

NORTHERN LAKES COMMUNITY MENTAL HEALTH AUTHORITY
January 2019 - CODE OF CONDUCT

Applicability

This Code of Conduct applies to Northern Lakes Community Mental Health Authority (NLCMHA) as a community mental health service provider, and as a member of Northern Michigan Regional Entity (NMRE). This code of conduct is intended to address both aspects of the organization's operations. NLCMHA directly provides and contracts services for adults and children with mental illness, developmental disabilities, and co-occurring mental health and substance abuse disorders. This code of conduct applies to all NLCMHA operational activities and administrative actions, and includes those activities that come within federal and state regulations relating to health care providers. Of particular importance to NLCMHA is to maintain a health care and business environment that is committed to integrity and ethical conduct, particularly in the areas of legal compliance, business ethics, confidentiality, conflict of interest, business and consumer relationships, documentation and billing practices, personnel and confidential employee information, investigation and response, discipline and evaluation, and professional ethics. Therefore, this code of conduct applies to all NLCMHA employees, volunteers, trainees, interns, in the performance of work for NLCMHA that is under the direct control of NLCMHA. All contract providers and subcontractors that provide services directly or indirectly to consumers are expected to follow principles that promote ethical health care, and uphold the integrity of ethical business practice.

The code of conduct is intended to establish ethical standards of health care and ethical business practices as a framework for NLCMHA employees, volunteers, trainees, and interns in the performance of work. It is not intended to set forth all of the substantive practices that are an intricate fiber of high quality care. Each NLCMHA employee, volunteer, trainee, and intern is expected to be familiar with and is obligated to adhere to the standards set forth in this Code of Conduct or incorporated by reference herein and in NLCMHA policies.

Obligation of NLCMHA Employees, Volunteers, Trainees, and Interns

Each individual is obligated to conduct themselves in accordance with:

- Standards set forth in this Code of Conduct;
- Applicable federal and state laws and regulations;
- NLCMHA policies, including general policies and those applicable to specific job, position or function;
- Standards of conduct incumbent upon an individual by virtue of holding state licensure or registration; and
- Ethical standards binding on an individual as a practitioner of a particular profession.

Professional ethics – An employee who is a member of a health care profession required to be licensed or registered under the Michigan Public Health Code is responsible for obtaining his or her license or registration and renewals thereof on a timely basis. A health care professional shall render professional services only within the scope of his or her license or registration and in a manner that conforms to applicable standards of care and to the ethics of his or her profession. No employee that is a health care professional is permitted to render professional services unless he or she possesses all valid, current and unrestricted state and federal licenses, registrations and certifications necessary to legally practice his or her profession and has been credentialed and privileged as provided in NLCMHA policies.

Each individual is obligated to report violations and suspected violations. Any individual that becomes aware of or has reasonable grounds to suspect a violation of any of the standards within a – e above by another individual is obligated to report the violation or suspected violation by one of the following methods:

- Directly to any supervisor;
- Directly to the Compliance Officer at the following address:

Compliance Officer
Northern Lakes Community Mental Health Authority
105 Hall Street, Suite A
Traverse City, MI 49684
Phone: (231) 935-3679
E-Mail: compliance@nlcmh.org

- Anonymously through the NMRE (1-866-789-5574)

All reports will be treated as confidential to the extent allowed by law, and will only be shared with others on a bona-fide need-to-know basis. Under no circumstances will NLCMHA as a CMH tolerate retribution against any employee or agent simply for making a “good faith” report to the Compliance Officer.

Obligations are also identified and defined in the Board approved Northern Lakes CMHA Compliance Plan which has been provided to each individual workforce member, and is available on the Northern Lakes web site at <http://www.northernlakescmh.org/> under the tab identified “For Providers”. “Participation in activities, and commitment to the goals of the Board-approved Compliance Plan, are required for all employees, agents, providers, and subcontractors.” “Each employee, affiliate, agent, contract provider, and subcontractor bears responsibility for compliance.” (Excerpt - Page 6, Compliance Plan) Additionally, the Compliance Plan provides clarification in pages 9-10, subsection “Non-compliance reporting by employees and agents”, and Attachment D, pages 17 – 20 on the process of non-compliance reporting.

