



**Effective: January 1, 2006**

United States Code Annotated [Currentness](#)

Title 42. The Public Health and Welfare

Chapter 7. Social Security ([Refs & Annos](#))

▣ [Subchapter XI](#). General Provisions, Peer Review, and Administrative Simplification ([Refs & Annos](#))

▣ [Part A](#). General Provisions ([Refs & Annos](#))

→ **§ 1320a-7b. Criminal penalties for acts involving Federal health care programs**

(a) Making or causing to be made false statements or representations

Whoever--

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a Federal health care program (as defined in subsection (f) of this section),

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized,

(4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person,

(5) presents or causes to be presented a claim for a physician's service for which payment may be made under a Federal health care program and knows that the individual who furnished the service was not licensed as a physician, or

(6) for a fee knowingly and willfully counsels or assists an individual to dispose of assets (including by any transfer in trust) in order for the individual to become eligible for medical assistance under a State plan under subchapter XIX of this chapter, if disposing of the assets results in the imposition of a period of ineligibility for such assistance under [section 1396p\(c\)](#) of this title,

shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing (by that person) of items or services for which payment is or may be made under the program, be guilty of a felony and upon conviction thereof fined not more than \$25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure, conversion, or provision of counsel or assistance by any other person, be guilty of a misdemeanor and upon con-

viction thereof fined not more than \$10,000 or imprisoned for not more than one year, or both. In addition, in any case where an individual who is otherwise eligible for assistance under a Federal health care program is convicted of an offense under the preceding provisions of this subsection, the administrator of such program may at its option (notwithstanding any other provision of such program) limit, restrict, or suspend the eligibility of that individual for such period (not exceeding one year) as it deems appropriate; but the imposition of a limitation, restriction, or suspension with respect to the eligibility of any individual under this sentence shall not affect the eligibility of any other person for assistance under the plan, regardless of the relationship between that individual and such other person.

**(b) Illegal remunerations**

**(1)** whoever knowingly and willfully solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind--

**(A)** in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or

**(B)** in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.

**(2)** whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person--

**(A)** to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or

**(B)** to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.

**(3)** Paragraphs (1) and (2) shall not apply to--

**(A)** a discount or other reduction in price obtained by a provider of services or other entity under a Federal health care program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under a Federal health care program;

**(B)** any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services;

**(C)** any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed under a Federal health care program if--

(i) the person has a written contract, with each such individual or entity, which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each such individual or entity under the contract, and

(ii) in the case of an entity that is a provider of services (as defined in [section 1395x\(u\)](#) of this title or in regulations under [section 1395w-103\(e\)\(6\)](#) of this title), the person discloses (in such form and manner as the Secretary requires) to the entity and, upon request, to the Secretary the amount received from each such vendor with respect to purchases made by or on behalf of the entity;

(D) a waiver of any coinsurance under part B of subchapter XVIII of this chapter by a Federally qualified health care center with respect to an individual who qualifies for subsidized services under a provision of the Public Health Service Act [[42 U.S.C.A. § 201 et seq.](#)];

(E) any payment practice specified by the Secretary in regulations promulgated pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987;

(F) any remuneration between an organization and an individual or entity providing items or services, or a combination thereof, pursuant to a written agreement between the organization and the individual or entity if the organization is an eligible organization under [section 1395mm](#) of this title or if the written agreement, through a risk-sharing arrangement, places the individual or entity at substantial financial risk for the cost or utilization of the items or services, or a combination thereof, which the individual or entity is obligated to provide;

(G) the waiver or reduction by pharmacies (including pharmacies of the Indian Health Service, Indian tribes, tribal organizations, and urban Indian organizations) of any cost-sharing imposed under part D of subchapter XVIII of this chapter, if the conditions described in [clauses \(i\) through \(iii\) of section 1320a-7a\(i\)\(6\)\(A\)](#) of this title are met with respect to the waiver or reduction (except that, in the case of such a waiver or reduction on behalf of a subsidy eligible individual (as defined in [section 1395w-114\(a\)\(3\)](#) of this title), [section 1320a-7a\(i\)\(6\)\(A\)](#) of this title shall be applied without regard to clauses (ii) and (iii) of that section); and

(H) [FN1] any remuneration between a health center entity described under [clause \(i\) or \(ii\) of section 1396d\(l\)\(2\)\(B\)](#) of this title and any individual or entity providing goods, items, services, donations, loans, or a combination thereof, to such health center entity pursuant to a contract, lease, grant, loan, or other agreement, if such agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center entity.

(H) [FN1] any remuneration between a federally qualified health center (or an entity controlled by such a health center) and an MA organization pursuant to a written agreement described in [section 1395w-23\(a\)\(4\)](#) of this title.

(c) False statements or representations with respect to condition or operation of institutions

Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution, facility, or entity in order that such institution, facility, or entity may qualify (either upon initial certification or upon recertification) as a hospital, critical access hospital, skilled nursing facility, nursing facility, intermediate care facility for the mentally retarded, home health agency, or other entity (including an eligible organization

under [section 1395mm\(b\)](#) of this title) for which certification is required under subchapter XVIII of this chapter or a State health care program (as defined in [section 1320a-7\(h\)](#) of this title), or with respect to information required to be provided under [section 1320a-3a](#) of this title, shall be guilty of a felony and upon conviction thereof shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.

(d) Illegal patient admittance and retention practices

Whoever knowingly and willfully--

(1) charges, for any service provided to a patient under a State plan approved under subchapter XIX of this chapter, money or other consideration at a rate in excess of the rates established by the State (or, in the case of services provided to an individual enrolled with a medicaid managed care organization under subchapter XIX of this chapter under a contract under [section 1396b\(m\)](#) of this title or under a contractual, referral, or other arrangement under such contract, at a rate in excess of the rate permitted under such contract), or

(2) charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under a State plan approved under subchapter XIX of this chapter, any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient)--

(A) as a precondition of admitting a patient to a hospital, nursing facility, or intermediate care facility for the mentally retarded, or

(B) as a requirement for the patient's continued stay in such a facility,

when the cost of the services provided therein to the patient is paid for (in whole or in part) under the State plan,

shall be guilty of a felony and upon conviction thereof shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.

(e) Violation of assignment terms

Whoever accepts assignments described in [section 1395u\(b\)\(3\)\(B\)\(ii\)](#) of this title or agrees to be a participating physician or supplier under [section 1395u\(h\)\(1\)](#) of this title and knowingly, willfully, and repeatedly violates the term of such assignments or agreement, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$2,000 or imprisoned for not more than six months, or both.

(f) "Federal health care program" defined

For purposes of this section, the term "Federal health care program" means--

(1) any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the health insurance program under chapter 89 of Title 5); or

(2) any State health care program, as defined in [section 1320a-7\(h\)](#) of this title.

CREDIT(S)

(Aug. 14, 1935, c. 531, Title XI, § 1128B, formerly Title XVIII, § 1877(d), and Title XIX, § 1909, as added and amended Oct. 30, 1972, Pub.L. 92-603, Title II, §§ 242(c), 278(b)(9), 86 Stat. 1419, 1454; Oct. 25, 1977, [Pub.L. 95-142](#), § 4(a), (b), 91 Stat. 1179, 1181; Dec. 5, 1980, [Pub.L. 96-499, Title IX, § 917](#), 94 Stat. 2625; July 18, 1984, [Pub.L. 98-369](#), Div. B, Title III, § 2306(f)(2), 98 Stat. 1073; renumbered Title XI, § 1128B and amended Aug. 18, 1987, [Pub.L. 100-93](#), §§ 4(a) to (d), 14(b), 101 Stat. 688, 689, 697; Dec. 22, 1987, [Pub.L. 100-203, Title IV, §§ 4039\(a\)](#), 4211(h)(7), 101 Stat. 1330-81, 1330-206; July 1, 1988, [Pub.L. 100-360, Title IV, § 411\(a\)\(3\)\(A\), \(B\)\(i\)](#), 102 Stat. 768; Dec. 19, 1989, [Pub.L. 101-239, Title VI, § 6003\(g\)\(3\)\(D\)\(ii\)](#), 103 Stat. 2153; Nov. 5, 1990, [Pub.L. 101-508, Title IV, §§ 4161\(a\)\(4\)](#), 4164(b)(2), 104 Stat. 1388-94, 1388-102; Oct. 31, 1994, [Pub.L. 103-432, Title I, § 133\(a\)\(2\)](#), 108 Stat. 4421; Aug. 21, 1996, [Pub.L. 104-191, Title II, §§ 204\(a\)](#), 216(a), 217, 110 Stat. 1999, 2007, 2008; Aug. 5, 1997, [Pub.L. 105-33, Title IV, §§ 4201\(c\)\(1\)](#), 4704(b), 4734, 111 Stat. 373, 498, 522; Dec. 8, 2003, [Pub.L. 108-173, Title I, § 101\(e\)\(2\), \(8\)\(A\)](#), Title II, § 237(d), Title IV, § 431(a), 117 Stat. 2150, 2152, 2213, 2287.)

[FN1] So in original. Two subsecs. (b)(3)(H) have been enacted.

## HISTORICAL AND STATUTORY NOTES

### Revision Notes and Legislative Reports

1972 Acts. House Report No. 92-231 and Conference Report No. 92-1605, see 1972 U.S. Code Cong. and Adm. News, p. 4989.

1977 Acts. [House Report No. 95-393](#)(Part II) and House Conference Report No. 96-673, see 1977 U.S. Code Cong. and Adm. News, p. 3039.

