Exceptions to the Stark Law Prohibition of Medical Referrals

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The Stark Law governs what types of referrals doctors can make if they bill for Medicare and Medicaid. The presumption is that that referrals made by a doctor to a designated health service are not legal if the doctor has a financial interest in a designated health service. The presumption also applies to immediate family members of the referring doctor. A designated health service is generally a health facility that provides clinical tests, therapy, medical equipment, hospital services, or home-health services.

Medical practices who improperly refer work can be denied payment, face substantial civil penalties for violating Stark, and lose their right to bill Medicare/Medicaid.

Fortunately, Stark Law does allow referrals – if it can be shown the financial interest meets an approved exception. Some Stark Law approved exceptions are related to just compensation. Other exceptions are related to just ownership and investment. Many exceptions are related to all three – compensation, ownerships, and investment.

QUICK SUMMARY OF FEDERAL "STARK" SELF-REFERRAL & ANTI-KICKBACK LAW AND CALIFORNIA SELF-REFERRAL AND FEE-SPLITTING PROHIBITIONS

Here is a quick summary of federal self-referral ("Stark law") and anti-kickback law, and California self-referral and anti-kickback / fee-splitting rules.

The best course of action for any medical practice is to consult with an **experienced Stark Law medical practice lawyer.** The attorney will review your business structure, the way you make referrals, and how your medical operations work. The attorney can then advise you whether you risk being charged with noncompliance with Stark. The lawyer can suggest various ways you can lessen the risk of noncompliance by showing your practice qualifies for an approved exception.

If you have been charged with a Stark violation, a **respected Stark lawyer** can help you argue any meritorious defenses. Showing your practice is on the exception list is one such meritorious defense.

General exception requirements

All exceptions, whatever the type of financial interest:

- Must comply with the regulations of the Centers for Medicare & Medicaid Services (CMS) and the Stark

- Must comply with the Anti-Kickback statute and any other relevant state and federal laws.
- Generally, apply only if the amount and volume of the referrals are not excessive.

Some exceptions require that the doctor be a member of a "group practice." A group practice is a complicated term that has many requirements. In short, it requires that at least five doctors work together for the common good of the practice. Your **Stark Law medical practice exception lawyer** can explain whether your practice is a group practice.

ANTI-KICKBACK, FEE-SPLITTING & STARK

Fraud and abuse issues permeate healthcare regulatory concerns. Our health care law attorneys regularly counsel clients on compliance with Federal and State anti-kickback statutes. Our lawyers […]

Stark Law referral exceptions that are related to compensation, ownership, and investment

Some of exceptions that can benefit medical practices are:

Physician services. Referrals are permissible if the medical services are:

- Performed by a doctor who is a member of the group practice
- Performed by a doctor under the supervision of a doctor who is a member of the group practice

In-Office Ancillary Services. Referrals are generally acceptable if the following conditions apply:

- **Who performs the services.** The services are achieved by:
  - The referring physician or
  - A doctor who is a member of the same practice group as the referring doctor or
  - Someone who is supervised by the referring doctor or someone in the referring doctor's practice group
- **Where the services are performed.** The services are done:

In the same location the treating doctor:

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    - Normally performs his/her practice or
    - The patient who is getting the service usually gets medical help from the referring doctor or someone in the group.
  - **Clinical laboratory services.** In a building that the referring doctor's practice group exclusively uses for all or some of the group's clinical laboratory services.
  - **Non-clinical laboratory services**. In a building the group practice of the referring doctor uses for some or all its services – other than the clinical laboratory services
- **How the services are billed.** The billing to Medicare/Medicaid used an approved billing number

Services Furnished by an Organization to Enrollees. Doctors can make referrals to organizations that provide prepaid health services to enrollees. Prepaid health plans include:

- Approved HMOs,

- Approved CMPs (Competitive Medical Plans),
- Plans approved by the Centers for Medicare & Medicaid Services
- Other plans identified in the Stark Law statute

This section applies to organizations and entities that contract with the organization.

Academic Medical Centers. A doctor who has a financial relationship with an academic medical center can make referrals to that center if:

- The doctor is “bona fide” employee of the medical center
- Has a valid state license in the state where the medical center is located
- Is a member of the facility’s faculty
- Provides clinical teaching services at the center and is paid for providing those services
- The academic medical center meets the Stark Law criteria for approval

All conditions must be met for the exception to apply.

Implants furnished by an ASC. An ASC is an Ambulatory Surgery Center. Acceptable implants include:

- Cochlear implants (for hearing)
- Intraocular implants (for eyes)
- Prosthetic devices that are implanted
- Other approved implants

The implant procedure must be done at the ASC by the referring doctor or a physician who belongs to the referring doctor’s medical group.