Responsibility to Consumers

Each NLCMHA employee, volunteer, trainee, and intern has an affirmative obligation to:

- Treat consumers and family members with dignity and respect.
- To provide service that meets the consumer’s medically necessity, as identified through clinical assessment; and when the consumer meets the requirements for the service, the service is included in the person-centered individualized plan of service.
- Not discriminate based on race, color, national origin, ancestry, religion, age, sex, marital status, physical or mental handicap by a employee, volunteer, and intern in the provision of services, including admission to and discharge from services or discrimination is prohibited.
- Provide consumers and families with all information concerning services and treatment when and to the extent required by applicable Federal and State laws and regulations and/or by sound clinical practice.
- Protect individually identifiable health information from unauthorized use or disclosure except as required or permitted by law.
- Report suspected abuse and neglect as required by law.
- Protect consumers’ Recipient Right’s and furnish services to consumers in a manner that does not violate their legal rights as defined in the Michigan Administrative Rules and Mental Health Code.
- Not have relationships of a sexual nature of any kind with a consumer. Relationships of a sexual nature with a consumer are prohibited. (See attachment A for additional clarification)
- Not engage in or permit any third party to engage in studies, surveys or clinical investigations involving consumers or consumers’ personally identifying information (collectively, “research”) without the prior written approval of the MDHHS Institutional Review Board. All research must be conducted in compliance with all applicable Federal and State laws and regulations, in accordance with applicable professional ethics, and with due respect for the legal rights of affected consumers.

Business Ethics

Financial Standards - All financial information must reflect actual transactions and conform to generally accepted accounting principles. No undisclosed or unrecorded funds or assets may be established. Transactions must be authorized, recorded and documented as provided by law and NLCMHA policy.

Kickbacks – Each NLCMHA employee, volunteer, trainee, and intern is prohibited from offering, soliciting, or accepting money or anything else of value from an NLCMHA vendor or provider except as provided herein. (See attachment B for additional clarification)

An employee, volunteer, trainee, and intern may share in a gift of goods or services from a vendor or provider if, and only if:

- The gift consists of goods delivered to NLCMHA premises;
- Is used or consumed on the premises;

- The gift is not intended for the personal use or benefit of specific individuals;
- The gift does not violate federal and state laws and regulations that prohibit soliciting or accepting anything of value in exchange for influencing a purchase of goods or services or the referral of consumers for services.

Marketing and Media - NLCMHA news releases, marketing campaigns and advertising materials shall not be deceptive or misleading by omission or commission. All marketing materials and advertising aimed at Medicaid eligible consumers are subject to prior approval of MDHHS and the NMRE.

Market Competition - To ensure compliance, NLCMHA policy and business practices prohibit setting charges in collusion with competitors and entering into certain exclusive arrangements with vendors. Additional information concerning antitrust issues can be obtained from the Compliance Officer.

Outside Employment – NLCMHA employees shall not represent or act as an agent, compensated or uncompensated, for any outside interest in any transaction in which NLCMHA has a direct or substantial interest, pecuniary or otherwise. Nor shall any employee accept any outside engagement or employment the pursuit of which conflicts with the ability of the employee to discharge properly his or her duties to NLCMHA. Outside employment shall be disclosed to and approved as defined in the NLCMHA policies.

Procurement - Vendors of goods and services shall be selected based on objective criteria including quality, technical excellence, price, delivery, and adherence to schedules, service, and maintenance of adequate sources of supply. Where required by law or contract, procurement shall be by competitive bid. Where procurement is by secret bid, no employee, volunteer, trainee, or intern shall directly or indirectly disclose any information to any bidder or potential bidder if such disclosure would confer or tend to confer any competitive advantage.

Trading on Inside Information - NLCMHA employees may not engage in or retain the profits of any private activity, business or transaction arising out of or in any way related to information acquired in the course and scope of their employment or other relationship with NLCMHA.

Improper Referrals - Referrals of consumers for services outside NLCMHA are important to the delivery of proper care to our consumers. If a referring health care professional or a member of his or her immediate family has an ownership or financial interest in an entity to which a consumer is referred, and payment for the referred services will be made by any federally-funded health care program (e.g., Medicare, Medicaid), federal and state laws may forbid the referral. No employee may make a referral in violation of such laws. Additional information concerning referral restrictions can be obtained from the Compliance Officer.

Billing and Claims - NLCMHA is committed to charging, billing and submitting claims for reimbursement only when the services have been provided and documented in the manner required by laws, regulations, policies and applicable standards of care. All employees should know and carefully follow the applicable rules for submission of bills and claims for reimbursement, whether those claims are submitted to NLCMHA for payment or to a third party for payment by NLCMHA. Any employee that knows or suspects that a bill or claim for reimbursement is incorrect is required to report the matter immediately to a supervisor or to the Compliance Officer.

