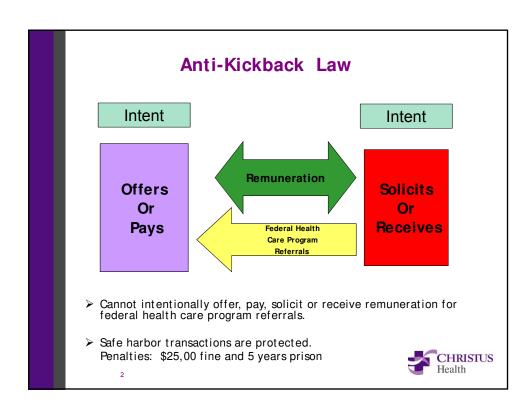
# Fraud and Abuse, Stark Law, and HIPAA Privacy

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## **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 where 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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