

MARKUP

ORIGINAL

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# Three federal fraud and abuse laws explained<sup>[1]</sup>

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.

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

**Comparison of Anti-Kick Back Statute, Stark Law, and False Claims Act**

	<b>Anti-Kick Back Statute (AKS)</b>	<b>Stark Law</b>	<b>False Claims Act (FCA)</b>
Prohibitions	<ul style="list-style-type: none"> <li>Prohibits offers of, solicitation of, or payment or receipt of remuneration intended to induce referrals for health care services covered by a government program</li> </ul>	<ul style="list-style-type: none"> <li>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</li> </ul>	<ul style="list-style-type: none"> <li>Prohibits the submission of false or fraudulent claims, false statements material to a false claim, and conspiracy to commit violation</li> </ul>
	<ul style="list-style-type: none"> <li>Covers provision of anything of value to a person who refers, orders/purchases or recommends</li> </ul>	<ul style="list-style-type: none"> <li>Regulates financial relationships with physicians only (and physician's immediate family members)</li> </ul>	<ul style="list-style-type: none"> <li>Also prohibits concealing or avoiding obligation to repay money to government (failure to return overpayments)</li> </ul>
			<ul style="list-style-type: none"> <li>Claims that violate AKS or Stark can also be considered false claims</li> </ul>
			<ul style="list-style-type: none"> <li>Common false claims: lack of medical necessity, billing/coding issues, retention of identified overpayments over 60 days, quality of care, off-label marketing</li> </ul>
Exceptions	<ul style="list-style-type: none"> <li>Arrangements are not required to fit within a safe harbor, however voluntary safe harbors exist</li> </ul>	<ul style="list-style-type: none"> <li>The arrangement must satisfy an exception or it violates the Stark law</li> </ul>	N/A
Penalties	<ul style="list-style-type: none"> <li>Applies to either party involved in an</li> </ul>	<ul style="list-style-type: none"> <li>No criminal enforcement</li> </ul>	<ul style="list-style-type: none"> <li>Treble damages</li> </ul>