actual charge by the reference laboratory together with the reasonable specimen collection charge by the referring laboratory or physician.

ARIZ. REV. STAT. ANNOT. § 13-3713. Consideration for referral of patient, client or customer; fraud; violation; classification.

A. A person who knowingly offers, delivers, receives or accepts any rebate, refund, commission, preference or other consideration as compensation for referring a patient, client or customer to any individual, pharmacy, laboratory, clinic or health care institution providing medical or health-related services or items pursuant to title 11, chapter 2, article 7 [footnote omitted] or title 36, chapter 29, other than specifically provided for in accordance with title 11, chapter 2, article 7 or title 36, chapter 29 [footnote omitted], is guilty of:

1. A class 3 felony if the consideration had a value of one thousand dollars or more.
2. A class 4 felony if the consideration had a value of more than one hundred dollars but less than one thousand dollars.
3. A class 6 felony if the consideration had a value of more than one hundred dollars or less.

**CALIFORNIA**

CAL. BUS. & PROF. CODE § 650. Consideration for referral of patients, clients, or customers.

Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code the offer, delivery, receipt or acceptance, by any person licensed under this division of any rebate, refund, commission, preference,

patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest or co-ownership in or with any person to whom such patients, clients or customers are referred is unlawful.

Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code it shall not be unlawful for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic, or health care facility solely because such licensee has a propriety interest or co-ownership in such laboratory, pharmacy, clinic, or health care facility; but such referral shall be unlawful if the prosecutor proves that there was no valid medical need for the referral.

CAL. BUS. & PROF. CODE § 654. Prohibited arrangements between opticians and medical licensees.

No person licensed under Chapter 5 (commencing with Section 2000) of this division may have any membership, proprietary interest or co-ownership in any form in or with any person licensed under Chapter 5.5 (commencing with Section 2550) of this division to whom patients, clients or customers are referred or any profit-sharing arrangements.

§ 654.1 Prohibited referrals of patients; clients or customers to certain laboratories; exceptions; violations; penalty

Persons licensed under Chapter 4 (commencing with Section 1600) of this division or licensed under Chapter 5 (commencing with Section 2000) of this division or licensed under any initiative act referred to in this division relating to osteopaths may not refer patients, clients, or customers to any clinical laboratory licensed under Section 1265 in which the licensee has any membership, proprietary interest, or co-ownership in any form, or has any profit-sharing arrangement, unless the licensee at the time of make such referral discloses in writing such interest to the patient, client, or customer. The written disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having any laboratory work or assignment performed.

. . .

§ 654.2 Prohibited charges, billings, solicitations, or referrals; written disclosure of beneficial interests to patients or third-party payers; definitions; application of section.

(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to charge, bill, or otherwise solicit payment from a patient on

behalf of, or refer a patient to, an organization in which the licensee, or the licensee's immediate family, has a significant beneficial interest, unless the licensee first discloses in writing to the patient, that there is such an interest and advises the patient that the patient may choose any organization for the purpose of obtaining the services ordered or requested by the licensee.

(b) The disclosure requirements of subdivision (a) may be met by posting a conspicuous sign in an area which is likely to be seen by all patients who use the facility or by providing those patients with a written disclosure statement. Where referrals, billings, or other solicitations are between licensees who contract with multispecialty clinics pursuant to subdivision (1) of Section 1206 of Health and Safety Code or who conduct their practice as members of the same professional corporation or partnership, and the services are rendered on the same physical premises, or under the same professional corporation or partnership name, the requirements of subdivision (a) may be met by posting a conspicuous disclosure statement at a single location which is a common area or registration area or by providing those patients with a written disclosure statement.

#### COLORADO

COLO. REV. STAT. § 12-36-125. Division of fees - independent advertising or marketing agent.

(1) (a) If any person holding a license issued by the board or by the state board of medical examiners as constituted under any prior law of this state divides any fee or compensation received or charged for services rendered by him as such licensee or agrees to divide any such fee or compensation with any person, firm, association or corporation as pay or compensation to such other person for sending or bringing any patient or other person to such licensee, or for recommending such licensee to any person, or for being instrumental in any manner in causing any person to engage such licensee in his professional capacity; or if any such licensee shall either directly or indirectly pay or compensate or agree to pay or compensate any person, firm, association, or corporation for sending or bringing any patient or other person to such licensee for examination or treatment, or for recommending such licensee to any person, or for being instrumental in causing any person to engage such licensee in his professional capacity; or if any such licensee, in his professional capacity and in his own name or behalf, shall make or present a bill or request a payment for services rendered by any person other than the licensee, such licensee commits a class 3 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

DELAWARE

DEL. CODE ANN. tit. 31, § 1005. Kickback schemes and solicitation.

(a) It shall be unlawful for any person to solicit or receive any remuneration (including kickback, bribe or rebate) directly or indirectly, overtly or covertly, in cash or in kind:

(1) In return for referring an individual to a provider for the furnishing or arranging for furnishing of any medical care or medical assistance for which payment may be made in whole or in part under any public assistance program; or

. . .

(b) It shall be unlawful for any person to offer or pay any remuneration (including any kickback, bribe or rebate) directly or indirectly, in cash or in kind to induce to any other person:

(1) To refer an individual to a provider for the furnishing or arranging for the furnishing of any medical care or medical assistance for which payment may be made in whole or in part under any public assistance program; or

(2) To purchase, lease, order or arrange for or recommend purchasing, leasing or ordering any property, facility, service, or item of medical care or medical assistance for which payment may be made in whole or in part under any public assistance program.

Delaware Board of Medical Practice (Rules and Regulations)  
§ 15. DISHONORABLE OR UNETHICAL CONDUCT (24 Del. C. Sec. 1731(b)(3))

The phrase "dishonorable or unethical conduct likely to deceive, defraud, or harm the public" as used in 24 Del. C. § 1731(b)(3) shall include, but not be limited to, the following specific acts:

. . .

