

Insights

What is a "Referral" Under the Anti-Kickback Statute?

August 31, 2021

By: Andrew W. Breck and Thomas N. Hutchinson

Central to the practice of medicine, referrals are an important part of patient care. Referrals are also a critical component when evaluating whether arrangements between parties violate the Anti-Kickback Statute ("AKS"), which prohibits knowingly or willfully offering, paying, soliciting, or receiving any remuneration in return for referring patients for services that are reimbursable by federal health care programs. However, the AKS does not establish a definition for "referral" leaving it up to the courts to interpret and apply.

On June 8, 2021 in *Stop Illinois Health Care Fraud, LLC v. Sayeed et al.*, the U.S. District Court for the Northern District of Illinois determined that a group of defendants violated the AKS by paying a community care organization for access to their client files in order to market services to federal health care program beneficiaries. In its analysis, the court determined that paying for the file access constituted a referral, the fees paid were intended to be remuneration for the referral of federal health care program beneficiaries, and that the defendants had violated the AKS.

The defendants originally entered into a management services agreement with the community care organization purportedly to assess the feasibility of creating an Accountable Care Organization. However, the file access also involved using the information for data mining purposes to identify and solicit services to federal health care program beneficiaries. In its ruling, the court applied a broad definition of "referral" to include payments intended to induce the community care organization to "indirectly refer" its clients to the defendants even if the arrangement was intended for a different purpose.

With the court's determination focusing on the "referral" prong of the AKS, this ruling could have a far reaching impact for parties wanting to enter into arrangements involving the exchange of patient information. It will be important to carefully evaluate and analyze any sort of arrangement involving patient file access in order to make sure there is no underlying objective by either party to use such information to solicit patients.

If you have any questions or would like additional information regarding the recent opinion, please contact **Andrew W. Breck** or **Thomas N. Hutchinson**.

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