

M&A Nugget: Health Care, Beware

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The acquisition of a health care entity implicates two major federal statutes aimed at the health care industry. The Anti-Kickback Statute prohibits offering, paying or soliciting anything of value in return for referrals of health care business covered by federal programs. A second law, known as Stark, prohibits physicians from referring Medicare patients for designated health services to an entity in which the physician has a financial relationship. Violations of these laws can result in severe and substantial penalties, including suspension from participation in federal health care programs and fines. Although these laws are usually discussed in the context of a health care provider's ongoing operations, the laws can also apply to health care consulting and service firms and can be implicated in the acquisition of health care related entities. A purchaser must conduct appropriate due diligence to ascertain whether the seller has any exposure under these laws. The business terms of an acquisition can actually bring these laws into play. These health care laws are unique and a violation of them can have serious consequences. A purchaser of a health care entity should, therefore, secure advice from an advisor well-versed in the health care law environment.