(i) Payment of a fee by a physician to another physician who has referred the patient to him, unless the fee is in proportion to work actually performed by the referring physician.

(k) Wilful failure to disclose to a patient that a referring physician has the financial interest in an



ancillary testing or treatment facility outside of the physician's office.

DISTRICT OF COLUMBIA

Health Occupations Revision Act Chapter 33 Subchapter V  
Licensing of Health Professionals § 2-3305.14. Revocation,  
suspension, or denial of license or privilege; civil penalty;  
reprimand.

(a) Each board, subject to the right of a hearing as provided by this subchapter, on an affirmative vote of a majority of its members then serving, may take 1 or more of the disciplinary actions provided in subsection (c) of this section against any applicant, licensee, or person permitted by this subchapter to practice the health occupation regulated by the board in the District who:

. . .

(14) Pays or agrees to pay anything of value to, or to split or divide fees for professional services with, any person for bringing or referring a patient.

FLORIDA

Medical Practice Act

FLA. STAT. § 458.327 Penalty for Violations

. . .

(2) Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

. . .

(c) Referring any patient, for health care goods or services, to any partnership, firm, corporation, or other business entity in which the physician of the physician's employer has an equity interest of 10 percent or more unless, prior to such referral, the physician notifies the patient of his financial interest and of the patients right to obtain such goods or services at the location of the patient's choice. This section does not apply to the following types of equity interest:

1. The ownership of registered securities issued by a publicly held corporation or the ownership of securities issued by a publicly held corporation,

the shares of which are traded on a national exchange or the over-the-counter market;

2. A physician's own practice, whether he is a sole practitioner or part of a group, when the health care good or service is prescribed or provided solely for the physician's own patients and is provided or performed by the physician or under his supervision; or

3. An interest in real property resulting in a landlord-tenant relationship between the physician and the entity in which the equity interest is held, unless the rent is determined, in whole or in part, by the business volume or profitability of the tenant or is otherwise unrelated to fair market value.

FLA. STAT. § 458.331. Grounds for disciplinary action; by the board and department

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

. . . .

(i) Paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. The provisions of this paragraph shall not be construed to prevent a physician from receiving a fee for professional consultation services.

. . . .

(o) Promoting or advertising on any prescription form of a community pharmacy unless the form shall also state "This prescription may be filled at any pharmacy of your choice."

. . . .

(gg) Referring any patient, for health care goods or services, to a partnership, firm, corporation, or other business entity in which the physician or the physician's employer has an equity interest or 10 percent or more unless, prior to such referral, the physician notifies the patient of his financial interest and of the patient's

right to obtain such goods or services at the location of the patient's choice. This section does not apply to the following types of equity interest:

1. The ownership of registered securities issued by a publicly held corporation or the ownership of securities issued by a publicly held corporation, the shares of which are traded on a national exchange or the over-the-counter market;
2. A physician's own practice, whether he is a sole practitioner or part of a group, when the health care good or service is prescribed or provided solely for the physician's own patients and is provided or performed by the physician or under his supervision; or
3. An interest in real property resulting in a landlord-tenant relationship between the physician and the entity in which the equity interest is held, unless the rent is determined, in whole or in part, by the business volume or profitability of the tenant or is otherwise unrelated to fair market value.

FLA. STAT. § 455.25. Disclosure of financial interest by practitioners.

It shall be a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 75.083, or s. 775.084, for any health care practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466 to make any professional referral for physical therapy services, as defined in s. 486.021, or to provide medicinal drugs from any source other than on a complimentary basis when the practitioner has a financial interest or for which the practitioner will receive some financial remuneration, unless in advance of any such referral the practitioner notifies the patient, in writing, of such financial interest.

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Nursing Homes and Related Health Care Facilities.

FLA. STAT. § 400.17 Bribes, kickbacks, certain solicitations prohibited.

(2) Whoever furnishes items or services directly or indirectly to a nursing home resident and solicits, offers, or receives any:

. . . .

(b) Return of part of an amount given in payment for referring any such individual to another person for the furnishing of such items or services; is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or by fine not exceeding \$5,000, or both.

GEORGIA

Medical Practice Act

GA. CODE ANN. § 43-34-37. Authority to refuse license or discipline physician; enforcement investigations generally.

(a) The board shall have the authority to refuse to grant a license to an applicant or to discipline a physician licensed under this chapter or any antecedent law upon a finding by the board that the licensee or applicant has:

. . . .

(9)...[D]ivided fees or agreed to divide fees received for professional services with any person, firm, association, corporation, or other entity for bringing or referring a patient;

IDAHO

Medical Practice Act

IDAHO CODE § 54-1814 Grounds for medical discipline.

Every person licensed to practice medicine or registered as an extern, intern, resident or physician's assistance in this state is subject to discipline by the board pursuant to the procedures and powers set forth in section 54-1806A, Idaho Code, upon any of the following grounds:

. . . .

(8) Division of fees or gifts or agreement to split or divide fees or gifts received for professional services with any person, institution or corporation in exchange for a referral.

ILLINOIS

MEDICAL PRACTICE ACT OF 1987

ILL. ANN. STAT. CH. 111. § 4400-22. Disciplinary action - Grounds

. . .

§ 22 (14) Dividing with anyone other than physicians with whom the licensee practices in a partnership, Professional Association or Medical or Professional Corporation and fee, commission, rebate or other form of compensation for any professional services not actually and personally rendered. Nothing contained in this subsection prohibits persons holding valid and current licenses under this Act from practicing medicine in partnership under a partnership agreement or in a corporation authorized by "The Medical Corporation Act," as now or hereafter amended, or as an association authorized by "The Professional Association Act" as now or hereafter amended, or under the "The Professional Corporation Act" as now or hereafter amended, or from pooling, sharing, dividing or apportioning the fees and monies received by them or by the partnership, corporation or association in accordance with the partnership agreement or the policies of the Board of Directors of the corporation or association. Nothing contained in this subsection prohibits 2 or more corporations authorized by "The Medical Corporation Act," as now or hereafter amended, from forming a partnership or joint venture of such corporations, and providing medical, surgical and scientific research and knowledge by employees of these corporations if such employees are licensed under this Act, or from pooling, sharing, dividing, or apportioning the fees and monies received by the partnership or joint venture in accordance with the partnership or joint venture agreement. Nothing contained in this subsection shall abrogate the right of 2 or more persons, holding valid and current licenses under this Act, to each receive adequate compensation for concurrently rendering professional services to a patient and divide a fee; provided, the patient has full knowledge of the division, and, provided, that the division is made in proportion to the services performed and responsibilities assumed by each.

