

Complete Healthcare Compliance Manual 2024

Eliminating Kickbacks in Recovery Act

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Fast Facts

Title of law: Eliminating Kickbacks in Recovery Act

Categories:

- Bills and statutes

U.S. Code: 18 U.C.S. § 220

Year enacted: 2018

Major amendments: n/a

Enforcement agencies: U.S. Department of Health & Human Services (HHS) Office of Inspector General (OIG), U.S. Department of Justice (DOJ)

Links to full text of law:

- <https://www.govinfo.gov/content/pkg/USCODE-2011-title31/pdf/USCODE-2011-title31-subtitleIII-chap37-subchapIII-sec3729.pdf>

Applies to: Recovery Homes, Clinical Treatment Facility, and Clinical Laboratories.

The Eliminating Kickbacks in Recovery Act (EKRA) was enacted rather surprisingly in 2018 and is an obvious overlay of the prohibitions already existing in the Anti-Kickback Statue (AKS), at least as applied to the recovery and laboratory health care industries.^[2] There has been considerable confusion about the interplay between EKRA and the AKS. The following article attempts to make some sense about the application of EKRA and the AKS to common health care referral and payment relationships.

The relevant content of the EKRA Statute prohibits whoever “pays or offers any remuneration ... (A) to induce a referral of an individual to a recovery home, clinical treatment facility, or laboratory; or (B) in exchange for an individual using the services of that recovery home, clinical treatment facility, or laboratory.”^[3]

This EKRA prohibition does not apply to:

(2) A payment made by an employer to an employee or independent contractor (who has a bona fide employment or contractual relationship with such

employer) for employment, if the employee's payment is not determined by or does not vary by—

(A) the number of individuals referred to a particular recovery home, clinical treatment facility, or laboratory;

(B) the number of tests or procedures performed; or

(C) the amount billed to or received from, in part or in whole, the health care benefit program from the individuals referred to a particular recovery home, clinical treatment facility, or laboratory.^[4]

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