

Fraud & Abuse, Stark Law, and HIPAA

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April 4, 2018

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Overview

- Fraud & Abuse Big 3 Laws:
 - Anti-Kickback Statute (“AKS”)
 - Stark Law
 - False Claims Act (“FCA”)
- HIPAA

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Anti-Kickback Statute

42 U.S.C. § 1320a-7b(b)

Anti-Kickback Statute

- Prohibits knowingly and willfully soliciting, receiving, offering or paying any remuneration in exchange for, or to induce, the referral of any item or service reimbursable under Medicare, Medicaid or other government program
 - “Knowing and willful” broadly interpreted by the courts – if any **one** purpose is to induce referrals under the Medicare program, that is sufficient to violate the statute

Anti-Kickback Statute

- Violation is a felony, punishable by fines up to \$25,000 and 5 years imprisonment, and may also result in imposition of Civil Monetary Penalties (“CMPs”) and/or exclusion from participation in federal health care programs
- Safe harbor transactions are protected

Anti-Kickback Statute Safe Harbors

- Safe harbors provide protection to arrangements resulting in referrals
 - Safe harbor protection requires strict compliance with each element of a safe harbor in order to be safe from prosecution

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First appeared as part of the conference materials for the
30th Annual Health Law Conference session
"Health Law Fundamentals"