INDIANA

Medical Licensing Board of Indiana

Art. 5: Standards of Professional Conduct and Competent Practice of Medicine

844 IAC 5-1-2 Standards of professional conduct.

Sec. 2 (j) A practitioner shall not pay, demand, or receive compensation, for referral of a patient, except for a patient

referral program operated by a medical society or association which is approved by the medical licensing board.

**KANSAS**

**Medical Practice Act**

**KAN. STAT. ANN. § 65-2837. Professional incompetency, unprofessional conduct, false advertisement and advertisement defined.**

. . .

(b) "Unprofessional conduct" means:

. . .

(19) Directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually or personally rendered, other than through the legal functioning of lawful professional partnerships, corporations or associations.

**KENTUCKY**

**KY. REV. STAT. § 205.850 Prohibited activities - Exception - Commencement of proceedings for enforcement.**

. . .

(2) No person shall unlawfully make, offer or receive payment, rebate of a fee, or charge for referring an individual to another person for furnishing of benefits;

**KY. REV. STAT. § 205.990 Penalties**

. . .

(7) Any person who violates subsections (1) to (6) of KRS 205.850 shall, in addition to any other penalties provided by law, forfeit and pay a civil penalty of payment to the cabinet in the amount of all benefits and payments to which the person was not entitled.

(8) Any provider who violates subsections (1) to (6) of KRS 205.850 shall, in addition to any other penalties provided by law, including the penalty set forth in subsection (7) of this section, forfeit and pay civil penalties of:

(a) Payment to the state treasury's general revenue fund in an amount equal to three (3) times the amount of such

benefits and payments to which the person was not entitled; and

(b) Payment of all reasonable expenses which the court determines have been necessarily incurred by the state in the enforcement of this section.

201 KY. ADMIN. REGS. 9.015 Professional and ethical conduct.

Relates to: KRS 311.530 to 311.620, 311-990

Pursuant to: KRS 13.082

. . .

Section 19. Any fee charged by a physician shall be reasonable and shall compensate the physician for services actually rendered.

Section 20. Division of any professional fees not based on actual services rendered is a violation which will not be tolerated within the membership of this association.

Section 21. A physician shall not pay or receive compensation for referral of patients.

#### LOUISIANA

LA. REV. STAT. § 37.1285. Causes for nonissuance; suspension; revocation; or the imposition of restrictions; fines; reinstatement; publication of action

(A) The board may refuse to issue, or may suspend or revoke any license or permit, or impose probationary or other restrictions on any license or permit issued under this Part for the following causes:

(19) Soliciting, accepting, or receiving anything of economic value in return for and based on the referral of patients to another person, firm, or corporation or in return for the prescription of medications or medical devices;

#### MAINE

The Board accepts the ethical standards adopted, and interpreted from time to time, by the AMA. The Board has previously considered a breach of those standards as unprofessional conduct, a basis for discipline set forth in ME. REV. STAT. ANN. tit. 32, § 3282-A(2)(F).

**MARYLAND**

Annotated Code of Maryland, Art. 27, Sec. 230B

(b) "Medicaid Fraud" means:

(5) Furnishing to a person items or services for which payment of any part is or maybe made from federal or State funds under a State medical assistance program; and soliciting, offering, or receiving any (i) kickback or bribe in connection with the furnishing of those items or services, or the making or receipt of any payment; or (ii) rebate of any fee or charge for referring a person to another person for the furnishing of those items or services;

**MASSACHUSETTS**

MASS. GEN. LAWS ANN. Ch. 118E, § 21B. Bribes or Kickbacks for Ordering or Recommending Medicaid-Paid Services; Penalties.

Whoever solicits or receives any remuneration, including any bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind in return for purchasing, leasing, ordering or arranging for or recommending purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part under this chapter, or whoever offers or pays any remuneration including any bribe or rebate directly or indirectly, overtly or covertly, in cash or in kind to induce such person to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service or item for which payment may be made in whole or in part under this chapter shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the state prison for not more than five years or in a jail or house of correction for not more than two and one-half years, or by both such fine and imprisonment.

This section shall not apply to a discount or other reduction in price obtained by a provider of services or other entity under this chapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this chapter or to any amount paid by an employer to an employee, who has a bona fide employment relationship with such employer, for employment in the provision of covered items or services.

MASS. GEN. LAWS ANN. Ch. 112, § 1, Section 12AA. Duty of referring physician to disclose financial interest in physical therapy corporation.



A physician who refers a patient for physical therapy services to any partnership, corporation, firm or other legal entity in which the physician has a financial ownership interest shall disclose such interest to the patient and shall inform the patient that such services may be available from other physical therapists in the patient's community.

For the purposes of this section, the term "ownership interest" shall mean any and all ownership interest including, but not limited to, any membership, proprietary interest, stock interest, partnership interest, co-ownership in any form or any profit-sharing arrangement.

The board of registration in medicine may prescribe by regulation that physicians report such ownership interest and referrals to the said board. Violation of this section may constitute grounds for disciplinary action by the board of registration in medicine.

MASS. GEN. LAWS ANN. Ch. 440, § 2, Section 23P½. Disclosure of Referring Physician's Ownership Interest in Physical Therapy Practice. Any physical therapist who is involved in the private practice of physical therapy, to whom a patient is referred by a physician who derives income directly or indirectly from the physical therapy service, shall disclose to the patient that the referring physician derives income from the provision of such service.