1980 Acts. [House Report No. 96-1167](#) and [House Conference Report No. 96-1479](#), see 1980 U.S. Code Cong. and Adm. News, p. 5526.

1987 Acts. [Senate Report No. 100-109](#), see 1987 U.S. Code Cong. and Adm. News, p. 682.

[House Report No. 100-391](#)(Parts I and II) and [House Conference Report No. 100-495](#), see 1987 U.S. Code Cong. and Adm. News, p. 2313-1.

1989 Acts. [House Report No. 101-247](#), [House Conference Report No. 101-386](#), and Statement by President, see 1989 U.S. Code Cong. and Adm. News, p. 1906.

1990 Acts. [House Report No. 101-881](#) and [House Conference Report No. 101-964](#), see 1990 U.S. Code Cong. and Adm. News, p. 2017.

1996 Acts. [House Report No. 104-496](#) and [House Conference Report No. 104-736](#), see 1996 U.S. Code Cong. and Adm. News, p. 1865.

1997 Acts. [House Report No. 105-149](#), [House Conference Report No. 105-217](#), and Signing Statement by President, see 1997 U.S. Code Cong. and Adm. News, p. 176.

2003 Acts. [House Conference Report No. 108-391](#) and Statement by President, see 2003 U.S. Code Cong. and Adm. News, p. 1808.

### References in Text

Part B of subchapter XVIII of this chapter, referred to in subsec. (b)(3)(D), is classified to [42 U.S.C.A. § 1395j et seq.](#)

The Public Health Service Act, referred to in subsec. (b)(3)(D), is Act July 1, 1944, c. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (section 201 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

Section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987, referred to in subsec. (b)(3)(E), is section 14(a) of Pub.L. 100-93, which is set out as a note under this section.

Part D of subchapter XVIII of this chapter, referred to in subsec. (b)(3)(G), originally read “part D of title XVIII”, meaning Part D of Title XVIII of the Social Security Act, Act Aug. 14, 1935, c. 531, Title XVIII, § 1860D-1 et seq., as added, Pub.L. 108-173, Title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2071, which is classified to part D of subchapter XVIII of this chapter, [42 U.S.C.A. § 1395w-101 et seq.](#)

#### Codifications

Prior to redesignation by Pub.L. 100-93, subsections (a) to (d) of this section were subsections (a) to (d) of section 1909 of Act Aug. 14, 1935, which was classified to section 1396h of this title, and subsection (e) of this section was subsection (d) of section 1877 of Act Aug. 14, 1935, which was classified to section 1395nn of this title.

Amendment by section 431(a) of Pub.L. 108-173, which directed amendment of “section 1128B(b)(3) ([42 U.S.C.A. 1320a-7\(b\)\(3\)](#))”, was executed to this section (42 U.S.C.A. § 1320a-7b), which is section 1128B of the Social Security Act, as the probable intent of Congress.

#### Amendments

2003 Amendments. Subsec. (b)(3)(C). Pub.L. 108-173, § 101(e)(8)(A), inserted “or in regulations under section 1395w-103(e)(6) of this title” after “section 1395x(u) of this title”.

Subsec. (b)(3)(E). Pub.L. 108-173, § 101(e)(2)(A), struck out “and” at the end of the subparagraph.

Subsec. (b)(3)(F). Pub.L. 108-173, § 101(e)(2)(B), struck out the period and inserted “; and”.

Pub.L. 108-173, §§ 237(d)(1) and 431(a)(1), made identical amendments by striking out “and” after the semicolon at the end of subsec. (d)(3)(F).

Subsec. (b)(3)(G). Pub.L. 108-173, § 101(e)(2)(C), inserted subpar. G.

Pub.L. 108-173, §§ 237(d)(2) and 431(a)(2), made identical amendments by striking out the period at the end of subsec. (b)(3)(G) and inserting “; and”.

Subsec. (b)(3)(H). Pub.L. 108-173, § 431(a)(3), added subpar. (H), set out first.

Pub.L. 108-173, § 237(d)(3), added subsec. (b)(3)(H), set out second, effective Jan. 1, 2006.

1997 Amendments. Subsec. (a). Pub.L. 105-33, § 4734, substituted “failure, conversion, or provision of counsel or assistance by any other person” for “failure, or conversion by any other person” in clause (ii) of the matter following paragraph (6), and rewrote paragraph (6), which previously read: “knowingly and willfully disposes of

assets (including by any transfer in trust) in order for an individual to become eligible for medical assistance under a State plan under subchapter XIX of this chapter, if disposing of the assets results in the imposition of a period of ineligibility for such assistance under section 1396p(c) of this title.”

Subsec. (c). Pub.L. 105-33, § 4201(c)(1), directed the substitution of “critical access” for “rural primary care” wherever appearing in subchapters XI and XVIII of chapter 7 of this title.

Subsec. (d)(1). Pub.L. 105-33, § 4704(b), inserted the parenthetical before the comma at the end.

1996 Amendments. Catchline. Pub.L. 104-191, § 204(a)(1), substituted “Federal” for “Medicare or State”.

Subsec. (a). Pub.L. 104-191, § 204(a)(4), in the closing paragraph, substituted reference to Federal health care program for reference to State plan approved under subchapter XIX of this chapter, and provisions relating to administrator having option, notwithstanding provisions of program, for provisions relating to State having option, notwithstanding provisions of subchapter or plan.

Subsec. (a)(1). Pub.L. 104-191, § 204(a)(2), substituted reference to Federal health care program as defined in subsec. (f) of this section, for reference to program under subchapter XVIII of this chapter or State health care program.

Subsec. (a)(5). Pub.L. 104-191, § 204(a)(3), substituted “a Federal” for “a program under subchapter XVIII of this chapter or a State”.

Subsec. (a)(6). Pub.L. 104-191, § 217, added par. (6).

Subsec. (b). Pub.L. 104-191, § 204(a)(5), substituted “a Federal” for “subchapter XVIII of this chapter or a State” wherever appearing in pars. (1)(A), (B), (2)(A), (B), and (3)(A), (C).

Subsec. (b)(3)(F). Pub.L. 104-191, § 216(a), added subpar. (F).

Subsec. (c). Pub.L. 104-191, § 204(a)(6), inserted reference to definition by section 1320a-7(h) of this title.

Subsec. (f). Pub.L. 104-191, § 204(a)(7), added subsec. (f).

1994 Amendments. Subsec. (b)(3)(B). Pub.L. 103-432, § 133(a)(2), directed the substitution of “1395m(j)(5)” for “1395m(j)(4)” in subsec. (b)(3)(B), as purportedly amended by section 134(a) of Pub.L. 103-432. Such amendment was incapable of execution since section 134(a) of Pub.L. 103-432 did not amend subsec. (b)(3)(B) and the existing text of subsec. (b)(3)(B) contained no reference to section 1395m(j)(4) of this title.

1990 Amendments. Subsec. (b)(3)(D), (E). Pub.L. 101-508, § 4161(a)(4), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (c). Pub.L. 101-508, § 4164(b)(2), added provision making false statements with respect to information required to be provided under section 1320a-3a of this title a felony.

1989 Amendments. Subsec. (c). Pub.L. 101-239 inserted “rural primary care hospital” following “hospital”.

1988 Amendments. Subsec. (c). Pub.L. 100-360 made technical correction to directory language of Pub.L. 100-203, § 4039(a), see 1987 Amendment note under this section.

1987 Amendments. Heading. Pub.L. 100-93, § 4(a)(1), substituted “Criminal penalties for acts involving Medicare or State health care programs” for “Offenses and penalties”.

Subsec. (a). Pub.L. 100-93, § 4(a)(3), (4), in provision following par. (4) substituted “made under the program” for “made under this subchapter”, “approved under subchapter XIX of this chapter” for “approved under this subchapter”, and “provision of that subchapter” for “provision of this subchapter”.

Subsec. (a)(1). Pub.L. 100-93, § 4(a)(2), substituted “a program under subchapter XVIII of this chapter or a State health care program (as defined in section 1320a-7(h) of this title)” for “a State plan approved under this subchapter”.

Subsec. (a)(5). Pub.L. 100-93, § 4(b), added par. (5).

Subsec. (b)(1)(A), (B), (2)(A), (B), (3)(A). Pub.L. 100-93, § 4(a)(5), substituted “subchapter XVIII of this chapter or a State health care program” for “this subchapter” wherever appearing.

Subsec. (b)(3)(C). Pub.L. 100-93, § 4(a)(6), added subpar. (C).

Subsec. (b)(3)(D). Pub.L. 100-93, § 14(b), added subpar. (D).

Subsec. (c). Pub.L. 100-203, § 4039(a), as amended by Pub.L. 100-360, substituted “institution, facility, or entity” for “institution or facility” wherever appearing and inserted “(including an eligible organization under section 1395mm(b) of this title)” after “other entity”.

Pub.L. 100-93, § 4(a)(7), substituted “home health agency, or other entity for which certification is required under subchapter XVIII of this chapter or a State health care program” for “or home health agency (as those terms are employed in this subchapter)”.

Subsec. (d)(1), (2). Pub.L. 100-93, § 4(a)(8), substituted “subchapter XIX of this chapter” for “this subchapter”.

