



Compliance with Anti-kickback Statutes & Other US Healthcare Laws

An Overview for Integrative Practitioners

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According to data collected from our 2010 Annual Membership Survey, a growing percentage of our members participate in Federal Healthcare programs including Medicare and Medicaid. By electing to participate in programs administered by the Government, you are agreeing to practice in compliance with all federal and local laws.

With Medicare and Medicaid fraud approaching record levels, DOJ and HHS created the Health Care Fraud Prevention and Enforcement Action Team (HEAT). With the creation of the new HEAT team the fight against Medicare fraud has become a Cabinet-level priority. The government, through its HEAT initiative, is aggressively stepping up enforcement of anti-fraud initiatives. Below are some of the core laws and issues surrounding the anti-fraud initiatives that you should be aware of.

What is the anti-kickback law?

The federal anti-kickback statute, 42 U.S.C. § 1320a-7b(b), prohibits individuals or entities from knowingly and willfully offering, paying, soliciting or receiving remuneration to induce referrals of items or services covered by Medicare, Medicaid or any other federally funded program.

Under the anti-kickback statute, suppliers are prohibited from providing any sort of compensation to you as a result of referrals of products or services that are billed to Medicare or Medicaid. As a best practice, you should consider the Anti-kickback statute when you engage in any business with suppliers. Labs, nutraceutical companies and device vendors are included in the Anti-kickback statute.

Does the law have any exceptions?

Yes. While the anti-kickback law is broad, the Office of Inspector General (OIG) has issued “safe harbor” guidelines, identifying specific types of activities not subject to enforcement actions under the anti-kickback statute as long as various conditions are satisfied (56 Fed. Reg. 35951 [1991], 42 C.F.R. § 1001).

The safe harbor guidelines cover such activities as investments in publicly traded companies, joint ventures, rentals of space or equipment. You should always consult with legal counsel if you feel a supplier is making an offer to you that could potentially violate the anti-kickback statute. If you would like to be connected to a member of ACAM’s legal team, please email legal@acam.org

Why does the anti-kickback statute matter to my practice?

Thus far, HHS and the OIG have demonstrated that government investment in fraud investigation and prevention programs are prudent investments as the government has recovered four dollars for every one dollar spent on antifraud programs. OIG regards the anti-kickback statute as a key weapon

in its anti-fraud and anti-abuse tool kit. Additionally, ACAM members practicing in groups or clinics face potential kickback violations in financial arrangements with other physicians, suppliers and managed care organizations.

What penalties does the anti-kickback law impose?

A violation of the anti-kickback law is a felony offense that carries criminal fines of up to \$25,000 per violation, imprisonment for up to five years and exclusion from government health care programs.

What is the Stark Law?

Physician Self-Referral Law [42 U.S.C. § 1395nn] or Stark Law, prohibits physicians from referring patients to receive “designated health services” payable by Medicare or Medicaid from entities with which the physician or an immediate family member has a financial relationship, unless a safe-harbor exception applies. Financial relationships include both ownership/investment interests and most compensation arrangements. For example, if you invest in a clinical services lab, the Stark law requires the resulting financial relationship to fit within an exception or you may not refer patients to the lab and the entity may not bill Medicare/Medicaid for the referred clinical services.

Can I offer free services to colleagues and friends?

Many physicians provide “professional courtesy” discounts to other physicians as family friends, staff etc. These discounts, which may involve the provision of services at no charge or the waiver of a patient’s copayment or deductible, may raise concerns under the federal anti-kickback statute. However, there have been no reported cases in which a physician has been prosecuted for professional courtesy discounts, and it is unlikely that the government would target such discounts except in extreme cases of abuse.

Is it possible to violate both laws at once?

Yes. Stark and the federal anti-kickback statute are independent laws. A physician who wishes to refer to or receive a referral from an entity with which that physician has a financial relationship must satisfy the requirements outlined in both laws. Compliance with one does not necessarily ensure compliance with the other. Since ACAM members typically refer patients to other members or other health care providers, they should be concerned about making referrals that do not violate anti-kickback laws if Medicare or Medicaid is to be billed. As best practice, implementing a “no kickback” policy in your office is strongly encouraged.

Could an arrangement violate a state law also?

Yes. Many states have anti-kickback statutes, including California, Florida, Georgia, Massachusetts, New Jersey, North Carolina and Texas. As some state laws are more comprehensive than others, ACAM members should consult legal counsel. If you wish to be connected with a member of our legal team, contact legal@acam.org.

What about fee-splitting?

Sharing a fee with another physician or health care provider for obtaining a patient referral is one type of remuneration for referrals. States such as Illinois, New York and North Carolina make fee-splitting a separate offense from the kickback acts. Violations of fee-splitting laws may subject a physician to disciplinary action by a state’s licensing board, in addition to violating Federal anti-kickback statutes.

