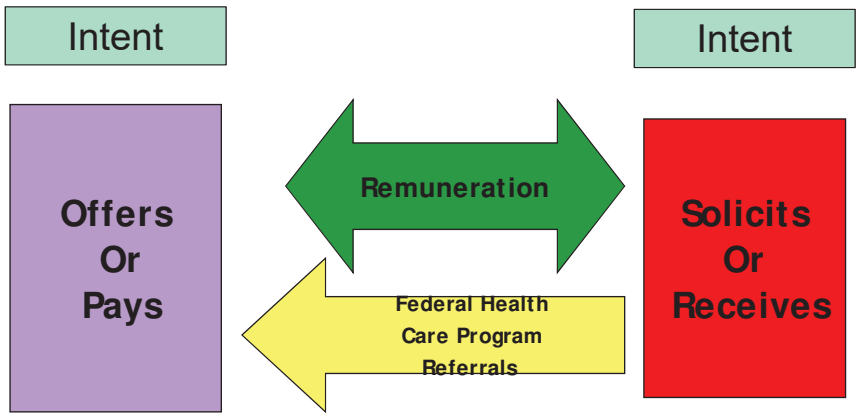
Fraud and Abuse, Stark Law, and HIPAA Privacy

Presented by: Violet Anderson
Regional General Counsel, CHRISTUS Health
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Anti-Kickback Law



- Cannot intentionally offer, pay, solicit or receive remuneration for federal health care program referrals.
- Safe harbor transactions are protected.
  Penalties: $25,00 fine and 5 years prison

Payments and Offers of Payment

- Statute limits in healthcare what may be appropriate in other industries
- Statute concerns payments or offers of payment (cash or in kind) for items or services reimbursed by Federal health care programs (Medicare and Medicaid)
- Not limited to cash payment (areas of concern also include leasing, purchasing, and ordering)

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Liability

- Liability is determined separately for each party
- Criminal penalties
- Civil monetary penalties
- Exclusions from Federal health care programs
- Because compliance with the AKS is a CONDITION for payment under Medicare and other health care programs, LIABILITY MAY ARISE UNDER THE FALSE CLAIMS ACT if an AKB violation results in payment under a Federal healthcare program

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Party's Intent

- Liability turns on a party's INTENT, but it's possible to identify ARRANGEMENTS OR PRACTICES THAT PRESENT SIGNIFICANT POTENTIAL FOR ABUSE
- ASK TWO QUESTIONS

- 1. Does a remunerative relationship exist with an entity that can generate Federal healthcare business?
- (For example, a hospital or its affiliate and a physician, clinic, ambulance company, home health agency, or a nursing home)

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Party's Intent

- 2. With respect to the remunerative relationship, could ONE PURPOSE be to induce or reward the referral or recommendation of business payable in part by a Federal health care program?

- IMPORTANT:

NEITHER A LEGITIMATE BUSINESS PURPOSE NOR A FAIR MARKET VALUE PAYMENT WILL LEGITIMIZE THE PAYMENT IF THERE IS ALSO AN ILLEGAL PURPOSE

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