Subsec. (d)(2)(A). Pub.L. 100-203, § 4211(h)(7)(B), substituted “nursing facility, or intermediate care facility for the mentally retarded” for “skilled nursing facility, or intermediate care facility”.

Subsec. (e). Pub.L. 100-93, § 4(c), redesignated subsec. (d) of section 1395nn of this title as subsec. (e) of this section.

1984 Amendments. Subsec. (e). Pub.L. 98-369 inserted “or agrees to be a participating physician or supplier under section 1395u(h)(1) of this title” after “section 1395u(b)(3)(B)(ii) of this title”, and substituted “or agreement” for “specified in subclause (I) of such section”.

1980 Amendments. Subsec. (b). Pub.L. 96-499 inserted “knowingly and willfully” following “Whoever” in pars. (1) and (2).

1977 Amendments. Subsec. (a). Pub.L. 95-142, § 4(b), added cl. (i), designated existing provisions following par. (4) as cl. (ii) and, as so designated, added provisions relating to activities of other persons, and added provisions authorizing the State to limit, restrict, or suspend, the eligibility of any convicted persons for benefits. See Codifications note under this section.

Subsec. (b). Pub.L. 95-142, § 4(b), redesignated existing provisions as par. (1) and, as so redesignated, substituted provisions relating to solicitation or receiving of any remuneration in return for referring an individual to a

person for the furnishing or arranging the furnishing of any item or service, or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, etc., as constituting a felony punishable by a fine of not more than \$25,000 and/or imprisonment for not more than five years, for provisions relating to furnishing items or services and soliciting, offering or receiving any kickback, bribe, or rebate in connection with furnishing, etc., items or services as constituting a misdemeanor punishable by a fine of not more than \$10,000 and/or imprisonment for not more than one year, and added pars. (2) and (3). See Codifications note under this section.

Subsec. (c). Pub.L. 95-142, § 4(b), substituted provisions setting forth felony nature of criminal activities with a fine of not more than \$25,000, or imprisonment for not more than five years, or both, for provisions setting forth misdemeanor nature of criminal activities with a fine of not more than \$2,000, or imprisonment for not more than six months, or both. See Codifications note under this section.

Subsec.(d). Pub.L. 95-142, § 4(b), added subsec. (d). See Codifications note under this section.

Subsec. (e). Pub.L. 95-142, § 4(a), added subsec. (e). See Codifications note under this section.

1972 Amendments. Subsec. (c). Pub.L. 92-603, § 278(b)(9), substituted “skilled nursing facility” for “skilled nursing home”.

#### Effective and Applicability Provisions

2003 Acts. Pub.L. 108-173, Title II, § 237(e), Dec. 8, 2003, 117 Stat. 2213, provided that: “The amendments made by this section [amending subsec. (b)(3)(F) to (H) of this section and [42 U.S.C.A. §§ 1395l](#), [1395w-21](#), [1395w-23](#), and [1395w-27](#)] shall apply to services provided on or after January 1, 2006, and contract years beginning on or after such date.”

1997 Acts. Amendment by section 4201 of Pub.L. 105-33 applicable to services furnished on or after October 1, 1997, see section 4201(d) of Pub.L. 105-33, set out as a note under section 1395f of this title.

Amendments by section 4704(b) of Pub.L. 105-33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, see section 4710 of Pub.L. 105-33, set out as a note under section 1396b of this title.

1996 Acts. Section 204(b) of Pub.L. 104-191 provided that: “The amendments made by this section [amending this section] shall take effect on January 1, 1997.”

Section 216(c) of Pub.L. 104-191 provided that: “The amendments made by subsection (a) [enacting subsec. (b)(3)(F) of this section] shall apply to written agreements entered into on or after January 1, 1997, without regard to whether regulations have been issued to implement such amendments.”

Amendment by section 217 of Pub.L. 104-191 effective Jan. 1, 1997, see section 218 of Pub.L. 104-191, set out as a note under section 1320a-7 of this title.

1994 Acts. Section 133(c) of Pub.L. 103-432 provided that: “The amendments made by this section [amending sections 1395m(j)(4), (5) and 1395pp(h) of this title and directing the amendment of subsec. (b)(3)(B) of this section] shall apply to items or services furnished on or after January 1, 1995.”

1990 Acts. Amendment by section 4161(a) of Pub.L. 101-508 applicable to services furnished on or after Oct. 1, 1991, see section 4161(a)(8) of Pub.L. 101-508, set out as a note under section 1395k of this title.

Amendment by section 4164(b) of Pub.L. 101-508 applicable with respect to items or services furnished on or after Jan. 1, 1993, in cases where items and services furnished by providers on or before Nov. 5, 1990 could be paid for under part B of subchapter XVIII of this chapter, or Jan. 1, 1992, with respect to items or services furnished by any other provider, see section 4164(b)(4) of Pub.L. 101-508, set out as a note under section 1320a-3a of this title.

1988 Acts. Except as specifically provided in section 411 of Pub.L. 100-360, amendment by Pub.L. 100-360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub.L. 100-203, effective as if included in the enactment of that provision in Pub.L. 100-203, see section 411(a) of Pub.L. 100-360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

1987 Acts. Amendments by section 4211(h)(7) of Pub.L. 100-203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether implementing regulations are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214 of Pub.L. 100-203, as amended, set out as a note under section 1396r of this title.

Amendment by Pub.L. 100-93 effective at the end of the fourteen-day period beginning on Aug. 18, 1987, and inapplicable to administrative proceedings commenced before the end of such period, see section 15(a) of Pub.L. 100-93, set out as a note under section 1320a-7 of this title.

1977 Acts. Section 4(d) of Pub.L. 95-142 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to acts occurring and statements or representations made on or after the date of the enactment of this Act [Oct. 25, 1977]."

1972 Acts. Section 242(d) of Pub.L. 92-603 provided that: "The provisions of amendments made by this section [enacting this section and section 1396h of this title and amending section 1395ii of this title] shall not be applicable to any acts, statements, or representations made or committed prior to the enactment of this Act [Oct. 30, 1972]."

#### Rulemaking for Exception for Health Center Entity Arrangements

Pub.L. 108-173, Title IV, § 431(b), Dec. 8, 2003, 117 Stat. 2287, provided that:

##### **“(1) Establishment.--**

**“(A) In general.--**The Secretary shall establish, on an expedited basis, standards relating to the exception described in section 1128B(b)(3)(H) of the Social Security Act, as added by subsection (a) [subsec. (b)(3)(H) of this section], for health center entity arrangements to the antikickback penalties.

**“(B) Factors to consider.--**The Secretary shall consider the following factors, among others, in establishing standards relating to the exception for health center entity arrangements under subparagraph (A):

**“(i)** Whether the arrangement between the health center entity and the other party results in savings of Federal grant funds or increased revenues to the health center entity.

**“(ii)** Whether the arrangement between the health center entity and the other party restricts or limits an individual's freedom of choice.

**“(iii)** Whether the arrangement between the health center entity and the other party protects a health care professional's independent medical judgment regarding medically appropriate treatment.

“The Secretary may also include other standards and criteria that are consistent with the intent of Congress

in enacting the exception established under this section.

**“(2) Deadline.**--Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003] the Secretary shall publish final regulations establishing the standards described in paragraph (1).”

#### Anti-Kickback; Regulations

Section 14(a) of Pub.L. 100-93 provided that: “The Secretary of Health and Human Services, in consultation with the Attorney General, not later than 1 year after the date of the enactment of this Act [Aug. 18, 1987] shall publish proposed regulations, and not later than 2 years after the date of the enactment of this Act [Aug. 18, 1987] shall promulgate final regulations, specifying payment practices that shall not be treated as a criminal offense under section 1128B(b) of the Social Security Act [subsec. (b) of this section] and shall not serve as the basis for an exclusion under section 1128(b)(7) of such Act [section 1320a-7(b)(7) of this title]. Any practices specified in regulations pursuant to the preceding sentence shall be in addition to the practices described in subparagraphs (A) through (C) of section 1128B(b)(3) [subsec. (b)(3) of this section].”

[Pub.L. 100-93, § 14(a), effective at the end of the fourteen-day period beginning on Aug. 18, 1987, see section 15(a) of Pub.L. 100-93, set out as a note under section 1320a-7 of this title.]

#### Negotiated Rulemaking For Risk-Sharing Exception

Section 216(b) of Pub.L. 104-191 provided that:

##### **“(1) Establishment**

**“(A) In general.**--The Secretary of Health and Human Services (in this subsection referred to as the ‘Secretary’) shall establish, on an expedited basis and using a negotiated rulemaking process under subchapter 3 of chapter 5 of title 5, United States Code [5 U.S.C.A. § 561 et seq.], standards relating to the exception for risk-sharing arrangements to the antikickback penalties described in section 1128B(b)(3)(F) of the Social Security Act, as added by subsection (a) [subsec. (b)(3)(F) of this section].

**“(B) Factors to consider.**--In establishing standards relating to the exception for risk-sharing arrangements to the anti-kickback penalties under subparagraph (A), the Secretary--

**“(i)** shall consult with the Attorney General and representatives of the hospital, physician, other health practitioner, and health plan communities, and other interested parties; and

**“(ii)** shall take into account--

**“(I)** the level of risk appropriate to the size and type of arrangement;

**“(II)** the frequency of assessment and distribution of incentives;

**“(III)** the level of capital contribution; and

**“(IV)** the extent to which the risk-sharing arrangement provides incentives to control the cost and quality of health care services.

