

New State-Level Anti-Kickback Statute Expands Minnesota AG's Power to Prosecute Healthcare Fraud

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On May 23, 2025, Minnesota Governor Tim Walz signed the Human Services omnibus policy bill into law, which included in part, the addition of a new statutory provision in the state's criminal code, [Chapter 609](#). Effective August 1, 2025, Section 609.542 of the Minnesota Statutes will essentially inscribe the federal Anti-Kickback Statute ([United States Code, title 42, section 1320a-7b\(b\)](#)) into state law, so that state prosecutors may address fraud against Human Services programs, including without limitation, the state Medical Assistance and Child Care Assistance programs as well as state-funded substance use disorder treatment programs.

The new statute makes it a crime for an individual or entity to "intentionally" solicit, receive, offer, or provide "money, a discount, a credit, a waiver, a rebate, a good, a service, employment, or anything else of value" in exchange for (i) referring another individual for the furnishing or arranging to furnish any item or service; (ii) purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing or ordering any good, facility, service, or item; or (iii) applying for or receiving any item or service which is payable in whole or in part under a federal health care program (as defined in [United States Code, title 42, section 1320a-7b\(f\)](#), including without limitation Medicare, Medicaid, and TRICARE), state behavioral health program (see [Chapter 254B](#) of the Minnesota Statutes), or state child care assistance program (see [Chapter 142E](#) of the Minnesota Statutes).

Like the federal analog, a violation of the state-level anti-kickback statute constitutes a false or fraudulent claim for purposes of the state-level false claims act (see [Section 15C.02](#) of the Minnesota Statutes). But, at the same time, the same exceptions, or Safe Harbors, to the federal Anti-



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Kickback Statute also apply to Chapter 609.542. In addition to the adoption of the federal Safe Harbors, the statute adds an exception for employers enrolled in the Child Care Assistance program. The new statute does not apply to payment from an employer to an employee who provides covered items or services under Chapter 142E in the scope of their employment or to childcare provider discounts, scholarships, or to other financial assistance to families allowable under Section 142E.17, subdivision 7 of the Minnesota Statutes.

The criminal sentence for a violation of this statute varies depending on the value of the kickback at issue. For a kickback that is not more than \$5,000, the sentence may include imprisonment for not more than five years or payment of a fine of not more than \$10,000, or both. For a kickback that is more than \$5,000 and not more than \$35,000, the sentence may include imprisonment of not more than ten years or payment of a fine of not more than \$20,000, or both. And for a kickback that exceeds \$35,000, the sentence may include imprisonment of not more than 20 years or payment of a fine of not more than \$100,000, or both. The dollar amounts of any kickbacks provided within a six-month period may be aggregated for the purposes of charging and sentencing under this statute. In comparison, criminal penalties for a violation of the federal Anti-Kickback Statute may include imprisonment of not more than ten years or payment of a fine not more than \$100,000, or both. The federal statute does not discuss aggregation of claims. But note that a violation of the federal Anti-Kickback Statute may also be subject to civil monetary penalties up to \$50,000 per kickback plus three times the amount of the kickback (also known as treble damages). The new Minnesota statute does not contemplate the collection of state-level civil monetary penalties in connection with a violation of Chapter 609.542. We note, however, that pursuant to Section 62J.23 of the Minnesota Statutes, the state commissioner of health separately may levy a fine against any individual or entity that violates the federal Anti-Kickback Statute in the amount of \$1,000 or 110 percent of the estimated kickback, whichever is greater.

Legislative Background

Section 609.542 appears to be, at least in part, a direct reaction to the recent indictment of Evergreen Recovery and the recent \$18.5 million settlement between the United States Department of Justice and NUWAY Alliance. Both Evergreen and NUWAY are substance use disorder treatment program providers in Minnesota that allegedly provided free or subsidized housing for patients in exchange for patients' attendance at counseling sessions payable by federal healthcare programs. These state investigations serve as a good reminder that prosecutable kickbacks do not always take the form of cash, but can be anything of value, including discounted or in-kind services.

Expected Impact

Unlike state-level anti-kickback statutes in other states and unlike Section 62J.23 (discussed above), the new Minnesota statute notably does **not** expand the scope of state kickback enforcement to commercial arrangements. The expected impact of this statute is that, as of August 1, 2025, state prosecutors will be able to file anti-kickback claims that previously were the purview of only federal prosecutors and may ask for

additional jail time (20 years instead of ten years) during sentencing for violations. We will have to wait for additional guidance, or new enforcement actions, to fully understand how broadly Minnesota prosecutors and, ultimately, the courts will interpret the *mens rea* term “intentionally,” as it is used in Chapter 609.542. If a violation of the state statute merely requires intentional action, rather than intentional wrongful action, the requisite *mens rea* under the state-level anti-kickback statute may be a lower threshold than under the federal Anti-Kickback Statute.^[1] Overall, it remains to be seen whether this new statute will indeed significantly increase healthcare fraud enforcement in Minnesota, particularly against individuals and entities that do business with the state.

Please contact the authors or your regular Dorsey attorney with any questions about how this new statute could affect your current or contemplated business practices.

^[1] At least under Eighth Circuit precedent. There currently is a significant federal Circuit split regarding the requisite *mens rea* under the Anti-Kickback Statute.