Confidentiality

Consumer Identifying and Confidential Information – Except as otherwise required by law (e.g. Mental Health Code), consumer identifying and confidential information shall not be released without an appropriately signed “Authorization to Disclose Confidential Information” or official judge’s court order.

Disclosure of Business and Personnel Information - Except as otherwise required by law (e.g. the Freedom of Information Act), personnel information and business information about the operations of NLCMHA acquired by a employees, volunteers, trainees, or interns from any source shall be disclosed within NLCMHA only on a need to know basis and solely for purposes related to the performance of job duties. Such information may be disclosed outside the agency only as permitted or required by law and NLCMHA policy.

Workplace Conduct and Employment Practices

Employment Discrimination - NLCMHA and its employees, volunteers, trainees, interns shall abide by any and all applicable federal and/or state equal opportunity statutes, rules, and regulations including, without limitation, Title VII of the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Americans with Disability Act, the Rehabilitation Act of 1973, and the Occupational Health and Safety Act of 1970, all as may from time to time be modified or amended.

Controlled Substances - NLCMHA prohibits the consumption of alcohol and the unlawful possession, use,

manufacture or distribution of illicit drugs or alcohol on or in its property, including NLCMHA owned or leased vehicles. In addition, no employee, volunteer, trainee, intern shall consume alcohol or be under the influence of illicit drugs or alcohol while acting in the course and scope of his or her employment or while operating a NLCMHA vehicle. All health care professionals, including those who maintain DEA registration, must comply with all Federal and State laws regulating controlled substances. An employee, volunteer, trainee, intern who knows or suspects the consumption, unlawful or unauthorized possession, use, manufacture or distribution of illicit drugs or alcohol by another employee, volunteer, trainee, intern in violation of this paragraph must promptly notify his or her supervisor or the Compliance Officer.

Harassment - Unlawful harassment is any unwelcome conduct, whether verbal, physical or visual, that is based on a person's race, color, religion, sex, age, national origin, height, weight, marital status, veteran status or disability or any other legally protected characteristic.

Sexual Harassment - Sexual harassment is prohibited. Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct explicitly or implicitly affects an individual's employment, interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

Weapons - No employee, volunteer, trainee, intern shall possess, maintain, keep or bear any rifle, pistol or other firearm, whether licensed or unlicensed, registered or unregistered, concealed or not concealed, holstered or unholstered, cased or uncased in or on any building, grounds, property or vehicle owned, rented or operated by NLCMHA or on which consumers receive services for which payment is made in whole or in part with NLCMHA funds. No employee, volunteer, trainee, intern shall possess, maintain, keep or bear any knife (except a folding pocket knife with a blade under three inches in length), explosive or other weapon in or on any building, grounds, property or vehicle owned, rented or operated by NLCMHA or on which consumers receive services for which payment is made in whole or in part with NLCMHA funds.

Personal Use of NLCMHA Resources - Except as provided herein, an employee, volunteer, trainee, intern's use of NLCMHA property, equipment or other tangible assets for personal purposes without the prior written approval of the employee, volunteer, trainee, intern's supervisor is prohibited. The occasional personal use of NLCMHA property, equipment and tangible assets (e.g., making local phone calls and sending personal e-mail over company communications equipment) is acceptable where NLCMHA incurs no direct expense in connection with such personal use. Employees, volunteers, trainees, interns may not contribute NLCMHA funds or property to any charity without prior written authorization of the CEO or his or her designee.

Nepotism - An employee, volunteer, trainee, intern shall not advocate a relative for appointment, employment, promotion, or advancement. An employee, volunteer, trainee, intern shall not appoint, employ, promote, or advance a relative to any position over which he or she has supervisory responsibility.

For the purpose of this section, the term "relative" means an individual related to the Member by blood or marriage. For the purpose of this section, the term "advocate" means the referral or recommendation of a relative to a employee, volunteer, trainee, intern standing lower in the same chain of command for appointment, employment, promotion, or advancement.

