

STARK LAW

Open Forum
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<p>Robert A. Wade Partner Barnes & Thornburg LLP 700 1st Source Bank Center 100 North Michigan South Bend, Indiana 46601 Telephone: 574.237.1107 Email: bob.wade@btlaw.com</p>	<p>Lester J. Perling, P.A. Partner Broad and Cassel LLP 100 S.E. 3rd Avenue Fort Lauderdale, FL 33394 Telephone: 954.764.7060 Email: lperling@broadandcassel.com</p>	<p>Kevin McAnaney, Esq. Law Offices of Kevin G. McAnaney 250 Riverside Dr., Apt 71 New York, NY 10025 Telephone: 240-620-5449 Email: kevin@mcaneylaw.com</p>
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Learning Objectives

- Recognize when the Stark Act is implicated
- Comply with the components for exceptions for a physician practice

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Stark Act § 42 U.S.C. 1395nn

- The Stark II Act prohibits a physician from making a **Referral**
 - to an **Entity**
 - for the furnishing of a **Designated Health Service**
 - for which payment may be made under Medicare
 - if the physician (or an immediate family member)
 - has a **Financial Relationship** with the entity

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Stark II Act

Proof of Intent is *Not* Required

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Penalty

Denial of payment or refund; civil money penalties (up to \$100,000) and exclusions from federal and state programs for improper claims or schemes

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Examples

Simple Example:

Dr. X Practice

Referral

Lab Owned by Dr. X

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Examples

Simple Example:

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    graph LR
      A[Dr. X Practice] -.- Referral -.-> B[Lab Owned by Dr. X]
    
```

How Stark II has been applied:

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    graph LR
      A[Dr. X Practice] <-- Medical Directorship Payments --> B[Hospital V]
      A <-- Medical Suite Rent Payments --> B
      A <-- Referral --> B
    
```

In both examples, the referrals violate Stark unless an exception applies

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What is a Referral?

A referral includes:

- Request for an item or a service by a physician
- Request by physician for consultation with another physician, and any tests or procedures the other physician orders, performs or supervises
- Request for or of plan of care that includes provision of designated health services

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What is a Referral?

- A *referral* is not a DHS personally performed by a physician
- A referral does not include a request by:
 - Pathologists for clinical diagnostic laboratory tests and pathological examination services
 - Radiologists for diagnostic radiology services
 - Radiation Oncologists for Radiation Therapy
- If the request for such additional services results from a consultation initiated by another physician

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Designated Health Services

- **Designated Health Services** include:
 - Clinical laboratory services;
 - Physical therapy and occupational therapy services;
 - Radiology or other diagnostic services (including MRI, CAT scans);
 - Radiation therapy services;
 - Durable medical equipment;
 - Parental and enteral nutrients, equipment and supplies;
 - Prosthetics, orthotics and prosthetic devices;
 - Home health services;
 - Outpatient prescription drugs; and
 - Inpatient and outpatient hospital services (encompassing almost every type of medical procedure).

Note: Ambulatory Surgery Centers services are *not* DHS!

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What is a DHS Entity?

- Entity that bills for DHS service
- Entity that performs DHS service
 - “Perform” is given common meaning

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What Is a Financial Relationship?

A **Financial Relationship** includes:

- Ownership interests
 - Through equity, debt , compensation or other means; and
- Compensation arrangements
 - Includes virtually any form of direct or indirect **remuneration** (i.e., personal service contracts, medical directorships, lease agreements, consulting arrangements, medical service provider arrangements)

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What Is a Financial Relationship?

Remuneration is defined (42 CFR § 411.351) as “any payment *or other benefit* made directly or indirectly, overtly or covertly, in cash or *in kind* ...”



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What Is a Financial Relationship?

Benefits:

- Payments for services rendered
- Use of space
- Use of personnel
- CME
- Dinners
- Trinkets
- Parking



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Nature of Exceptions

If *Financial Relationship* exists with an *Entity*, and patients are being *Referred* for *Designated Health Service*, then activity must either comply with an exception or the activity is illegal



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