

Anti-Kickback Statute

Health care is not an ordinary business. Actions that are legal in most industries could be considered criminal in the health care industry. For example, if a hospital executive gives a referring physician a gift with the intent to encourage the physician to refer to the hospital, the health care executive and physician could be subject to criminal prosecution under the Anti-Kickback Statute.

Under statute 42 U.S.C. § 1320a-7b, it is illegal to knowingly and willfully solicit or receive anything of value directly or indirectly, overtly or covertly, in cash or in kind, in return for referring an individual or purchasing, leasing, ordering or arranging for any good or service for which payment may be made in whole or in part under a federal health care program. The penalties are severe. If a person or entity is found guilty of violating the statute, a fine of not more than \$25,000 or imprisonment for not more than five years can be assessed.

In addition to the Federal Anti-Kickback Statute, many states have adopted state anti-kickback statutes. Many of these statutes have the same elements and penalties as the Federal Anti-Kickback Statute.

Baker & Daniels' professionals have substantial experience in representing clients and litigating issues involving the Anti-Kickback Statute. We have developed financial arrangements between referral sources that either meet applicable safe harbors or are structured to decrease exposure under the Anti-Kickback Statute. We also have represented clients on investigations and litigation involving Anti-Kickback allegations.

Baker & Daniels' professionals also frequently speak on the topic of the Anti-Kickback Statute. For a PowerPoint Presentation on the Anti-Kickback Statute, [click here](#) (1.9mb).

To view the text of the Anti-Kickback Statute, [click here](#) (requires Adobe Acrobat Reader).