

COMPARISON OF THE ANTI-KICKBACK STATUTE AND STARK LAW*

	THE ANTI-KICKBACK STATUTE (42 USC § 1320a-7b(b))	THE STARK LAW (42 USC § 1395nn)
Prohibition	Prohibits offering, paying, soliciting or receiving anything of value to induce or reward referrals or generate Federal health care program business	<ul style="list-style-type: none"> • Prohibits a physician from referring Medicare patients for designated health services to an entity with which the physician (or immediate family member) has a financial relationship, unless an exception applies • Prohibits the designated health services entity from submitting claims to Medicare for those services resulting from a prohibited referral
Referrals	Referrals from anyone	Referrals from a physician
Items/ Services	Any items or services	Designated health services
Intent	Intent must be proven (knowing and willful)	<ul style="list-style-type: none"> • No intent standard for overpayment (strict liability) • Intent required for civil monetary penalties for <i>knowing</i> violations
Penalties	Criminal: <ul style="list-style-type: none"> • Fines up to \$25,000 per violation • Up to a 5 year prison term per violation Civil/Administrative: <ul style="list-style-type: none"> • False Claims Act liability • Civil monetary penalties and program exclusion • Potential \$50,000 CMP per violation • Civil assessment of up to three times amount of kickback 	Civil: <ul style="list-style-type: none"> • Overpayment/refund obligation • False Claims Act liability • Civil monetary penalties and program exclusion for <i>knowing</i> violations • Potential \$15,000 CMP for each service • Civil assessment of up to three times the amount claimed
Exceptions	<i>Voluntary</i> safe harbors	<i>Mandatory</i> exceptions
Federal Health Care Programs	All	Medicare/Medicaid

*This chart is for illustrative purposes only and is not a substitute for consulting the statutes and their regulations.

