

Updated 4/23/2026

**(4) Could a financial arrangement that satisfies an exception to the physician self-referral law (42 U.S.C. § 1395nn) violate the Federal anti-kickback statute?**

~~Compliance with~~ Yes, depending on the facts and circumstances, a financial arrangement could satisfy the requirements of an applicable exception to the physician self-referral law but violate the Federal anti-kickback statute. Satisfying the requirements of an applicable exception to the physician self-referral law, 42 U.S.C. § 1395nn, or an exception to the physician self-referral law does not rebut any implication of intent under the Federal anti-kickback statute. Notably, conditions (including the same or similar terms used in the safe harbors to the Federal anti-kickback statute and which are separately defined under In other words, parties may enter into a financial arrangement that fits in an exception to the physician self-referral law) required by an exception to but still have the knowing and willful intent necessary to violate the Federal anti-kickback statute. We have long distinguished between the physician self-referral law and the Federal anti-kickback statute as they exist for different purposes, differ in what they prohibit, and impose distinct consequences for violations. For these reasons, they are subject to separate legal and regulatory frameworks and analyses.

~~the physician self-referral law may differ from conditions set forth in any similar safe harbor to the Federal anti-kickback statute. In other words, satisfying an exception~~ In addition, the exceptions under the physician self-referral law does not mean that an arrangement satisfies the conditions of a similar safe harbor to are different from the exceptions and safe harbors under the Federal anti-kickback statute. This is true even when the physician self-referral law exceptions and Federal anti-kickback statute safe harbors have similar titles, use similar terms, or include similar conditions. Indeed, similar terms are defined differently in the physician self-referral law regulations than they are interpreted under the Federal anti-kickback statute. ~~In addition, satisfying an~~ Satisfying the requirements of an applicable exception to the physician self-referral law alone does not provide protection from sanctions under the Federal anti-kickback statute. ~~Indeed, it is possible, depending on the facts and circumstances, that an arrangement may comply with an exception to~~ Notably, the physician self-referral law but violate is a strict liability statute, and intent is a critical element of a violation of the Federal anti-kickback statute. ~~The fact that a party complies~~ A party's compliance with the requirements of ~~the physician self-referral law or an~~ an applicable exception to the physician self-referral law is not evidence that the party ~~does or does not have~~ lacks the intent ~~to induce or reward referrals for purposes of~~ necessary to violate the Federal anti-kickback statute. ~~By way of example~~ Therefore, a party that knowingly and willfully offers and pays any remuneration to induce, or solicits or receives any remuneration in return for, Federal health care program referrals could be liable under the Federal anti-kickback statute, even if the financial arrangement at issue satisfies the requirements of an exception to the physician self-referral law.

By way of example, we are aware that some hospitals, labs, and other providers and suppliers may offer and provide tickets to sporting events and other entertainment to physician referral sources. Depending on the facts and circumstances, it is possible that this type of remuneration could implicate both the physician self-referral law and the Federal anti-kickback statute. Although such an arrangement, depending on the facts and circumstances, potentially could satisfy the requirements of an applicable exception to the physician self-referral law (e.g., the

exception for nonmonetary compensation at 42 C.F.R. § 411.357(k)), it would be unlikely to receive protection under any **safe harbor to the Federal anti-kickback statute**. Thus, under the Federal anti-kickback statute, the arrangement would be subject to a case-by-case assessment based on the totality of facts and circumstances, including the intent of the parties. OIG has consistently warned that providing remuneration to referral sources—including the provision of tickets to sporting events and other entertainment—to **induce or reward referrals** would violate the Federal anti-kickback statute if the requisite intent were present. This warning remains true regardless of whether the financial relationship between the physician and the party providing the remuneration satisfies the requirements of an applicable exception to the physician self-referral law.

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Embedded Graphics (Visio, ChemDraw, Images etc.)	0
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