Elements of the Federal Anti-Kickback Statute

42 U.S.C. s. 1320a-7b(b)

The following chart summarizes the key elements of the federal anti-kickback statute ("AKS") and the definitions or interpretations identified in federal law and case law.* Note that AKS establishes a number of safe harbors that if an arrangement meets one it would be immune from prosecution.

Element	Definition or Interpretation
Knowingly and willfully	Courts have held that only "one purpose" of the arrangement needs to be to improperly induce referrals (*U.S. v. Greber*, 760 F.2d 68 (3rd Cir. 1985))
	Person/entity does not need to intend to violate the federal anti-kickback statute itself, only needs to intend to induce referrals with a kickback (42 U.S.C. § 1320a-7b(h), added by the Patient Protection and Affordable Care Act)
Offers, solicits, pays or receives	AKS applies to both parties of an improper kickback transaction
	The law covers the actual payment and receipt of remuneration
	Additionally, the law extends to the offering or soliciting of remuneration
Remuneration	Anything of value, not limited to cash
	Can be direct or indirect
In return for referring an individual to a person/ entity for items or services payable by federal health care programs	Part or all of the services are paid by a federal health care program such as Medicare or Medicaid
Penalties	Prison time up to 5 years per violation
	Fines up to $25,000 per violation
	Per se violation of False Claims Act, which carries additional fines
	Civil monetary penalties up to $50,000 per violation
	Federal health care program exclusion

* Note states may have their own anti-fraud laws that also must be considered.

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