**“(2) Publication of notice.**--In carrying out the rule-making process under this subsection, the Secretary shall publish the notice provided for under [section 564\(a\) of title 5, United States Code \[5 U.S.C.A. § 564\(a\)\]](#) by not later than 45 days after the date of the enactment of this Act [Aug. 21, 1996].

**“(3) Target date for publication of rule.**--As part of the notice under paragraph (2), and for purposes of this

subsection, the 'target date for publication' (referred to in section 564(a)(5) of such title) [5 U.S.C.A. § 564(a)(5)] shall be January 1, 1997.

**“(4) Abbreviated period for submission of comments.**--In applying section 564(c) of such title [5 U.S.C.A. § 564(c)] under this subsection, '15 days' shall be substituted for '30 days'.

**“(5) Appointment of negotiated rulemaking committee and facilitator.**--The Secretary shall provide for--

“(A) the appointment of a negotiated rulemaking committee under section 565(a) of such title [5 U.S.C.A. 565(a)] by not later than 30 days after the end of the comment period provided for under section 564(c) of such title [5 U.S.C.A. § 564(c)] (as shortened under paragraph (4)), and

“(B) the nomination of a facilitator under section 566(c) of such title [5 U.S.C.A. § 564(c)] by not later than 10 days after the date of appointment of the committee.

**“(6) Preliminary committee report.**--The negotiated rule-making committee appointed under paragraph (5) shall report to the Secretary, by not later than October 1, 1996, regarding the committee's progress on achieving a consensus with regard to the rulemaking proceeding and whether such consensus is likely to occur before one month before the target date for publication of the rule. If the committee reports that the committee has failed to make significant progress toward such consensus or is unlikely to reach such consensus by the target date, the Secretary may terminate such process and provide for the publication of a rule under this subsection through such other methods as the Secretary may provide.

**“(7) Final committee report.**--If the committee is not terminated under paragraph (6), the rulemaking committee shall submit a report containing a proposed rule by not later than one month before the target publication date.

**“(8) Interim, final effect.**--The Secretary shall publish a rule under this subsection in the Federal Register by not later than the target publication date. Such rule shall be effective and final immediately on an interim basis, but is subject to change and revision after public notice and opportunity for a period (of not less than 60 days) for public comment. In connection with such rule, the Secretary shall specify the process for the timely review and approval of applications of entities to be certified as provider-sponsored organizations pursuant to such rules and consistent with this subsection.

**“(9) Publication of rule after public comment.**--The Secretary shall provide for consideration of such comments and republication of such rule by not later than 1 year after the target publication date.”

[Except as otherwise provided, this note is effective Jan. 1, 1997, see section 218 of Pub.L. 104-191, set out as a note under section 1320a-7 of this title.]

#### CROSS REFERENCES

Exclusions from coverage and medicare as secondary payee and screening requirements for provider and suppliers including penalties, see [42 USCA § 1395y](#).

General disqualifications for fraud and abuse of medical assistance program, see [42 USCA § 1396r-6](#).

#### CODE OF FEDERAL REGULATIONS

Program integrity, see [42 CFR § 455.1 et seq.](#)

## LAW REVIEW COMMENTARIES

A conceptual model of [health care fraud enforcement](#). Joan H. Krause, 12 J.L. & Pol'y 55 (2003).

Autonomy and privacy: [Protecting patients from their physicians](#). Mary Anne Bobinski, 55 U.Pitt.L.Rev. 291 (1994).

Crimes by health care providers. Pamela H. Bucy, 1996 U.Ill.L.Rev. 589.

Direct-to-consumer marketing: the Food and Drug Administration is not alone. Paul E. Kalb, Karen O. Dunlop, Diane C. McEnroe and Scott D. Stein, 58 Food & Drug L.J. 25 (2003).

[Government's mistaken use of the Medicare Anti-kickback Statute in False Claims Act prosecutions](#). Robert Salcido, 6 Annals of Health Law 105 (1997).

Health care anti-referral laws effective in 1995. Melvyn B. Ruskin and Ellen F. Kessler, 213 N.Y.L.J. 1 (Jan. 5, 1995).

Health care fraud. Stanley S. Arkin, 212 N.Y.J.L. 3 (Aug. 11, 1994).

[Health Insurance Portability and Accountability Act of 1996](#). Scott J. Kelly, 59 Ohio State L.J. 303 (1998).

[Managing physician financial conflicts of interest in clinical trials conducted in the private practice setting](#). Kevin W. Williams, 59 Food & Drug L.J. 45 (2004).

Medicare and medicaid fraud and abuse. Sanford V. Teplitzky, 118 N.J.Law. 36 (Feb. 1987).

[Medicare anti-kickback provision of the Social Security Act--Is ignorance of the law an excuse for fraudulent and abusive use of the system?](#) 45 Cath.U.L.Rev. 943 (1996).

[Regulating physician investment and referral behavior in the competitive health care marketplace of the '90s--An argument for decentralization](#). 65 Wash.L.Rev. 657 (1990).

White coat crime or hospital-physician financial relationships in the '90s. Ellen L. Janos and M. Daria Niewenhous, 40 Boston B.J. 8 (May/June 1996).

## LIBRARY REFERENCES

American Digest System

[Health](#) 🔑 980 to 981.

[United States](#) 🔑 120.

Key Number System Topic Nos. 198H, 393.

## RESEARCH REFERENCES

ALR Library

194 ALR, Fed. 133, Validity, Construction, and Application of Health Insurance Portability and Accountability Act of 1996 (Hipa) and Regulations Promulgated Thereunder.

[172 ALR, Fed. 109](#), Validity, Construction, and Application of [18 U.S.C.A. § 1346](#), Providing That, for Purposes of Some Federal Criminal Statutes, Term “Scheme or Artifice to Defraud” Includes Scheme or Artifice to Deprive Another Of...

[162 ALR, Fed. 147](#), Construction and Application of “Reverse False Claim Provision” of False Claims Act ([31 U.S.C.A. § 3729\(A\)\(7\)](#)).

[145 ALR, Fed. 559](#), Downward Departure from United States Sentencing Guidelines ([U.S.S.G. §§ 1A1.1 et seq.](#)) Based on Extraordinary Family Circumstances.

[132 ALR, Fed. 525](#), Test of “Dual Criminality” Where Extradition to or from Foreign Nation is Sought.

[132 ALR, Fed. 601](#), Illegal Remuneration Under Medicare Anti-Kickback Statute (Social Security Act § 1128B) ([42 U.S.C.A. §§ 1320a-7b](#)).

[122 ALR, Fed. 281](#), Propriety of Increase of Offense Level Under Sentencing Guideline § 3B1.3 for Use of “Special Skill” in Commission or Concealment of Offense.

[114 ALR, Fed. 355](#), What Constitutes Unusually “Vulnerable” Victim Under Sentencing Guideline § 3A1.1 Permitting Increase in Offense Level.

[100 ALR, Fed. 156](#), What Constitutes Playing “Mitigating Role” in Offense Allowing Decrease in Offense Level Under [United States Sentencing Guideline § 3B1.2](#), U.S.S.G.

[68 ALR, Fed. 628](#), Statute of Limitations in Prosecution Under [18 U.S.C.A. § 371](#) for Conspiracy to Commit Offense Against or to Defraud United States.

[27 ALR, Fed. 407](#), Construction and Application of Provision of [Rule 9\(B\), Federal Rules of Civil Procedure](#), that Circumstances Constituting Fraud or Mistake be Stated With Particularity.

[88 ALR 4th 209](#), Propriety and Prejudicial Effect of Counsel's Negative Characterization or Description of Witness During Summation of Criminal Trial--Modern Cases.

[169 ALR 315](#), Comment Note.--Duty in Instructing Jury in Criminal Prosecution to Explain and Define Offense Charged.

#### Encyclopedias

[61 Am. Jur. Proof of Facts 3d 245](#), Liability of a Physician for Improper Referral of Patients to a Medical Care-Facility in Which the Physician Has a Financial Interest.

[Am. Jur. 2d Bankruptcy § 1849](#), Medicare Participation.

[Am. Jur. 2d Welfare Laws § 41](#), Criminal Penalties.

#### Forms

[Nichols Cyclopedia of Legal Forms Annotated § 5.304](#), Tax-Exempt Status -- the Hospital Tax Audit.

#### Treatises and Practice Aids

[Emp. Discrim. Coord. Analysis of Related Issues § 28:4](#), Availability of Public Policy Claims.

[Norton Bankruptcy Law and Practice 2d § 157:6](#), Antikickback and Antireferral Laws.