Political Activities and Contributions - An employee, volunteer, trainee, or intern may not directly or indirectly contribute NLCMHA property, equipment, funds, resources or other tangible or intangible assets or the use thereof to political campaigns, candidates, political parties or any agent or affiliate thereof. Prohibited conduct includes, but is not limited to, the use of work time and/or NLCMHA equipment to solicit or canvas on behalf of a political cause or candidate. No employee, volunteer, trainee, intern shall publicly or privately represent his or her political views as those of the NLCMHA.



Excerpts from Mental Health Code

CHAPTER 1 - DEPARTMENT OF MENTAL HEALTH

330.1100a Definitions; A to E.

(2) "Abuse" means nonaccidental physical or emotional harm to a recipient, or sexual contact with or sexual penetration of a recipient as those terms are defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a, that is committed by an employee or volunteer of the department, a community mental health services program, or a licensed hospital or by an employee or volunteer of a service provider under contract with the department, community mental health services program, or licensed hospital.

Excerpts from Michigan Penal code**THE MICHIGAN PENAL CODE (EXCERPT)****Act 328 of 1931****750.520a Definitions.**

(q) "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:

(i) Revenge.

(ii) To inflict humiliation.

(iii) Out of anger.

(r) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

Excerpt from MDCH – Bureau of Mental Health & substance Abuse Services**RIGHTS OF RECIPIENTS**

PART 7. RIGHTS OF RECIPIENTS

SUBPART 1. GENERAL PROVISIONS

R 330.7001 Definitions.

(r)"Sexual abuse" means any of the following:

(i) Criminal sexual conduct as defined by section 520b to 520e of 1931 PA 318, being MCL 750.520b to MCL 750.520e involving an employee, volunteer, or agent of a provider and a recipient.

(ii) Any sexual contact involving an employee, volunteer, or agent of a department operated hospital or center, a facility licensed by the department under section 137 of the act or an adult foster care facility and a recipient.

(iii) Any sexual contact between an employee, volunteer, or agent of a provider and a recipient for whom the employee, volunteer, or agent provides direct services.

(s) "Sexual contact" means the intentional touching of the recipient's or employee's intimate parts or the touching of the clothing covering the immediate area of the recipient's or employee's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:

(i) Revenge.

(ii) To inflict humiliation.

(iii) Out of anger.

(t)"Sexual harassment" means sexual advances to a recipient, requests for sexual favors from a recipient, or other conduct or communication of a sexual nature toward a recipient.

Excerpt Michigan Department of Civil Service – Regulation**SPDOC No.: Effective Date: Index Reference: Regulation Number:**

06-14 September 10, 2006 Employment Sanctions **3.06**

Rule 2-8 Ethical Standards and Conduct**2-8.1 Ethical Conduct Required**

Employment in the state classified service demands a high degree of loyalty and imposes high ethical standards on employees to ensure the integrity of state government and maintain effective services. All

employees must meet these ethical standards and all appointing authorities are obligated to enforce these ethical standards.

A sampling of excerpts from Individual professional ethics code of conduct: is provided below:

NAADAC Code of Ethics (The Association for Addiction Professionals)

Principle 7: Dual Relationships

I understand that I must seek to nurture and support the development of a relationship of equals rather than to take unfair advantage of individuals who are vulnerable and exploitable.

- I shall not engage in professional relationships or commitments that conflict with family members, friends, close associates, or others whose welfare might be jeopardized by such a dual relationship.
- Because a relationship begins with a power differential, I shall not exploit relationships with current or former clients for personal gain, including social or business relationships.
- I shall not under any circumstances engage in sexual behavior with current or former clients.
- I shall not accept substantial gifts from clients, other treatment organizations, or the providers of materials or services used in my practice.

National Board for Certified Counselors (NBCC)

CODE OF ETHICS

Section A: General

9. Certified counselors must insure that they do not engage in personal, social, organizational, financial, or political activities which might lead to a misuse of their influence.

10. Sexual intimacy with clients is unethical. Certified counselors will not be sexually, physically, or romantically intimate with clients, and they will not engage in sexual, physical, or romantic intimacy with clients within a minimum of two years after terminating the counseling relationship.

11. Certified counselors do not condone or engage in sexual harassment, which is defined as unwelcome comments, gestures, or physical contact of a sexual nature.

12. Through an awareness of the impact of stereotyping and unwarranted discrimination (e.g., biases based on age, disability, ethnicity, gender, race, religion, or sexual orientation), certified counselors guard the individual rights and personal dignity of the client in the counseling relationship.

