

FEDERAL AND STATE SELF-REFERRAL AND ANTI-KICKBACK LAWS

Athletic training services are sometimes provided to secondary schools on an ‘outreach’ basis, where a physician-, physical therapist-, or athletic trainer-owned clinic or a hospital hires an athletic trainer and contracts their services to local schools. In another scenario, a college or university might provide athletic training services to area schools as an opportunity for their athletic training graduate students to gain practical experience. In either scenario, the athletic trainer is paid a salary by the entity and the entity may or may not charge the school.

There are federal laws against self-referral arrangements and kickbacks, including the physician self-referral law, commonly referred to as the “Stark Law,” and the Federal Anti-kickback Statute. Many states have enacted laws that are parallel or similar to the Stark Law and the Federal Anti-kickback Statute. Fundamentally, lawmakers do not want health care practitioners to refer patients to entities with whom they or their family members have a financial relationship (ownership, investment, or direct or indirect compensation).

The Stark Law primarily affects physicians and entities that present bills to governmental health care programs. The Federal Anti-kickback Statute applies to anyone, including athletic trainers. However, as health care financial arrangements continually evolve and have become more complex, the rules are evolving to keep up with them. Because of the infinite variables, it is critical that the athletic trainer know that there are legal considerations and questions that should be answered prior to entering into such arrangements. Because many state laws set out some level of professional guidance or supervision of athletic trainers by physicians, referrals could be imputed to the physician. Violations of the law carry strict and severe penalties.

Specific state laws may also affect contractual arrangements.

The NATA does not provide legal opinions or guidance to individual members, but the following does lay out some considerations.

- Is the provider (physician, clinic, hospital) charging the secondary school fair market value for the athletic training services provided? (Stark laws require that the compensation not *exceed* fair market value.) Do you know the fair market value of the services provided?
- Does the athletic trainer refer injured athletes back to his or her employer-provider?
- Are the injured athletes ‘insured’ by federal or state health care programs (e.g., Medicare or Medicaid)?

- Is the fee paid by the school to the provider based in any way on referrals back to the provider?
- Is the contract between the provider and the school specific as to the services to be provided, the hours the athletic trainer will provide the services, and the duration of the contract?

The information contained in this document does not constitute legal advice. Please consult an attorney for specific questions relating to these laws.

F:\data\Government Affairs\ Legal Issues\Stark Laws\Stark Considerations for ATs
November 28, 2007