

FRAUD & ABUSE/STARK

Hall Render provides in-depth guidance and counsel to health care providers with respect to issues arising under the federal Stark and Fraud and Abuse Laws. These laws potentially implicate numerous relationships among providers, including but not limited to service agreements, office and equipment leases, management agreements, acquisitions, joint ventures and the provision of ancillary services by physician practices.

The Anti-Kickback Statute (AKS), a powerful weapon in the federal government's anti-fraud and abuse arsenal, prohibits a person from knowingly and willfully soliciting, receiving, offering or paying remuneration in exchange for, or to induce, the referral of any item or service for which payment may be made in whole or in part under Medicare, Medicaid or other government health care program. A violation of the AKS is a felony, punishable by fines up to \$25,000 and up to five years imprisonment, and can also result in the imposition of civil monetary penalties and/or exclusion from such government health care programs. While parties must have illegal intent to violate the AKS, they could be erroneously found in violation of the AKS, which is why it's important to structure financial relationships in a low risk manner.

The Stark Law prohibits a physician with a financial relationship with an entity from making any referrals to such entity for "designated health services" (e.g., clinical lab services, PT/OT/Speech, radiology services and all hospital services, among others) unless a relevant exception applies. The entity may not present a claim or bill to the government, patient or any other party for designated health services furnished pursuant to a prohibited referral. Sanctions for violation of the Stark Law include civil monetary penalties of up to \$15,000 and up to \$100,000 for circumvention schemes. Unlike the AKS, the Stark Law is a "strict liability" statute, meaning providers can run afoul of the Stark Law no matter their good intentions and for technical reasons, such as missing signatures from a written contract. Given the wide-ranging applicability of the Stark Law, the severe penalties for its violation, and the fact that violations of the Stark Law and AKS can serve as a basis for an allegation of a False Claims Act violation, clients must structure their financial relationships carefully.

Hall Render attorneys are well versed in the nuances of the Stark and AKS laws and stay current on regulatory changes, case law and interpretive advisory opinions. Whether the matter involves a brief explanation on a specific issue, the preparation of Stark and AKS-compliant contracts or transaction documents or a full legal analysis and opinion, Hall Render attorneys are able to assist clients to conform their financial and business relationships to these laws.

AREAS OF FOCUS

- Advisory Opinion
- Affordable Care Act (ACA)
- AKS
- Contractual Joint Ventures
- Designated Health Services
- Exceptions/Safe Harbors
- FCA
- In-Office Ancillary Services
- Physician Group Practice
- Stark I, II, III
- Voluntary Disclosure