

More Anti-Kickback & Fee-Splitting Legal Basics

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In today's video, we discuss more basics of federal and state anti-kickback and fee-splitting prohibitions.

Hi, I'm Michael H. Cohen, founding attorney of the Cohen Healthcare Law Group. We help healthcare industry clients just like you navigate healthcare and FDA legal issues so you can launch, or continue to scale, your health and wellness product or service.

PREVIOUSLY on Stark and Anti-Kickback Basics.

I always flash back to 24: So, Previously on 24.

Well, on this channel we talked about how Stark is the federal law that prohibits self-referral, how self-referral involves certain designated health services or DHS, and how state laws contain mirror-Stark provisions.

For example, California has PORA, the Physician Ownership & Referral Act, which is like a state law mirror to Stark, the federal prohibition against self-referral.

That is all codified in Business & Professions Code, Section 650.01.

Just as Stark has exceptions, similarly, PORA has exceptions that allow certain arrangements or deem them unlawful or lawful.

Then we discussed the definition of a kickback, how federal law prohibits unlawful referrals, and we mentioned some of the safe harbors that federal law offers to arrangements that federal law deems legitimate or not illegitimate.

On the state side, we said that there are mirror laws prohibiting kickbacks and fee-splitting.

California's anti-kickback and fee-splitting prohibition is contained in Business & Professions Code, Section 650.

Simply put, a kickback is an unlawful inducement to refer a patient for healthcare services.

Business & Professions Code Section 650(a) says:

"... The offer, delivery, receipt, or acceptance by any person licensed under this division or the Chiropractic Initiative Act of

any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest, or co-ownership in or with any person to whom these patients, clients, or customers are referred is unlawful.”

There are 3 key parts:

1, there is an offer or acceptance by a licensed healthcare practitioner.

2, the offer or acceptance involves, basically, money or something valuable like money. The language Business & Professions Code Section 650(a) is: “rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise.”

3, the money or value is compensation or an inducement for referring that involve patients, clients, or customers to another person.

Violating this prohibition, period, is unlawful, whether or not the person that’s doing the referring has shares or membership interest in the business to which the referral is made.

While federal law provides a whole series of safe harbors, California law keeps it simple, just one: Section 650(b) which says, you can pay money for services OTHER than referring patients, as long as the referral is based on a percentage of gross revenue or similar type of arrangement at fair market value.

Arrangements between entities, businesses, and persons, get complicated, so it is helpful to have your healthcare lawyer at your back analyze the arrangement for possible Stark, self-referral, anti-kickback, and fee-splitting issues.

Thanks for watching. If you still have questions, click on the link below, cohenhealthcarelaw.com/contact, to send us a message or book an appointment. Here’s to the success of your healthcare venture, we look forward to speaking with you soon.

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