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[1/212](#) . Generally

No private cause of action exists under the federal health care fraud statute; only the federal government may bring lawsuits for the recovery of loss caused by alleged Medicare fraud. [Rzayeva v. U.S., D.Conn.2007](#), 492 F.Supp.2d 60. [Action](#) 🔑 3

### 1. Constitutionality

Physicians and hospital executive who negotiated and entered “consulting” contracts in an attempt to camouflage underlying agreement to exchange remuneration for patient referrals could not successfully challenge Medicare Antikickback Act for vagueness as to fair notice, since their conduct was very conduct contemplated by Act. [U.S. v. LaHue, C.A.10 \(Kan.\) 2001](#), 261 F.3d 993, certiorari denied 122 S.Ct. 818, 534 U.S. 1083, 151 L.Ed.2d 701, certiorari denied 122 S.Ct. 819, 534 U.S. 1083, 151 L.Ed.2d 701, certiorari denied 122 S.Ct. 819, 534 U.S. 1084, 151 L.Ed.2d 701, post-conviction relief denied in part 2003 WL 21544241, subsequent determination 2004 WL 624966, certificate of appealability denied 2004 WL 1192635, appeal dismissed 133 Fed.Appx. 549, 2005 WL 1324978. [Health](#) 🔑 980

Original version of this section governing offense of receiving kickbacks, which was in effect during years involved, was not invalid for vagueness. [U. S. v. Tapert, C.A.6 \(Mich.\) 1980](#), 625 F.2d 111, certiorari denied 101 S.Ct. 356, 449 U.S. 952, 66 L.Ed.2d 216, certiorari denied 101 S.Ct. 609, 449 U.S. 1034, 66 L.Ed.2d 496, certiorari denied 101 S.Ct. 610, 449 U.S. 1034, 66 L.Ed.2d 496. [Social Security And Public Welfare](#) 🔑 1.1

This section proscribing receiving kickbacks in medicaid cases is not unconstitutional as vague and because it omits intent as element of crime, since term kickback has a commonly understood meaning so that it gives fair notice of conduct forbidden and the requirement of corruption is sufficient requirement of mental culpability to withstand constitutional attack, especially in context of Congress' regulation of expenditure of enormous sums of federal funds under medicaid program. [U. S. v. Hancock, C.A.7 \(Ind.\) 1979](#), 604 F.2d 999, certiorari denied 100 S.Ct. 521, 444 U.S. 991, 62 L.Ed.2d 420. [United States](#) 🔑 75(6)

Discount safe harbor provision of Medicare anti-kickback statute was not unconstitutionally vague as applied to defendants, whose actions in providing customer with free medical supplies to induce customer to purchase, lease, and order other medical products did not fall within the provision. [U.S. v. Carroll, S.D.Ill.2004](#), 320 F.Supp.2d 748. [Constitutional Law](#) 🔑 4509(1); [Health](#) 🔑 976

Medicare antikickback statute was not vague as applied to physicians charged, as aiders and abettors, with sending patients to medical provider for prescribed medical services in return for checks tendered to their alleged coconspirator and officer manager, even if physicians merely solicited remuneration from provider; statute was economic in nature and free from any chilling effects on constitutionally protected rights, and its specific intent requirement, “knowing and willfully,” ensured that felony penalties would not be imposed arbitrarily and without fair warning. [U.S. v. Vaghela, M.D.Fla.1997](#), 970 F.Supp. 1018. [Constitutional Law](#) 🔑 4509(1); [Health](#) 🔑 976

### 2. Construction with other laws

United States stated claim against drug manufacturer under False Claims Act (FCA) for antecedent violation of Anti-Kickback Statute for claims submitted through Medicare program, on allegations that manufacturer fraudulently published false average wholesale price and then marketed “spread” between reimbursement rate and provider's acquisition cost, Medicare program required health care providers to affirmatively certify that they had complied with Anti-Kickback Statute, and failure to comply with kickback laws was, in and of itself, false statement to government. [In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2007](#), 2007 WL

1334496. [United States](#) 🔑 122

Indictment properly alleged a crime of mail fraud since defendants may have defrauded Medicare of a property right by violating Medicare anti-kickback statute. [U.S. v. Carroll, S.D.Ill.2004, 320 F.Supp.2d 748. Postal Service](#) 🔑 48(4.1)

Violation of federal antikickback provision is not a per se violation of the False Claims Act (FCA), and in order for antikickback violation to be transformed into actionable FCA claim, government must have conditioned payment of claim upon the claimant's certification of compliance with antikickback provision. [U.S. ex rel. Franklin v. Parke-Davis, Div. of Warner-Lambert Co., D.Mass.2001, 147 F.Supp.2d 39, motion to amend denied 2002 WL 32128635.](#)

Enactment of this section did not preempt use of other federal criminal statutes in prosecution of Medicaid fraud; such prosecution could proceed on charges of mail fraud and making false statements within jurisdiction of federal agency. [U. S. v. Simon, E.D.Pa.1981, 510 F.Supp. 232.](#)

### 3. Inspector General opinions

Advisory opinion of Office of Inspector General of Department of Health and Human Services regarding legality, under Medicare/Medicaid antikickback statute, of contract between manufacturer of orthopedic products and independent contractor to sell products was entitled to deference as informed judgment to which courts and litigants may properly resort for guidance. [Zimmer, Inc. v. Nu Tech Medical, Inc., N.D.Ind.1999, 54 F.Supp.2d 850. Statutes](#) 🔑 219(6.1)

### 4. Antitrust actions

Allegations that health care providers and ambulance service engaged in illegal kickback scheme, in violation of state and federal Medicare and Medicaid antifraud statutes, could not form basis for antitrust claim. [Action Ambulance Service, Inc. v. Atlanticare Health Services, Inc., D.Mass.1993, 815 F.Supp. 33. Antitrust And Trade Regulation](#) 🔑 972(3)

### 5. State law civil actions

At least with respect to alleged remuneration provided by drug manufacturers to doctors in order to induce them to prescribe their drugs to Medi-Cal recipients, Federal Medicare Anti-Kickback Statute did not preempt California Welfare and Institutions Code provision forbidding remuneration in the form of a kickback. [In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2007, 2007 WL 861178. States](#) 🔑 18.79

Ambulance service could not allege violations of Medicaid and Medicare antifraud statutes by competitor and health care providers as a basis for liability under the Massachusetts Consumer Protection Act. [Action Ambulance Service, Inc. v. Atlanticare Health Services, Inc., D.Mass.1993, 815 F.Supp. 33. Antitrust And Trade Regulation](#) 🔑 358

### 6. Safe harbor regulations

Marketing agreement violated Medicare statute, whether marketing agent was viewed as being paid for referring persons who needed Medicare-covered supplies to medical supplier, who in turn sold those supplies via their nursing homes, or as being paid for recommending to Medicare recipients that they purchase their Medicare-reimbursable supplies from supplier; agreement was not saved by "safe harbor" regulations, even if agreement

could not properly form basis of criminal or civil prosecution. [Nursing Home Consultants, Inc. v. Quantum Health Services, Inc., E.D.Ark.1996, 926 F.Supp. 835, affirmed 112 F.3d 513. Health ↪ 533](#)

#### 7. Extradition

Requirement of “double criminality” for international extradition did not require the reason doctor's conduct constituted bribery under Israeli law be common to both Israel and United States where common element of bribery, corrupt giving or receiving of payments to influence duty owed, was common under both Israeli statute under which the prosecution of doctor was sought and the United States statutes; double criminality did not require that reason doctor's conduct constituted bribery, involving violation of laws associated with system of socialized medicine, be common in both jurisdictions. [Heilbronn v. Kendall, W.D.Mich.1991, 775 F.Supp. 1020. Extradition And Detainers ↪ 5](#)

#### 8. Misrepresentations or false statements

To be convicted of Medicaid fraud, defendant must know that claims being submitted are, in fact, false. [U.S. v. Laughlin, C.A.10 \(Okla.\) 1994, 26 F.3d 1523, 126 A.L.R. Fed. 749, certiorari denied 115 S.Ct. 428, 513 U.S. 965, 130 L.Ed.2d 342. Health ↪ 981](#)

Evidence supported finding that billing code used to submit claims for medical assistance reimbursement for office visits was false, for purposes of prosecution for making false statements in application for payments in federally approved plan for medical assistance; billing code was defined as brief examination, evaluation, and/or treatment, for same or new illness, but treatment given was routine allergy shot administered by nurse when doctor was not in office, and another billing code was defined as minimal service consisting of injections, minimal dressings, or the like, not necessarily requiring presence of physician, and state medical service association representative testified that he twice informed doctor and his wife, who acted as office manager, that billing code used required physician's presence. [U.S. v. Larm, C.A.9 \(Hawai'i\) 1987, 824 F.2d 780, certiorari denied 108 S.Ct. 1057, 484 U.S. 1078, 98 L.Ed.2d 1019. Health ↪ 989](#)

Submission of claim for reimbursement for brand name drugs when generic or over-the-counter drug had been dispensed constituted misrepresentation of a material fact within meaning of Medicaid fraud statute [42 U.S.C.A. § 1396h(a)(1)]. [U.S. v. Brown, C.A.8 \(Ark.\) 1985, 763 F.2d 984, certiorari denied 106 S.Ct. 273, 474 U.S. 905, 88 L.Ed.2d 234. Health ↪ 981](#)


It is illegal to make or cause to be made false statement or representation of material fact knowingly and willfully in any application for payment under Medicare program. [Godwin v. Visiting Nurse Ass'n Home Health Services, E.D.Pa.1993, 831 F.Supp. 449, affirmed 39 F.3d 1173, appeal dismissed 39 F.3d 1173. Social Security And Public Welfare ↪ 18](#)

#### 9. Kickbacks--Generally



A person who offers or pays remuneration to another person violates the Medicare Antikickback Act so long as one purpose of the offer or payment is to induce Medicare or Medicaid patient referrals; it is not necessary to show that this was the primary purpose. [U.S. v. McClatchey, C.A.10 \(Kan.\) 2000, 217 F.3d 823, certiorari denied 121 S.Ct. 574, 531 U.S. 1015, 148 L.Ed.2d 492, on remand 160 F.Supp.2d 1254. Health ↪ 980](#)


