

Compliance Today – October 2019 The Travel Act: State crimes become federal crimes

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The federal Anti-Kickback Statute (AKS) makes it a crime to solicit or receive remuneration, specifically kickbacks or bribes, for patient referrals (among other activities) when the source of payment is a federal healthcare program (e.g., Medicare, Medicaid, or Tricare).^[1] The AKS does not give the federal government jurisdiction to prosecute cases that don't involve federal healthcare programs. Kickback schemes involving private payers are often covered under individual state laws and are prosecuted by state governments.

Because the AKS is limited to situations in which a federal healthcare program is the source of coverage, the Department of Justice (DOJ) has begun employing a new strategy to combat illegal remuneration cases, regardless of the source. If the acts of an individual or entity involve some interstate activity and rise to a level of priority for the federal government, the DOJ may use the Travel Act, which criminalizes unlawful activity crossing state lines, to implicate state law violations on the federal level.

What is the Travel Act?

Although this law is new to healthcare providers, the Travel Act was passed in 1961 and has been used in various types of cases.^[2] The Travel Act prohibits “whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce” from distributing the proceeds of, committing, or promoting unlawful activity across state lines.

Unlawful activity is defined to include gambling, narcotic distributions, bribery, and other illegal monetary exchanges. The Travel Act gives the federal government the ability to criminalize a wide range of illegal conduct occurring between states. The broad definition of the Travel Act suggests why and how it is now being used in healthcare cases involving kickbacks, which are a form of bribery.

Recently, physicians and other healthcare providers accused of participating in illegal kickback schemes involving private payers have been charged or indicted federally under the Travel Act. Even if an individual or entity is not in violation of the AKS, the federal government may still have jurisdiction over that individual or entity for being in violation of a state law.

There have been four key cases that explain how the Travel Act is being used to prosecute kickback schemes and how state law violations are being brought in as the underlying claim in federal complaints and indictments.

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