For the purposes of this section, the term "ownership interest" shall mean any and all ownership interest including, but not limited to, any membership, proprietary interest, stock interest, partnership interest, co-ownership in any form or any profit-sharing arrangement.

The board of allied health professionals may prescribe by regulation that physical therapists report such ownership interest and referrals to the said board. Violation of this section may constitute grounds for disciplinary action by the board of allied health professionals.

## MICHIGAN

### Public Health Code

MICH. COMP. LAWS ANN. § 333.16221 Investigation of licensee; grounds

. . . .

(d) Unethical business practices, consisting of any or the following:

. . .  
(ii) Dividing fees for referral of patients or accepting kickbacks on medical or surgical services, appliances, or medications purchased by or in behalf of patients.

. . .  
(e) Unprofessional conduct, consisting of any of the following:

. . .  
(iii) Promotion for personal gain of an unnecessary drug, device, treatment, procedure, or service from another person, place, facility, or service from another person, place, facility, or business in which the licensee has a financial interest.

(iv) Directing or requiring an individual to purchase or secure a drug, device, treatment, procedure or service from another person, place, facility, or business in which the licensee has a financial interest.

#### MEDICAID FALSE CLAIM ACT

MICH. STAT. ANN. § 16.614(4) Kickbacks or bribes in connection with furnishing of goods or services; rebates of fees or charges for referrals; felony, penalty.

Sec. 4. A person who solicits, offers, 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 pursuant to a program established under Act No. 280 of the Public Acts of 1939, as amended, who makes or receives the payment, or who receives a rebate of a fee or charge for referring an individual to another person for the furnishing of the goods and services is guilty of a felony, punishable by imprisonment for not more than 4 years or by a fine of not more than \$30,000 or both. (MCL § 400.604.)

#### MINNESOTA :

#### PHYSICIANS AND SURGEONS, OSTEOPATHS

MINN. STAT. ANN. § 147.091. Grounds for Disciplinary Action.

. . .  
Subdivision 1. Grounds Listed. The board may refuse to grant a license or may impose disciplinary action as described in

section 147.141 against any physician. The following conduct is prohibited and is grounds for disciplinary action:

. . .

(p) Fee splitting, including without limitation:

(1) paying, offering to pay, receiving, or agreeing to receive, a commission, rebate, or remuneration, directly or indirectly, primarily for the referral of patients or the prescription of drugs or devices;

(2) dividing fees with another physician or a professional corporation, unless the division is in proportion to the services provided and the responsibility assumed by each professional and the physician has disclosed the terms of the division;

(3) referring a patient to any health care provider as defined in section 144.335 in which the referring physician has a significant financial interest unless the physician has disclosed the physician's own financial interest; and

(4) dispensing for profit any drug or device, unless the physician has disclosed the physician's own profit interest.

The physician must make the disclosures required in this clause in advance and in writing to the patient and must include in the disclosure a statement that the patient is free to choose a different health care provider. This clause does not apply to the distribution of revenues from a partnership, group practice, non-profit corporation, or professional corporation to its partners, shareholders, members, or employees if the revenues consist only of fees for services performed by the physician or under a physician or under a physician's direct supervision, or to the division or distribution of prepaid or capitated health care premiums, or fee-for-service withhold amounts paid under contracts established under other state law.

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Administrative Rules; Adopted Permanent Rules Related to the Medical Assistance Payment, Department of Health and Human Services

Part 9505.0221 PAYMENT LIMITATION; PARTIES AFFILIATED WITH A PROVIDER.

Equipment, supplies, or services prescribed or ordered by a

physician are not eligible for medical assistance payment if they are provided:

A. by a person or entity that provides direct or indirect payment to the physician for the order or prescription for the equipment, supplies, or services; or

B. upon or as a result of direct referral by the physician to an affiliate of the physician unless the affiliate is the only provider of the equipment, supplies, or services in the local trade area.

Part 9505.0365 PROSTHETIC AND ORTHOTIC DEVICES.

Subp. 6. Excluded prosthetic and orthotic devices. The prosthetic and orthotic devices in items A to K are not eligible for medical assistance payment:

. . . .

I. a device that is supplied to the recipient by a physician who prescribed the device or by the consultant to the physician in subpart 3 or 4;

J. a device that is supplied to the recipient by a provider who is an affiliate of the physician who prescribes the device for the recipient or of the consultant to the physician as in subpart 3 or 4. For purposes of this item, "affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the referring physician

. . . .

MISSOURI

MO. REV. STAT. § 334.100. Denial, revocation or suspension of license, grounds for - reinstatement provisions.

. . . .

(19) Any candidate for licensure or person licensed to practice as physical therapist, paying or offering to pay a referral fee or practicing or offering to practice professional physical therapy independent of the prescription and direction of a person licensed and registered as a physician and surgeon under this chapter, as a dentist under chapter 332, RSMo, or as a podiatrist under chapter 330, RSMo, whose license is in good standing;

. . . .

(21) Any person licensed to practice as a physician or surgeon, requiring, as a condition of the physician-patient relationship, that the patient receive prescribed drugs, devices or other professional services directly from facilities of that physician's office or other entities under that physician's ownership or control. A physician shall provide the patient with a prescription which may be taken to the facility selected by the patient;

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R.S.Mo. Chapter 198.145 (1986). Kickbacks, bribes and rebates prohibited, when. - A person shall not purposely solicit or receive any payment, including, without limitation, any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, from any vendor or health care provider:

(1) In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under Medicaid; or

(2) In return for purchasing, leasing, ordering or arranging for or recommending purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part under Medicaid.

#### NEBRASKA

NEB. REV. STAT. § 71-147. License or certificate to practice a profession; denied, revoked or other disciplinary actions; causes -

A license or certificate to practice a profession may be denied, refused renewal, limited, revoked, suspended or have other disciplinary measures taken against it in accordance with section 71-155 when the applicant, licensee, or certificate holder is guilty of any of the following acts or offenses . . . (10) unprofessional conduct, which term includes all acts specified in section 71-148....