Subsections of statute which makes it a criminal offense to pay kickbacks for the referral of Medicare patients do not distinguish between physicians and lay-persons, but refer to the difference between the referral of individuals, and the recommendation of specific services. [U.S. v. Polin, C.A.7 \(Ill.\) 1999, 194 F.3d 863. Health ↪](#)


980


Within this section and section 1396nn of this title proscribing receiving kickbacks in medicare and medicaid cases, term “kickback” includes percentage of payment for granting assistance by one in position to open up or control a source of income and is not limited to return of funds to earlier possessor. [U. S. v. Hancock, C.A.7 \(Ind.\) 1979, 604 F.2d 999, certiorari denied 100 S.Ct. 521, 444 U.S. 991, 62 L.Ed.2d 420. United States](#)  75(6)

10. ---- Knowledge and intent, kickbacks

Evidence in prosecution of hospital executive for conspiracy and violating the Medicare Antikickback Act was sufficient to permit jury to find that defendant knowingly, voluntarily, and purposefully entered into an agreement with the specific intent to offer or pay remuneration to induce physicians to refer Medicaid patients to hospital, though contract appeared to encompass a legal arrangement, where defendant knew the physicians had not performed substantial services required under the prior contracts and that certain hospital staff members were not even interested in having them perform some of these services, and understood how important the physicians' patient referrals were to hospital's financial health. [U.S. v. McClatchey, C.A.10 \(Kan.\) 2000, 217 F.3d 823, certiorari denied 121 S.Ct. 574, 531 U.S. 1015, 148 L.Ed.2d 492, on remand 160 F.Supp.2d 1254. Conspiracy](#)  47(3.1); [Health](#)  989

“Willfully” as used in anti-kickback provision of Social Security Act making it illegal to knowingly and willfully solicit or receive any remuneration for referrals for services covered by the federal government did not require knowledge that arrangement for referrals to treatment program violated the statute, but only required knowledge that the conduct was unlawful; one would not expect the kickbacks to be legal, and they were malum in se, rather than malum prohibitum. [U.S. v. Starks, C.A.11 \(Fla.\) 1998, 157 F.3d 833. Social Security And Public Welfare](#)  18

Profit motive as evidenced by the offer or acceptance of a “discount or other reduction in price” is not sufficient to support a finding of the state of mind necessary to convict under Medicare anti-kickback statute. [U.S. v. Shaw, D.Mass.2000, 106 F.Supp.2d 103. Health](#)  980

Jury could find that chief executive of hospital purposefully intended to violate Anti-Kickback Act when he caused hospital to enter into consulting agreement with two physicians in return for their referral of Medicare patients to hospital; defendant resisted efforts to investigate services being performed by physicians and made no efforts to have services performed by others when it appeared contract was coming to end. [U.S. v. Anderson, D.Kan.1999, 85 F.Supp.2d 1047, reversed 217 F.3d 823, certiorari denied 121 S.Ct. 574, 531 U.S. 1015, 148 L.Ed.2d 492, on remand 160 F.Supp.2d 1254, affirmed 254 F.3d 900, withdrawn from bound volume, rehearing en banc denied, amended and superseded on denial of rehearing 261 F.3d 993, certiorari denied 122 S.Ct. 818, 534 U.S. 1083, 151 L.Ed.2d 701, certiorari denied 122 S.Ct. 819, 534 U.S. 1083, 151 L.Ed.2d 701, certiorari denied 122 S.Ct. 819, 534 U.S. 1084, 151 L.Ed.2d 701, post-conviction relief denied in part 2003 WL 21544241, subsequent determination 2004 WL 624966, certificate of appealability denied 2004 WL 1192635, appeal dismissed 133 Fed.Appx. 549, 2005 WL 1324978. Health](#)  991

11. ---- Conspiracy, kickbacks

Allegations of conspiracy to provide kickbacks in connection with medical laboratory procedures, in violation of Anti-Kickback Act, were not required to be severed from allegations of general conspiracy to violate Medicare, even though amendment was made only seven weeks prior to initially scheduled trial date. [U.S. v. Nachamie,](#)

S.D.N.Y.2000, 101 F.Supp.2d 134. [Criminal Law](#) 🔑 620(6)

Chief operating officer of hospital did not join conspiracy to violate Anti-Kickback Act, under which hospital made payments to physicians referring Medicare patients in return for physicians' services under consulting agreement that were never performed, even though officer made preparations for influx of patients that would result from referrals; officer did not negotiate agreement, which he believed was bona fide, and he attempted to increase physicians' level of effort under agreement. [U.S. v. Anderson, D.Kan.1999, 85 F.Supp.2d 1047](#), reversed [217 F.3d 823](#), certiorari denied [121 S.Ct. 574, 531 U.S. 1015, 148 L.Ed.2d 492](#), on remand [160 F.Supp.2d 1254](#), affirmed [254 F.3d 900](#), withdrawn from bound volume, rehearing en banc denied, amended and superseded on denial of rehearing [261 F.3d 993](#), certiorari denied [122 S.Ct. 818, 534 U.S. 1083, 151 L.Ed.2d 701](#), certiorari denied [122 S.Ct. 819, 534 U.S. 1083, 151 L.Ed.2d 701](#), certiorari denied [122 S.Ct. 819, 534 U.S. 1084, 151 L.Ed.2d 701](#), post-conviction relief denied in part [2003 WL 21544241](#), subsequent determination [2004 WL 624966](#), certificate of appealability denied [2004 WL 1192635](#), appeal dismissed [133 Fed.Appx. 549, 2005 WL 1324978](#). [Conspiracy](#) 🔑 13

12. ---- Offer, kickbacks

Proposal suggesting a 15% rebate in exchange for referral of medicare and Medi-Cal business would meet statutory standard of an "offer" of a bribe or kickback as proscribed by subsec. (b)(2)(A) of this section and section 1395nn(b)(2)(A), contrary to contention that definition of "offer" should be controlled by contract law and that under contract law the acts in question were mere preliminary negotiations and not an offer. [U. S. v. Duz-Mor Diagnostic Laboratory, Inc., C.A.9 \(Cal.\) 1981, 650 F.2d 223](#). [Health](#) 🔑 980; [Health](#) 🔑 979

13. ---- Capacity of offeree, kickbacks


Physician and nurse employed by medical facility which provided cardiac pacemaker monitoring services paid remuneration for referral of Medicare patients, in violation of Medicare Anti-Kickback Act, when they made cash payments to pacemaker sales representative for each Medicare patient he referred to facility for monitoring services, even though sales representative was not a physician, and further authorization was thus required before facility could provide monitoring for patients. [U.S. v. Polin, C.A.7 \(Ill.\) 1999, 194 F.3d 863](#). [Health](#) 🔑 980

Defendant could be convicted of offering bribe or kickback for referring persons to provider of medicare or Medi-Cal services even though alleged offer was made to a Federal Bureau of Investigation informant who could not in fact refer to defendant services reimbursable from federal funds. [U. S. v. Duz-Mor Diagnostic Laboratory, Inc., C.A.9 \(Cal.\) 1981, 650 F.2d 223](#). [Health](#) 🔑 980; [Health](#) 🔑 979


14. ---- Federal funds, kickbacks



Even if payments made by druggist to nursing home operators for opportunity of supplying drugs had not been paid out of federal funds, but were merely gifts from druggist's profits, payments would still be "kickbacks" proscribed by this section. [U.S. v. Ruttenberg, C.A.7 \(Ill.\) 1980, 625 F.2d 173](#). [Social Security And Public Welfare](#) 🔑 18


Alleged illegal scheme involving referral of specimens and payments by labs to doctors fell within provision of this section making it a misdemeanor to furnish items or services to an individual for which payment is or may be made in whole or in part out of federal funds and to solicit, offer, or receive any "kickback" or bribes in connection with furnishing of such items or services. [U. S. v. Weingarden, E.D.Mich.1979, 468 F.Supp. 410](#), affirmed [625 F.2d 111](#), certiorari denied [101 S.Ct. 356, 449 U.S. 952, 66 L.Ed.2d 216](#), certiorari denied [101 S.Ct.](#)



609, 449 U.S. 1034, 66 L.Ed.2d 496, certiorari denied 101 S.Ct. 610, 449 U.S. 1034, 66 L.Ed.2d 496. United States  75(6)


15. ---- Payments constituting kickbacks



Alcoholic beverages solicited and received by defendant, the administrator of two nursing homes whose patients were Medicaid recipients, from supplier of pharmaceutical items to nursing homes, which submitted statements for payment directly to state of Michigan, constituted illegal kickback payments where supplier was not selected to service Medicaid recipients for any reason other than its willingness to make payments to defendant and where payments demanded made federal funds available. *U. S. v. Perlstein, C.A.6 (Mich.) 1980, 632 F.2d 661*, certiorari denied 101 S.Ct. 871, 449 U.S. 1084, 66 L.Ed.2d 809. United States  75(6)

Where druggist paid monthly fee to nursing home owners for opportunity of providing drugs and pharmaceutical services and one home solicited and received from another drug company three dollars per month for each public aid patient, the payments constituted “kickbacks” within this section proscribing receiving kickbacks in furnishing of items or services to an individual for which payment is made in whole or in part out of federal funds under state plan approved under social security subchapter dealing with grants to states for medical assistance programs. *U.S. v. Ruttenberg, C.A.7 (Ill.) 1980, 625 F.2d 173*. Health  979; Health  982


