HUSCH BLACKWELL

Federal Anti-Kickback Statute Overview

42 U.S.C. § 1320a-7b(b)

The following chart summarizes the key elements of the federal Anti-Kickback Statute ("AKS"') along with additional guidance from federal statutes and/or case law. Keep in mind that states may have their own anti-fraud laws that must also be considered.

Element	Definition/Interpretation
Whoever knowingly and willfully	• Only "one purpose" of the arrangement needs to be to improperly induce referrals (*U.S. v. Greber*, 760 F.2d 68 (3d Cir.1985)) • The person/entity does not need to intend to violate the AKS itself, only to intend to induce referrals with a kickback (42 U.S.C. § 1320a-7b(h))
Offers, solicits, pays or receives	• The AKS applies to both parties involved in an improper kickback transaction • The law covers both (i) actual payment and receipt of remuneration and (ii) offering or soliciting of remuneration
Remuneration	• Anything of value (not just cash) whether direct or indirect
In return for referring an individual to a person/entity for items/services payable by federal health care programs	• Part or all of items or services are paid by federal health care programs, such as Medicare and Medicaid
Penalties	• Prison time up to 5 years per violation • Fines up to $25,000 per violation • Civil monetary penalties up to $50,000 per violation • Exclusion from federal health care programs • *Per se* violation of False Claims Act, which carries additional fines

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