13. Certified counselors are accountable at all times for their behavior. They must be aware that all actions and behaviors of the counselor reflect on professional integrity and, when inappropriate, can damage the public trust in the counseling profession. To protect public confidence in the counseling profession, certified counselors avoid behavior that is clearly in violation of accepted moral and legal standards.

AAMFT Code of Ethics (American Association for Marriage and Family Therapy)

Principle I - Responsibility to Clients

1.4 Sexual intimacy with clients is prohibited.

1.5 Sexual intimacy with former clients is likely to be harmful and is therefore prohibited for two years following the termination of therapy or last professional contact. In an effort to avoid exploiting the trust and dependency of clients, marriage and family therapists should not engage in sexual intimacy with former clients after the two years following termination or last professional contact. Should therapists engage in sexual intimacy with former clients following two years after termination or last professional contact, the burden shifts to the therapist to demonstrate that there has been no exploitation or injury to the former client or to the client's immediate family.

American Psychiatric Association - The Principles of Medical Ethics

Section 2

A physician shall uphold the standards of professionalism, be honest in all professional interactions and strive to report physicians deficient in character or competence, or engaging in fraud or deception to appropriate entities.

1. The requirement that the physician conduct himself/herself with propriety in his or her profession and in all the actions of his or her life is especially important in the case of the psychiatrist because the patient tends to model his or her behavior after that of his or her psychiatrist by identification. Further, the necessary intensity of the treatment relationship may tend to activate sexual and other needs and fantasies on the part of both patient and psychiatrist, while weakening the objectivity necessary for control. Additionally, the inherent inequality in the doctor-patient relationship may lead to exploitation of the patient. Sexual activity with a current or former patient is unethical.

Ethical Principles of Psychologists and Code Of Conduct

APA Ethics Code 2002
ETHICAL STANDARDS

10.05 Sexual Intimacies With Current Therapy Clients/Patients Psychologists do not engage in sexual intimacies with current therapy clients/patients.

10.06 Sexual Intimacies With Relatives or Significant Others of Current Therapy Clients/Patients Psychologists do not engage in sexual intimacies with individuals they know to be close relatives, guardians, or significant others of current clients/patients. Psychologists do not terminate therapy to circumvent this standard.

10.07 Therapy With Former Sexual Partners Psychologists do not accept as therapy clients/patients persons with whom they have engaged in sexual intimacies.

10.08 Sexual Intimacies With Former Therapy Clients/Patients

(a) Psychologists do not engage in sexual intimacies with former clients/patients for at least two years after cessation or termination of therapy. (b) Psychologists do not engage in sexual intimacies with former clients/patients even after a two-year interval except in the most unusual circumstances. Psychologists who engage in such activity after the two years following cessation or termination of therapy and of having no sexual contact with the former client/patient bear the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including (1) the amount of time that has passed since therapy terminated; (2) the nature, duration, and intensity of the therapy; (3) the circumstances of termination; (4) the client's/patient's personal history; (5) the client's/patient's current mental status; (6) the likelihood of adverse impact on the client/patient; and (7) any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post termination sexual or romantic relationship with the client/patient. (See also Standard 3.05, Multiple Relationships.)

Code of Ethics of the National Association of Social Workers

Ethical Standards

1.09 Sexual Relationships

(a) Social workers should under no circumstances engage in sexual activities or sexual contact with current clients, whether such contact is consensual or forced.

(b) Social workers should not engage in sexual activities or sexual contact with clients' relatives or other individuals with whom clients maintain a close personal relationship when there is a risk of exploitation or potential harm to the client. Sexual activity or sexual contact with clients' relatives or other individuals with whom clients maintain a personal relationship has the potential to be harmful to the client and may make it difficult for the social worker and client to maintain appropriate professional boundaries. Social workers--not their clients, their clients' relatives, or other individuals with whom the client maintains a personal relationship--assume the full burden for setting clear, appropriate, and culturally sensitive boundaries.

(c) Social workers should not engage in sexual activities or sexual contact with former clients because of the potential for harm to the client. If social workers engage in conduct contrary to this prohibition or claim that an exception to this prohibition is warranted because of extraordinary circumstances, it is social workers--not their clients--who assume the full burden of demonstrating that the former client has not been exploited, coerced, or manipulated, intentionally or unintentionally.

(d) Social workers should not provide clinical services to individuals with whom they have had a prior sexual relationship. Providing clinical services to a former sexual partner has the potential to be harmful to the individual and is likely to make it difficult for the social worker and individual to maintain appropriate professional boundaries.