NEB. REV. STAT. § 71-148. License or certificate; revocation or suspension; unprofessional conduct, defined.

For the purpose of section 71-147, unprofessional conduct shall include any of the following acts: (1) Solicitation of professional patronage by agents or person, popularly known as capers or steerers, or profiting by the acts of those representing themselves to be agents of the licensee or certificate holders;... (3) division of fees, or agreeing to

split or divide the fees, received for professional services with any person for bringing or referring a patient....

NEVADA

NEV. REV. STAT. § 630.305. Grounds for initiating disciplinary action or denying licensure.

The following acts, among others, constitute grounds for initiating disciplinary action or denying licensure:

1. Directly or indirectly receiving from any person, corporation or other business organization any fee, commission, rebate or other form of compensation which is intended or tends to influence the physician's objective evaluation or treatment of a patient.
2. Dividing a fee between licensees except where the patient is informed of the division of fees and the division of fees is made in proportion to the services personally performed and the responsibility assumed by each licensee.
- . . .
6. Failing to disclose to a patient any financial or other conflict of interest.

NEW JERSEY

BOARD OF MEDICAL EXAMINERS REGULATIONS; SUBCHAPTER 6. GENERAL RULES OF PRACTICE § 13:35-6.4 Prohibition of kickbacks, rebates or receiving payment for services not rendered

(a) It shall be unprofessional or unethical conduct for any licensee or registrant of the State Board of Medical Examiners to:

1. Receive directly or indirectly from any person firm or corporation any fee, commission, rebate, gift or other form of compensation for prescribing, ordering or promoting the sale of a device, appliance or prescribed item or service when such device, appliance or prescribed item or service is provided by another;
2. Directly or indirectly charge or bill the recipient of a device, appliance or prescribed item, directly or indirectly charge or bill any third party when such device, appliance or prescribed item is delivered by the licensee or registrant without disclosing to the recipient and third party, if any, the actual cost to the licensee or registrant for such device, appliance or prescribed

item which the licensee or registrant paid or shall pay the provider of such device; appliance or prescribed item;

3. Receive directly or indirectly from any person, firm or corporation any fee, gift commission, rebate, free saleable products, anything of value or any form of compensation for prescribing or promoting the sale of any drug, commodity or product;

. . . .

5. Render any bill or invoice or receive any monies from any person, firm, corporation or governmental entity for the performance of services which were not, in fact, performed; provided, however, that this shall not be construed to prohibit an agreed charge for appointment made or services ordered notwithstanding subsequent patient or consumer cancelation.

§ 10:49-6.9 Administrative charges/service fees

(a) A provider shall not pay nor require payment of an administrative charge or service fee for the privilege of doing business with another provider or for service for which reimbursement is included as part of the Medicaid fee.

1. An example of a prohibited activity is that a LTCF may not require a pharmacy to pay an administrative charge or service fee to the facility for handling of the LTCF resident's medications, drugs and/or related pharmaceutical records.

N.J. STAT. ANN. § 30:4D-17. Penalty

. . . .

(c) Any provider, or any person, firm, partnership, corporation or entity who solicits, offers, or receives any kickback, rebate or bribe in connection with:

- (1) The furnishing of items or services for which payment is or may be made in whole or in part under this act; or
- (2) The furnishing of items or services whose cost is or may be reported in whole or in part in order to obtain benefits or payments under this act; or
- (3) The receipt of any benefit or payment under this act, is guilty of a high misdemeanor and, upon conviction thereof, shall be liable to a penalty of not more than \$10,000.00 or to imprisonment for not more than 3 years or both.

This subsection shall not apply to (A) a discount or other reduction in price under this act if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made under this act; and (B) any amount paid by an employer to an employee who has a bona fide employment relationship with such employer for employment in the provision of covered items or services.

NEW MEXICO

N.M. STAT. ANN. § 61-6-14. License may be refused, revoked or suspended; procedure; practice after suspension or revocation; penalty; notice of claim. (Effective until July 1, 1992)

A. The board shall refuse to license and shall revoke or suspend any license which has been issued by the board or any previous board upon satisfactory proof being made to the board that the applicant for or holder of the license has been guilty of unprofessional or dishonorable conduct. ...

B. "Unprofessional or dishonorable conduct," as used in this section, means among other things but not limited to because of enumeration:

. . .

(16) fee splitting;

. . .

C. As used in this section, "fee splitting" includes offering, delivering, receiving or accepting any unearned rebate, refunds, commission preference, patronage dividend, discount or other unearned consideration, whether in the form of money or otherwise, as compensation or inducement of referring patients, clients or customers to any person irrespective of any membership, proprietary interest or co-ownership in or with any person to whom the patients, clients or customers are referred.

NEW YORK

RELATIONSHIP BETWEEN CLINICAL LABORATORIES AND PURVEYORS OF HEALTH SERVICES

N.Y. GEN. BUS. LAW § 801. Prohibited Practices.

1. No health services purveyor or his agent, employee or fiduciary shall solicit, receive, accept or agree to receive or accept any payment or other consideration in any form to the extent such payment or other consideration is given for the referral of services or participate in the division,



transference, assignment, rebate, splitting of fees, with any clinical laboratory or its agent, employee or fiduciary, or with another health services purveyor. Specifically prohibited practices shall include, without limiting thereto, the following:

(a) Acceptance of rental payments for storage space for any supplies provided by any clinical laboratory or its agent, employee or fiduciary or for filling in proper information on laboratory request forms for tests.

. . .

(d) Receipt or acceptance of any monies or other consideration from any clinical laboratory or its agent, employee or fiduciary as a bonus, commission or fee in the form of a fixed or percentage return for the amount of laboratory tests performed or to be performed by any clinical laboratory tests performed or to be performed by any clinical laboratory to which patients or specimens are referred or in any other form, including from funds of governmental agencies paid directly to the clinical laboratory.

