



Avoiding Compliance Pitfalls: The Anti-Kickback Statute

What is the Anti-Kickback Statute?

In the context of federal-payor reimbursement, the federal Anti-Kickback Statute prohibits remuneration “directly or indirectly, overtly or covertly, in cash or kind to any person to induce such person to refer an individual.” The statute imposes stiff penalties for violations which are considered felonies. This is an intent-based criminal statute, which is broadly worded and has been interpreted to include any arrangement, one purpose of which is to induce referrals. The Anti-Kickback Statute can also be enforced through non-criminal, administrative actions. *See* 42 U.S.C. §1320a-7b(b).

Consequences of Anti-Kickback violations:

- Exclusion from federal healthcare programs;
- Criminal penalties of up to \$25,000 in fines or up to 5 years in jail (or both);
- \$50,000 civil monetary penalty for each violation.

Note that parties on both sides of an impermissible “kickback” transaction may be found criminally liable.

Below is an example of an Anti-Kickback violation as identified by the Office of Inspector General.

July 2, 2007 - Advanced Neuromodulation Systems, Inc. (“ANS”) of Texas agreed to pay \$2.95M for allegedly violating the Civil Monetary Penalties Law. The OIG alleged that ANS offered and paid remuneration to potential and existing referral sources in exchange for referrals to ANS for the purchasing, leasing, ordering, arranging for, or furnishing of medical devices that were manufactured by ANS that were payable to a federal health care program. Other ANS practices that raised kickback concerns included free dinners, gifts and expenses paid to physicians under consulting agreements.

Other arrangements that could potentially generate prohibited remuneration under the Anti-Kickback Statute include:

- Paying a healthcare provider a per patient amount for the physicians’ services in collecting blood;
- Waivers of co-payments and deductible amounts;
- Transfers of items or services for free or for other than fair market value;
- Transportation or parking;
- Payments for blood drawing services that exceed Medicare reimbursement;
- Labeling of test tubes and specimen collection containers; and
- Gifts of trips, event tickets, rounds of golf, equipment, meals, advertising expenses.

An excellent online resource that discusses this law can be found at:
<http://oig.hhs.gov/fraud/PhysicianEducation/>.

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I have reviewed the above information, understand its contents and agree to fully and completely adhere to federal and state fraud and abuse laws.

Name: _____

Signature: _____

Date: _____