Hospital/Physician relationships are governed by complex and illogical laws and regulations. These laws include the Federal Anti-Kickback Statute, the Federal Stark Law, and, for tax-exempt hospitals, the tax laws and related tax-exempt bond financed space issues (neither of which are discussed here). Violations of these laws come with draconian consequences for both individuals and organizations. At a minimum, every financial relationship with a physician must be evaluated in the context of these laws. In most cases, the arrangement will need to be evaluated in context of applicable state laws and other laws as well.

### Stark and Anti-Kickback Laws

<table>
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<th>Stark and Anti-Kickback Laws</th>
<th>Penalties</th>
<th>Do's and Don't's</th>
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<tbody>
<tr>
<td><strong>The Federal Anti-kickback Statute</strong> (the &quot;AKS&quot;) prohibits offering, soliciting, paying or receiving anything of value if even one purpose is intended to induce or reward referrals. The AKS (and similar state laws) looks to the intent of one or both of the parties when evaluating an arrangement.</td>
<td><strong>AKS</strong></td>
<td><strong>Do's</strong></td>
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| The AKS includes many “safe harbors”. If the payment or arrangement fits within a safe harbor, the arrangement may be permitted even if it appears inconsistent with the AKS prohibition. However, safe harbors are narrowly designed and, in practice, can be difficult to meet. | - Criminal – up to 5 years in prison and a $25,000 fine for each violation  
- Medicare and Medicaid program exclusion* if convicted  
- Civil – possible Medicare and Medicaid program exclusion | - Have a written & signed agreement in place prior to paying a physician or allowing the physician to provide services.  
- Have a written, signed agreement in place before renting space or leasing equipment to or from a physician.  
- Ensure that agreements between a physician or hospital have been reviewed by legal counsel or are documented using a template approved by legal counsel.  
- Treat every deal with a physician-owned company as if it is a deal with the physician.  
- Assume that every email and document is being read by the FBI and the FBI is listening to every phone call.  
- Immediately report suspected non-compliance to legal or appropriate compliance resource.  
- Ask questions if you have concerns. |

*Exclusion means the individual or entity cannot provide, order or supervise a service that would be paid for by a federally funded healthcare program. Practically this means the end of the ability to work in healthcare.

### Stark Laws

**The Federal Stark Law** ("Stark") prohibits referrals by a physician* to a hospital or other entity when there is a direct or indirect financial relationship between the physician (or immediate family member**) and the hospital or other entity. A financial relationship includes virtually all arrangements where something of value is exchanged between the parties. This includes payments for goods, services, equipment, space, and the provisions of other gift, discounts, free services or items, etc. Notably, an otherwise prohibited referral may be permitted if the financial relationship meets an applicable Stark exception. Financial relationships can be direct or indirect. Under Stark, there are three types of exceptions: (1) ownership exceptions; (2) compensation exceptions; and (3) services/global exceptions. In many cases, a written, signed agreement is required to qualify for an exception.

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| Hospitals (or other DHS entity) – cannot bill Medicare for services ordered or performed by the physician, whether or not the services are related to the financial relationship in question | **Physicians – Civil penalties and possible Medicare and Medicaid Program exclusion**  
- Improper claims trigger False Claims Act exposure.  
False claim = repayment, damages of up to 3 times amount of overpayment, plus penalties of $5,500 to $11,000 per claim.  
- Discuss the volume or value of referrals in the context of proposed or existing arrangements with physicians.  
- Offer to pay, make or increase payments, based on the value or volume of referrals.  
- Make a payment without a signed contract.  
- Allow a physician to begin to perform services without a signed contract.  
- Allow a physician to occupy space or use equipment without a signed contract.  
- Instruct or direct a subordinate to do something contrary to law/rules/policy.  

* "Physician" means a doctor of medicine or osteopathy, a doctor of dental surgery, or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor.

**Immediate family member** includes the physician’s spouse, birth or adoptive parent, child, sibling, stepparent, stepchild, stepbrother or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law; grandfather or grandchild and spouse of a grandparent or grandchild.  

This document is for educational purposes only. For legal advice, consult healthcare legal counsel.
Selected Exceptions/Safe Harbors

(5) A holder-month-to-month rental for up to 6 months immediately following the expiration of an agreement at least 1 year that meets the conditions of paragraphs (e)(4) through (e)(5) of this section satisfies the requirements of paragraph (e)(5) of this section, provided that the holder-month-to-month rental is on the same terms and conditions as the immediately preceding agreement.

(b) Indirect compensation arrangements, indirect compensation arrangements, as defined at 411.354(a)(2), if all of the following conditions are satisfied:

(i) The compensation received by the referring physician (or immediate family member) described in § 411.354(c)(2)(ii) is fair market value for services and items actually provided and not determined in any manner that takes into account the volume or value of referrals or other business generated by the referring physician for the entity furnishing DSH.

(ii) Compensation for the rental of office space or equipment may not be determined using a formula based on—

(A) A percentage of the revenue raised, earned, billed, collected, or otherwise attributable to the services performed or business generated in the office space; or

(B) Per-unit of service rental charges, to the extent that such charges reflect services provided to patients referred by the lessor to the lessee.

(iii) The compensation agreement does not violate the anti-kickback statute (section 1127(b) of the Act) and shall not serve as the basis for an exclusion:

(A) In a manner that takes into account the volume or value of referrals or other business related or other activity that violates any State or Federal law.

(B) In a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare, Medicaid, or other Federal health care programs.

(C) In a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare, Medicaid, or other Federal health care programs.

(D) The agreement is not set out in writing and signed by the parties.

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AKS SAFE HARBORS

42 CFR 100.152 Exceptions

The following paragraphs of § 411.354 do not constitute a criminal offense under section 112B of the Act and shall not serve as the basis for an exclusion:

(1) A lease rental as used in § 411.354 does not include any payment made by a lessor to a lessee for the use of premises, as long as the following six standards are met—

(A) The lease agreement is set out in writing, is signed by the parties, and specifies the terms of the arrangement.

(B) The lease covers all of the premises leased by the lessor to the lessee.

(C) The lease specifies exactly the schedule of such intervals, their precise length, and the exact rent for each such interval.

(D) The lease of the term is for less than one year.

(E) The aggregate rental charges is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare, Medicaid, or other Federal health care programs.

(F) The aggregate space rented does not exceed that which is reasonably necessary to accomplish the commercially reasonable business purpose of the rental. Note that for purposes of paragraph (b) of this section, the term fair market value means the value of the rental property for general commercial purposes, but shall not be adjusted to reflect the additional value that one party (either the prospective lessee or lessor) would attribute to the property as a result of its proximity or convenience to sources of referrals or business otherwise generated for which payment may be made in whole or in part under Medicare, Medicaid, and all other Federal health care programs.

(G) The agreement is not set out in writing and signed by the parties.

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