

Anti-Kickback Statute Compliance for Healthcare Providers and Facilities

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The federal Anti-Kickback Statute (AKS) is a vital regulation that healthcare service providers and facilities must follow to maintain ethical financial relationships and steer clear of really bad legal outcomes. This statute makes it crystal clear that you can't offer, pay, solicit, or receive anything of value in exchange for referrals that involve federal healthcare programs. You can imagine why folks in the healthcare business would be concerned about this law (and about violating it, of course).

Understanding the Anti-Kickback Statute and Its Scope

The AKS casts a wide net over all kinds of remuneration that might be given or received in exchange for healthcare referrals. They cover cash, gifts, and a whole range of other benefits that might serve as bait. The law obviously targets bad behavior—hospitals buying up doctors to ensure a steady supply of patients, for instance—but risk-averse healthcare providers might take the absence of specific legal safe harbors to mean that they ought to avoid almost any kind of profitable interaction with a referral source.

Not complying with the rules can get you into a lot of trouble. If the law is broken, the violators can serve up to five years in jail, pay eye-popping fines, and be banned from all sorts of federal programs. But it's crucial to understand what the rules do and don't allow, and to get clear on the difference between the AKS and the Stark Law. The latter isn't in our purview, but a case study associated with it makes the relevant point. A hospital offers a lot of services (of the "designated health service" variety), and it was in the hospital's best interest if doctors referred to those services. The offer to make it happen, however, was borderline illegal. The case was risk-laden, and the hospital won the suit but lost money in the process. More details on AKS compliance are at the [OIG's website](#).

Leveraging Safe Harbor Provisions for Compliance

The AKS includes safe harbor provisions that protect particular financial arrangements from enforcement actions if they satisfy established criteria. These provisions pertain to typical business arrangements, such as leasing space for offices, service contracts, and managed care arrangements. To qualify for safe harbor protections, such arrangements must adhere to three basic requirements: 1) they have to be at fair market value, 2) they have to serve a legitimate business purpose, and 3) they have to be independent of any referrals for services or items that would be covered by Medicare or Medicaid. More details on safe harbor provisions are available at the [OIG](#) site.

A compliant arrangement in a clinic that serves as a lease agreement can be seen as a "safe harbor." This is when a healthcare provider is upheld as not violating the Anti-Kickback Statute. A lease agreement can also serve as a format that allows a provider to stay above board and not be seen as paying for patient referrals. A safe harbor way to carry out a lease agreement is for it to be carried out as a clinic serves an arrangement. A clinic's lease can be seen as a way that keeps the clinic and the working arrangements of its healthcare providers in a non-violation mode. A clinic and its providers are seen as

working in compliance with the Anti-Kickback Statute because a lease serves as a safe harbor.

Structuring Employment and Compensation Agreements for Compliance

Healthcare entities must guarantee that their employment and compensation arrangements are compliant with the standards set by the AKS. One of the main high-risk areas is payments that are linked to referrals. Compensations must reflect fair market value and be based strictly on actual services that were rendered, and not on the number of referrals given or the amount of generated revenue from federal healthcare programs.

Suppliers should steer clear of compensation models that are productivity-based and that link payments directly to the number of referrals. Agreements should spell out the nature of services, the terms of the arrangement, and the payment to be made to illustrate a business purpose that is not “primarily to induce referrals.” A once-accused-compliance-under-the-AKS healthcare organization found itself in trouble because it used unscrupulously designed compensation contracts to pay “too much” to referring physicians—around 115% of “fair market value.” After a redesign in 2007, with help from the OIG, Ingenix, and other experts, the group achieved compliance with the AKS and now works “under the radar.”

Conducting Compliance Audits and Employee Training

It is crucial to conduct compliance audits and staff training regularly to avoid Anti-Kickback violations. These routine audits help to uncover financial arrangements that pose a high risk of not complying with the law. That risk is generally associated with these kinds of arrangements: incentive payments, or payments made to individuals with the intent to induce or reward referrals. People who conduct these high-risk financial arrangements must do so under the watchful eyes of regular compliance audits.

The key to compliance is a well-trained workforce. Employees must understand the overall picture—why we have laws like the AKS and what could happen if we don’t comply. They also need to know the specifics—what counts as a violation and what doesn’t; what is a permissible financial arrangement, and what is a “risky” one that could get us into hot water with the OIG, the Department of Justice, or both. Audits are a big part of the federal enforcement picture these days.

Understanding the Legal Risks and Penalties of Non-Compliance

Failing to comply with the AKS can lead to serious outcomes like fines, exclusion from federal healthcare programs, and damage to one’s reputation. Some of the violations that happen most frequently are:

- Paying or receiving prohibited financial incentives to induce or reward referrals.
- Not observing the provisions that are supposed to create safe harbors
- Inadequately documenting financial arrangements with potential referral sources

For instance, paying people to be your friends can result in fines, prison time, and being kicked out of federal health care programs. Not complying with safe harbor protections can also lead to increased regulatory scrutiny and harm to your reputation. And paying for referrals without a sufficient basis in fair market value can invite legal action and loss of those oh-so-important Medicare dollars. Similarly, having inadequate documentation can raise your audit risk, make proving compliance much harder, and push some poor soul in your organization toward the edge of the Sarbanes-Oxley compliance cliff.

To gain more knowledge about AKS compliance, healthcare providers can look to:

- Office of Inspector General (OIG) Provider Compliance Training on the [Anti-Kickback Statute \(AKS\)](#)

The Anti-Kickback Statute (AKS) is a key law for establishing and maintaining ethical financial relationships in the healthcare sector. It is a criminal law that prohibits payment of anything of value to induce or reward referrals for services reimbursed by federal healthcare programs.

Healthcare providers can avoid the risks associated with the AKS by using the safe harbor provisions, structuring their financial relationships at fair market value, and conducting regular compliance audits.