

# Stark Law and Anti-Kickback Violations

It's not good for anyone—patients or the government—when a health care provider selects a course of treatment because he or she may personally benefit financially. This can lead to increased costs and result in the government paying out millions of dollars' worth of improper and fraudulent payments to providers. Fortunately, the federal government enacted two powerful laws to protect patients and the government: the Medicare and Medicaid Anti-Kickback Statute and the Stark Law. A violation of one of these laws renders an offending provider's claims to government health care programs false, resulting in a violation of the False Claims Act.

## Anti-Kickback Statute

The Anti-Kickback Statute (“AKS”), 42 U.S.C. § 1320a-7b(b), is a law that prohibits medical providers from offering, soliciting, paying, or receiving anything of value in exchange for referrals of patients whose treatment will be paid for by Medicare, Medicaid, and other federal programs. The AKS covers kickbacks in any form, including cash, free or reduced rent, expensive hotel stays and meals, excessive compensation for medical consultancies, among many others.

## Stark Law

The Stark Law, 42 U.S.C. 1395nn, prohibits patient referrals where the referring physician has a financial interest in the health care provider or entity to which the patient is being referred. Unlike the AKS, the Stark Law is a “strict liability” statute, meaning that one need not have intended to violate the law in order to be held accountable under it. The Stark Law covers referrals for a wide variety of services referred to in the statute such as (a) clinical laboratory services, (b) therapy and pathology services, (c) radiology services, (d) radiation therapy services, (e) durable medical equipment, (f) prosthetics, orthotics, and prosthetic devices; (g) home health services, (h) outpatient prescription drugs, and (i) inpatient and outpatient hospital services.

## EXAMPLES OF WHISTLEBLOWER/RELATOR FEES AWARDED AND SETTLEMENTS IN STARK LAW AND ANTI-KICKBACK FRAUD CASES

In September of 2019, three **whistleblowers received more than \$17.7 Million** as a Relator share when a pharmaceutical company was charged for paying kickbacks to a health care provider to prescribe the company's drug to beneficiaries of federal health care programs. The company agreed to pay more than **\$108 million** in criminal penalties, forfeiture, and civil damages. DOJ alleged that the pharmaceutical company paid kickbacks in the form of money, honoraria, travel, and meals to health care providers of elderly patients at long-term care facilities to induce them to prescribe the company's drug for behaviors associated with dementia patients, which is not an approved use of the drug. *See* Press Release, Office of Pub. Affairs, U.S. Dep't of Justice, Pharmaceutical Company Targeting Elderly Victims Admits to Paying Kickbacks, Resolves Related False Claims Act Violations (Sept. 26, 2019),

<https://www.justice.gov/opa/pr/pharmaceutical-company-targeting-elderly-victims-admits-paying-kickbacks-resolves-related>.

The **relator**, a physician who refused to sign a contract with the health care system, **received \$18.1 million of the \$72.4 million settlement proceeds** in October of 2015, when a health care system agreed to resolve claims that it allegedly violated the Stark Law and engaged in illegal Medicare billing practices. The health care system allegedly contracted with physicians to require them to refer their outpatient procedures to the health care system, paying them compensation that was above fair market value. *See* Press Release, Office of Pub. Affairs, U.S. Dep't of Justice, United States Resolves \$237 Million False Claims Act Judgment against South Carolina Hospital that Made Illegal Payments to Referring Physicians (Oct. 16, 2015), <http://www.justice.gov/opa/pr/united-states-resolves-237-million-false-claims-act-judgment-against-south-carolina-hospital>.

### **Blow the Whistle on Stark Law or AKS Fraud**

Individuals with knowledge of fraud committed by that potentially violate the Stark Law or Anti-kickback Statute may be able to blow the whistle on this kind of fraud using the FCA, the TMFPA and other whistleblower reward programs. Whistleblowers play a critical role in bringing this type of fraud to light and holding wrongdoers accountable when they try to cheat the system.

To talk with me about your potential Stark Law or Anti-kickback case, call my Dallas law offices at 214-505-0097 or contact me online. Consultations with a Dallas County Qui Tam attorney are free and confidential. I handle these types of cases on a contingent fee basis, meaning you owe me no legal fees or expenses unless I obtain a recovery for you.