Eyeglasses and Contact Lenses after the patient has cataract surgery. This exception does require that Medicare approved the eyeglasses or contact lenses.

EPO (Erythropoietin) and other prescription drugs for dialysis patients who need outpatient treatment. Referrals must be for specified drugs (preapproved) that are given in an end-stage renal disease (ERSD) facility.

Preventive services. Vaccines, immunizations, and screening tests are generally allowable Stark exceptions provided they aren’t given too often. The tests must be covered by Medicare.

Intra-family rural referrals. Additionally, some referrals in rural areas are allowed if the services are for an immediate family member. To quality, there can’t be any nearby facilities or people that can provide the same service.

Stark Law compensation exceptions that are related to just compensation arrangements

Our **Stark law attorneys** acceptable forms of compensation may include:

Rental of office space. Doctors can lease office space to lessees if the lease is in writing, the term is at least one year, the lease is commercially reasonable, and other conditions are met.

Equipment rental. Like office rentals, equipment leases are acceptable forms of compensation if the lease is commercially

reasonable, is in writing, lasts for a year or more, and other Stark Law conditions are met.

Bona fide employee relationship. An employer can pay a physician or family member:

- If the doctor/family member has a true bona fide employment relationship with that employer,
- The compensation is fair
- It's clear what services are required to earn the pay. For example, serving as a department chair or performing specific administrative duties.
- Other factors are met

Some productivity bonuses may also be acceptable.

Personal service arrangement. A doctor can also receive compensation if he/she is an independent contractor, instead of an employee. The conditions that must be met are similar to those for the bona fide employee relationship exception.

Doctor incentive plan. Incentive plans are generally acceptable provided they don't limit necessary medical services to those who are eligible.

Physician recruitment. Hospitals need to spend money to attract the top medical talent. Compensation that the hospital pays a doctor to persuade the doctor to work for the hospital is an acceptable if certain conditions are met including:

- The agreement is in writing
- The agreement does not require that the doctor refer patients to the hospital
- The amount of the inducement is not related to the value or volume of any referrals
- The doctor can obtain staff privileges at other hospitals

Charitable contributions. Charitable donations by a doctor or immediate member of the doctor's family may be acceptable if the charity is an approved IRS tax-exempt charity. As with other exceptions, the donation can't be based on the value or volume of referrals. It also can't violate the Anti-Kickback statutes.

Nonmonetary compensation. Referrals from a doctor to a designated health service are allowable if the compensation isn't monetary – cash, check, money, etc. The compensation should be services or items that have small value – $300 or less. It can't be solicited by the doctor or his/her staff. For example, it may be Ok for the doctor or staff to receive birthday presents or holiday presents.

Fair Market Value Compensation. Some referrals are OK if several compensation basics are met:

- There is an agreement in writing that defines when and how compensation will be paid
- The amount of compensation to be paid is clear
- There is a timetable for services
- The transaction is commercially reasonable
- The services are legal

This exception is a broad catch-all exception. It is often used when the other exceptions don't apply

Medical staff incidental benefits. Hospitals can provide non-cash benefits to their medical staff provided:

- The benefit is provided at the hospital
- For all members of the medical staff
- The benefit is comparable to benefits given at other hospitals
- The value of the benefit is less than $25
- Other conditions are met

An experienced **Stark Law exception attorney** can explain what your medical practice needs to do to comply with these exceptions.

Other compensation exceptions

There are many other exceptions set forth in the Stark Law statutes. These exceptions cover the following compensation areas:

- Risk-sharing arrangements
- Compliance training
- Indirect compensation arrangements
- Obstetrical malpractice insurance subsidies
- Professional courtesy
- Retention payments in underserved areas
- Community-wide health information systems
- Electronic prescribing items and services
- Electronic health records items and services
- Assistance to compensate a non-physician practitioner
- Timeshare arrangements

Certain individual and group practice arrangements with hospitals may also be acceptable.

Stark Law exceptions related to just ownership or investment interests

The following ownership interests or investment interests may also be acceptable:

- An interest in publicly traded securities that are traded on standard exchanges such as the New York Stock Exchange and were publicly available
- An interest in mutual funds covered by the IRS rules if certain time and financial conditions are met
- An interest in certain providers such as rural providers, hospitals located in Puerto Rico, and hospitals that meet specific criteria.

DO ONLINE COUPONS FOR DISCOUNTS TO PHYSICIAN AND OTHER CLINICIAN SERVICES VIOLATES STARK, ANTI-KICKBACK AND FEE-SPLITTING LAWS?

Many online ventures want to know whether Stark, anti-kickback, and fee-splitting laws are violated by business arrangements that offer online coupons or Web-based coupons to customers.

Make an appointment with a trusted California Stark Law exception attorney today

There are many Stark Law exceptions that can benefit your medical practice. Learn what those exceptions are and how to implement them.