

Get to Know the Five Most Important Federal Fraud and Abuse Laws Applying to Physicians...

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The Impact Is Strong! While most medical professionals deserve the trust and respect from the public, there are still cases where fraud and abuse occur within the healthcare system. The laws that combat fraud and abuse are complex, and it is important for physicians and their office managers to understand these laws. Potential violations have strong impact and could result in criminal penalties, civil fines, exclusion from the Federal health care programs, or loss of a medical license from the State medical board.

According to the Office of the Inspector General, the five most important Federal fraud and abuse laws that apply to physicians are the False Claims Act (FCA), the Anti-Kickback Statute (AKS), the Physician Self-Referral Law (Stark Law), the Exclusion Statute, and the Civil Monetary Penalties Law (CMPL).

These laws are enforced by various government agencies, including the Department of Justice, the Department of Health & Human Services Office of Inspector General (OIG), and the Centers for Medicare & Medicaid Services (CMS).

Starting with the False Claims Act, here is an overview of the five:

False Claims Act [31 U.S.C. §§ 3729–3733]

The civil FCA generally protects the government from being overcharged or charged for procedures that are not medically necessary. This law works in conjunction with other fraud and abuse laws. If a claim results from a kickback or is made in violation of the Stark Law, it may also be false or fraudulent, creating liability under the civil FCA as well as the AKS or Stark Law.

Anti-Kickback Statute [42 U.S.C. § 1320a-7b(b)]

The Anti-Kickback Statute is a criminal law that prohibits the knowing and willful payment of remuneration to induce or reward patient referrals or the generation of business involving any item or service payable by the Federal health care programs.

Penalties include sizable fines, jail terms, and exclusion from participation in Federal health care programs. Safe harbors protect certain payment and business practices that include personal services and rental agreements, investments in ambulatory surgi-

cal centers, and payments to bona fide employees.

Physician Self-Referral Law [42 U.S.C. § 1395nn]

The Stark Law prohibits physicians from referring patients to receive designated health services payable by Medicare or Medicaid from entities with which the physician or an immediate family member has a financial relationship, unless an exception applies. This is a strict liability statute, so proof of specific intent to violate the law is not required. Penalties for physicians who violate the Stark Law include fines as well as exclusion from participation in Federal health care programs.


Exclusion Statute [42 U.S.C. § 1320a-7]

OIG has the authority to exclude individuals and entities from Federal health care programs like Medicare and Medicaid. Individuals may be excluded for reasons that fall into one of two categories: permissive or mandatory. Excluded individuals are prohibited from furnishing all types of services including administrative and management services.

On May 8, 2013, the OIG issued an updated special advisory bulletin on the effect of exclusion from federal health care programs. It is posted at <http://oig.hhs.gov/exclusions/files/sab-05092013.pdf>.

Civil Monetary Penalties Law [42 U.S.C. § 1320a-7a]

OIG may seek civil monetary penalties for a wide variety of conduct, and is authorized to seek different amounts of penalties and assessments based on the type of violation at issue. Penalties range from \$10,000 to \$50,000 per violation.

Understanding these laws and their potential ramifications is important to physicians and office managers to avoid the potential strong impact of violation. Take action to ensure your practice is compliant with these laws. 

Julie Sheppard, BSN, JD, CHC is President and Founder of *First Healthcare Compliance*. *First Healthcare Compliance* (<http://1sthcc.com/>) addresses the challenges created by the recent compliance mandates of the Affordable Care Act (ACA) for healthcare providers, specifically for private physician practices.

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