

The Anti-Kickback Statute & Stark Law Explained

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The Anti-Kickback Statute and Stark Law are in place to ensure that medical services and recommendations remain as free from financial influence as possible. These anti-fraud and abuse laws are important measures to help ensure integrity in the healthcare community.

Violations of the Anti-Kickback Statute and the Stark Law may be subject to criminal and civil penalties as well as possible exclusion from Medicare and Medicaid programs. If you have information about actions that you believe may be in violation of either of these anti-fraud laws, speak to a qualified attorney today. Reporting kickbacks may be able to qualify you for a possible monetary rewards and whistleblower protections.

What is the Anti-Kickback Statute?

The Anti-Kickback Statute is a particularly stringent law put in place to prevent the offering of payments, goods, services, or other kinds of remuneration in exchange for certain referrals, prescriptions, or other kinds of medical care. Doctors have an enormous amount of influence over what kinds of care their patients receive, from the prescriptions they take to the services they seek out for continuing care. As such, they are particularly sought-after targets for kickback schemes.

It is important to note that receiving or offering rewards in exchange for business referrals is not prohibited in other fields. However, in state or federally-funded healthcare programs, paying for referrals is a crime. This means that when Medicare, Medicaid, VA, or TRICARE funds are involved, if you are a medical professional and accept payment or other remuneration such as free accommodations, meals, travel, or excessively high compensation for speaking engagements in exchange for medical referrals, you may be in violation of the Anti-Kickback Statute.

The Anti-Kickback Statute is meant to prevent the following from taking place in government-funded medical practices:

- Overutilization
- Increased costs
- Poor services

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- Unfair competition
 - Patient steering
 - Corruption in medical decision-making

What is the Physician Self Referral Law?

The Physician Self Referral Law, more commonly known as the Stark Law, protects Medicare and Medicaid patients from receiving referrals based on financial interests. Under the Stark Law, physicians cannot refer or recommend that patients receive certain health services from providers with whom they or family members of theirs have a financial relationship.

According to the Office of the Inspector General, some of the services covered by the Stark Law include:

- Clinical laboratory services
- Physical therapy, occupational therapy, and speech-language pathology services
- Radiology and other imaging practices
- Radiation therapy
- Prosthetics, orthotics, and prosthetic devices and supplies
- Home health care
- Prescription drugs
- Inpatient and outpatient hospital services

Importantly, the Stark Law is a strict liability law. This means that the statute can be violated without a physician having the specific goal of doing so. Even non-intentional connections involving financial ties may be in violation of the Stark Law.

Examples of Violations of the Stark Law and the Anti-Kickback Statute

Under the Stark Law, if a doctor has a patient who is covered by Medicare or Medicaid, they cannot refer that patient to other services in which they have a financial interest. As an example, let's say that a general practitioner has a spouse who owns a home health care service. The doctor's patient needs to receive some continuing outpatient care, and is covered by Medicare. If the doctor in question refers the patient to their spouse's company - even if doing so is not motivated by financial gain - they are in violation of the Stark Law. The law is strict about any kinds of mixing and matching of financial interest and medical referrals when federal funds are involved.

Kickbacks are not always the direct exchange of funds. In healthcare, many kickbacks take the form of:

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- Paying physicians excessively high speaker fees
 - Sending physicians and their families on vacations
 - Paying for gifts or travel
 - Paying for accommodations or offering free rent
 - Offering more benefits that funnel business towards certain prescription drugs or service providers.

In general, if a benefit or remuneration is involved in exchange for recommending something to a patient, it is likely a violation of the Anti-Kickback Statute and may be subject to civil and criminal penalties.

How Common are Kickbacks in Healthcare?

The federal government regularly recovers billions of dollars lost to kickback schemes in healthcare. For instance, Operation Rubber Stamp in October 2020 uncovered more than \$1.5 billion in fraudulent billings in healthcare, charging approximately 30 medical providers engaging in a network of kickbacks, bribes, and other collusion.

The Novartis Kickback Scandal

In one recent case, the pharmaceutical company Novartis has agreed to pay over \$642 million to settle allegations of kickbacks, bribes, and other improper promotions of its drugs Gilenya and Afinitor.

"Novartis coordinated with three co-pay foundations to funnel money through the foundations to patients taking Novartis' own drugs," said U.S. Attorney Andrew E. Lelling for the District of Massachusetts. "As a result, the Novartis' conduct was not 'charitable,' but rather functioned as a kickback scheme that undermined the structure of the Medicare program and illegally subsidized the high costs of Novartis's drugs at the expense of American taxpayers."

Novartis also allegedly spent hundreds of millions of dollars on "speaker programs" that paid doctors to supposedly share educational content. In reality, these programs were nothing more than bribes for the continued prescription of Novartis drugs to patients. The events largely took place at fancy restaurants, and in some cases never at all - payments were simply offered to physicians, and withheld from others who failed to increase their prescription rate of Novartis products. The settlement to resolve these speaker fee kickback allegations came to approximately \$591.4 million under the False Claims Act, with an additional forfeiture of \$38.4 million and \$48.2 million allocated to resolve state Medicaid fraud claims.

How to Report Illegal Kickbacks

The Anti-Kickbacks Statute and Stark Law may seem particularly stringent, but the areas that they govern are at especially high risk for fraud and abuse of power. Who and what your healthcare provider recommends can have an enormous impact on your quality of life and overall life expectancy. Removing as much financial influence from these areas as possible is a valuable and

crucial goal.

If you have information about possible kickbacks or violations of the Stark Law, speak up. Whether you work in a doctor's office, in a billing department of a healthcare group or insurance provider, you may be able to report on your employer and be protected against possible retaliation. If you are a patient, family member, or other concerned party, you may also be able to share your suspicions with a healthcare fraud attorney and launch an investigation.

Whistleblowers who are able to provide useful, unique information that leads to a recovery of misappropriated funds can be eligible to receive a financial reward. Award amounts may vary, but are based on a percentage of the government's total recovery. For more information, speak to a qualified qui tam lawyer to understand what kinds of proof are necessary and allowable by law. By speaking up, you can stop healthcare fraud in its tracks, and make receiving medical care safer and more equitable for everyone.

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