**Excerpt from THE MEDICAID FALSE CLAIM ACT
Act 72 of 1977**

400.604 Furnishing of goods or services; kickbacks or bribes; payments or rebates 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 \$30,000.00, or both.

History: 1977, Act 72, Imd. Eff. July 27, 1977.

**Excerpt from THE MICHIGAN PENAL CODE
Act 328 of 1931**

750.125 Giving, offering, or promising commission, gift, or gratuity to agent, employee, or other person with intent to influence action of agent or employee; requesting or accepting commission, gift, or gratuity; using or giving document containing materially false, erroneous, or defective statement; evidence; use of truthful testimony, evidence, or other information against witness in criminal case; violation as misdemeanor.

Sec. 125.

(1) A person shall not give, offer, or promise a commission, gift, or gratuity to an agent, employee, or other person or do or offer to do an act beneficial to an agent, employee, or other person with intent to influence the action of the agent or employee in relation to his or her principal's or employer's business.

(2) An agent or employee shall not request or accept a commission, gift, or gratuity, or a promise of a commission, gift, or gratuity, for the agent, employee, or another person or the doing of an act or offer of an act beneficial to the agent, employee, or another person according to an agreement or understanding between the agent or employee and any other person that the agent or employee shall act in a particular manner in relation to his or her principal's or employer's business.

(3) A person shall not use or give to an agent, employee, or other person, and an agent or employee shall not use, approve, or certify, with intent to deceive the principal or employer, a receipt, account, invoice, or other document concerning which the principal or employer is interested that contains a statement that is materially false, erroneous, or defective or omits to state fully any commission, money, property, or other valuable thing given or agreed to be given to the agent or employee.

(4) Evidence is not admissible in any proceeding or prosecution under this section to show that a gift or acceptance of a commission, money, property, or other valuable thing described in this section is customary in a business, trade, or calling. The customary nature of a transaction is not a defense in a proceeding or prosecution under this section.

(5) In a proceeding or prosecution under this section, a person shall not be excused from attending and testifying or from producing documentary evidence pursuant to a subpoena on the ground that the testimony or evidence may tend to incriminate him or her or subject him or her to a penalty or forfeiture. Truthful testimony, evidence, or other truthful information compelled under this section and any information derived directly or indirectly from that truthful testimony, evidence, or other truthful information shall not be used against the witness in a criminal case, except for impeachment purposes or in a prosecution for perjury or otherwise failing to testify or produce evidence as required.

(6) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

History: 1931, Act 328, Eff. Sept. 18, 1931 ;-- CL 1948, 750.125 ;-- Am. 1999, Act 251, Imd. Eff. Dec. 28, 1999 ;-- Am. 2002, Act 672, Eff. Mar. 31, 2003

**Excerpt from - Agency: Management and Budget - ADVISORY MEMORANDUM NO. 2000-6 TO: All Offices
SUBJECT: Conflict of Interest and Disclosure of Interest – Uniform Department Application of Civil Service Rules
2-21 and 2-22**

DEFINITIONS

Anything of Value: Anything of value means any tangible or intangible item, including, but not limited to, services, entertainment, recreation, travel, food, beverages, event tickets, gifts, loans, or money. Exceptions as to when anything of value may be accepted are listed below:

1. Situations in which, in the judgment of the employee concerned, the state's interest will be served by the participation by Department personnel in activities at the expense of a vendor, contractor, or government unit. In any such case in which Department personnel accept any gratuity, favor, entertainment, etc., either directly or indirectly from any person, firm, corporation, or any other entity which is engaged in or endeavoring to engage in official transactions of any sort with the Department, a written memorandum detailing the circumstances (date of contact, donor, item received, and estimated value) must be prepared and forwarded within 14 calendar days to the employee's supervisor. Memoranda will be retained as required at the office level. NOTE: Reporting of the receipt of de minimus items, as noted in III above, is not required.
2. Things available impersonally to the general public or classes of the general public.
3. Social activities engaged in by officials of the Department with local government officials as part of community relations programs.
4. Training courses and seminars in which all expenses are borne by the vendor, contractor, or governmental unit in accordance with contract provisions or devoted to technical developments in which the only "gratuity" may be the giving of lectures free of charge. Guidance for appropriate action in this area should be secured from the Office of Administrative Services.
5. Food or beverage provided in the course of a normal business meeting.