Payments which five osteopathic physicians admitted receiving for sending urine and blood samples of their medicaid patients to certain laboratory for analysis were “kickbacks” within meaning of this section governing offense of receiving kickbacks. *U. S. v. Tapert, C.A.6 (Mich.) 1980, 625 F.2d 111*, certiorari denied 101 S.Ct. 356, 449 U.S. 952, 66 L.Ed.2d 216, certiorari denied 101 S.Ct. 609, 449 U.S. 1034, 66 L.Ed.2d 496, certiorari denied 101 S.Ct. 610, 449 U.S. 1034, 66 L.Ed.2d 496. Health  981



Showing that laboratory, having received lawful fee under medicare program, shared it with doctor who had referred specimen to lab did not establish bribery or “kickbacks” within meaning of statute providing for punishment of anyone furnishing items or services to individuals for which payment was to be made under subchapter and who solicited, offered or received any kickback or bribe; in ordinary parlance, “kickback” is secret return to earlier possessor of part of sum received. *U. S. v. Porter, C.A.5 (Fla.) 1979, 591 F.2d 1048*. Bribery  1(1); United States  75(6)


Defendants' alleged actions in providing customer with free medical supplies to induce customer to purchase, lease, and order other medical products did not fall within discount safe harbor provision of Medicare anti-kickback statute; while defendants could show either a “discount” or a full and accurate report of the transaction, they could not show both as required by the discount safe harbor provision. *U.S. v. Carroll, S.D.Ill.2004, 320 F.Supp.2d 748*. Health  980




The Anti-Kickback Act, which regulates referrals between physicians and hospitals who participate in federal health care programs, does not prohibit hospitals from acquiring medical practices, nor does it preclude seller-physician from making future referrals to buyer-hospital, provided there are no economic inducements for those referrals; to comply with Act, hospital must simply pay fair market value for practice's assets. *U.S. ex rel. Obert-Hong v. Advocate Health Care, N.D.Ill.2002, 211 F.Supp.2d 1045*. Health  485; Health  533


Government stated claims under False Claims Act when it alleged that agreement under which testing laboratory performed routine dialysis blood tests at below-cost rate in exchange for referrals of nonroutine tests violated anti-kickback law, which prohibited offer or solicitation of remuneration in exchange for referrals of Medicare-payable services, and that agreement was intentionally concealed to induce government to make Medicare pay-

ments. *U.S. ex rel. Kneepkins v. Gambro Healthcare, Inc.*, D.Mass.2000, 115 F.Supp.2d 35. [United States](#)  122


Under “discount exception,” both buyer-providers and seller-suppliers are required to “properly disclose and appropriately reflect” the reduction in price offered or received for Medicare or Medicaid reimbursable goods or services in order to avoid criminal liability under Medicare anti-kickback statute. *U.S. v. Shaw*, D.Mass.2000, 106 F.Supp.2d 103. [Health](#)  980; [Health](#)  981



Evidence supported conviction of physician defendants, for violating Anti-Kickback Act; defendants received large amounts of money from number of hospitals to which they referred Medicare patients, pursuant to ostensible services contract under which they performed little or no services, and defendants were aware of Anti-Kickback Act prohibitions. *U.S. v. Anderson*, D.Kan.1999, 85 F.Supp.2d 1047, reversed 217 F.3d 823, certiorari denied 121 S.Ct. 574, 531 U.S. 1015, 148 L.Ed.2d 492, on remand 160 F.Supp.2d 1254, affirmed 254 F.3d 900, withdrawn from bound volume, rehearing en banc denied, amended and superseded on denial of rehearing 261 F.3d 993, certiorari denied 122 S.Ct. 818, 534 U.S. 1083, 151 L.Ed.2d 701, certiorari denied 122 S.Ct. 819, 534 U.S. 1083, 151 L.Ed.2d 701, certiorari denied 122 S.Ct. 819, 534 U.S. 1084, 151 L.Ed.2d 701, post-conviction relief denied in part 2003 WL 21544241, subsequent determination 2004 WL 624966, certificate of appealability denied 2004 WL 1192635, appeal dismissed 133 Fed.Appx. 549, 2005 WL 1324978. [Health](#)  989

Agreement under which medical goods supplier would consign its products to independent contractor and pay independent contractor percentage of its sales in exchange for distributing products and billing insurance carriers or individuals for products was illegal under Medicare/Medicaid antikickback statute, and thus unenforceable under Indiana law. *Zimmer, Inc. v. Nu Tech Medical, Inc.*, N.D.Ind.1999, 54 F.Supp.2d 850. [Health](#)  527; [United States](#)  75(6); [Health](#)  485

Showing actual patient referrals by podiatrist to supplier of equipment paid for by Medicare was unnecessary to convict podiatrist of kickbacks; podiatrist only needed to solicit or receive payments as an inducement, that is, as encouragement, to refer patients to supplier. *U.S. v. Picciotti*, D.N.J.1999, 40 F.Supp.2d 242. [Health](#)  980

#### 16. --- Medical referrals, kickbacks

Hospital's requirement that ophthalmologist provide his own operating room staff in order to continue to receive privileges with hospital, including right to receive patient referrals from hospital's emergency room, did not constitute “kickback,” for purposes of Medicare anti-kickback statute; manner of providing surgical support did not affect Medicare payments, and agreement was allowed and contemplated under state law. *U.S. ex rel. Conner v. Salina Regional Health Center, Inc.*, D.Kan.2006, 459 F.Supp.2d 1081. [Health](#)  533

Provision in employment contracts between health care provider and physicians, requiring that physicians refer their patients to provider's hospitals, did not constitute inducements prohibited by the Anti-Kickback Act and the Stark Act, which were designed to remove economic incentives from medical referrals; both Acts contained employee exceptions from their mandates and there was nothing in either Act prohibiting hospitals from requiring that employee physicians refer patients to that hospital. *U.S. ex rel. Obert-Hong v. Advocate Health Care*, N.D.Ill.2002, 211 F.Supp.2d 1045. [Health](#)  485; [Health](#)  533

There was sufficient evidence that defendant physician referred patients to the owner of a vascular testing lab in exchange for the payment of rent to support conviction for receiving and soliciting Medicare and Medicaid kickbacks, regardless of whether the written terms of the lease fell within safe harbor provisions; the physician admitted receiving rent money and admitted referring two patients, and the evidence that the two were connected

and that the physician intended to provide the referrals as a quid pro quo was sufficient to allow the jury to find a violation. [U.S. v. Goss, C.A.6 \(Ohio\) 2004, 96 Fed.Appx. 365, 2004 WL 953926](#), Unreported, amended on re-hearing [100 Fed.Appx. 461, 2004 WL 1327819](#). [Health ☞ 989](#)

#### 17. Illegal patient admittance and retention practices

Plaintiffs could not state claim for violation of equal protection clause on basis that Medi-Cal beneficiaries who were also medicare beneficiaries were treated differently from individuals covered solely by Medi-Cal in that doctors were permitted to collect medicare part B costs from crossover beneficiaries in excess of Medi-Cal reimbursement rates, since health care services provided to crossover beneficiaries were provided under state plan and that prohibitions of this section therefore applied such that collection of medicare part B deductible and coinsurance costs from crossover beneficiary was impermissible. [Samuel v. California Dept. of Health Services, N.D.Cal.1983, 570 F.Supp. 566](#), amended [572 F.Supp. 273](#). [Civil Rights ☞ 1052](#)

#### 18. Referrals

Referrals made to hospital by nurse, who worked for physician who was under services agreement with hospital, were not in violation of Antikickback Statute (AKS) or Stark Act, since physician, as person who allegedly received inducement, was person who was prohibited from making referral to entity that offered remuneration, nurse was not contractually obligated to refer patients to hospital, and the two were not in collusion. [U.S. ex rel Perales v. St. Margaret's Hosp., C.D.Ill.2003, 243 F.Supp.2d 843](#). [Health ☞ 485](#)

#### 19. Bribery

Nursing home operator who charged his private patients \$29 per day and required payment of \$4 per day as a supplement to medicaid payments reimbursed at rate of about \$25 per day was not guilty of "bribery" within this section effective in 1973 and 1974 and which prohibited the receipt of "bribes" in connection with the furnishing of nursing home services to medicaid patients, absent showing that "bribe" within this section had been intended to encompass more than at common law or in common usage. [U. S. v. Zacher, C.A.2 \(N.Y.\) 1978, 586 F.2d 912](#). [Bribery ☞ 1\(1\)](#)


#### 20. Lease arrangements

Equipment leased from hospital to physicians was not for referrals in violation of Antikickback Statute (AKS), since lease covered all equipment leased and fair market value was charged for use of that equipment. [U.S. ex rel Perales v. St. Margaret's Hosp., C.D.Ill.2003, 243 F.Supp.2d 843](#). [Health ☞ 485](#)


Lease agreement between medical center and realty group which owned building in which medical center provided services was an "arms lengths transaction," in context of Medicare Anti-Kickback statute and Stark II, a self-referral statute; parties negotiated price per square foot, length of lease term, whether to calculate square footage from inside or outside surface of exterior walls, whether rent was required to be paid for period of renovation, and whether parking was to meet governmental requirements or be provided consistent with medical center's business needs. [U.S. ex rel. Goodstein v. McLaren Regional Medical Center, E.D.Mich.2002, 202 F.Supp.2d 671](#). [Health ☞ 533](#)

