

Morgan Lewis

Stark Law and Anti-Kickback: Update and Examples

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STARK LAW PROHIBITION

- Physician may not refer Medicare/Medicaid patients to a DHS entity if the physician (or immediate family member) has a financial relationship with the entity
- DHS entity cannot bill for the services
- Unless the financial relationship qualifies for an exception

ANTI-KICKBACK LAW

- Prohibits the willful and knowing offer, solicitation, payment, or receipt of any remuneration, directly or indirectly for
 - Referring an individual covered by a government health program or arranging for such a referral; or
 - Purchasing, leasing, ordering, arranging for, or recommending the purchase, lease, or order of any good, facility, service, or item covered by a government health program

STARK CASE LAW / SETTLEMENTS

Salinas Valley Urology Associates

- Urology group, owned by two physicians, leased IMRT equipment to outside physicians
- Outside physicians billed Medicare for the service
- Allegation of failure to meet location requirement of in-office ancillary services exception
- Settled for \$1 million

STARK CASE LAW / SETTLEMENTS

Pine Creek Medical Center

- Hospital paid for advertisements and marketing for medical staff
- Settled for \$7.5 million

STARK CASE LAW / SETTLEMENTS

Hamot Medical Center / Medicor Associates, Inc.

- March 15 ruling by U.S. District Court for Western District of Pennsylvania
- Draft agreements and email chains outlining preliminary arrangements did not constitute required written agreement for medical director agreements
- Expired agreements, with subsequent invoices and payments, could constitute collection of documents required for written agreement
- Settled for \$20.75 million day before trial

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