Excerpt from Anti-Kickback Act of 1986

The Anti-Kickback Act of 1986, 41 U.S.C. § 51 *et seq.*, modernized and closed the loopholes of previous statutes applying to government contractors. The 1986 law attempts to make the anti-kickback statute a more useful prosecutorial tool by expanding the definition of prohibited conduct and by making the statute applicable to a broader range of persons involved in government subcontracting. Prosecutions under these statutes must establish the following:

1. Prohibited conduct--the Act prohibits attempted as well as completed "kickbacks," which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind. The act also provides that the inclusion of kickback amounts in contract prices is prohibited conduct in itself.
2. Purpose of kickback--The Act requires that the purpose of the kickback was for improperly obtaining or rewarding favorable treatment. It is intended to embrace the full range of government contracting. Prior to 1986, the "kickback" was required to be for the inducement or acknowledgement of a subcontract.
3. Covered class of "kickback" recipients--The Act prohibits "kickbacks" to prime contractors, prime contractor employees, subcontractors, and subcontractor employees. These terms are defined in the Act.
4. Type of contract--The Act defines kickbacks to include payments under any government contract. Prior to this legislation, the statutes' applicability was limited to negotiated contracts.
5. Knowledge and willfulness--The Act requires one to knowingly and willfully engage in the prohibited conduct for the imposition of criminal sanctions.

Excerpt from THE HEALTH CARE FALSE CLAIM ACT Act 323 of 1984

752.1004 Kickbacks, bribes, or rebates as felony; penalty.

Sec. 4. A person who solicits, offers, pays, or receives a kickback or bribe in connection with the furnishing of goods or services for which payment is or may be made in whole or in part by a health care corporation or health care insurer, or who receives a rebate of a fee or charge for referring an individual to another person for the furnishing of health care benefits, is guilty of a felony, punishable by imprisonment for not more than 4 years, or by a fine of not more than \$50,000.00, or both.

History: 1984, Act 323, Eff. Mar. 29, 1985.

MEDICAID FALSE CLAIM ACT, MICHIGAN COMPILED LAWS § 400.604

It is a felony to (a) solicit, offer, or receive a kickback or bribe in connection with the furnishing of goods or services for which payment is or may be made under the Medicaid program, (b) make or receive the payment, or (c) receive a rebate of a fee or charge for referring an individual to another person for the furnishing of the goods and services. Violations are punishable by up to 4 years in prison, a fine of up to \$30,000, or both.

<http://legislature.mi.gov/doc.aspx?mcl-400-604>

HEALTH CARE FALSE CLAIM ACT, MICHIGAN COMPILED LAWS §§ 752.1004-752.1004B

It is a felony to solicit, offer, pay, or receive a kickback or bribe in connection with the furnishing of goods or services for which payment is or may be made by a health care corporation or health care insurer. It is also unlawful to receive a rebate of a fee or charge for referring an individual to another person for the furnishing of health care benefits. Violations are punishable by up to 4 years in prison, a fine of up to \$50,000, or both.

<http://legislature.mi.gov/doc.aspx?mcl-752-1004>

A rebate or discount from a drug manufacturer or from a company that licenses or distributes the drugs of a drug manufacturer to a consumer for his or her own use does not violate the Michigan Health Care False Claim Act.

<http://legislature.mi.gov/doc.aspx?mcl-752-1004a>

A rebate or discount from a medical supply or device manufacturer or from a company that licenses or distributes medical supplies or devices to a consumer for his or her own use does not violate the Michigan Health Care False Claim Act.

<http://legislature.mi.gov/doc.aspx?mcl-752-1004b>

PUBLIC HEALTH CODE, MICHIGAN COMPILED LAWS § 333.16221(D)(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 constitute unethical business practices which may result in disciplinary proceedings. This provision applies to physicians and other health professionals.

<http://legislature.mi.gov/doc.aspx?mcl-333-16221>

PENAL CODE, MICHIGAN COMPILED LAWS § 750.428

Any physician or surgeon who divides fees with, or promises to pay part of his or her fee to, or pays a commission to, any other physician or surgeon or person who consults with or sends patients for treatment or operation is guilty of a misdemeanor punishable by up to 6 months in prison or a fine of not more than \$750. The first conviction may result in loss of license. A second conviction will result in loss of license.

<http://legislature.mi.gov/doc.aspx?mcl-750-428>