#### 21. Loans


Loans from hospital to physicians were not in violation of Antikickback Statute (AKS) or Stark Act, even though physicians were all on active staff status with hospital when loans were made and they continued to be

on active staff status throughout payback period of loans; loans were for legitimate business purpose since they were made for purposes of permitting payment over time of debt already owed to hospital, loans were not contingent on referral requirement, amount of, or interest rate, for loans did not take into account volume or value of any referrals, and loans were at market rate of interest and were paid in full. [U.S. ex rel Perales v. St. Margaret's Hosp., C.D.Ill.2003, 243 F.Supp.2d 843. Health](#)  485


#### 22. False claim action

Relator's allegation that government would not have paid claims submitted by diabetes treatment center, if it had known of alleged kick-backs paid to physicians, supported False Claims Act suit against center, brought under implied certification theory; Medicare Health Care Provider/Supplier Application certification included language that program complied with Anti-Kickback and Stark laws and that certification was material to payment. [U.S. ex rel. Pogue v. Diabetes Treatment Centers of America, Inc., D.D.C.2002, 238 F.Supp.2d 258. United States](#)  122


#### 23. Civil pleading

Relator's allegations that diabetes treatment center ran centers in various hospitals, appointed physicians to serve as medical directors, and that physicians were paid not for nominal service as directors, but on a per-patient basis for referring their patients to the centers, in violation of False Claims Act, satisfied heightened pleading requirements for fraud claims; allegations allowed center to prepare its defense, although the scheme allegedly occurred in a 12 year range and only one specific location of allegedly nationwide scheme was mentioned. [U.S. ex rel. Pogue v. Diabetes Treatment Centers of America, Inc., D.D.C.2002, 238 F.Supp.2d 258. Federal Civil Procedure](#)  636

#### 24. Removal

Allegation, in shareholder derivative suit, that corporate president breached fiduciary duty by entering into fee arrangement that violated federal Medicare anti-kickback statute did not present substantial question of federal law justifying removal of case to federal court; assessment of whether president breached fiduciary duty, even if informed by determination of whether federal criminal statute was violated, remained question of state law. [Donovan v. Rothman, S.D.N.Y.2000, 106 F.Supp.2d 513. Removal Of Cases](#)  19(1)

#### 25. Indictment

In prosecution of hospital executive and others for conspiracy and violating the Medicare Antikickback Act, prejudicial variance did not arise as to the executive when the district court granted attorney defendants' motions for judgment of acquittal, on theory that, while the indictment alleged executive and the attorney defendants worked in knowing cooperation to craft "sham" contracts, the acquittal of the attorneys allowed the jury to convict executive on different theories, either that executive failed to disclose certain information to the attorneys or that he failed to heed their advice, and thereby eviscerated his good faith reliance on counsel defense, since by raising that defense, executive himself necessarily required the jury to consider whether he made full disclosure to the attorneys and whether he followed their advice. [U.S. v. McClatchey, C.A.10 \(Kan.\) 2000, 217 F.3d 823, certiorari denied 121 S.Ct. 574, 531 U.S. 1015, 148 L.Ed.2d 492, on remand 160 F.Supp.2d 1254. Criminal Law](#)  1167(1)

There was no fatal variance between indictment, which charged Medi-Cal abuse by alleging a violation of this section, and the evidence at trial, which showed a scheme by which clinic's remuneration was to be calculated as a percentage of the gross billings of the laboratory for which defendant worked, since the evidence showed that

the remuneration was offered to induce the clinic to order laboratory services, and the patient "referrals" were only incidental to the main plan. [U.S. v. Universal Trade and Industries, Inc., C.A.9 \(Cal.\) 1983, 695 F.2d 1151. Social Security And Public Welfare ↪ 18](#)

Variance between indictment charging laboratory operators with violating subsec. (b)(2)(A) of this section prohibiting payoffs for referring Medi-Cal patients and proof of violation of prohibition of subsec. (b)(2)(B) of this section on referring Medi-cal services was fatal. [U. S. v. Stewart Clinical Laboratory, Inc., C.A.9 \(Cal.\) 1981, 652 F.2d 804.](#)

Indictment adequately alleged that chiropractors received kickbacks for referring medicare and medicaid recipients' blood and tissue and specimens to particular laboratory. [U. S. v. Hancock, C.A.7 \(Ind.\) 1979, 604 F.2d 999, certiorari denied 100 S.Ct. 521, 444 U.S. 991, 62 L.Ed.2d 420. United States ↪ 75\(6\)](#)

In view of fact that no fraud or other illegal act was shown in connection with payments asserted to be bribes or kickbacks, indictment charging, inter alia, that laboratories received fees and shared them with doctors who had referred specimens to them failed to charge use of the mails to defraud. [U. S. v. Porter, C.A.5 \(Fla.\) 1979, 591 F.2d 1048. Postal Service ↪ 48\(4.2\)](#)

## 26. Information

Information alleging that five osteopathic physicians received kickbacks for sending urine and blood samples of their patients to certain laboratory for analysis, that all five physicians were enrolled in medicaid programs and that charges for laboratory analysis were paid to such laboratory out of medicaid funds charged violation of original version of medicaid statute governing offense of receiving kickbacks, which was in effect during years involved. [U. S. v. Tapert, C.A.6 \(Mich.\) 1980, 625 F.2d 111, certiorari denied 101 S.Ct. 356, 449 U.S. 952, 66 L.Ed.2d 216, certiorari denied 101 S.Ct. 609, 449 U.S. 1034, 66 L.Ed.2d 496, certiorari denied 101 S.Ct. 610, 449 U.S. 1034, 66 L.Ed.2d 496. Health ↪ 988](#)

## 27. Pleas

Where, prior to their guilty pleas, five osteopathic physicians, who were convicted of receiving kickbacks for sending urine and blood samples of their medicaid patients to certain laboratory for analysis, gave notice that they intended to appeal district court's ruling on applicability of provision of this section governing offense of receiving kickbacks, and they moved for arrest of judgment under applicable rule on grounds that such provision did not apply to their conduct, so that district court had no jurisdiction to accept their guilty pleas, such legal issue was not waived by their guilty pleas, but, rather, was properly before court of appeals. [U. S. v. Tapert, C.A.6 \(Mich.\) 1980, 625 F.2d 111, certiorari denied 101 S.Ct. 356, 449 U.S. 952, 66 L.Ed.2d 216, certiorari denied 101 S.Ct. 609, 449 U.S. 1034, 66 L.Ed.2d 496, certiorari denied 101 S.Ct. 610, 449 U.S. 1034, 66 L.Ed.2d 496. Criminal Law ↪ 273.4\(1\)](#)

## 28. Sentence and punishment

Recipient of Aid to Families with Dependent Children, food stamps, and Medicaid who failed to report receipt of wages and workmen's compensation benefits to state agency which administered programs could not be subjected to pyramided sentencing for violating each program's reporting requirement where failure to report was single not multiple offense because administration of programs was consolidated and recipient was thus required to make but one application for benefits, congressional intent in establishing programs barred such sentencing, and prosecutor elected to treat failure to report as single fact in information. [U. S. v. Barrington, C.A.4 \(Va.\) 1981, 662 F.2d 1046. Agriculture ↪ 2.6\(5\); Sentencing And Punishment ↪ 527](#)

### 29. Instructions

District court's jury instructions correctly defined term "willfully," as that term is used in Medicare antikickback statute, to mean unjustifiably and wrongfully, known to be such by defendant, and it instructed that good faith was defense to charge. [U.S. v. Jain, C.A.8 \(Mo.\) 1996, 93 F.3d 436](#), rehearing denied, certiorari denied [117 S.Ct. 2452, 520 U.S. 1273, 138 L.Ed.2d 210](#). [Health 992](#)

In prosecution for Medicaid fraud, failure to instruct jury that it had to find that physician must either have known that Medicaid claims being submitted were false or have submitted claims with intent to defraud or deceive was prejudicial error; general definition of "knowingly and willfully" was not helpful given that jury was never adequately instructed what elements of statute these terms modified, and indictment containing accurate description of mens rea for Medicaid fraud was merely summarized by trial court and jury was told that indictment was not evidence, but rather merely described charges. [U.S. v. Laughlin, C.A.10 \(Okla.\) 1994, 26 F.3d 1523, 126 A.L.R. Fed. 749](#), certiorari denied [115 S.Ct. 428, 513 U.S. 965, 130 L.Ed.2d 342](#). [Health 992](#)

### 30. Moot questions

Health care provider organizations' argument that Health Care Financing Administration's (HCFA) potential payment of 100% of costs under Medicare demonstration project designed to test alternative method of paying for outpatient cataract surgery and related treatments with single negotiated fee violated antifraud provision of this section and their equal protection rights was moot; all contracts in project were final or near final, and beneficiaries were to continue to be liable for deductible and 20% copayment customary under Medicare. [American Academy of Ophthalmology, Inc. v. Sullivan, C.A.6 \(Ohio\) 1993, 998 F.2d 377](#), rehearing denied. [Federal Courts 757](#)

42 U.S.C.A. § 1320a-7b, 42 USCA § 1320a-7b  
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