



## The Stark Law and Anti-Kickback Statute final rules: Top 10 takeaways

February 23, 2021

On November 20, 2020, the Centers for Medicare and Medicaid Services (CMS) and Department of Health and Human Services Office of Inspector General (OIG) issued long-awaited final rules updating and revising the [Stark Law](#) and the [Anti-Kickback Statute](#), respectively. To highlight some of the most noteworthy aspects of these final rules, we have compiled our top 10 takeaways:

1. New protections exist for value-based arrangements under the final rules, with fewer requirements imposed when more risk is assumed.
2. The devil is in the details of the new value-based rules. Pay close attention to the definitions of the defined terms related to value-based arrangements under the Stark Law and Anti-Kickback Statute, which are similar in many respects, but do contain differences.
3. Changes to the indirect compensation arrangement definition mean fewer relationships with physicians will trigger the Stark Law.
4. The new objective definition of what it means to “take into account the volume or value of referrals” will make it easier to apply the Stark Law.
5. The new exception for Limited Remuneration to Physician combined with the special rule allowing 90 days’ grace for getting an arrangement reduced to writing and the new 90 days’ grace for reconciling payments after the end of an arrangement will result in fewer “technical” and minor, non-abusive Stark violations.

6. Now is the time to determine whether the changes to the rules affecting compensation models for group practices affect your organization.
7. CMS made clear that an arrangement might still be commercially reasonable under the Stark Law even if it is not profitable for one or both parties.
8. Donations of electronic health records (EHR) and cybersecurity technology and services can continue.
9. The OIG relaxed the Anti-Kickback safe harbor rules regarding the provision of free transportation to patients.
10. Watch the effective dates to ensure your organization is applying the correct version of the rules.

The OIG's Anti-Kickback Statute final rule and most of the Stark Law final rule became effective January 19, 2021. However, the Stark Law changes to the rules governing how group practices compensate their physicians (including the provision of the group practice definition related to value-based arrangements) are not effective until January 1, 2022.

# Authors

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