. . .

2. No clinical laboratory or its agent, employee or fiduciary shall make, offer, give, or agree to make, offer, or give any payment or other consideration in any form to the extent such payment or other consideration is given for the referral of services or participate in the division, transference, assignment, rebate, splitting of fees, with any health services purveyor or its agent, employee or fiduciary, or with another clinical laboratory.

Specifically prohibited practices shall include, without limiting thereto, the following:

(a) To offer or agree to give or give rental payments for storage space for any supplies provided to any health services purveyor or his agent, employee or fiduciary, or for filling in proper information on laboratory request forms for tests.

(b) To supply technical employees or other agents, employees or fiduciaries of a clinical laboratory to perform any duties in the facility of any health services purveyor or his agent, employee or fiduciary provided, however, that nothing in this subdivision shall prohibit a health services purveyor and a clinical laboratory from contracting for laboratory management services, including the provision of technical services and employees in the facility of the health services

purveyor for the performance of functions directly related to clinical laboratory operations.

. . .

(d) To offer or agree to give or give any monies or other consideration to any health services purveyor or his agent, employee or fiduciary as a bonus, commission or fee in the form of a fixed or percentage return for the amount of laboratory referrals of patients or specimens of patients, including patients in any governmental medical assistance program in which partial or full reimbursement is due the patient or in which payment is made directly to any clinical laboratory.

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RULES OF THE BOARD OF REGENTS ON UNPROFESSIONAL CONDUCT Section  
29.1 GENERAL PROVISIONS FOR ALL PROFESSIONS

29.1(b) Unprofessional conduct in the practice of any profession licensed or certified pursuant to title VIII of the Education law shall include:

. . .

(3) direct or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a patient or client or in connection with the performance of professional services;

OHIO

OHIO REV. CODE ANN. § 4731.21 Grounds for Discipline.

. . .

(B) The board, pursuant to an adjudicatory hearing under Chapter 119. of the Revised Code and by a vote of not less than six members, shall, to the extent permitted by law, limit, revoke, or suspend a certificate, refuse to register or refuse to reinstate an applicant, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

. . .

(17) Any division of fees or charges, or any agreement or arrangement to share fees or charges, made by any person licensed to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery

with any other person so licensed, or with any other person;

PENNSYLVANIA

35 PA. CONS. STAT. § 449.22 [1988-66-Public Law 403, Section 2].  
Disclosure of interest in referral facilities.

(a) General rule. -- Any practitioner of the healing arts shall, prior to referral of a patient to any facility or entity engaged in providing health-related services, tests, pharmaceutical, appliances or devices, disclose to the patient any financial interest of the practitioner or ownership by the practitioner in the facility or entity. In making any referral, the practitioner of the healing arts may render any recommendations he considers appropriate, but shall advise the patient of his freedom of choice in the selection of a facility or entity.

(b) Penalty. -- A person who violates this section shall be liable to the Commonwealth for a civil penalty not to exceed \$1,000.

(c) Enforcement. - The Licensing Boards in the bureau shall enforce this section.

PA. STAT. ANN. § 1407. Provider prohibited acts. Criminal penalties and civil remedies

(a) It shall be unlawful for any person to:

. . . .

2. Solicit or receive or to offer or pay any remuneration, including any kickback, bribe or rebate, directly or indirectly, in cash or in kind from or to any person in connection with the furnishing of services or merchandise for which payment may be in whole or in part under the medical assistance program or in connection with referring an individual to a person for the furnishing or arranging for the furnishing of any services or merchandise for which payment may be made in whole or in part under the medical assistance program.

RHODE ISLAND

R.I. GEN. LAWS § 5-37-5.1. Unprofessional conduct. The term "unprofessional conduct" as used in this chapter shall include but not be limited to the following items or any combination thereof and may be further defined by regulations established by the board with the prior approval of the director:

. . .

(6) Promotion by a physician or limited registrant of the sale of drugs, devices, appliances, or goods or services provided for a patient in such a manner as to exploit the patient for the financial gain of the physician or limited registrant;

. . .

(12) Division of fees or agreeing to split or divide the fees received for professional services for any person for bringing to or referring a patient;

(13) Agreeing with clinical or bioanalytical laboratories to accept payments from such laboratories for individuals tests or test series for patients.

R.I. GEN. LAWS § 5-37-21. Fee Splitting. - No physician shall directly or indirectly receive payment, reimbursement, compensation or fee for a referral to any clinical laboratory. A violation of the provisions of this section shall constitute a misdemeanor and upon conviction thereof may be punished by imprisonment for not longer than one (1) year or a fine of not more than five hundred dollars (\$500) or by both such fine and imprisonment.

#### SOUTH CAROLINA

S.C. CODE ANN. § 81-60 [Principles of Medical Ethics]

. . .

G. In the practice of medicine a physician should limit the source of his professional income to medical services actually rendered by him, or under his supervision, to his patients. His fee should be commensurate with the services rendered and the patient's ability to pay. He should neither pay nor receive a commission for referral of patients. Drugs, remedies or appliances may be dispensed or supplied by the physician provided it is in the best interests of the patient.

#### SOUTH DAKOTA

S.D. CODIFIED LAWS ANN. § 36-4-30 Acts considered unprofessional conduct.

The phrase "unprofessional or dishonorable conduct" as used in this chapter shall be construed to include:

. . .

(10) Splitting fees or giving to any person furnishing a patient any portion of the fees received from such patient or paying or giving to any person any consideration whatsoever for furnishing any patient;

S.D. CODIFIED LAWS ANN. § 22-45-4. Action of person aiding provider with goods or services or referring individuals to provider for which additional value received an offense -- Violation a felony. A person commits an offense if he:

. . .

(3) Refers an individual to a provider for the provision of a good or a service for which payment may be made, in whole or in part, under the program, and solicits or accepts anything of value in connection with such referral.