How can I protect myself against anti-kickback liability?

ACAM members should review all leases and contracts they currently have or are negotiating

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with other physicians and with suppliers. Such documents could serve as damaging evidence of intent to engage in illegal conduct. Adopting an anti-kickback policy in your practice is also recommended.

If you wish to report suspected kickback acts to federal law enforcement authorities, you may call the OIG's national toll-free hotline at (800) 447-8477

Accurate Coding and Billing

If you bill insurance, you should be aware that companies trust you, as a physician, to provide necessary, cost-effective and quality care. You exert significant influence over what services your patients receive, you control the documentation describing what services they actually received and your documentation serves as the basis for bills sent to insurers for services you provided. Insurance carrier's payment of claims is generally based solely on your representations in the claims documents.

Insurance companies (including Medicare and Medicaid) have extensive capabilities to audit claims and investigate providers when they have a reason to suspect fraud. Because payers generally trust physicians, they have afforded severe penalties to implement when that trust is broken. Suspicion of fraud and abuse may be raised by irregular billing patterns or reports from others, including your staff, competitors, and patients. Random audits of your billing may also trigger suspicion.

When you submit a claim for services performed for a Medicare or Medicaid beneficiary, you are filing a bill with the Federal Government and certifying that you have earned the payment requested and complied with the billing requirements. If you knew or should have known that the submitted claim was false, then the attempt to collect unearned money constitutes a violation. A common type of false claim is "upcoding" which refers to using billing codes that reflect a more severe illness than actually existed or a more expensive treatment than was provided. Additional examples of improper claims include:

- billing for services that you did not actually render;
- billing for services that were not medically necessary;
- billing for services that were performed by an improperly supervised or unqualified employee;
- billing for services that were performed by an employee who has been excluded from participation in the Federal health care programs;
- billing for services of such low quality that they are virtually worthless; and
- billing separately for services already included in a global fee, like billing for an evaluation and ...management service the day after surgery.

Upcoding

Insurance pays for many physician services using Evaluation and Management (commonly referred to as "E&M") codes. New patient visits generally require more time than follow-up visits for established patients, and therefore E&M codes for new patients command higher reimbursement rates than E&M codes for established patients. An example of upcoding is an instance when you provide a follow-up office visit or follow-up inpatient consultation, but bill using a higher level E&M code as if you had provided a comprehensive new patient office visit or an initial inpatient consultation.

Another example of upcoding related to E&M codes is misuse of Modifier 25. Modifier 25 allows additional payment for a separate E&M service rendered on the same day as a procedure. Upcoding occurs if you use Modifier 25 to claim payment for an E&M service when the patient care rendered was not significant, was not separately identifiable and was not above and beyond the care usually associated with the procedure.

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Documentation

Physicians should maintain accurate and complete medical records and documentation of treatment. Claims submitted to insurance should be accompanied by documentation. The Medicare and Medicaid programs may review beneficiaries' medical records. Good documentation practice helps ensure that your patients receive appropriate care from you and other providers who may rely on your records for patients' past medical histories. It also helps you address challenges raised against the integrity of your bills. You may have heard the saying regarding malpractice litigation: "If you didn't document it, it's the same as if you didn't do it." The same can be said for insurance billing.

As a practicing physician, you may have opportunities to work as a consultant or promotional speaker for the drug or device industry. For every financial relationship offered to you, evaluate the link between the services you can provide and the compensation you will receive. If the compensation seems excessive, you should consult with legal counsel.

The Patient Protection and Affordable Care Act of 2010 requires drug, device, and biologic companies to publicly report nearly all gifts or payments they make to physicians beginning in 2013; the information will be made available to the public.

By familiarizing yourself with the laws and regulations of the US healthcare system, you are reducing your liability that you will engage in fraudulent activity, whether it be accidental or due to lack of understanding, it is important to understand that fighting fraud is now a cabinet-level priority.

We always recommend you have a strong understanding of the legal environment of healthcare. ACAM's legal team is available for initial consultations. To be connected with a member of our legal team, Email legal@acam.org.

About ACAM:

The American College for Advancement in Medicine (ACAM) is a not-for-profit Organization dedicated to educating physicians and other health care professionals on the safe and effective application of integrative medicine. ACAM's healthcare model focuses on prevention of illness and a strive for total wellness. ACAM is the voice of integrative medicine; our goals are to improve physician skills, knowledge and diagnostic procedures as they relate to integrative medicine; to support integrative medicine research; and to provide education on current standard of care as well as additional approaches to patient care.

ACAM enables members of the public to connect with physicians who take an integrative approach to patient care and empowers individuals with information about integrative medicine treatment options.

Celebrating more than a quarter century of service, ACAM represents more than 1,500 physicians in 30 countries. ACAM is the largest and oldest organization of its kind in the world dedicated exclusively to serving the needs of the integrative medicine industry.



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