



## 2018 Budget Act Eases Stark Law Requirements, Increases AKS and CMP Penalties

The Bipartisan Budget Act of 2018, signed into law on February 9, 2018, imposes changes on health care fraud and abuse laws that appear to reflect Congress's desire to reduce the draconian threat of strict liability under the Stark Law (42 U.S.C. §1395nn), while increasing penalties applicable to intent-based violations of the Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)) (AKS) and the Civil Monetary Penalties Law (42 U.S.C. §1320a-7a) (CMP Law).

Under the Stark Law's strict liability provisions, providers of designated health services are prohibited from entering into compensation and other financial relationships with referring physicians unless those relationships comply with statutory or regulatory exceptions. Often arrangements are structured between physicians and providers complying with the substantive criteria of an applicable exception, but failing on technical grounds, such as being written and signed by the parties. These violations can result in significant overpayments and potentially trigger the process of self-reporting the violation to the government.

In the Bipartisan Budget Act of 2018, Congress eases some of these burdens. Codifying guidance recently issued by the Centers for Medicare and Medicaid Services, the law provides that the "in writing" requirement of certain arrangements will be satisfied by any means established by the Secretary of the Department of Health and Human Services, including "contemporaneous documents evidencing the course of conduct between the parties involved." Similarly, a signature requirement will be satisfied by obtaining the required signatures within 90 consecutive calendar days after the arrangement became noncompliant, so long as other applicable exception criteria are satisfied.

Additionally, Congress offers relief for expired leases and personal services arrangements, providing that if otherwise compliant with the applicable exception, expired arrangements will remain protected so long as the holdover arrangement is on the same terms and conditions as the preceding arrangement.

However, Congress increased penalties for knowing or intentional violations. Congress quadrupled the potential fines under the AKS from \$25,000 to \$100,000 per violation and doubled potential prison time from five to ten years. The CMP penalty amounts are doubled (although, due to increases under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the new amounts reflect only an approximately 33% increase).

While good news for compliance-minded health care providers who will benefit from new and reasonable methods to correct technical Stark non-compliance, intentional AKS and CMP Law violators will suffer from increased penalties.

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