#### TENNESSEE

##### GENERAL RULES AND REGULATIONS GOVERNING THE PRACTICE OF MEDICINE AND SURGERY

TENN. CODE ANN. § 63-6-214 Grounds for license denial, suspension or revocation -- Reporting misconduct.-- . . . .The grounds upon which the board shall exercise such power includes, but is not limited to, the following:

. . .

(16) Giving or receiving, or aiding or abetting the giving or receiving of rebates, either directly or indirectly;...

#### TEXAS

TEX. STAT. ANN. art. 4495b § 3.07 Unlawful and prohibited practices; penalties.

. . .

(c) A physician or surgeon may not employ or agree to employ, pay or promise to pay, or reward or promise to reward any person, firm, association of persons, partnership or corporation for securing, soliciting, or drumming patients or patronage. A physician or surgeon may not accept or agree to accept any payment, fee, reward, or anything of value for securing, soliciting, or drumming for patients or patronage for any physician or surgeon. Whoever violates any provision of

this section commits a Class A misdemeanor. Each payment, reward, or fee or agreement to pay or accept a reward or fee is a separate offense. ..."

VERMONT

PROFESSIONS AND OCCUPATIONS

VT. STAT. ANN. tit. 26, § 1354. Unprofessional Conduct. The term "unprofessional conduct" as used in this chapter shall mean the following items or any one of combination thereof:

. . . .

(6) promotion by a physician of the sale of drugs, devices, appliances or goods provided for a patient in such a manner as to exploit the patient for financial gain of the physician or selling, prescribing, giving away or administering drugs for other than legal and legitimate therapeutic purposes;

. . . .

(12) division of fees or agreeing to split or divide the fees received for professional services for any person for bringing to or referring a patient;

VT. STAT. ANN. tit. 18, § 1852 Patients' bill of rights; Adoption

. . . .

(9) The patient has the right to know the identity and professional status of individuals providing service to him or her, and to know which physician or other practitioner is primarily responsible for his or her care. This includes the patient's right to know of the existence of any professional relationship among individuals who are treating him or her, as well as the relationship to any other health care or educational institutions involved in his or her care.

VIRGINIA

Virginia Medicine and Other Healing Arts

VA. CODE § 54-278. Division of fees between physicians and surgeons prohibited. -- No surgeon or physician shall directly or indirectly share any fee charged for a surgical operation or medical services with a physician who brings, sends or recommends a patient to such surgeon for operation or such physician for such medical services; and no physician who brings, sends or recommends any patient to a surgeon for a surgical operation or medical services shall accept from such surgeon or physician any

portion of a fee charged for such operation; provided, however, that nothing in this chapter shall be construed as prohibiting the members of any regularly organized partnership of such surgeons or physicians from making any division of their total fees among themselves as they may determine or a group of duly licensed practitioners of any branch or branches of the healing arts from using their joint fees to defray their joint operating costs. Any person violating the provisions of this section shall be guilty of a misdemeanor.

VA. CODE § 54-278.3. Disclosure of interest in referral facilities.

Any practitioner of the healing arts shall, prior to referral of a patient to any facility or entity engaged in the provision of health-related services, appliances or devices, including but not limited to physical therapy, hearing testing, or sale or fitting of hearing aids or eyeglasses, disclose to the patient any financial interest of or ownership by the practitioner in such facility or entity. In making any such referral, the practitioner of the healing arts may render such recommendations as he considers appropriate, but shall advise the patient of his freedom of choice in the selection of such facility or entity. Nothing in this section shall be construed to permit any of the practices prohibited in subdivision (12) of Sec. 54-317. Any person violating the provisions of this section shall be guilty of a Class 3 misdemeanor.

VA. CODE § 54-317. What constitutes unprofessional conduct.

A. Any practitioner of medicine, osteopathy, chiropractic, podiatry, physical therapy or clinical psychology or any physical therapist assistant shall be considered guilty of unprofessional conduct if he:

. . . .

(7) Violates any of the provisions of § 54-278 or practices any branch of the healing arts in violation of the provisions of this chapter; or

. . . .

D. A practitioner of the healing arts shall not engage in selling or promoting the sale of eyeglasses from within his office unless a dispenser of such items is not located within fifteen miles of the practitioner's office. However, a practitioner may own, in whole or in part, an optical dispensary located adjacent to or at a distance from his office, and may dispense contact lenses to his patients from within his office. Further, practitioners shall not employ unlicensed persons to fill prescriptions for eyeglasses.

E. Any practitioner of the healing arts engaging in the examination of eyes and prescribing of eyeglasses shall give the patient a copy of any prescription for eyeglasses and inform the patient of his right to have the prescription filled at the establishment of his choice. No practitioner who owns, in whole or in part, an establishment dispensing eyeglasses shall make any statement or take any action, directly or indirectly, that infringes on the patient's right to have a prescription filled at an establishment other than the one in which the practitioner has an ownership interest. In addition, no practitioner shall offer any inducement, take any action or make any statement to encourage the patient to have a prescription filled at the establishment in which the practitioner has an ownership interest unless such inducement, action or statement is offered on the same terms to the general public.

Disclosure of ownership interest by a practitioner as required by § 54-278.3 or participation by the practitioner in contractual arrangements with third-party payors or purchasers of vision care services shall not constitute a violation of this subsection.

#### WASHINGTON

#### WASH. REV. CODE § 19.68.010 Rebating prohibited -- Penalty.

It shall be unlawful for any person, firm, corporation or association, whether organized as a cooperative, or for profit or nonprofit, to pay, or offer to pay or allow, directly or indirectly, to any person licensed by the State of Washington to engage in the practice of medicine and surgery, drugless treatment in any form, dentistry, or pharmacy, and it shall be unlawful for such person to request, receive or allow, directly or indirectly, a rebate, refund, commission, unearned discount or profit by means of a credit or other valuable consideration in connection with the referral of patients to any person, firm, corporation or association, or in connection with the furnishings of medical, surgical, or dental care, diagnosis, treatment or service, on the sale, rental, furnishing or supplying of clinical laboratory supplies or services of any kind, drugs, medication, or medical supplies, or any other goods, services or supplies prescribed for medical diagnosis, care or treatment: Provided, that ownership of a financial interest in any firm, corporation or association which furnishes any kind of clinical laboratory or other services prescribed for medical, surgical, or dental diagnosis shall not be prohibited under this section where the referring practitioner affirmatively discloses to the patient in writing, the fact that such practitioner has a financial interest in such firm, corporation, or association.



