## COMPARISON OF THE ANTI-KICKBACK STATUTE AND STARK LAW*

<table>
<thead>
<tr>
<th>THE ANTI-KICKBACK STATUTE</th>
<th>THE STARK LAW</th>
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<tbody>
<tr>
<td>(42 USC § 1320a-7b(b))</td>
<td>(42 USC § 1395nn)</td>
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**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.*