

**COMPARISON OF THE ANTI-KICKBACK STATUTE AND STARK LAW\***

	<b>THE ANTI-KICKBACK STATUTE</b> (42 USC § 1320a-7b(b))	<b>THE STARK LAW</b> (42 USC § 1395nn)
Prohibition	Prohibits offering, paying, soliciting or receiving anything of value to induce or reward referrals or generate Federal health care program business	<ul style="list-style-type: none"> <li>• Prohibits a physician from referring Medicare patients for designated health services to an entity with which the physician (or immediate family member) has a financial relationship, unless an exception applies</li> <li>• Prohibits the designated health services entity from submitting claims to Medicare for those services resulting from a prohibited referral</li> </ul>
Referrals	Referrals from anyone	Referrals from a physician
Items/ Services	Any items or services	Designated health services
Intent	Intent must be proven (knowing and willful)	<ul style="list-style-type: none"> <li>• No intent standard for overpayment (strict liability)</li> <li>• Intent required for civil monetary penalties for <i>knowing</i> violations</li> </ul>
Penalties	Criminal: <ul style="list-style-type: none"> <li>• Fines up to \$25,000 per violation</li> <li>• Up to a 5 year prison term per violation</li> </ul> Civil/Administrative: <ul style="list-style-type: none"> <li>• False Claims Act liability</li> <li>• Civil monetary penalties and program exclusion</li> <li>• Potential \$50,000 CMP per violation</li> <li>• Civil assessment of up to three times amount of kickback</li> </ul>	Civil: <ul style="list-style-type: none"> <li>• Overpayment/refund obligation</li> <li>• False Claims Act liability</li> <li>• Civil monetary penalties and program exclusion for <i>knowing</i> violations</li> <li>• Potential \$15,000 CMP for each service</li> <li>• Civil assessment of up to three times the amount claimed</li> </ul>
Exceptions	<i>Voluntary</i> safe harbors	<i>Mandatory</i> exceptions
Federal Health Care Programs	All	Medicare/Medicaid

\*This chart is for illustrative purposes only and is not a substitute for consulting the statutes and their regulations.

