**Federal Anti-Kickback Statute Elements**

1. Exchange or offer to exchange
2. Something of value
3. Inducement (intent to incentivize)
4. Referral of a Federal health care program beneficiary

**Safe Harbors:** <https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=90f45f0c857144405b17a43c35600c16&ty=HTML&h=L&mc=true&r=SECTION&n=se42.5.1001_1952>

**Advisory Opinions:** <https://oig.hhs.gov/compliance/advisory-opinions/index.asp>

**Special Fraud Alerts:** <https://oig.hhs.gov/compliance/alerts/index.asp>

**Scenario 1 – Surgeon Locator**

A medical device manufacturer, AcmeOrtho, sells an implantable medical device to hospitals and ASCs. A surgeon must receive specific training to be qualified to use the device. AcmeOrtho bills and receives payment directly from the hospital or ASC. The device is used on beneficiaries of all health plans, including Federal health care programs.

AcmeOrtho wants to use its website to create a surgeon locator on its website. The purpose is to allow potential patients to find a qualified surgeon in the area in which the person lives. Here are the details:

* The person will enter a zip code and a mile radius.
* Results will be returned based on distance from the zip code.
* Surgeons are not charged to have their name listed on the website.
* The only criteria for listing a surgeon is completion of the required training.

**Scenario 2 – Free Lunch**

ABC Pharmaceuticals has a Meals and Entertainment policy that permits its sales force members to provide lunches with an educational discussion in an office setting or other setting conducive to education. Here are the details:

* IMC Internal Medicine Clinic has a staff of 11 people including 1 doctors, 2 PAs, an office manager, a biller, receptionist, and 5 MAs.
* The clinic closes for lunch every day from 12-1 and that is the only time the see reps.
* The sales representative from ABC Pharmaceuticals, Jamie, scheduled a lunch with IMC Internal Medicine Clinic from 12-1.
* Jamie brought food to serve all of the office staff, himself, and 4 others (just in case).
* Jamie provided his educational presentation to everyone except the doctor.
* IMC Internal Medicine Clinic has been a solid customer for Jamie for 2 years.
* This is the 4th lunch Jamie has brought to the practice in the last 2 months.

