

## The Blurring Line Between the Anti-Kickback Statute and Stark Law

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### THE BLURRING LINE BETWEEN THE ANTI-KICKBACK STATUTE AND STARK LAW

- **Continued confusion between these laws**
- **Vast majority of enforcement actions involve these laws**
- **Stark is related to, but not the same as the Anti-Kickback Statute**
- **Violators of both laws may be subject to DOJ prosecution**
- **Suggestions for Compliance Offices**

Confusion continues in understanding the respective roles and enforcement of the [Anti-Kickback Statute \(AKS\) and Stark Laws](#), understandable in that both focus on [physician arrangements](#) that corrupt medical decision-making. The AKS covers referrals for all services from anyone, whereas the Stark Law is for referrals from physicians only and covers a set list of “Designated Health Services” (DHS). One is a criminal statute and the other civil, each with different rules. However, the line between time between them over time has become blurred and it is important to understand the significant differences.

[Anti-Kickback Statute \(AKS\)](#) is a criminal statute, dating back to the 1970s, that prohibits the exchange (or offer to exchange), of anything of value, to induce (or reward) the referral of business reimbursable by federal health care programs. Penalties for violating the AKS include fines of up to \$25,000, up to five years in jail, and exclusion from Medicare and Medicaid care program business. Investigation has been assigned to the HHS OIG with enforcement actions by the DOJ. A confusing factor is that there are alternative administrative authorities assigned to the OIG. Important is that the great majority of DOJ enforcement actions in health care arise from the AKS.

**Stark Laws** (physician self-referral laws) are federal civil laws that prohibit physician self-referral, specifically a referral by a physician to an entity providing “designated health services” (DHS) where the physician (or his/her immediate family member) has a financial relationship. Violations are non-criminal. Penalties for violations of Stark Law include (a) denial of payment for money received by physicians and facilities, (b) payment of civil penalties of up to \$15,000 for each service provided in violation of the law, (c) three times the amount of improper payment the entity received from the Medicare program, and/or (d) exclusion from the Medicare/Medicaid programs. Although it is the primary agency responsible for enforcing the Stark Law, CMS has resulted in little government-initiated enforcement litigation. Instead, Whistleblowers (qui tam relators) have been the primary drivers of Stark enforcement actions through the DOJ.

**Contributing to the Confusion.** Over time the Stark Laws have been amended to add additional regulations and regulations have been added to bring it closer to the AKS. The major driver of this is qui time relators who file under the False Claims Act, leading DOJ to investigate and

prosecute violations of the Stark Law if such violations are in conjunction with violations of the Anti-Kickback Statute or the False Claims Act. The result has been for the Stark Law evolving from its initial intent and moved towards the AKS in appearance.

**Suggested Compliance Officer Actions.** The consequences of violating either AKS or Stark are serious, but there are steps to take to mitigate the risks including (a) development and implementation of policies and procedures; (b) ensuring those responsible for arrangements with potential referral sources engage in ongoing monitoring to verify that they comply with written guidance; (c) conduct or engage experts to [conduct independent review](#) to verify monitoring compliance and validate that it has addressed the risks.

For more definitions relating to health care compliance and enforcement, go to .....

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