Any person violating the provisions of this section is guilty of a misdemeanor.

WASH. REV. CODE § 19.68.020 Deemed unprofessional conduct

The acceptance directly or indirectly by any person so licensed of any rebate, refund, commission, unearned discount, or profit by means of a credit or other valuable consideration whether in the form of money or otherwise, as compensation for referring patients to any person, firm, corporation or association as set forth in RCW 19.68.030 constitutes unprofessional conduct.

WASH. REV. CODE § 18.130.180. Unprofessional conduct

The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

. . .

(21) Violation of chapter 19.68 RCW;

WEST VIRGINIA

W.VA. CODE § 9-7-5. Bribery; false claims; conspiracy; criminal penalties.

(a) A person shall not solicit, offer or receive any remuneration, including any kickback, rebate or bribe, directly or indirectly, with the intent of causing an expenditure of moneys from the medical services fund established pursuant to section two [§ 9-4-2], article four of this chapter which expenditure is not authorized by applicable laws or rules and regulations governing said medical services fund.

. . .

(d) Any person found to be in violation of subsection (a), (b) or (c) of this section shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary not less than one nor more than ten years or shall be fined not to exceed ten thousand dollars, or both fined and imprisoned as provided. (1981, c. 216)

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West Virginia Medical Practice Act

W.VA. CODE § 30-3-14 Professional Discipline of physicians and podiatrists . . . (c) The board may deny an application for license or other authorization to practice medicine and surgery

or podiatry in this state and may discipline a physician or podiatrist licensed or otherwise lawfully practicing in this state who, after a hearing, has been adjudged by the board as unqualified due to any of the following reasons:

. . . .

(6) Requesting, receiving or paying directly or indirectly a payment, rebate, refund commission, credit or other form of profit or valuable consideration for the referral of patients to any person or entity in connection with providing medical or other health care services or clinical laboratory services, supplies of any kind, drugs, medication or any other medical goods, services or devices used in connection with medical or other health care services.

(7) Unprofessional conduct by any physician or podiatrist in referring a patient to any clinical laboratory or pharmacy in which the physician or podiatrist has a proprietary interest unless such physician or podiatrist discloses in writing such interest to the patient. Such written disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having any laboratory work or assignment performed or any pharmacy for purposes of purchasing any prescribed drug or any other medical goods or devices used in connection with medical or other health care services.

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Sec. 19. Causes for Denial, Probation, Suspension or Revocation of Licenses and Permits

Sec. 19.1. The Board may deny an application for a license or permit, place a licensee or permit holder on probation, suspend a license or permit, limit or restrict a license or permit, or revoke any license or permit heretofore or hereafter issued by the Board, upon satisfactory proof that the licensee or permit holder has:

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r. Paid or received any commission, bonus, kickback or rebate, or engaged in any split-fee arrangement in any form whatsoever with a physician, organization, agency or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers or pharmacies. The provisions of this paragraph shall not be construed to prevent a physician from receiving a fee for professional consultation services;

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w. Exercised influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party, which shall include, but not be limited to, the promoting or selling of services, goods, appliances or drugs, and the promoting or advertising on any prescription form of a community pharmacy. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities, is not in the best interests of the patient and is not in the course of the physician's professional practice, without regard to his intent;

gg. Knowingly maintained a professional connection or association with any person who is in violation of the Medical Practice Act or the rules or regulations of the Board; or knowingly aided, assisted, procured, or advised any person to practice medicine contrary to the Medical Practice Act or to the rules and regulations of the Board; or knowingly performed any act which in any way aids, assists, procures, advises or encourages any unlicensed person or entity to practice medicine; or divided fees or agreed to divide fees received for professional services with any person, firm, association, corporation or other entity for bringing or referring a patient; or engaged in the practice of medicine as an officer or employee of any corporation other than one organized and existing pursuant to the Medical Practice Act, except as a licensed physician, intern or resident of a hospital or teaching institution licensed by this State.

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### WIS. STAT. ANN. § 49.49. Medical assistance offenses

#### (2) Kickbacks, Bribes and Rebates.

(a) Solicitation or receipt of remuneration. Any person who solicits or receives any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a medical assistance program, or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a medical assistance program, may be fined not more than \$25,000 or imprisoned for not more than 5 years.

(b) Offer or payment of remuneration. Whoever offers or pays any remuneration including any kickback, bribe, or rebate directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a medical assistance program, or to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service or item for which payment may be made in whole or in part under a medical assistance program, may be fined not more than \$25,000 or imprisoned for not more than 5 years or both.

WISC. STAT. ANN. § 49.45 Medical Assistance; Administration

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(9s) Disclosure. Any person who is an employee of, or an owner, partner, stockholder or investor in, any legal entity providing services which are reimbursed under this section, shall notify the department, on forms provided by the department for that purpose, if such person is an employee of, or an owner, partner, stockholder or investor in, any other legal entity providing services which are reimbursed under this section.

WISC. STAT. ANN. § 448.08. Fee Splitting; separate billing required, partnerships and corporations; contract exceptions.

(1) Fee Splitting. Except as otherwise provided in this section, no person licensed or certified under this chapter may give or receive, directly or indirectly, to or from any person, firm or corporation any fee, commission, rebate or other form of compensation or anything of value for sending, referring or otherwise inducing a person to communicate with a licensee in a professional capacity, or for any professional services not actually rendered personally or at his or her direction.