

3 federal fraud and abuse laws explained

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PRESCRIPTIONS | MAY 23, 2017

Health care fraud and abuse issues continue to be an area of focus and enforcement for the government. The legal framework and regulations can be intimidating. The chart below compares the three most common federal health care fraud and abuse laws. It is intended as background and to increase your basic understanding of these laws.

	Anti-Kick Back Statute (AKS)	Stark Law	False Claims Act (FCA)
Prohibitions	<ul style="list-style-type: none"> Prohibits offers of, solicitation of, or payment or receipt of remuneration intended to induce referrals for health care services covered by a government program Covers provision of anything of value to a person who refers, orders/purchases or recommends 	<ul style="list-style-type: none"> Prohibits referrals of designated health services by a physician that if the physician (or an immediate family member) has a financial relationship with the entity performing the designated health service Regulates financial relationships with physicians only (and physician's immediate family members) 	<ul style="list-style-type: none"> Prohibits the submission of false or fraudulent claims, false statements material to a false claim, and conspiracy to commit violation Also prohibits concealing or avoiding obligation to repay money to government (failure to return overpayments) Claims that violate AKS or Stark can also be considered false claims Common false claims: lack of medical necessity, quality of care, billing/coding issues, off-label marketing, retention of overpayments
Exceptions	<ul style="list-style-type: none"> Arrangements are not required to fit within a safe harbor, however voluntary safe harbors exist 	<ul style="list-style-type: none"> The arrangement must satisfy an exception or it violates the Stark law 	N/a
Penalties	<ul style="list-style-type: none"> Applies to either party involved in an arrangement that violates AKS Criminal penalties (\$25,000/offense, up to 5 years imprisonment) Civil penalties (CMP 3x unlawful remuneration and \$73,588/violation) Exclusion from federal health programs FCA liability 	<ul style="list-style-type: none"> No criminal enforcement CMP enforcement for knowing violations: CMP \$15,000/violation + 3x claims and/or \$100,000 per circumvention scheme Nonpayment of claims arising from prohibited arrangement Recoupment of amounts received Exclusion from federal health programs FCA liability 	<ul style="list-style-type: none"> Treble damages Per claim penalties between \$10,781 and \$21,562
Agency	Regulated by the OIG	Regulated by CMS	Regulated by DOJ

For a review or analysis of relationships or claims, or for more information, please contact the attorneys listed below.



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