COMPARISON OF THE ANTI-KICKBACK STATUTE AND STARK LAW*

	THE ANTI-KICKBACK STATUTE (42 USC § 1320a-7b(b))	**THE STARK LAW** (42 USC § 1395nn)
Prohibition	Prohibits offering, paying, soliciting or receiving anything of value to induce or reward referrals or generate Federal health care program business	• Prohibits a physician from referring Medicare patients for designated health services to an entity with which the physician (or immediate family member) has a financial relationship, unless an exception applies • Prohibits the designated health services entity from submitting claims to Medicare for those services resulting from a prohibited referral
Referrals	Referrals from anyone	Referrals from a physician
Items/ Services	Any items or services	Designated health services
Intent	Intent must be proven (knowing and willful)	• No intent standard for overpayment (strict liability) • Intent required for civil monetary penalties for *knowing* violations
Penalties	Criminal: • Fines up to $25,000 per violation • Up to a 5 year prison term per violation Civil/Administrative: • False Claims Act liability • Civil monetary penalties and program exclusion • Potential $50,000 CMP per violation • Civil assessment of up to three times amount of kickback	Civil: • Overpayment/refund obligation • False Claims Act liability • Civil monetary penalties and program exclusion for *knowing* violations • Potential $15,000 CMP for each service • Civil assessment of up to three times the amount claimed
Exceptions	*Voluntary* safe harbors	*Mandatory* exceptions
Federal Health Care Programs	All	Medicare/Medicaid

*This chart is for illustrative purposes only and is not a substitute for consulting the statutes and their regulations.